CHAPTER – II

EVOLUTION OF JUVENILE JUSTICE SYSTEM

HISTORICAL BACKGROUND

2.1 Post and Pre-Independence Era

The word “Juvenile” originates in a Latin word “Juenis” that means young. A “Juvenile” or Child means a person who has not completed eighteen years of age. I would not hesitate to say that the Children are the greatest assets to the Nation. They are the future of the Country. Off late there has been a vast increase in the Crimes committed by Juveniles across the country which is totally alarming. A Juvenile Crime is normally stated to be Juvenile delinquency. What do we mean by Juvenile delinquency. This term denotes the participation of a Juvenile in an act wherein he has violated the laws. It is needless to state that a Juvenile who confronts with law requires immediate attention. Therefore, it has become essential to create a System wherein the rights of Juveniles are protected be it a Juvenile who has committed a Crime or a Child who is in need of care and protection. There are various factors which constitute to the Juvenile delinquency. Before we go in to the factors, it becomes essential to research upon the growth and development of Juvenile Justice System. The Juvenile Court System in India is functioning by the Juvenile Justice Boards where cases that involve individuals less than eighteen years of age are inquired.¹

¹ Mousumi Dey ,“Juvenile Justice in India” Department of Political Science, Ranaghat College,West Bengal, India published in (IJIMS), 2014, Vol 1, No.6, 64-70 at page 64.
2.1.1 Historical Background

2.1.2 International Scenario:

In the earlier period of the nineteenth century, the Juvenile and the adults were divided based on a thin line. This line was typically drawn where the offender could determine the wrongfulness of his actions. Children below seven years of age were determined to be infants, who would not be in a position to know that their acts were wrong. Hence, they could not be found guilty of a felony. A felony is a criminal action that is punishable by death or imprisonment. The term felony, in some common law countries, means a serious Crime. The word originates from English common law (from the French medieval word "félonie"), where felonies were originally Crimes that involved confiscation of a convicted person's land and goods. Children above fourteen-years of age were determined to be capable of understanding the wrongfulness of their acts and were treated like adults. Whereas, Children between Seven to fourteen years were not so easily classified. If they seemed to understand that their acts were wrong, then they were treated as adults. If not then they were treated as infants.

In 1704, Pope Clement XI first introduced the idea of the, instruction of profligate youth in institutional treatment. Then Elizabeth Fry established a separate institution for Juvenile offenders. Subsequently, in Britain, Reformatory Schools Act was passed in 1876 and Industrial Schools Act was brought in a statute book\textsuperscript{2}. The first Juvenile Court was established in 1899 in Chicago under Juvenile Offenders Act. The Evolution Today, the structure of the Juvenile court remains

\footnote{\textsuperscript{2} International Journal of Interdisciplinary and Multidisciplinary Studies (IJIMS), 2014, Vol.1, No.6. Pg 64-70.}
essentially the same as it did decades ago. What has evolved are the interpretation of the rights that Juveniles possess while working their way through the System. Later in the nineteenth century, the treatment of Juveniles began to change. It was researched that Children who were in trouble needed special facilities. In view of the same New York and Chicago for the first time housed the Juvenile offenders and adult offenders separately. In 1899, the first Juvenile court was opened in Cook County in the United States of Illinois. The theory of the Juvenile court was to rehabilitate Juvenile offenders and not to punish them. The doctrine of 'Parens Patriae', meaning parent of the country, became the guiding light to allow the state to serve as the guardian of Juveniles with physical, legal or mental disabilities. The courts followed the 'best interests of the Child' in determining what would help the Juvenile become a productive member of society. In some cases, this meant removing the Juvenile from the home and placing him in an institution in order to rehabilitate him in the most effective way possible. The U.S. Supreme Court in 1963 established that every citizen, including a Juvenile, has the right to have an attorney in a criminal proceeding via *Gideon Vs Wainwright.* Because of this case, integrated into the structure of the Juvenile court process is the Juvenile's attorney, who answers any questions a Juvenile may have and represents their legal rights in court. Depending on the seriousness of the offense and the Juvenile's age when he committed the offense, he may be facing a bind over. A bind over is a proceeding to determine if the Juvenile should be tried as an adult in court instead of as a minor. The U.S. Supreme Court in 1966, ruled in *Kent Vs United States*.

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that a Juvenile is entitled to a hearing where his attorney can have access to all records, and in which, the court provides a written statement of all the reasons for the bind over to the adult System. The Supreme Court decided that the Juvenile Court's order waiving jurisdiction and remitting petitioner for trial in the District Court was invalid. Through the U.S. Supreme Court case *In re Gault* in 1967, Juvenile constitutional trial rights were settled. The U.S. Supreme Court ruled that in cases that could result in incarceration for a Juvenile, that they had the same trial rights as an adult, such as the right to a lawyer, to question witnesses and the right against self-incrimination. Even after *In re Gault* was decided, the weight of the evidence required to adjudicate, or find guilty, a Juvenile had not been settled. It wasn't until *In re Winship* was decided in 1970 that the U.S. Supreme Court ruled that, just as in adult court, Juveniles had a right to have their cases proved 'by proof beyond a reasonable doubt' before they could be adjudicated. This serves to protect the Juvenile's due process rights through the U.S. Constitution. In Juvenile court, a Juvenile does not have a right to a jury trial, a trial by twelve of his fellow citizens, unless he has previously been bound over to the adult System after a pretrial bind over hearing. At this point, then, the Juvenile is facing adult sanctions if convicted of the offense. This was determined by the U.S. Supreme Court case *McKeiver Vs Pennsylvania*, which stated in 1971, a Juvenile case bound over to the adult System is the only circumstance in which a Juvenile has the right to a jury trial. Where a question arose whether a jury trial is constitutionally required in a Juvenile delinquency proceeding in state court, it was

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held that “No, Juvenile defendants are not entitled to a jury trial for the adjudicative phase of state delinquency proceedings”\(^7\).

In England, the first Juvenile Court was set up in 1905. And the first probation law was enacted in the state of Massachusetts, USA in 1878 and in England in 1887. The second and sixth UN Congress on Prevention of Crime and Treatment of Offenders in 1960 and 1980 discussed in detail the problem of Juvenile delinquency and decided that there should be the standard Minimum Rules for Juvenile Justice. Subsequently, it was accepted that special attention should be given to prevent Juvenile delinquency. The same area was discussed at Beijing in 1985 which examined the Standard Minimum Rules for Administration of Juvenile Justice. In 1989, the UN Convention on Rights of the Child (CRC) draws attention to four sets of Civil, Political, Social, Economic and Cultural rights of every Child. The Convention provides the legal basis for initiating action to ensure the rights of Children in society.

2.1.3 Indian Scenario:

2.1.4 Pre-Independence Era:

India has a long history of providing separate treatment for Juvenile offenders. Differential treatment for Children can be traced as far back as the Code of Hammurabi in 1790 BC, the responsibility for their supervision and maintenance being vested on the family. The Code of Hammurabi\(^8\) is a well-preserved Babylonian law code of ancient Mesopotamia dating back to about 1754

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\(^7\) *McKeiver v. Pennsylvania* 403 U.S. 528 (1971), available at https://books.google.co.in/books?isbn (visited on 20.5.14)

\(^8\) Review: The Code of Hammurabi, J. Dyneley Prince, The American Journal of Theology Vol. 8, No. 3 (Jul., 1904), pp. 601–609 Published by: The University of Chicago Press Stable URL: http://www.jstor.org/sTable/3153895 (visited on 20.5.15)
BC. It is one of the oldest deciphered writings of significant length in the world. The sixth Babylonian king, Hammurabi enacted the code, and partial copies exist on a human-sized stone stable and various clay Tablets. The Code consists of 282 laws, with scaled punishments, adjusting "an eye for an eye, a tooth for a tooth" (lex talions) as graded depending on social status, of slave versus free man. Nearly one-half of the Code deals with matters of contract, establishing, for example, the wages to be paid to an ox driver or a surgeon. Other provisions set the terms of a transaction, establishing the liability of a builder for a house that collapses, for example, or property that is damaged while left in the care of another. A third of the code addresses issues concerning household and family relationships such as inheritance, divorce, paternity and sexual behavior. Only one provision appears to impose obligations on an official; this provision establishes that a judge who reaches an incorrect decision is to be fined and removed from the bench permanently. A handful of provisions address issues related to military service.

- During the colonial regime, in 1843, the first center for those Children called “Ragged School” was established by Lord Cornwallis. The period between 1850 and 1919 was marked by social and industrial upheavals.

- The Apprentices Act, 1850, chronologically the first law which required that Children between the ages of 10-18 convicted in Courts, to be provided vocational training as part of their rehabilitation process. The Indian Penal Code (1960) exempts Children under the age of seven years from criminal responsibility. It also exempts Children between the ages of seven to twelve years, because they have not attained sufficient maturity of understanding to consequences of their act.

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9 Gabriele Bartz, Eberhard König, (Arts and Architecture), Könemann, Köln, (2005), ISBN 3-8331-1943-8. The laws were based with scaled punishments, adjusting "an eye for an eye" depending on social status.
For the treatment of Juvenile delinquents, the next landmark legislation was the Reformatory School Act, 3 1876 and 1897. Under the Act, the court could detain delinquents in a reformatory school for a period of two to seven years but after they had attained the age of eighteen years, the court would not keep them in such institutions.

The Act of Criminal Procedure, 1898 provided special treatment for Juvenile offenders. The Code provided probation for good conduct to offenders up to the age of twenty-one.

Then Indian Children Act came from the Indian Jail Committee (1919-1920). Individual provincial government chooses to enact separate legislation for Juvenile in their respective jurisdictions; provinces of Madras, Bengal and Bombay passed their own Children Acts in 1920, 1922 and 1924, respectively. Though the Bombay Children Act was enacted four years after the Madras Children Act, it was the first Children Act to become functional. Children's aid Society a voluntary state agency was formed in 1924 to implement the provisions of Bombay Children Act. These laws contained provisions for the establishment of a specialized mechanism for the treatment of Juveniles.

Some states passed Legislations to provide a separate procedure and institutions for the trial, custody, correction, and rehabilitation of delinquent Children. Such acts which have been passed in various states brought within its ambit two categories of Children, namely, (a) youthful offenders, and (b) destitute and neglected Children. The Juvenile courts handled both these categories of Children. Throughout the world, during this period, Children were dealt with under the “welfarism" mode. The welfare model emphasized the rehabilitation needs of
the offender. When Children were tried legally in both the above categories' priority was given to the well-being of them and adjudication of guilt was not stressed (Adenwalla, 2006).

2.1.5 Post-Independence Era:

In 1960, the Government of India enacted the Children’s Act, which is also applicable to the Union Territories. The act was conceived as a model piece of legislation. The above act was to “provide for the care, protection, maintenance, welfare, training, education and, rehabilitation of neglected or delinquent Children and for the trial of delinquent Children in the Union Territories.” Under this Act, a Child was a boy below 16 years of age and a girl below 18 years of age. The Child Welfare Board handled neglected Children, and the Children’s court delinquent Children (Section 2(e) of the Children Act, 1960 quoted by Adenwalla, 2006). The Children Act, 1960, was a precursor to the Juvenile Justice Act, 1986. The Juvenile Justice Bill, in conformity with Beijing Rules, was first introduced in the Lok-Sabha on 22nd August 1986, and the Central Children Act was replaced by this Juvenile Justice Act 1974. The Law came into force in all the union territories but the States having no Juvenile law were free to adopt it in 1974. India declared it’s National Policy for Children which include training and rehabilitation of delinquent, destitute, neglected and exploited Children.

➢ The Juvenile Justice Act, 1986: Prior to the enactment of the Juvenile Justice Act, 1986, the state governments had enacted their own legislations for Children. But the provisions contained in each state’s Children Act were different.

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from each other. For example, the definition of the term “Child" differed from state to state. On May 12, 1986, the 69th Report of the Committee on Subordinate Legislation was tabled on in the Parliament which recommended a uniform law. At this juncture it would be relevant to state about one Ms. Sheela Barse, a freelance journalist by profession and a member of the Maharashtra State Legal Aid and Advice Committee. She persistently followed the issue of illegal detention of Children in jails. She filed a public interest litigation for the release of Children kept in jails and for information on the conditions of the Children in detention. In *Sheela Barse Vs. Secretary Children Aid Society* decided by the Apex Court on 20/12/1986 by their Lordships Hon'ble Justice P.N Bhagawathi the then Chief Justice of India and Hon'ble Justice R.S.Pathak. This act provided for prohibition of confinement of Juveniles in Police lock-up or jail and separate institutions for the neglected or delinquent Children with regard to the processing, treatment, and rehabilitation. The act also has provided for a wide range of disposition alternatives. The Hon’ble Supreme Court in Sheela Barse's case\(^\text{11}\) observed that instead of each state having its own Children’s Act different in procedure and content from the Children’s Act in other states, it would be desirable if the Central Government initiates parliamentary legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to Children in the entire territory of the country. The Children’s Act which may be enacted by the Parliament should contain not only provisions for investigation and trial of offences against Children below the age of 16 years but should also contain mandatory provisions for ensuring social, economic, and psychological rehabilitation of the Children who are either accused of offences or are abandoned,

\(^{11}\) *Sheela Barse v. Union of India* 1986 3 SCC (Cri) 352.
destitute, or lost. Moreover, it is not enough merely to have a legislation on the subject, but it is equally, if not more, important to ensure that such a legislation is implemented in all earnestness and mere lip sympathy is not paid to a such legislation and justification for non-implementation is not pleaded on ground of lack of finances on the part of the state. The greatest recompense which the state can get for expenditure on Children is the building up of powerful human resources ready to take- its place in the forward march of the nation. The Juvenile Justice Act (JJA) came into effect in 1986, when the Parliament decided to replace the Children Acts in different states and union territories with a single uniform piece of legislation. This act was to provide 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.

- In the United Kingdom the common law right of parens patriae provided the Chancery Courts (a division of the High Court of Justice) to exercise authority over Children in the absence of responsible parental control. In India, only in 1897 the Reformatory Schools Act gave the statutory recognition of jurisdiction of courts in cases of Juveniles. The courts were conferred with the power of sending a convicted youth to reformatory schools, instead of imprisoning him or her. But such power of the court in its basic features is meant to be in the nature of basic equitable jurisdiction exercisable by the Chancery Court over the Juvenile in criminal matters. But after the Madras Children Act came into force in 1920, the above provisions were affected because the Madras Children Act divested the criminal courts to assume jurisdiction over the Children under the Reformatory Schools Act, 1897.
As a result of such a move, an amendment in the Code of Criminal Procedure in 1923 was made to insert Section 29 B. This section emphasized the need for a judicial procedure with respect to the adjudication in criminal proceedings of Child offenders. Section 29B of the code of the criminal procedure, 1868 provided that “any offence” other than one punishable with death or imprisonment for life committed by a person under the age of 15 years may be tried by a District Magistrate or a Chief Presidency Magistrate or by any Magistrate specially empowered by the state government to exercise the powers conferred by Section 8 sub-section (1) of the Reformatory Schools Act, 1897.

However, the Code of Criminal Procedure, 1973, streamlined the subject of adjudication of status. Section 27 of the new Cr.P.C provides that “any offence not punishable with death or imprisonment for life” committed by a person under the age of 16 years may be tried by the court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960, or any other for the time being in force providing for the treatment, training, and rehabilitation of youthful offenders (Code of Criminal Procedure, 1973). The Juvenile Justice (Care and Protection of Children) Act, 2000, brought in compliance of Child Rights Convention 1989, repealed the earlier Juvenile Justice Act of 1986 after India signed and ratified Child Rights Convention 1989 in year 1992.12

2.2 Juvenile Justice (Care and Protection of Children) Act, 2000

The Convention on the Rights of Children was ratified by the Government of India on December 11, 1992. A necessity arose for the Government of India to re-enact the existing law relating to Juveniles bearing in mind the standards

prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations-Rules of the Protection of Juveniles Deprived of Their Liberty of 1990, and all other relevant International instruments. The above objective was taken note of the Parliament as such the Indian Parliament enacted the present Act on Juvenile Justice called as Juvenile Justice (Care and Protection of Children) Act, 2000, on December 30, 2000, The said act consolidated and amended the law relating to Juveniles in conflict with law and Children in need of care and protection. This act was aimed at providing for proper care, protection, and treatment by catering to their development needs and by adopting a Child-friendly approach in the adjudication and disposition of matters in the best interest of Children and for their ultimate rehabilitation.

The Juvenile Justice (Care and Protection of Children) Act, 2000, was brought into force on April 1, 2001. However, certain provisions of this act were challenged before the High Court of Delhi through an public interest litigation. The High Court of Delhi also observed that some provisions of the above Act needed reconsideration. In the light of the observations made by the High Court of Delhi, it was proposed to carry out amendments in some sections of this act. Accordingly, an amendment Bill was introduced in the Lok Sabha in July 2003. Thereafter, the Lok Sabha referred the amendment Bill to the Parliamentary Standing Committee on Labour and Welfare for examination and report submission. But, the Lok Sabha was dissolved before the Standing Committee submitted its report and as a result the amendment Bill lapsed. Before re-introducing a fresh amendment Bill, the

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Government of India considered it necessary to revisit the amendment proposals again along with other suggestions received by the Standing Committee from various experts. The suggestions and views of all those concerned were obtained on the proposed amendments and based upon such suggestions and views it was proposed to make amendments in the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, in addition to those contained in the earlier Bill. The amendment Act enacted by the Parliament in the 57th Year of the Republic of India (Act 33 of 2006) was notified on August 22, 2006.

2.2.1 **Salient Features of the Juvenile Justice (Care and Protection of Children) Act 2000 and Amendments in 2006**

- The Juvenile Justice (Care and Protection of Children) Act 2000
  - The Title of the Act stresses on the need for care and protection to both categories of Children.

- Uniform age for both boys and girls – any Child who has not completed the age of 18 fall within the jurisdiction of the Act to comply with the CRC definition of the Child.

- Separation of Child in need of care and protection and Child in conflict with law.

- Constitution of Child Welfare Committees to deal with Children in need of care and protection and Juvenile Justice Boards to handle Children in conflict with law.
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.

More legal protection assured for the Child in conflict with law – detention to be resorted to as the last option, disqualification of past records and privacy maintained.

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. (Sec 39).

The law outlines four options of restoration for Children in Children’s homes and special homes which include adoption, foster care, sponsorship and after care.

The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. The JJ Act 2000 was subsequently amended and referred as Principal Act.

The Amendment Act brought about 26 amendments which are in force.

This Act forms the legal System and framework for the care, protection, treatment and rehabilitation of Children of both categories

The competent authority to deal with Children in need of care and protection is the Child Welfare Committee which constitutes a Chairperson and four other members, one of whom at least should be a woman.
Juvenile Justice Board (JJB) is the competent authority to deal with Children in conflict with law which consists of three members. The Chairperson of the Board should be a First Class Judicial Magistrate and two honorary social workers out of whom at least one should be a woman.

The Act provides for the establishment of various kinds of Institutions such as Children’s Home for the reception of Child in need of care and protection.– Special Homes for the reception of Child in conflict with law– Observation Homes which are meant for the temporary reception of Children during the pendency of any inquiry.– After-care Organizations which are meant for the purpose of taking care of Children after they have been discharged from Children’s Home or Special Homes.

A few sections in the Act (Sec 23 – 26) are focused on the offences committed by anyone against a Child such as assault, causing mental or physical suffering and employment of a Child which are considered as non-bailable offences.

“Advisory Board” was constituted in Central, State, District and City level to advise the Government on matters relating to establishment and maintenance of Homes in all means.

The term Juvenile in conflict with law Welfare Board was changed into Juvenile Justice Board.

Process of adoption was introduced.

A Governmental, registered Non-Governmental organizations or a voluntary organization prepared to take responsibility of the Child were categorized to” Fit Institutions.”
The words ‘Brothel, Prostitute, prostitution’ was removed.

Child protection Units were constituted as per Sec 62-A of the present Act.

Provision to form Special Juvenile Police Unit was included and has been established.

The Ministry of Women and Child Development at New Delhi, the 26th day of October 2007 notified the Model Rules under the Juvenile Justice (Care and Protection of Children) Act 2000 and the Amendment Act 2006 to be administered by the States for better implementation and administration of the provisions of the Act in its true spirit and substance.

Sec 68 of the Model Rules provides for notification by the State Government in the Official Gazette to make rules to carry out the purpose of the Act. These rules called the Juvenile Justice (Care and Protection of Children) Rules, 2007 has come into force on the date of its publication in the Official Gazette and these Rules will be conformed to until the concerned State Government formulates Rules specific for the State with effect to implementation of the JJ Act.

The Act in Section 68 prescribes various areas wherein the Rules can be applied to for better implementation of the Act, specifically with management of the homes, standards to be adhered to, roles and responsibilities of the JJ functionaries, procedures and functioning of the competent authorities, rehabilitation mechanism and operation of Juvenile Justice Fund.

It is recommended that the Act is implemented in line with the Rules to promote better understanding of the Act in order to benefit the Children who come in contact with the Juvenile Justice System.
The Tamil Nadu State Government had notified the State Rules as “Tamil Nadu Juvenile Justice (Care and Protection of Children) Rules 2001 in the Official Gazette.”

2.3 JUVENILE IN CONFLICT WITH LAW

The term 'Children in Conflict with the law' refers any person below the age of 18 who has come in contact with the Justice System as a result of committing a Crime or being suspected of committing a Crime. It is found that most of the Children in conflict with the law are involved in petty theft like stealing mobile phones, pick pocketing, extortion, burglary and robbery along with adult offenders, chain snatching and rarely involved in street fights and hurt cases. Alarmingly the involvement of Children in rape and murder cases is also in the rise. There are various factors behind their delinquent behavior. Some of them are involved in more serious offences. Juveniles get themselves involved in heinous Crimes either independently or under the influence of adult offenders by forming gangs. Of late we have come across Juveniles committing Crimes like murder and rape. The Delhi gang rape case commonly known as Nirbhaya Rape case has brought a lot of change in the Juvenile Justice System. In the aftermath of the gang rape in Delhi, a committee was constituted with by His Lordships Hon'ble Justice Verma as Chairperson of a three member commission tasked with reforming and imparting strength and vitality to anti-rape law. The members of the committee were Ex-Solicitor General Gopal Subramaniam and Justice (Retd.) Leila Seth. The Committee was assisted by a team of young lawyers, law students and academics. The Committee's counsel, Abhishek Tewari, Advocate was overall in charge of the

14 Published in the Tamil Nadu Gazette, vide S.R.O(A)9(a), dated 17th January, 2002.
preparation of the report. The Committee was facilitated in the task by an overwhelming response to the Public Notice inviting suggestions within the available short time. An oral consultation was also held for interaction with the representatives of several stakeholders, particularly the women’s social action groups and experts in the field and dedicated industry of a group of young lawyers, law graduates and academics who worked around the clock to do the necessary research and study required for the preparation of this report. Women’s social action groups, which have been actively advocating the cause of gender justice for decades, also came forward to give valuable suggestions with requisite supporting material. Many foreign contributors, including academia and students of prestigious foreign universities also volunteered and rendered valuable opinions. The committee felt that failure of good governance is the obvious root cause for the current unsafe environment eroding the rule of law, and not the want of needed legislation. If there was a felt need for more laws there are many recommendations of expert bodies and judicial decisions that remain unimplemented. The Law Commission’s report relating to this subject, the National Police Commission Reports recommending autonomy and seminal improvement in the quality of the Police force, which is the principal machinery for the maintenance of law and order, continue to gather dust for decades due to the apathy of all the political dispensations. The Supreme Court’s judgment of 2006 in Prakash Singh’s case giving certain directions for the autonomy and improving the quality of the Police force remain to be implemented by all the governments. Action in this behalf does not brook any further delay, if there is a genuine desire to honour the purpose of

constituting this Committee. Attitudinal changes to correct the aberration of gender bias have to be brought about in the institutions of governance to improve the work culture, and in civil society to improve the social norms for realizing the constitutional promise of ‘equality’ in all spheres for the womenfolk. The ‘workmen’ must improve the work culture instead of quarreling with the ‘tools’. In the Committee’s view, without the improvement in this aspect, mere additions in the statute book are of no avail. Focus on the machinery for implementing the laws is, therefore, a significant part of this exercise. The Committee hoped that the concern and urgency shown by the Government in constituting it will not wane with the passage of time and the publication of our report; and that the constitutional promise of gender Justice in a social order with the egalitarian ethos will soon be realized without much ado. A positive reaction to the tragedy which triggered this response of the government would be the real tribute to the memory of the victim of gang rape and to the honor of the women folk. The Committee concluded its task with this fervent hope. The Committee adopted a multidisciplinary approach interpreting its mandate expansively. The Report deals with sexual Crimes at all levels and with the measures needed for prevention as well as punishment of all offences with sexual over tones that are on affront to human dignity. This is on the basis that the issue of sexual assault against women is one that goes to the core of social norms and values. The report was submitted on 23.1.2013\textsuperscript{16}. The Report also deals with the construct of gender Justice in India and the various obstructions to this. The Committee's approach is founded on

achieving the guarantee of equality for all in the Constitution of India. The comprehensive 630 page report, which was completed in 29 days, was lauded both nationally and internationally. This eventually led to the passing of the Criminal Law(Amendment) Act 2013, which was criticized as not adequately applying the Committee's work and recommendations.\(^\text{17}\)

Adult perpetrators play a vital role for the behavior of the Juveniles. These adult perpetrators are aware of the lenient sentence on the Juveniles and use the Juvenile for their own welfare. This is at times used by coercion also. Many incidents have also been brought to light by discriminating the Children. More than 1 million Children worldwide are detained by law officials. Children rights are denied in the institutions and they are treated like slaves. The institutional works like cleaning the toilet, sweeping the dormitory are also done by these Children instead of putting them in to a rehabilitative atmosphere. Most of the institutions are not provided with a full time medical officer which is a must. Posting of psychologist in the institutions are also the need of the hour.

### 2.4. CHILD IN NEED OF CARE AND PROTECTION

Majority of the India Children are in distress. Various factors like emotional sexual and physical abuse are in the rise. It is the need of the hour that the society and the States identify this issue and jump into action. Children are prone to abuses of various types like physical, sexual and emotional abuse.

Child in need of care and protection means a Child who:\(^\text{18}\)

- who is found without any home or settled place or abode and without any ostensible means of subsistence.

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\(^{17}\) http://en.wikipedia.org/wiki/J._S._Verma\,(visited\,on\,19.5.15)

\(^{18}\) See 2(d) Juvenile Justice (Care and Protection of Children) Act 2000.
who resides with a person (whether a guardian of the Child or not) and such person has threatened to kill or injure the Child and there is a reasonable likelihood of the threat being carried out, or

who has killed, abused or neglected some other Child or Children and there is a reasonable likelihood of the Child in question being killed, abused or neglected by that person

who is mentally or physically challenged or ill Children or Children suffering from terminal diseases or incurable diseases having no one to support or look after,

who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the Child,

who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away Child and whose parents cannot be found after reasonable injury.

who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,

who is found vulnerable and is likely to be inducted into drug abuse or trafficking

who is being or is likely to be abused for unconscionable gains

who is a victim of any armed conflict, civil commotion or natural calamity

2.4.1 Child Abuse

Family is the first contact a Child gets. He gets adapted to the life style of the family. Parents play a vital in the development of a Child. Most of the times
abuse starts at home. The root goes to schools and the society where the Child gets interacted. Neglect of a Child occurs when a person who holds his responsibility disowns him or fails to provide him with the basic requirements like food and shelter. A Child may have various needs based upon his mental requirement. When he fails to get the basic requirements or in some cases a luxurious requirement, he tends to develop a negative attitude towards the family and tries to look after his needs by resorting to illegal means like committing theft.

2.4.2 Physical Abuse

Most of the time when a Child does not heed to his parents words, parents get irritated and physically abuses the Child. Instead of counseling the Child, not to resort into illegal activities parents resort to beating the Child and physically harming him. Physical abuse is a physically aggression directed at Child by an adult. It can involve punching, striking, kicking, showing, slapping, burning, pulling ears or hair, stabbing, choking or shaking a Child. Shaking Child can cause shaken baby syndrome. Boys are more battered than girls, the transmission of toxins to Child through its mother (such as with fetal alcohol syndrome) can also be considered physical abuse in some jurisdictions. This kind of abuse creates hatred in the mind of the Child towards his family. In unmanageable circumstances the Child resorts to running away from the home. He does not realize that he would be even more abused if he leaves the family. Things like failure to provide adequate food, clothing, failure provide nurturing or affection, educational: failure to enroll a Child in school, failure to medicate the Child or take him or her to the doctor as and when required are some abuses a Child comes across at home.
2.4.3 Sexual Abuse

Sexual abuse of Child is a form of Child abuse in which a Child is abused either by an adult or an adolescent for sexual stimulation. Mostly girls are victims of sexual abuse than boys a high proportion of Children during the age 14 to 16 years of age. Child sexual abuse includes certain behavior of adults or adolescent in pressuring a Child to engage in sexual activities, indecent exposure of the genitals to a Child, actual sexual contact against a Child, physical contact with the Child's genitals, viewing of the Child's genitalia without physical contact, or using a Child to produce Child pornography. Effect of Child sexual abuse include guilt and self-blame, flash back, nightmares, fear of things associated with the abuse, self-esteem issues, sexual dysfunction, chronic pain, addiction, self-injury, depression, anxiety.

2.4.4 Emotional Abuse

In many circumstances Children are abused emotionally too. This is the hardest to define. Irritating a Child by ridiculing him, degrading him, comparing him with others, giving him mental torture by criticizing his acts and humiliating him in front of his own friends would amount to emotional abuse. Many parents who ill-treat their Children are those who are aggressive, irritable and less tolerant in their emotional characteristics and have low-esteem, feeling of alienation, and lack of ability domineering in their behavioral characteristics indulge in this kind of behavior with the Child.
2.4.5 Child Labour

Child labour refers to the employment of Children at regular and sustained labour. This practice is considered exploitative by many international organizations and is illegal in many countries. Child laborers are exploited, exposed to hazardous work conditions and paid a pittance for their long hours of work. Forced to forego education, shouldering responsibilities far beyond their years, becoming worldly wise when their peers have yet to leave the cocoons of parental protection, these Children never know what Childhood is.

2.4.6 Vulnerable Children

Street Children are an extremely vulnerable group because they are forced to live on the streets due to compelling circumstances and where there is no protection, supervision and care from concerned adults. The term ‘street Children’ covers several groups of Children living on the streets, coming from different circumstances and for various reasons. Often these Children are found on railway platforms, bus stops, pavements, traffic lights and religious places. To make a living they have to resort to begging, rag picking, shoe shining, working as porters, working at food stalls and hotels etc. Children on the street are primarily working Children, who due to difficult circumstances have to support themselves and contribute to their family’s income. They may have families but the nature and degree of contact varies from returning home daily, to a few times annually. Another group of Children have the street as their home and it is here that they seek food, shelter, livelihood and companionship. They have family ties, which are limited and very infrequent. The abandoned and destitute street Children have no ties whatsoever with their families. They are abandoned due to reasons like
poverty, mental or physical handicap, and in some cases gender discrimination. These Children are very much in need of care & protection. The missing Children have either run away from home or are victims of circumstances that have separated them from their families. If the families are not traced they live on the streets and hence are part of the category of street Children. Dysfunctional families, poverty, exploitation, domestic violence, sexual abuse, neglect, alcoholism and drug abuse are some reasons that compel Children to leave home and live on the streets. They are constantly exposed to the dangers of the city life and are vulnerable to exploitation, violence and various forms of abuse. Children on the streets do not have access to basic resources that are required for healthy growth and development. Their right to education, proper nutrition, clothing, shelter and medical care are grossly violated.¹⁹

The above categorized Children need special attention. The state's responsibility towards the Children in need of care and protection is high. Under the new Juvenile Justice Act punishments are provided for the abuser. Children face various abuses in their day to day life.

2.5. OFFENCES AGAINST CHILDREN

2.5.1 Punishment for Cruelty to Juvenile or Child.

Any person who has actual charge of or charge of or control over, a Juvenile or the Child, assaults, abandons, exposes or willfully neglects the Juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such Juvenile or the Child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extent to six

months, or fine, or with both.\textsuperscript{20} Even Police people come under the purview of cruelty done to Children after apprehension. It was laid down in a decision of the Hon'ble Delhi High Court in \textit{State vs Rameez}\textsuperscript{21} that Police men who have control over the Juvenile or Child would fall under the purview of the provision of Sec 23 Juvenile Justice (Care and Protection of Children) Act 2000.

\textbf{2.5.2 Punishment for Employing a Juvenile or Child for Begging}

Any person who employs or uses any Juvenile or the Child for the purpose or causes any Juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine and the one who abets such an act shall also be liable with imprisonment for a term which may extend to one year and shall also be liable to fine.\textsuperscript{22}

\textbf{2.5.3 Penalty for Giving Intoxicating Liquor or Narcotic Drug or Psychotropic Substance to Juvenile or Child}

Any person who gives, or causes to be given, to any Juvenile or the Child any intoxicating liquor in a public place or any narcotic drug or psychotropic substance except upon the order of duly qualified medical practitioner or in case of sickness shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.\textsuperscript{23}

\textbf{2.5.4 Exploitation of Juvenile or Child Employee}

Any person who ostensibly procures a Juvenile or the Child for the purpose of any hazardous employment keeps him in bondage and with-holds his earnings

\textsuperscript{21} \textit{State v. Rameez}, 2009 Available at http://indiankanoon.org/doc/159909054/ (visited on 10.4.15)  
\textsuperscript{22} See 24 of the Juvenile Justice(care and Protection of Children) Act 2000.  
or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.\textsuperscript{24}

The Act further provides for the constitution of the Child Welfare Committees for every district or group of districts for exercising the power and discharging the duties in relation to Child in need of care and protection. The committee shall consist of a chairman and four other members, of which one shall be woman and another, an expert on matters concerning Children. The committee shall function as a Bench of Magistrates and shall have powers conferred on a judicial Magistrate of the 1st class under the code of Criminal Procedure. The committee is the final authority to deal with matters of care, protection, treatment, development and rehabilitation of the Children so produced.

\textbf{2.6 International Convention of Rights of Child 1989}

The convention of Child rights\textsuperscript{25} was adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989 and came into force on 2 September 1990, in accordance with article 49 of the CRC. The convention proposes various rights of the Child as enumerated below:-

\begin{itemize}
  \item A Child means every human being under the age of eighteen years, unless, under the applicable to the Child, majority is attained earlier.
\end{itemize}

\textsuperscript{24} See 26 of the Juvenile Justice(Care and Protection of Children) Act 2000.
Every Child has the inherent right to life. Every Child shall have the right from birth to a name, the right to acquire a nationality, and the right to know and be cared for by his parents.

Every Child has the right to preservation of his or her identity. Every Child who is separated from his parents has the right to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the Child's best interests.

Every Child has the right to leave any country, including their own.

Every Child has the right to express his/her own views freely in all matters affecting the Child.

Every Child has the right to freedom of expression. Every Child has the right to freedom of thought, conscience and religion. Every Child has the right to freedom of association and to freedom of peaceful assembly.

Every Child has the right to privacy. Every Child has the right to protection of the law in case of interference or attacks on said privacy.

Every Child has the right to access information and material from a diversity of national and international sources, especially those aimed at the promotion of his/her social, spiritual and moral well-being and physical and mental health.

Children of working parents have the right to benefit from Child-care services and facilities for which they are eligible.
Every Child has the right to protection from all forms of abuse, physically or mentally.

Every Child temporarily or permanently deprived of his/her own family environment has the right to special protection and assistance provided by the state.

Every Child who is seeking refugee status has the right to receive appropriate protection and humanitarian assistance.

Every mentally or physically disabled Child has the right to enjoy a full and decent life, in conditions which ensure dignity and promote self-reliance.

Every Child has the right to the highest attainable standard of health and to facilities for the treatment of illness and the rehabilitation of health.

Every Child who has been "placed" by the competent authorities for the purposes of care has the right to a periodic review of the treatment provided the Child and all other circumstances relevant to his/her placement.

Every Child has the right to benefit from social security, including social insurance.

Every Child has the right to a standard of living adequate for the Child's physical, mental, spiritual, moral and social development.

Every Child has the right to education. Every Child has the right to enjoy his/her own culture, to profess and practice his/her own religion and to use his/her own language. Every Child has the right to engage in play, recreational activities, and to participate freely in cultural life and the arts.
Every Child has the right to be protected from economic exploitation. Every Child has the right to be protected from the illicit use of narcotic drugs, and from being used in the illicit production and trafficking of such substances.

Every Child has the right to be protected from all forms of sexual exploitation and sexual abuse.

Every Child alleged as or accused of having infringed the penal law has the right to be presumed innocent until proven guilty. Every Child has the right to prompt access to legal and other assistance. Neither capital punishment nor life imprisonment will be imposed for offenses committed by persons below 18 years of age. Every Child has the right to protection during times of war.26

By agreeing to the Convention, countries undertake to respect the rights of Children listed in it. The Convention has over 50 sections describing specific rights, and four main principles that underpin all these rights.

2.7 Main Principles

2.7.1 The Right to Life, Survival and Development

Children have a right to good health, food and drinkable water. They also have the right to be raised by their parents. Parents must provide their Children with a home, clothing, good food, an education and even leisure time. Countries also undertake to protect Children against violence, abuse, slavery and forced marriage.

2.7.2 Priority on Children's Interest First

Decisions about a Child must be based on what is best for that Child. For example, when governments and courts make decisions, and when laws are made, this principle must be respected.

26 "International Conventions on Rights of Child 1989" Available at http://rehydrate.org/facts/convention-summary.htm (visited on 23.4.15)
2.7.3 **Non-Discrimination**

All Children are entitled to the same protection and services, regardless of whether the Child is a boy, a girl, a refugee, Aboriginal, has a disability or belongs to a minority group. Countries must ensure that Children are not discriminated against on the basis of race, colour, sex, religion, origins, a disability, language, political opinions or wealth.

2.7.4 **The Right to Take part in Decisions**

Children have the right to give their opinions and take part in decisions that affect them. Depending on age and maturity, this can mean that a court making a decision about a Child might have to give the Child a chance to be heard. Children also have freedom of expression. For example, Children have the right to write a letter to be published in a newspaper or to participate in a legal public gathering.

2.8 **PROTECTION OF THE RIGHTS OF CHILDREN UNDER VARIOUS LAWS**

2.8.1 **Constitution of India**

Children are guaranteed with various rights under the Constitution of India. As per Article 14\(^{27}\), all the citizens are equal before Law and are granted equal protection. Further all citizens are granted protection on the basis of religion, caste, sex or place of birth\(^{28}\). Exploitation of Children in any form is curbing their right to life\(^{29}\). Right to education is also considered as a right to life after in 86th amendment in 2002. Right against exploitation - prohibition of traffic in human

\(^{27}\) Article 14 of the Constitution of India.
\(^{28}\) Article 15 ibid.
\(^{29}\) Article 21 ibid.
beings and forced labour. Prohibition of employment of Children in factories. No Child below the age of 14 shall be employed to work in any factory or mine or any hazardous employment.

2.8.2 Directive Principles Of State Policies For Children Under The Constitution Of India

Every State has a duty to direct its policy towards securing the health and strength of Children and that their tender age is not abused and they are not forced by economic necessity to enter avocations unsuited to their age or strength. State to direct its policy towards securing that Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity; and Childhood and Youth are protected against exploitation and against moral and material abandonment. Early Childhood care and education for all Children until they complete the age of fourteen years. It shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his Child or ward between the age of six to fourteen.

2.8.3 Provision in Child Labour (Prohibition & Regulation) Act, 1986

"Child" means a person who has not completed his 14th year of age as per the Child Labour (Prohibition and Regulation) Act 1986. It prohibits employment of Children in 16 occupations and 65 processes. It also regulates the conditions of employment of Children in all other occupations and processes not prohibited under the Act. Any employer who contravention of Sec. 3 shall be punishable with

30 Article 23 ibid.
31 Article 24 ibid.
32 Article 39(e) ibid.
33 Article 39(f) ibid.
34 Article 45 ibid.
35 Article 51 A (k) ibid.
36 Part A & B of the Schedule (Sec 3)
imprisonment for minimum 3 months which may extend to 1 year or with fine not
less than Rupees 10,000 which may extend to 20,000 rupees or with both\textsuperscript{37}. In case
of similar offence being committed for the second time, he shall be punishable
with imprisonment for a term not less than six months which may extend to 2 yrs\textsuperscript{38}.

2.8.4 Provisions in the Factories Act, 1948

Children have been granted protection under the Factories Act as early in
1948. No Child who has not completed his fourteenth year shall be required or
allowed to work in any factory\textsuperscript{39}. The penalties are provided in sub-sections (1)
and (2) of sec.14 of sections (1) and (2) of sec.14 of Child Labour (Prohibition &
Regulation) Act,1986. Therefore the Child Labour Act comes to the rescue of
Children.

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\textsuperscript{37} Sec 14(1) Child Labour (Prohibition and Regulation) Act 1986.
\textsuperscript{38} Sec 14(2) ibid.
\textsuperscript{39} Sec 67 Factories Act 1948.