The review chapter highlighted the conditions that bring children on to street, their definitional issues, relationship with other types of neglected children and the efforts made by the state and non-state institutions to respond to their needs. In this chapter we review the various approaches to Juvenile Justice System within and outside the country. It is divided into four sections: a), Historical development of Juvenile Justice System, b) its normative structure, c) the Juvenile Justice (Care and Protection) of Children Act 2000 and the Juvenile, Justice (Care and Protection) of Children Amendment Act 2006, d) Implementation of the Acts and emergence of the infrastructure under the Juvenile Justice System across the country.

2.1 Historical Development of Juvenile Justice System

The Underlying Principles of Juvenile Justice in the Western Context

Even though the juvenile justice system in various countries has taken a similar course there have been two different rationales for separate system for juveniles. The first, treating all offences as criminal and the second recognizing that offence by juvenile must not be seen as a criminal activity. The choice of rationale determined the nature of juvenile courts and procedures. The establishment of a separate juvenile court in England, for example, was the consequence of the principle of segregation of juveniles from adult offenders (Morris, A. and Giller, H., 1987). Hence, the Children's Court established under the Children Act, 1908, was a Criminal Court. The authorised magistrates held separate sittings and tried children in the same manner as adults. The prevailing idea was that the juvenile was essentially a wrong doer and the old procedures of dealing with the adult offenders were thought to be appropriate for them in most respects. Though courts were given wide range for disposition of cases and decisions were governed by such considerations as seriousness of the offence and the interest of the public (Morris, A. and Giller, H., 1987).

The move to establish special courts for juveniles using the second principle was initiated, for the first time, in 1847, in the United States of America. (Champion, 1992) outlines juvenile justice system in the United States of America. However, the first 'juvenile court' could be established, only in 1899, in Chicago under the Juvenile Offenders Act. This court was neither a criminal court nor did it follow the criminal procedure. The law was meant to regulate treatment and control dependent, neglected and delinquent children with separate treatment, by a specially designated judge (Chute, 1949). The suit was followed in England and the first juvenile court was set up in 1905 (Farrington, P., 1984). The first probation law was enacted in the state of Massachusetts, U.S.A, in 1878 and in England in 1887 (Chute, 1949).

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Ketcham traces the development of juvenile justice in the United States, and according to him it has three distinct components: (a) prefatory or pre-adjudication process, (b) fact finding adjudication, and (c) disposition or post adjudication process. In 1967 the US Presidential Commission on Law Enforcement and Administration of Justice, recommended the control of juvenile delinquency. Six strategies were offered: (i) decriminalization; (ii) diversion; (iii) extension of due process rights of juvenile; (iv) deinstitutionalization; (v) diversification; and (vi) decentralization (Ketcham, 1978).

The first juvenile welfare boards were established in Norway by an act adopted in 1896, it was the establishment of the juvenile court in Illinois, Chicago, in America, in 1898, which gave impetus to a juvenile court movement. It spread rapidly first in America and then all over the world (Scholassman, S.L., 1983). The juvenile court in America, on the other hand, was neither a criminal court nor did it follow a criminal procedure. It was based on the principle of equity to mitigate the rigours of common law and to provide adequate remedies in deserving cases. The king as parens patriae or as father of the country exercised his power of guardianship where the family failed, which has been looked upon as responsible for the child’s upbringing in the first place (Morris, A. and Giller, H., 1987). In the Scandinavian countries also the principles of parens patriae formed the basis for the special provisions for the care and protection of children. These countries adopted juvenile welfare board system instead of the juvenile court. Nyquist suggests that perhaps the two systems arose completely independently in the absence of knowledge about each other (Nyquist, 1987).

Juvenile Justice Perspectives
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) children in conflict with law and in need of care and protection; and (iii) Convicted juveniles. Though the formal system of juvenile justice generally concentrates on action after the onset of delinquency, a comprehensive strategy to forestall conditions and factors that generate delinquency is equally imperative (Singh, H., 2001). 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 juveniles 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 a constructive participation of the community in the mainstreaming of the erring juveniles and the minimisation of legal intervention in their lives (Singh, H., 2001). These models were however not adequate by themselves & needed integration.
The dilemma between the rights and needs and the conflict that arises due to the gravity of the offence and the degree of conflict with the society vis-a-vis a juvenile, has been resolved by the United Nations through its Standard Minimum Rules when the Juvenile Justice System becomes an integral part of the holistic approach towards protecting the rights of the child. Even the efficiency and effectiveness of the Juvenile Justice depends on the measures undertaken to ensure the well-being and welfare of the juveniles in the society. This aspect has been forcefully brought out in the United Nations Standard Minimum Rules for the Administration of the Juvenile Justice System (Beijing Rules) adopted in 1985. The fundamental perspectives enunciated therein specify, inter alia, that sufficient attention shall be given to positive measures to involve the full mobilisation of all possible resources, including the family, volunteers and other community groups as well as the schools and community institutions for the purpose of promoting the well-being of the juvenile and reducing the need of intervention under the law, and to effectively, fairly and humanely deal with the juveniles in conflict with law. The formulation of the Beijing rules symbolizes the commitment of the international community to provide for a separate legal system for juvenile justice. There is also a candid awareness of the reality that no juvenile justice system on its own can undo the aberration of the wider socio-economic system.

**Origin of Juvenile Justice in India** - Until the middle of the nineteenth century, the sufferings of children drew little social attention. This was mainly because there was no social recognition given to the person of the child, apart from the family or the community to which s/he belonged. Under such a dispensation children were expected to participate in all family activities such as trade, business or vocation commensurate their physical and mental abilities. Children were not exempt even from the harsh burden flowing from the kinship and caste bonds. For deviant and mischievous children, repressive methods of control were often preferred. However, despite such hardships and denial the child appeared to be better integrated within the family and the society. That is why the incidents of child vagrancy and deviations were less known. With the introduction of the capitalist mode of production leading to industrialization and urbanization, the situation changed significantly for the children. The weakening of the family bonds let not only to the disintegration of the children but also to the State intervention in matters of child upbringing. State intervention was both direct and subtle. Direct intervention resulted from measures like the Apprentices Act, 1850 that conferred power to the Courts to bind over poor and destitute children to work as apprentices in industries and establishments in which voluntary child labour was not easily forthcoming. The Act was in force in most of the States, especially in those States where Children Acts were in operation. The Act has since been repealed by the Apprentices Act, 1961 (Jain, S.N.,1979).
2.2 Early Forms of Juvenile Justice

The anomie, anonymity and over crowding of the newly established urban centres of the nineteenth century must have provided real opportunities to a section of disintegrated to indulge in vagrancy and other deviant activities. Since the early childhood criminal law was harsh and permitted no exception from liability, for children above twelve years (children below seven years and below twelve years were totally and partially exempted from the liability under the Sections 82 and 83 of the Penal Code), the trials and punishments of the child offenders must be abhorring to the newly emerging notions of justice. That appears to be the main reason why the Indian Jail Committee, 1919-1920, strongly advocated a different kind of dealing with the child offenders. Even before the Jail Committee, West Bengal and United Provinces had constituted Special Magistrates Courts for trying the cases of child offenders. Separate detention centres were also in vogue in certain regions within the country in term of Reformatory Schools Act, 1876. However, the idea of comprehensive exclusive system of justice for children gained currency only after 1920. The Indian Jail Committee categorically stated that the child offenders should be given an altogether a different treatment from the one that is being given to an adult. It also held that the imprisonment of the child offenders should be prohibited and recommended provision of Remand Homes and Juvenile Courts (Jain, S.N., 1979).

Thus the main focus of the early form of Juvenile Justice was the child in conflict with law. With the introduction of the idea of Juvenile Justice, yet another kind of State intervention emerged, which wider care and protection potential but had also led to great stigmatisation. It may be interesting to note here, that unlike America and some European countries, Juvenile Justice intervention was initiated in India without child labour exclusion, child abuse prohibition and child education measures. That is why, Juvenile Justice or juvenile delinquency regime happens to be more dominant and stronger, in term of legislative and administrative set-up (between 1920 and 1985, as many as 14-Children Acts were enacted in various States and Union Territories), than in the child labour or child education regimes (Singh, H., 2001). By 1986, all States except Nagaland, had enacted their Children Acts, however, it was soon realised that there was a lack of uniformity in the provisions thereof. No minimum standards for basic needs, working conditions, therapeutic services, etc., were being maintained (Singh, H., 2001).

In this context, two Acts, namely the Central Children Act, 1960 (CCA) and the Juvenile Justice Act, 1986 (JJA), deserve special mention; the former because it enunciates the basic philosophy of care, protection, maintenance, welfare, training, education and rehabilitation of the neglected and delinquent children and the latter for bringing about uniform Juvenile Justice System in the country by consolidating all related legislations in the country. The Juvenile Justice Act should be proclaimed as the first all-India child welfare enactment seeking to promote 'the best interests of
the juveniles' by incorporating into its fold not only some of the major provisions and clauses of the Indian Constitution and National Policy Resolution for the Children but also universally agreed principles and standards for the protection of the juveniles such as the United Nations Standard Minimum Rules for the Administration of the Juvenile Justice (commonly known as 'Beijing Rules') thereby making it the most comprehensive piece of legislation for the protection of children. The basic ideology for adopting the differential approach has been to save children from the devastating ill-effects of criminalisation, penalisation and stigmatization (Srivastava S.P., 1979).

2.3 Normative Structure of Juvenile Justice System

2.3.1 Juvenile Justice Act, 1986

In fact the indigenous thinking on Juvenile Justice has been keeping abreast with the global trends in this field. 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. The Statement of Objects and Reasons of the Juvenile Justice Bill of 1986 mentioned that one of the objectives of the proposed law was to bring the operation of the Juvenile Justice System in the country in conformity with these Rules. Of course, the other objectives were to lay down a uniform legal framework for Juvenile Justice, to provide towards a specialised approach towards the prevention and control of juvenile delinquency, to spell out the machinery and infrastructure for Juvenile Justice operations, to establish norms and standards for the administration of Juvenile Justice, to develop appropriate linkages and coordination between the formal system and voluntary agencies and to constitute special offences in relation to juveniles and to prescribe punishment thereof.

With its enforcement on 2nd October, 1987, the Juvenile Justice Act of 1986 has replaced the earlier mechanism of the Children Act enacted by the Central and State Governments for dealing with children coming in conflict with law. The Juvenile Justice Act not only aims at restructuring the system in tune with the internationally proclaimed set of principles but also intends to evolve a new concept of juvenile justice within the true meaning of social justice as enshrined in the Constitution of India. It surely represents an enlightened response to the socio-cultural and economic transition that affects juveniles more than any other segment of society. The Act envisages an optimum use of the inherent potentials of the family and the community in tackling the problem of erring juveniles, as far as possible. It attempts to bring them back within the mainstream of social life. It calls for a diversified approach towards the recovery, re-education and rehabilitation of various categories of socially maladjusted juveniles, through an active participation of the public. In order to realise this goal, the Act imbibes the essential elements of all the due processes, parespatriae
and participatory models (Singh, H., 2001). The new law undoubtedly places an onerous duty on the state to appropriately harness the resources from various sectors of socio-economic development in ensuring the well-being and welfare of juveniles and a chance to recover if they happen to falter.

The salient features of the Juvenile Justice Act, 1986, are stated below (Bare Act Juvenile Justice, 1986):

- The Act documents the definition of “neglected juvenile” in section 1(I) as a child who (i) is found begging; or (ii) is found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute; or (iii) has a parent or guardian who is unfit or incapacitated to exercise control over the juvenile; or (iv) lives in a brothel or with a prostitute or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life; or (v) who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain.
- The Act precisely defines neglected juveniles as diverged in the previous chapter (page no. 21).
- The Act provides for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to and disposition of, delinquent juveniles. It covers such juveniles upto the age of 16 years in case of boys and 18 years in case of girls and aims at counteracting the problem of juvenile social maladjustment in its full range.
- Besides prohibiting the confinement of the juvenile in a police lock – up or jail, the Act provides that an inquiry regarding a juvenile shall be held expeditiously and shall ordinarily be completed within a period of three months from the date of its commencement, unless for special reasons to be recorded in writing, the competent authority otherwise directs.
- The Act provides for a differential approach in the processing of the neglected juvenile vis-à-vis the delinquent. While neglected juveniles are to be produced before Juvenile Welfare Board, the delinquents have to be dealt with by Juvenile Court. No person will be appointed as a member of the Board or a magistrate in the Court unless he or she has special knowledge of child psychology and child welfare.
- Juvenile Welfare Board and Juvenile Court have been empowered for the transferability of cases brought before them on the basis of a preliminary screening. An important feature relates to the classification and separation of delinquent juveniles on the basis of their age and his welfare interests have to be ascertained as an additional requirement.
- The Act enables a wide range of dispositional alternatives open to the competent authority, with preference to family community based placement. The neglected juvenile will be sent to a juvenile home only if his care with a parent, guardian or fit
person/institution is not found conducive. For juvenile delinquent also, institutional care
may be resorted to only if his restoration to parents, care under fit person/institution or
discharge on fine is not considered appropriate.

• Even when the juvenile is sent to a Juvenile Home or a Special Home, there is a definite
provision for his conditional discharge or transfer to a fit person or a fit institution, other
than an Observation Home established or maintained by the Government, may be
recognised as an Observation Home. Every Observation Home is required not only to
provide for the juvenile, facilities for accommodation, maintenance, medical examination
and treatment but also for useful occupation.

• For neglected juveniles in need of institutional treatment, Juvenile Home is required to be
established or maintained by the government or a voluntary institution may be certified as
such. Such Juvenile Home will not only provide for the juvenile, facilities for
accommodation, maintenance, education, vocational training and rehabilitation but as
necessary training for protecting himself against moral danger or exploitation.

• Similarly, for delinquent juveniles, Special Home is required to be set up or a voluntary
institution may be certified as such. A Special Home has to offer to the juveniles, suitable
facilities for their accommodation, maintenance, education, vocational training and rehabilitation as well as for the development of their character and ability and reformative
training, so as to ensure an all-rounded growth and development of their individual
personality.

• The Act contains a comprehensive provision regarding the establishment or recognition of
after care organisations for taking care of juveniles discharged from Juvenile Homes or
Special Homes and for the purpose of enabling them to lead an honest, industrious and
useful life. Specific rules as to be formulated for the relevant scheme as also for the nature
and standards of such organisations.

• Offences in respect of juveniles have been defined in keeping with the newly – emerging
problems faced by them, with stringent penalties. A provision has been made to the effect
that where an act or omission constitutes an offence punishable under this Act, and also
under any other Central or State Act, then, notwithstanding anything contained in any law
for the time being in force, the offender found guilty of such offence shall be liable to
punishment only under such Act which provides for punishment which is greater in degree.

• Consequent upon the enactment of the Narcotic Drugs and Psychotropic Substances Act,
1985, providing, inter alia, for the establishment and notification of treatment centres for
drug addicts, a provision has been made for the transfer of juveniles of unsound mind and
those suffering from leprosy to treatment centres.

• A provision has been incorporated for the creation of a fund to be exclusively utilized for the
welfare and rehabilitation of juveniles dealt with under this Act. Such a fund may be raised
from voluntary donations, contribution or subscriptions made by individuals or
organisations. This surely opens up a definite avenue of generating public participation in building up an effective system of juvenile justice.

- The Act requires the State Governments to constitute advisory boards to advise on matters relating to the establishment and maintenance of Homes, mobilisation of resources, provision of facilities for education, coordination among various official and non-official agencies concerned. At the institutional level, non-official visitors are required to be appointed for each Home. These provisions seek to enlist an enlightened public opinion and to make an optimum use of various sectors of socio-economic development in the welfare of juveniles in situations of social maladjustment.

- While the State Governments are responsible for the administration of the Act, the Government of India has been supporting their endeavours by the way of technical and financial assistance.

2.3.2 Implementation of the Juvenile Justice Act, 1986

A review of the implementation of the Juvenile Justice Act (pg 33-42 of chapter-I), brings to the fore a wide gap between its cherished principles and actual practices. When examined from the viewpoint of the structure, manpower and methods employed, it appears that the country has yet to give a fair trial to the law in its true spirit. This would be evident from the information from the various committees which has been summarised below:

1. While all the state governments are reported to have framed their rules, as required under the Section 62 of the Act, in several States the provisions thereof are yet to be implemented in their entirety, especially with reference to the infrastructure. Staffing pattern institutions as well as standards of services are lacking. Non-implementation of any rules under a law amounts to the circumvention of the law itself.

2. The Sinha Committee Report in 1968 pointed out that there should be at least one juvenile court and juvenile welfare board in each district (Sinha Committee Report, 1968) to deal with cases of neglected and delinquent juveniles, ‘for this purpose it is necessary to have 244 more juvenile courts and 327 welfare boards in the country in the fourth plan. According to the statistical surveys published by the NISD the number of juveniles courts in 1976 stood at ninety five (Statistical Survey- children courts and child welfare boards, Social Defence, 1981).’ sixteen years later in 1984-85 the official figure of districts without a juvenile court stood at 230 and without a board at 419. The data published for the same year by NISD gave the total of 175 juvenile courts/boards (Statistical Survey- juvenile courts, 1985-86, Social Defence, 1990) against the 227 pointed out in the official statement (Welfare Ministers’ Conference, Govt. of India, 1987). Setting up of juvenile courts in 202 districts and
constitution of 260 juvenile welfare boards in different parts of the country has been mentioned among the achievements of the ninth Five-Year Plan (Kumari, V., 2004). In the year 2001, however the figures mentioned by Prayas Juvenile Institute were 189 juvenile courts and about ninety juvenile welfare boards and the child welfare committees shall be set up within the premises of the observation homes / children's homes indicating thereby that none had been set up till September, while the JJ (C & P) Act had been brought into force six months ago on April 1, 2001 by the notification published in February, 2001 (Kumari, V., 2004).

3. Many states are yet to constitute the requisite number of Juvenile Welfare Boards and Juvenile Courts to cover all the districts as required under Sections 4 and 5 of the Act. As per the Annual Report of the Ministry of Welfare for the year 1996-97, there were only 271 Juvenile Welfare Boards and 189 Juvenile Courts in the country. As a result the functions of these Boards and Courts are being discharged by other authorities specified in Section 7 of the Act. Though such arrangement is legally tenable it runs contrary to the spirit of the law, when allowed to become a regular feature. In any case, the functioning of a Juvenile Court, or an authority as a Juvenile Court under the Section 7 of the Act, without being assisted by a panel of honorary social workers, is legally flawed.

4. In many cases, even juveniles in situations of general neglect are found to have been indiscriminately roped in without due regard to the circumstances in which they could be brought within the purview of the law and taken charge of. Thus when arbitrarily picked up, the poor juvenile is rendered victimized by a law that aims to protect him, and he is deprived of his basic right to freedom without being provided with an alternative better than what he was actually exposed to.

5. In most of the States, the institutional infrastructure as required under the Act has yet to be developed in all the areas within the jurisdiction. According to the Annual Report of the Ministry of Welfare for the year 1996-97, only about 280 Observation Homes, 251 Juvenile Homes, 36 Special Homes and 46 After Care Homes were reported to have been operating under the Act. Even the facilities of one Observation Home in every district, and one Juvenile Home and one Special Home in every four districts, as proposed in the Seventh Five Year Plan, are yet to be created in several states, indicating a half hearted attempt to implement the law (Annual Report, Ministry of Welfare, 1996-97). In the year 2000, the NISD reported 280 Observation Homes, 251 Juvenile Homes, 36 Special Homes and forty six After Care Institutions (Children in need of care and protection, Social Defence, 2000) in the country, that is a total of 613 homes for the whole of country – a shortfall of 786 Homes by the time the JJ (C & P) Act was brought into force.
6. Whereas under the scheme of the law, institutional care is to be utilized only as the last measure in the dispositional options with the competent authority, it seems to have become the main recourse in the absence of suitable alternatives. In the planning for juvenile justice services in the country, little attention has been paid to the development of probation services. As a consequence institutional care is used accessibly, often unjustifiably, especially in relation to those apprehended as neglected juveniles (Kumari, V., 2004).

7. The Act requires State Governments to spell out certain minimum standards for institutional care in terms of accommodation, maintenance, education and vocational training and rehabilitation. Despite a set of institutional norms having been suggested in the scheme and financial assistance extended by the Central Government, most of the State Governments seem to be devoid of political will to allocate enough matching resources to implement these standards. In the absence of the diversified programme to cater adequately to the varied correctional and developmental needs of different categories of the inmate population, the whole approach tends to become counterproductive (Kanth, A., 2001).

8. The Act calls, on the part of functionaries, a highly scientific and specialised approach towards the problems of the juveniles coming within the purview. Apart from drawing upon the requisite talent from the concerned disciplines, a well-defined policy has to be adopted towards manpower development in this field. However there is no national consensus on recruitment, training and specialisation of various categories of juvenile justice personnel. As a result the quality of services varies from State to State, and the morale of the functionaries is by and large at the lowest ebb (Kanth, A., 2001).

9. In order to mobilise community resources for and public participation in its implementation, the Act provides inter-alia for the appointment of non-official visitors for each of the Homes set up by the Government, the creation of a fund for the welfare and rehabilitation of the juveniles, and the constitution of an advisory board for the development of juvenile justice services. Many States have yet to make these statutory mechanisms fully operational.

10. The involvement of social workers and non-governmental organisations at different stages of apprehension, treatment and rehabilitation of the juveniles is an essential element of the correctional strategy under this law. The concept of ‘place of safety’ and ‘fit person/institution’ and the recognition of the voluntary institutions as Observation Homes, Juvenile Homes, Special Homes and After Care Homes have yet to materialise in most of the States (Kanth, A., 2001).
2.3.3 Juvenile Justice (Care and Protection of Children) Act, 2000

In view of the current developments, the juvenile justice administration in India, was found to have several gaps in legal provisions and shortcomings by way of linkages between the governmental and non-governmental efforts in the care, treatment and rehabilitation of such children. The JJ Act 1986 required that the pre-existing system built around the implementation of the then available Children’s Acts be restructured. However, due to the absence of a national consensus on the time frame for such a restructuring, the steps taken by most of the State Governments were still heavily short of the proclaimed goals. The inadequacy of the juvenile justice personnel, in terms of both quantity and quality continues to be the weakest part of the operational strategy. In order to rationalise and standardise the approach towards juvenile justice in keeping with the relevant provisions of the Constitution of India and International obligations in this regard, the Government of India (re)enacted the Juvenile Justice (Care and Protection of the Children) Act, 2000. For this a Working Group was set up (failures in the implementation of the Juvenile Justice System are summarized in the literature review, see p. 40-42).

The Interim Report of the Working Group of Ministry of Social Justice and Empowerment (2001-02) has drawn attention to certain additional inputs incorporated under the Juvenile Justice (Care and Protection of Children) Act, 2000. The Act with all additional inputs has been enforced since April 1, 2001, to deal with the children within its purview.

The main recommendations were as follows (Interim Report of the Working Group of Ministry of Social Justice and Empowerment, Govt. of India, 2001-02):

1. The new Act does not provide for any interim arrangement of powers of the Juvenile Justice Boards by any district authority. The Juvenile Justice Boards need to be set up for each district of the country within a month of its implementation. Now the Juvenile Justice Board would have to have two social workers as its members, the constitution of the Juvenile Justice Board would not be complete without such social workers.

2. Once the law is uniformly enforced all over the country, an Observation Home for the children in conflict with law would have to be established in each district with the necessary infrastructure, personnel and services. Likewise, a Special Home for the institutional care of the children in conflict with law, on a selective basis would have to be set up in one of every two districts. Similarly, at least one After-Care Home would be required for every two districts so as to provide for a smooth transition of children from institutional care to the mainstream of social life.

3. Community participation is the key theme under the JJ (C & P) Act, 2000. The role of community in the rehabilitation of children had been duly recognized in the JJIA as well (Col-1 & 2, 2 August, 1987, Hindustan Times, New Delhi). The Sinha Committee had observed,
‘although the main responsibility for the provision of services for children in conflict with law and children in need of care and protection rests with the government, it would be desirable to utilise to the utmost the services of well established voluntary organisations for providing specialized institutional and after care services.’ (Sinha Committee Report, Govt. of India, 1968)

4. The new Act envisages a vigorous thrust towards non-institutional treatment of the children in conflict with law, a separate probation service for juveniles would have to be developed as a nucleus for the community based care of such juveniles in each State.

5. **Role of police** - The new Act has made a salutary provision for the setting up of a Special Police Unit in every district and city to coordinate and upgrade the police treatment of juveniles. Such Special Police Units must have one trained social worker, one trained police officer to function as the Child Welfare Officer, along with linkages with Voluntary Welfare organisation, to fulfill the task expected of them (Singh, H., 2001). The behaviour of the police personnel and the environment in the police station, for howsoever brief period, are the first encounters of these children with state machinery and these determine to a large extent the attitude of the children towards the so called *parens patriae* regime of JJS (Kumari, V., 2004).

6. Information from unofficial sources (Srivastava S.P., 1979) reveals that Bombay had taken the lead in establishing the juvenile aid police unit (JAPU) in 1952. Subsequently, juvenile aid police units/bureaus were established in Calcutta (1956), Hyderabad (1958), Chennai (1960), Patna and Ranchi (1961), Poona, Sholapur and Nagpur (1967), Calicut (1970), and Bhilai, Indore and Jabalpur (1974). Development on the subject, thereafter are not known at a national level, though there are sporadic reports on juvenile clubs and so on being run by the police in certain places, such as Prayas in Delhi (Kanth, A., 2001).

7. **JJ (C & P) Act, 2000**, would involve selection and training of 15,000 Police Officers at the level of Police stations, besides setting up Special Juvenile Police Units in 704 Police Districts in the country (Kanth, A., 2001). There is no information available, even in Delhi as to how many such police stations are still awaited (Sinha, B., 2002, Times of India, New Delhi, 2002, p. 2)

8. The upper *age limit* of the children within the purview of the law has been raised. 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 Code and Special Laws would increase from 14897 below 16 years to 103231 upto 18 years, whereas the total capacity of various institutions working under the Juvenile Justice Act, 1986, was only for about 36,500 inmates, including children in conflict with law and children in need of care and protection. The number of children in need of care and protection would be much more than those in conflict with law (Kanth, A., 2001)
9. The new Act has enlarged the range of dispositional alternatives open to the Juvenile Justice Boards. Apart from the certification of any institution 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 juveniles in conflict with law.

10. It is now mandatory to constitute a 'National Level Advisory Board' on juvenile justice, to advice the Central and State Governments as well as the Voluntary Organisations associated with this work.

11. To ensure progressive planning, development and standardisation of services in this field of paramount importance, the Working Group reiterates the need of active involvement of the Non-Governmental Organisations and Social Workers.

2.3.4 Juvenile Justice Act, 1986 and Juvenile Justice (Care & Protection) of Children Act, 2000 - Comparative Perspectives

Age
The law provides that any juvenile or child who has not completed the age of eighteen would fall within the jurisdiction of the Act. In the previous enactment the definition of juvenile included boys who had not completed the age of 16 and girls who had not completed the age of 18. With the present change, the CRC standard, which defines a child as anyone under the age of 18, has been complied with.

Separation of Child in Conflict with Law from Child in Need of Care and Protection
The law provides for separate treatment for children in need of care and protection and juveniles in conflict with the law. Under the old Act the classification of delinquent juveniles and neglected juveniles was meant to separate the two categories of children with the Juvenile Welfare Board and the Juvenile Home meant for the neglected juvenile and the Juvenile Court and Special Home meant for the delinquent juvenile. However the separation was only a partial separation as pending inquiry both categories of children were kept in an Observation Home together. Thus the argument went that often children who had committed serious offences were kept in the same institution as children whose only crime was that they were neglected children as per the Act. Keeping this argument in mind, the state has now ensured a complete separation between the two categories as now juveniles in conflict with the law are kept in the observation home and children in need of care and protection are sent directly to the juvenile home. However this shift itself seems a cursory attempt at really changing the deeply custodial nature of the entire juvenile justice system. If one was serious about decriminalizing at least the child in need of care and protection then, one needed to intervene at every level starting from the police. In fact the police are still empowered to come in contact with both categories of children. The police have more power vis-a-vis the
category of child in need of care and protection as under Sec 33 of the enactment they are now even empowered to inquire into the situation of the child. With regard to the role of the police what has happened is really a deeper level of recriminalization rather than decriminalization. What is also important to keep in mind is that the distinction between the two categories is illusory as the way the law treats both categories is by prescribing custodial care as one of the options.

**Points Specific to Child in Conflict with the Law**

- *Adjudicating Authority for child in conflict with the law*

The law pertaining to what are now called children in conflict with law has undergone a few changes. The adjudicating authority has been redesignated as the Juvenile Justice Board and the composition has changed from an adjudicating authority which was a Magistrate with a panel of two social workers to assist her as prescribed under the old law to a Bench which is composed of two social workers and one Magistrate. This change in composition of the adjudicating authority is one of the more significant changes in the new law, as now the space exists for bringing about a change in the very nature of the inquiry. The primary inquiry of whether the child did commit the offence as mandated by a magistrate's training could now be displaced by a social workers inquiry, which could focus in on why the child committed the offence, and how does one redress the same. The shift in composition of the Board can bring about a shift in the line of inquiry from intention to motive. Thus what could change has been referred to as the criminal law mindset itself. This is in effect an important step towards decriminalizing the administration of juvenile justice, provided the rules operationalise the same.

- *Legal Protections for children in conflict with the law*

The protections under the Juvenile Justice Act, 1986, continue with the new enactment with there being no additional protection guaranteed to the child in conflict with the law. The protections can be enumerated as follows:

  - Whether the juvenile commits a bailable or non-bailable offence, the child shall be released on bail with or without surety. The only grounds on which the juvenile can be detained is if there is reasonable ground for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. Further detention can only be in observation home and not in prison or police station. The bail provisions for young offenders are far more liberal than those applicable under the criminal procedure code (Sec 12).

  - In terms of the orders which the Board may pass regarding the juvenile, there is a discretionary power to send the child home after admonition or advice, order the
juvenile to perform community service, release the child on probation of good conduct etc. (Sec 15) The only controversial part of the power of the Board is the power to send the child to a special home for a minimum period of not less than two years for a child who is over seventeen and less than eighteen and in case of any other juvenile till he ceases to be a juvenile. There is a provision under which the child could reduce the period of stay having regard to the nature of offence and circumstances of the case. However this provision is in clear contravention of Art 37(b) of the Convention of the Rights of the Child, which notes that No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of the last resort and for the shortest appropriate period of time.

- The Act also clearly prohibits sentencing a child to death or life imprisonment or committing to prison in default of payment of fine or furnishing of security. (Sec 16)
- For a juvenile sentenced under the Act, there is a clear mandate such juvenile shall not suffer any disqualification attaching to a conviction of an offence under the law. Further after a reasonable period of time the Board is enjoined to remove the records. (sec 19)
- The Act also stipulates that there shall be no joint trial of a juvenile with a person who is not a juvenile. (Sec 18)
- The Act also protects the privacy of the child by mandating that no report by newspaper etc., shall disclose the name, address or school or other particulars calculated to lead to the identification of the juvenile nor shall any picture of such juvenile be published. (Sec 21)

Points specific to child in need of care and protection

- Expansion of category of child in need of care and protection
The category of children in need of care and protection has been expanded to include victims of armed conflict, natural calamity, civil commotion, child who is found vulnerable and likely to be inducted into drug abuse etc. The expansion of the category of children in need of care and protection has itself led to serious questions as the system still remains custodial in nature and what one in effect does is bring more children within a criminal justice framework.

- Custodial framework for dealing with child in need of care and protection
The framework of the law remains within the criminal justice system as the police still have power to contact a child and produce him before the Committee. In fact the powers of the police have been expanded as under the new Act the police have also been empowered to hold an inquiry regarding the child in the prescribed manner. Further if the
child is sent to a Juvenile Home, then such Home remains a place where the child is deprived of her liberty, thereby reinscribing the custodial nature of the institution.

- **Restoration as option for child in need of care and protection**

The innovation the law makes with respect to children in need of care and protection is the conceptualization of restoration of the child as being the focal point, with restoration being conceptualized as restoration to parents, adopted parents or foster parents (Sec39). This being the crux, the law then outlines four options for children in juvenile homes and special homes which include adoption, foster care, sponsorship and after care. While the aim of minimizing the stay of the child in the juvenile home and special home as conceptualized is laudable, there are serious concerns as to whether restoration can be the only solution. Especially in the case of sexual abuse the solution can be ill conceived. Further in the case of children in difficult circumstances such as children on the street, children in prostitution restoration might not be an immediate solution. The other concern is as to the fact that no safeguards have been built into the procedures regulating adoption and foster care in the Act itself leaving it entirely to the discretion of states, which have the power to make rules under the Act.

**Table -5: Changes between the JJ Acts of 1986 & 2000**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Delinquent Juvenile</td>
<td>Juvenile in conflict with law</td>
</tr>
<tr>
<td></td>
<td>Juvenile Court</td>
<td>Juvenile Justice Board.</td>
</tr>
<tr>
<td>2.</td>
<td>Age 16 for boys- 18 for girls.</td>
<td>Age 18 years for both sexes</td>
</tr>
<tr>
<td>3.</td>
<td>Enquiry period 3 months</td>
<td>Enquiry period 4 months.</td>
</tr>
<tr>
<td>4.</td>
<td>Government to establish Homes</td>
<td>NGO can also run Govt. Homes wholly / on partnership basis</td>
</tr>
<tr>
<td>5.</td>
<td>Magisterial power to individual member of Competent Authority.</td>
<td>Power vested in the bench.</td>
</tr>
<tr>
<td>6.</td>
<td>No provision for production before individual member of Competent Authority.</td>
<td>Provision for production before individual member of Competent Authority.</td>
</tr>
<tr>
<td>7.</td>
<td>Provision for disposal vested in the bench.</td>
<td>Disposal can be done by any two member of Competent Authority.</td>
</tr>
</tbody>
</table>
8. Govt. may establish homes as many as necessary. Govt. to establish homes for every district or group of districts.

9. Only police was authorized to produce juvenile before competent authority. Voluntary Organisation, Social Worker, public servant, public spirited citizen, child line, child himself can produce child in need of care and protection before competent authority. The juvenile in conflict with law can be produced before Competent authority either by SJPUS and Voluntary Organisations.

10. Visit of home after the permission of Joint Director. Permission can be given by the Superintendent of home.

11. Case of cruelty, begging, intoxication and exploitation of juvenile were dealt by Juvenile Welfare Board. Now these cases shall be dealt by JJ Board.

12. Only section dealing with employment of juvenile for begging was a cognizable offence. All offences as mentioned above were made cognizable.

13. Publication of names and photographs of juveniles was prohibited. Publication of names and photographs of juvenile in conflict with law is prohibited.

14. Reports of juveniles were treated as confidential. Report of juveniles in conflict with law treated as confidential.

15. Probation officer was authorized to deal with the cases of juveniles. Probation officer can only deal with the cases of juvenile in conflict with law.

- Cases of child in need of care and protection will be dealt by the caseworker.


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 it still falls short of the international obligations undertaken by the Indian state both in the form of treaties as well as declarations.
2.3.5 Juvenile Justice (Care and Protection of Children) Amendment Act, 2006

Salient features and Synopsis

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. A Bill seeking amendment to The Juvenile Justice (Care and Protection of Children) Act, 2000 was introduced in Lok Sabha on 24 July, 2003 and it was referred to the Standing Committee on Labour and Welfare for examination. However, the Lok Sabha was dissolved before the committee could submit its report and the Bill lapsed. Thereafter, consultations were made with several Departments, child welfare organizations, and legal and child welfare experts regarding the Bill on the amendment proposals of the Act. Based on consultations, revised amendment proposal had been prepared and submitted to the Cabinet for its approval. The Cabinet in its meeting held on 18.08.05 approved the proposal. Thereafter, Ministry introduced the Juvenile Justice (Care and Protection of Children) Amendment Bill 2005 in the Lok Sabha on 29.08.05 and Hon’ble Speaker referred the Bill to the Standing Committee on Social Justice & Empowerment for examination and report. After the work re-allocation, the subject matter of the Act came under the Ministry of Women and Child Development. Detailed consultations with State Governments and NGOs/Child Welfare Experts were held on the possible amendments. Thereafter, an amendment Act with more comprehensive amendment provisions got passed in both houses of Parliament. In 2006, the Act was further revised and came into effect from 22 August 2006 (Programmes for care and protection of children, MWCD, GoI, 2010). This Act may be called the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, Bare Laws). Here we have tried to analyse fourteen clauses where we found major changes. Here these changes have been put in four categories: changes in nomenclature; changes in organization; changes in application and; last but not the least innovations introduced. This has been pointed out in Table-6.
### Table -6: Changes between the Juvenile Justice Act of 2000 and Juvenile Justice Amendment Act of 2006

<table>
<thead>
<tr>
<th>Section</th>
<th>Juvenile Justice (Care &amp; Protection of Children) Act, 2000</th>
<th>Juvenile Justice (Care &amp; Protection of Children) Amendment Act, 2006</th>
<th>Nature of change</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Long Title –</strong> An Act to consolidate.............and for their ultimate rehabilitation through various institutions established under this enactment.</td>
<td><strong>Short Title –</strong> the word ‘through various institutions’ to be replaced by ‘and for the matters connected therewith.’</td>
<td>Nomenclature</td>
<td></td>
</tr>
<tr>
<td><strong>Sec 2 (iv) clause (l)</strong> ‘Juvenile in conflict with law’ means a juvenile who is alleged to have committed an offence.</td>
<td>Terminologies that improved the application ‘juvenile in conflict with law’ mean 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 offence.</td>
<td>Nomenclature</td>
<td></td>
</tr>
<tr>
<td><strong>Sec 6 (1)</strong> Where a Board has been constituted for any district or a group of districts......</td>
<td>Omitting ‘group of districts’ amendment lays down the procedure whereby a claim of juvenility can be raised before any court.</td>
<td>Organisational</td>
<td></td>
</tr>
<tr>
<td><strong>Sec 10(1)</strong> The juvenile in conflict with law once apprehended should be produced immediately by the SJPU or the designated police officer to the juvenile board.</td>
<td>As per the amended Act, once apprehended the juvenile should be produced within twenty four hours of his apprehension excluding the time necessary for the journey, from the place where the juvenile is apprehended to to the Board. In no case shall a juvenile in conflict with law be placed in police lock up or lodged in a jail.</td>
<td>Improved application</td>
<td></td>
</tr>
<tr>
<td><strong>Sec 15(1)</strong> In case the juvenile is over seventeen years but less than eighteen, he should be kept in the special home for at least two years.</td>
<td>The Board may reduce the period of stay to such period as it thinks fit, with regard to the nature of the offence and record reasons for the same.</td>
<td>Improved application</td>
<td></td>
</tr>
</tbody>
</table>
| Sec 39(1) | Restoration of the child to –  
| a. Parents  
| b. Adopted parents  
| c. Foster parents | Increasing the option - Restoration of the child to-  
| • Parents  
| • Adopted parents  
| • Foster parents  
| • Guardian  
| • Fit person  
| • Fit institution | Improved application |
| Sec 41(1) | Did not mention adoption | It expands the scope of restoration  
- The concept of adoption has been well defined in Sec.2 of the Act, follows:  
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 rights, privileges and responsibilities that are attached to the relationship. | Innovation |
| Sec. 41 (6) | To whom child may be given in adoption?  
The court is empowered by Sec.41 of the Act to allow a child to be given in adoption to the following persons:  
i. to a single parent  
ii. to parents to adopt a child of the same sex irrespective of the number of existing biological sons or daughters.  
The JJ Act was amended in 2000 to include 'secular' adoption, but it did not specify the rights of the adopted child.  
Juvenile Justice amendment Act, 2006 allows people belonging to any religion to adopt, and gives the adopted child the same legal rights as a biological child. | Innovation |
| Sec. | The competent authority may permit the child / | In the amendment Act the leave period was provided more | Improved application |

5 "There has not been a single adoption in Maharashtra under the JJ Act since 2000," says Sunil Arora of Bal Asha, an adoption agency. But the recent amendment to the Act allows an adopted child to become the "legitimate child of his adoptive parents with the rights, privileges and responsibilities attached to the relationship". Source: http://www.dnaindia.com/mumbai/report_non-hindus-get-an-adoption-fillip_1057357 accessed on 15 May 2010
<table>
<thead>
<tr>
<th>59(2)</th>
<th>juvenile only maximum of seven days of leave was allowed that may be given to a child on special occasions like examination, marriages and death of relatives or any similar emergency.</th>
<th>flexibility by inclusion of words “generally not exceeding seven days.”</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.</td>
<td>Only police was authorized to produce juvenile before competent authority</td>
<td>Voluntary Organisation, Social Worker, public servant, public spirited citizen, child line, child himself can produce child in need of care and protection before competent authority. The juvenile in conflict with law can be produced before Competent authority either by SJPUS and Voluntary Organisations.</td>
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<td>17.</td>
<td>Visit of home after the permission of Joint Director</td>
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<td>19.</td>
<td>Only section dealing with employment of juvenile for begging was a cognizable offence</td>
<td>All offences as mentioned above were made cognizable.</td>
</tr>
<tr>
<td>20.</td>
<td>Publication of names and photographs of juveniles were prohibited</td>
<td>Publication of names and photographs of juvenile in conflict with law is prohibited - No such prohibition is exist for children in need and care of protection</td>
</tr>
<tr>
<td>21.</td>
<td>Probation officer was authorized to deal with the cases of juveniles.</td>
<td>Probation officer can only deal with the cases of juvenile in conflict with law Cases of child in need of care and protection will be dealt by the caseworker.</td>
</tr>
</tbody>
</table>

According to Mehta, the main objectives of the amended Juvenile Justice (Care and Protection of Children) Act, 2006 are (Mehta, N., 2008):

- 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.
- To clarify that JJA shall apply to all cases of detention or criminal prosecution of juveniles under any law.
- To remove doubts regarding the relevant date in determining the juvenility of a person and the applicability of the JJA.
- To lay down the procedure whereby a claim of juvenility can be raised before any court.
- To do away with the involvement of any police officer in the inquiry process, for the child in the need of care and protection as this work is assigned to the CWC and to cover other cases where the child can remain in a children’s / shelter home after completion of enquiry
- To widen the scope of adoption of a child to childless parents and to limit the same to the citizens of India in a secular manner.
- To provide for a flexible period of leave that may be given to a child on special occasions.
- Exclusion of ‘local authority’ from the provisions authorizing them to discharge or transfer a child in need of care and protection or a juvenile from a children’s home or special home or for sending a child or a child in need of care and protection or a juvenile in conflict with law to a special home or a fit institution.

The enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000 and its subsequent amendment in 2006 is definitely a significant effort of the legislature towards recognition of adoption of orphan, abandoned and surrendered children by people irrespective of their religious status. It can’t be denied that it is a secular legislation only under which any person can adopt a child of orphan, abandoned and surrendered child irrespective of his/her religion. It is more children oriented unlike other legislations. But it may be mentioned at the same time that some more factors need to be considered specifically by the legislature.

In the following paragraphs, we look at detail at the innovation introduced which is of great significance:

Adoption: This Act stipulates adoption by any person irrespective of his/her marital status, but it does not specify whether the consent of the other spouse is required to be obtained by the adopting spouse in case adoption by a married couple. This might create misconceptions among the Hindus as in Hindu Laws, Hindu Adoption and Maintenance Act (HAMA), 1956
taking consent of the wife by her husband is an essential criteria for adoption. The JJ Act is not stand alone legislation on adoption. It will not stand unless the HAMA and Guardians Wards Act (GWA), 1890 are amended and brought in harmony (Misra, A., 2006).

Secondly, the expression “Court” has not been specifically defined for the purpose of adoption under this Act as a result of unwarranted mistakes/misconception arises frequently in filing the application for adoption by the adoptive parents. Thirdly, the Act is silent about the criteria for age difference between the adoptee and adoptive parents in case they are of opposite sex. This is an essential factor for adoption, which should be considered seriously for the purpose of preventing child abuse and trafficking (Roy, D., 2009). The Act is silent on inter-country adoptions as well as prohibition of adoption in the religious laws of some communities (Misra, A., 2006).

The review of the Act indicates that it reasonably safeguards the interests of the children within the purview of the law besides removing the negative connotations like neglected and delinquent, apprehension, remand, accused, trial, prosecution, inmate, court, arrest, etc., while 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 7 years of experience, a juvenile may feel free and empowered. A Child Welfare Committee entirely constituted by such experts and social workers may also prove much more child friendly. Community based treatment programmes have great potentiality in enhancing rehabilitation of released prisoners. Among different community based treatment programmes, probation services have immense potentiality, which has no so far fully harnessed in the country.

The probation services so far, have not been able to make any significant dent in the correctional field in the country. The main reason of this state of affairs may be attributed to common ignorance among public and general apathy of the law enforcement agencies. Another hurdle in the implementation process is the absence of adequate information on various aspects relating to juveniles. The first and foremost shortcoming that may be pointed out is the number of socially maladjusted juveniles and difficulties in identification of the children in conflict with law and children in need of care and protection.The Sinha Committee, way back in 1968 said, ‘available data for assessing the nature and size of the problem of the socially handicapped children are at present very inadequate. A number of surveys and studies should be organised to fill the gaps in the present information (Sinha Committee Report, Govt. of India, 1968).’ The Joint Secretary, Ministry of Welfare, Government of India, twenty two years later stated, ‘no firm estimates of destitutes and delinquents are available (Das, A, 1989).’
In the implementation of the re-enacted Juvenile Justice (Care and Protection of Children) Act, 2000, it is not only the police but also the social workers and voluntary organisations that are expected to bring justice to children within the purview of law.

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. The Act contains exclusive chapters on adoption, foster care and sponsorship for their social reintegration (Kumari, V., 2004). The power of giving such children into adoption has been vested with the Juvenile Justice Board. Adoption is considered the best method for providing family care. In fact adoption is seen as a step towards integration.

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 Homes have also been recognised for placing the children in adoption and foster care (Kumari, V, 2004).

Despite 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.

The Working Group on the Children in Especially Difficult Circumstances (CEDC) recommended, (Report of the Working Group on CEDC submitted to the Ministry of HRD, Govt. of India by Prayas NGO in 2004) ‘the urgent task of the ministry is to understand the magnitude of the problem in relation to the children in need of care and protection. An in-depth national study needs to be undertaken. The focus of this study should be on the volume of such children, their specific needs, identifying the geographical areas of high concentration, and other related subjects.’

Our review of the available reports on the implementation process relating to the JJS in India reveals that its direction and pace is not determined and guided by the needs and number of children requiring care and protection. The reasons for this fragmented scenario of implementation may be found in the status of the beneficiaries sought to be protected and the attitude of the state and society towards them. The beneficiaries of the JJS are children. The reason for making special provisions for their protection is that they cannot take care of themselves because of their mental and physical immaturity. For the same reasons, they are not capable of organising themselves and agitating for their rights (Periodic Surveys by
National Nutrition Monitoring Bureau in 2005). Services and programmes for the welfare of juveniles under the JJS can be classified as supportive, supplementary, protective and substitute care. These services are provided through institutional programmes that we now examine.

One can thus see from the above that in-depth research is limited as far as life and experiences of the children in the correctional institutions under the Juvenile Justice System are concerned. It remains to be studied if the children in need of care and protection prefer institutionalization at the cost of their freedom. Comparative studies of the institutionalised children and their non-institutionalised peer groups are lacking. The legislation despite several amendments continues to be interpreted as before, putting emphasis on juveniles in conflict with law, neglecting different types of children in need of care and protection and treating institutionalization as the primary method of dealing with restoration.

The questions that remain pertinent are:
1. Are legal provisions for the protection and development of juveniles and children being implemented in letter and spirit?
2. Are the police and other stakeholders alive and sensitive to problems besetting deprived children and juveniles?
3. Are institutional services, as envisaged under the law, organised and functioning effectively?
4. Are the methods of re-integrating the institutionalised children into communities adequate?

These issues emerging out our review chapters help us identify our research problem & develop a design for the research.