A robust juvenile justice system is one of the pillars of a strong human development framework of a country. It is starkly different from the conventional criminal justice system. The essence of juvenile justice lies in the belief that children or juveniles need special treatment and considerations during their formative age and they cannot be weighed in the same balance with the adults. It also stems from the expectations that the justice delivery system and the decision makers can make responsive contributions towards upholding the child rights. The focus of a good juvenile system is on handholding and guiding the teens compassionately during their adolescent stage and facilitating them to become a responsible adult in the future. The root of the growing concern about juvenile justice in India can be traced to several international organisations and their relentless and sustained efforts to promote child rights all across the globe. The judiciary in India has also played a sensitive and in several cases a progressive role in propagating the concepts of right to child and strengthening the juvenile justice system in the country.

The International law in the domain of child right has flourished rapidly over the past few decades, especially since the dawn of the United Nations when rules and norms regulating activities carried on outside the legal boundaries of the states were developed. Numerous international agreements - bilateral, regional or multilateral in nature - have been signed and the international customary rules wherein general practices are accepted as law have come into being. The League of Nations adopted the Geneva Declaration of 1924 to achieve five point programme for normal and natural development - mental, physical and spiritual - of the child with support and protection at every point of exploitation. As a consequence of the five point programme, in the year 1950 the Temporary Social Commission made a ten point draft declaration on the rights of the child to provide assistance to the children and adolescents of those countries which had been the victims of aggression. In 1945, the United Nations Organisation replaced the League of Nations. In 1946, the Economic and Social Council of the United Nations recommended that the Geneva Declaration be reaffirmed as a sign of commitment to the cause of children. In the same year, under the auspices of United Nations a specialized agency namely UNICEF was established with a mandate to care for the world’s children. UNICEF helps children to get the care and stimulation they need in the early years of life and encourages families to educate girls as well as boys. It strives to reduce childhood death and illness and to protect
children in the midst of war and natural disaster. Working with national governments, NGOs (non-governmental organizations), other United Nations agencies and private-sector partners, UNICEF protects children and their rights by providing services and supplies and by helping to formulate policy agendas and budgets in the best interests of children. After the adoption of “Declaration of Geneva”, an extended version of this text was adopted by the General Assembly in the year 1948, which was followed by a revised version adopted by the General Assembly in 1959 as the United Nations Declaration on the Rights of the Child. However, in the year 1978, a proposal was made by Poland for a new convention on children’s rights on the issues with regard to children’s rights being binding upon state parties. The Convention on the Rights of the Child (CRC), 1989 served and reflected the basis of Poland’s proposal consistent draft, with minor amendments. Poland’s proposal to use the 1979 Year of the Child as an opportunity to turn the 1959 Declaration into a legally binding international treaty may have had different reasons, including political ones linked to the East-West division of the international political arena. The reasons for an international change of heart towards the protection of children’s rights were manifold, but all the signatory states fundamentally recognised that the Declaration on the Rights of the Child, 1959 no longer reflected the actual needs of the world’s children in general under need of care and protection. Although all the international instruments were developed that targeted the protection of children’s best interest in particular, it is to be emphasised that the UN instruments on the Universal Declaration of Human Rights already recognized those rights. The International Bill of Human Rights contains a broad bundle of human rights which also applicable to children and many of its principles are reflected and substantiated in children-specific legislation. The Universal Declaration of Human Rights, as the most prominent and fundamental UN human rights instrument, provides in its Article 25 that childhood is entitled to special care and assistance. Furthermore, the UN International Covenant on Civil and Political Rights, a legally binding document which came into force in 1978, contains provisions specifically referring to children. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) 1985 is the first direct step of the General Assembly on prevention of crime and youth offenders and also to review the actions of progress to administer Juvenile Justice within its member signatory states. This rule prescribes and provides the provisions relating to determination of Juvenile Delinquent, their right & privileges, trials before the court of Law and rehabilitation and lastly research relating to upgradation of delinquent Juvenile after home care. For the
purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the CRC, there shall be established a Committee on the Rights of the Child, which shall carry out the functions provided by the Convention. On 14th December, 1990 the General Assembly adopted and proclaimed its Riyadh Guidelines prescribing the rule of protection of Juvenile Delinquents.

In spite several developments in the arena of child rights, the international community continues to grapple with various emerging problems to promote and encourage the right to child. It shows that there are significant scopes for improvement in the way the UN promotes human rights, which is the foundation of the ‘right to child’ concept. The approach in vogue today is to adopt the hybrid juvenile justice systems laying equal emphasis on both justice and welfare models. In this regard the United Nations and many partner organisations have formulated a framework of actions to provide guidance to the national governments to respond to the urgent needs of children. In this direction, the multi-pronged strategy of the United Nations focuses on the factors like strengthening the family capacity for better protection and care of children, mobilising and supporting community-based responses to the vulnerable households, providing essential services including education, healthcare etc to all vulnerable children, ensuring governmental interventions through improved policy and legislation etc. for better protection of the vulnerable children, generating mass awareness for creating a supportive and children friendly environment, providing proper mechanism for care, treatment and rehabilitation of the children in conflict with laws, implementing effectively the child victim compensation programs and engaging the children to express their views and expectations.

India, as a state party to the Convention on the Rights of the Child (CRC), ratified the Convention on the Rights of the Child on January 11, 1993 (UNHCHR). To accomplish with the international commitments the government of India has reviewed its national and state legislations, brought a uniform juvenile justice system throughout the country in conformity with the guidelines and prescriptions of the international convention, treaties and agreements. Following constant international attention and universal attachment to the issue of juvenile justice the Govt. of India has also developed appropriate monitoring procedures to assess progress in implementation. The combination of a growing focus on the issue of juvenile justice influenced by the global pressure forced the central Indian government to submit the country report to the international committee on the rights of
the child. It inspired the Ministry for Social Justice and Empowerment to go for drafting of new law on juvenile justice.

Though the legal rights of children in India have brought about some changes and have given a special emotional, mental, psychological and physical status to the children, the plight of the India children has been subjected to lots of travails and traumas for a long period. For example, in the Indian family laws, a distinction has been made between legitimate and illegitimate children depending on the status of the marriage of their parents or other types of relationship. A child born out of a relationship having no legal sanctity or of a void or illegal marriage is considered 'illegitimate'. Consequently the children have been made a mere victim of circumstances and are forced to pay the prices for the decisions taken by the parents and are denied inheritance rights. Even worse, a child born in consequence of rape is stigmatised and treated as 'illegitimate' both by the society and also the law in force in the country. Moreover, despite specific legislation the practice of child marriages is still continuing in the Indian society. It is a matter of common knowledge that from almost all parts of the country children are being trafficked for slavery, exploitation both commercial and sexual, begging rackets, illegal adoption purpose and as cheap labour.

Along with Independence, came the dawn of a new era for the children in the country. In India it is evident that the rights of children are primarily related with the principle of human rights with emphasis on anti-discrimination, need for social participation, integration and protection of adolescent age. The founding fathers of the nation laid due emphasis on survival, development and protection needs of children by inserting relevant provisions in ‘Fundamental Rights’ and ‘Directive Principles of State Policy’ in the Constitution of India. To tide over the inadequacies of the pre-existing law and to bring uniformity across the nation, the Juvenile Justices Act 1986 was enacted for the whole country. With the objectives of providing special care, attention and treatment to the juveniles, the aim of the Act was to create a uniform legal framework for juvenile justice in the country as a whole and also to ensure that no child, in any circumstance, is lodged in jail and police lock-up. This also led to establishment of Juvenile Welfare Boards and Juvenile courts. The guiding approach was to prevent recurrence of juvenile delinquency and facilitate them in their development and social adjustment process. It also resulted in establishment of observation homes, juvenile houses, juvenile homes or neglected juvenile and special homes for delinquent or neglected juveniles. The Act drew heavily from the
major provisions and clauses of the Indian Constitution, the 1974 National Policy Resolution for Children, the universally agreed principles and standards for the protection of juveniles such as the 1959 United Nations Declaration of the Rights of the Child and the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) among others. In spite of sincere intentions and efforts, the JJ Act 1986 had several lacunae and posed difficulties in implementation. Interestingly, the administration of juvenile justice has historically been with the sole purview of the government. This somehow desisted the civil society to enter into this domain in the initial phase. Taking the cue from its own experience, to be in sync with the legal framework in the country and also in line with development in juvenile justice paradigms world-over, the government brought in a new Act, the 2000 Juvenile Justice (Care & Protection of Children) Act. This Act endorsed both ‘justice’ as well as the ‘rights’ approaches towards children. The new act also ushered in involvement and collaboration with civil society organizations for better juvenile justice in the country. The JJ Act 2000 was further amended in 2006 and made it clear that retrospective consideration of juvenility would be done from the date of commission of offence. Every child who is found to be neglected or delinquent juvenile should be dealt with under the JJ Act and should be brought within the protective umbrella of the juvenile home. It establishes the fact that there has been a revolution in the juvenile system in India post 2000. The impact of this has manifested itself as reduction in the count of juvenile crimes progressively over the years. However, the interesting finding is that while the crimes committed by the juveniles are actually decreasing over the years the number of crimes against children is showing an increasing trend post 2000 legislation. It points towards the need of mass awareness, attitudinal change in the minds of people in the society and rigorous implementation of the Act for better juvenile justice. It is apparent that a large number of children in our country continue to remain the victims at the hands of the perpetrators years after years. The long term policy prescription to arrest the trend is to create mass awareness and sensitize people against the evils of crimes against children. It will facilitate better lives of the juveniles in general. Concurrently, the judicial system must reorient itself for better records and quicker disposal of cases relating to crime against children. It will act as a deterrent to the crimes against children. There are ample opportunities to speed up and strengthen further child sensitive and child friendly jurisprudence.
The state of West Bengal has a progressive track record of legislative development and positive governmental actions relating to child right and child protection. In compliance of the recommendations of the Jail Committee in 1919-20 and to usher in complete reforms in young offenders, the provincial government of Bengal enacted the Bengal Borstal Schools Act, 1928. It was, perhaps, intended by the state government to cover the lower age group of children under the provisions of Borstal act in the absence of specific provisions in the Children Act, 1922. The scope of sending a young offender as defined under the Borstal Act, by a court was on the basis of the cardinal principles of the Act. The guiding focus was to recognize the individual identity of the offender, to help him to get rid of the criminal tendency or antisocial behavior and to restrain him from committing further wrongs. The Bengal Children Act, 1922 was ultimately repealed and replaced by the West Bengal Children Act, 1959. The new Act attempted to strike a balance between the conflicting interests connected with the past experience of implementation of enforcement of the Act of 1922. The Act also repealed the provisions of the Reformatory Schools Act, 1897 (VIII of 1987), the Bengal Borstal Schools Act, 1928 (Bengal Act 1 of 1928) and the Bengal Vagrancy Act, 1943 (Bengal Act VII of 1943) so far it applies to the neglected children. Time to time the State of West Bengal has implemented the recommendations of the Government and thereby has developed and strengthened the system for consolidation. In the context of juvenile justice, the legislative ideas of the state of West Bengal were more advanced and progressive than the union legislation. Before the enactment of the Children Act in 1960 by the Central Government, the state of West Bengal had enacted its own state law in 1959. Though the union legislation JJ Act, 1986 replaced the West Bengal Children Act, 1959 but the union legislature relied upon heavily on the same principles and concepts of the state Act of 1959 in the year 2000 (JJ Act, 2000). Both the state Act of 1959 and the central Act of 2000 hold a person as juvenile until he / she attains the age of eighteen years irrespective of gender. Moreover, both the Acts relied heavily on the need for deviating from the primitive criminal trial and sentencing system for the juveniles.

Undoubtedly, there have been several reforms in West Bengal in the arena of juvenile justice through legislative process. The state has shown its progressiveness in juvenile justice in the pre independence era and even after the independence till the JJ Act, 1986 was promulgated. Thereafter, the Govt. of West Bengal lagged behind the union legislature. Presently in West Bengal, Child Protection has received due importance and it comprises a
manifold set of services. The judiciary along with the police and various government agencies, autonomous bodies, public enterprises and NGOs are involved in the implementation of the laws, schemes and programmes for children. Despite of that the advancement of the child right related issues in the State of West Bengal in the current decades are not impressive. The need of the hour for all of them is to ensure that laws, schemes and programmes for protection and promotion of children’s rights are properly implemented at the ground level in the right perspective. The study of statistical position shows that the crimes against children in the recent times are more pronounced than juvenile delinquency in the state. It captures a broader picture of the status of juvenile justice in West Bengal, which largely indicates that the children in the state are more victims of crime than being delinquent themselves. It is a pointer to the direction of strengthening the system and mechanisms to foster better juvenile justice in the state. The need of the hour is to adopt and intensify efforts & practices and harness legal activism for arresting increasing rate of crimes against children in the state.

As the children are increasingly becoming the victims of atrocities - whether targeted directly or as a consequence of violent attacks against their parents or coerced to act as combatants in hostilities – the courts of India as such have played an important role to strengthen the systems and mechanisms for implementing the existing child protection standards. The holistic observations, judicious directions and apt interventions of the courts have arrested the increase of juvenile delinquency and also attempted to reduce the number of crime incidents against the children in the country. However, at times it is far from reality. Sometimes the components of juvenile justice i.e. police, courts, correctional homes, legislations etc. show the lack of unity of purpose. In several cases, competition among these components is more typical than cooperation. Collaboration among various components of justice as well as all stakeholders holds the key to foster better juvenile justice system in the country.
6.1. **Suggestions**

In the light of the studies and analyses done in this research work, the key issues, challenges and suggestions pertaining to child rights and juvenile justicesystem in India are being summarily put below:

1. The JJ Rule prescribes threshold period for the completion of enquiry within a period of four months or extended period of two months. However, no time limit for completion of investigation has been mentioned. A comprehensive rule is required to deal both the issues conjointly.

2. If a person is accused of any offence and obtains bail or any other relief ventilating the ground of juvenility and afterwards found to be a major, then at that situation the rule is silent how to initiate adverse action on the concerned person.

3. A child is incompetent to contract, but Ld. Advocates profess appear before the JJ Board or Court to represent the children, it is also cardinal principle of the JJ Act that, every child is entitled to represent himself through Ld. Advocate, then the problem demands for reformation of the exiting rule in a comprehensive manner.

4. Filing of petitions in a proceeding before a court requires payment of requisite court fees as per rule. The common understanding suggests that the court fees are meant for the court not for the board. In this perspective the rule is silent whether the petitions or applications are to be entertained in a proceeding before the JJ Board with or without fees. A rule in this regard is required to be put into practice.

5. The JJ Board has no power to entertain a complaint against any person and when the complaint itself is against a juvenile, the court of law has no power to prosecute a juvenile. It leads to a conflicting and dichotomous situation. Hence the rule needs to be amended to incorporate necessary provision empowering the board to entertain complaint against juvenile so as to stop misuse of precious time of the court of law.

6. The rule is clear regarding dress code of police personnel dealing with juveniles. As per the rule, a police person cannot wear his robe during handling a juvenile. However, in case of advocates dealing with juveniles there is no such mention. It should be clearly prescribed.
7. The related process of a proceeding before a JJ Board, like the manner of preferrng application for custody of JCL or prayer for release of seized article if any, have not been prescribed in the rule. It should be framed.

8. When the case is a complaint case, the patent formula is absent in the rule regarding how to go ahead with the proceeding in view of the legal right of the complainant to represent himself through an advocate in sync with the legal necessity of preparation of the case diary for the JCL under the provisions in the Rule 11 of the JJ Rule.

9. Section 12 of the JJ Act provides the right to every person accused of any offence under the age of eighteenth years irrespective of the nature of offence whether it is bailable or non–bailable. The problem arises when the person arrested is a foreigner. If a foreigner under the age of eighteenth year is arrested under a charge of commission of any offence, he is also entitled to bail according to the aforementioned section. However, the bail order, if granted shall tantamount to invasion to the administrative jurisdiction of the respective state of India. Therefore, the Section 12 is conflicting with the provision of the Foreigners Act or Rules or any other similar Act or Rules. The problem is required to be resolved by a comprehensive legal prescription.

10. Necessary legal provision is required to facilitate the scope of compensation to the juvenile who is subjected to false prosecution.

11. There should be a provision to fix the liability where a police officer arrested a person as adult and later on such person turns out to be a juvenile. The authority concerned should undertake an inquiry to satisfy himself that a deliberate lapse has not been committed.

12. The JJ Board cannot do anything unless the record is transmitted to it. At the same time the court of law is debarred to go ahead in a proceeding when the person against whom the allegation made is a juvenile. But when a juvenile is under apprehension of arrest he has to knock the door of the Hon’ble High Court or Ld. Session Judge as the case may be, for an order of anticipatory bail under Section 438 Cr.P.C. This puts excessive burden upon a JCL compared to an adult. Hence the JJ Board should be made empowered to hear the matter of anticipatory bail to JCL.
13. Different laws are there prescribing different age of consideration for upholding the rights relating to child, which in turn creates conflicting situations. There is an urgent need for unification of all laws related to the right to child.

14. Necessary provisions should be incorporated in the rule fixing the liability of the Probation Officers or CSW or DSW for non compliance of any legal duty or direction of the Board.

15. The Act and the rules do not provide any process relating to deposition of fine, if the JCL is sentenced to fine under Section 15 of the Act. The other form of anomaly arises when the Board directs to furnish bond to a JCL by a registered surety as the Act does not provide any provision relating to registration of a person as surety. It is only the CJM or ACJM as the case may be, can register a person as surety of the court. To address this issue, necessary rule is required to be framed.

16. One of the cardinal principles of the JJ Act is the separation of juveniles from adult in a criminal trial as per the provision in the section 18 sub-Section – 2 of the JJ Act, 2000. However, in spite of its noble intent it turns out be burdensome to a JCL, who has been apprehended along with adult/s. For example, if the issue of juvenility is raised or revealed at the stage when the trial of the alleged juvenile is completed or is about to be completed the court directs to split up the case record and transfers the record of the juvenile only to the JJ Board for proceeding in accordance of the JJ Act or rule framed there under. However, as per the JJ Act the Board has to start afresh as the Board cannot consider the evidences already examined in the trial courts. Consequently the JCL has to face the trial before the Board from the beginning. A provision is required to be made particularly when the juvenile was on the verge of being absolved of the charges, empowering the Board to consider the part of the proceeding already completed before transfer under the JJ Act, 2000.

17. The Board has no jurisdiction to deal with any legal issue relating to the right to child to which the civil court has jurisdiction. Sometimes, children are begotten out of love affairs without formal marriage or in consequence of an offence against woman. Fundamentally, it is an admitted legal position that every child secures his paternal identity in the society before the birth itself. However, there is no law in India to automatically bestow familial identity on that child.
18. Laws in the matter of punishment for sexual abuse and exploitation of children, cyber crimes against children, child labour among others have to be reformed and uniformly formulated.

19. The provisions for prevention, rehabilitation and compensation of child victims are required to be specifically incorporated and unified into various child related legislations.

20. Creating a comprehensive database relating to all aspects of child rights especially of the disadvantaged and vulnerable communities is require to be established immediately to facilitate national research on child right in the country.

21. In view of the rapid change under the influence of the western culture in the Indian society, the laws are required to be reformed to build a social platform to accord equal societal status to the children begotten through temporary and not legal relationships with the children having legal family origin. The JJ Board is required to be provided with concurrent legal authority with civil court to decide the question of parental identity of a child. Necessary legal provision is also to be introduced to secure the right to maintenance, right to share of paternal property of a child whose birth was due to temporary, transient and not legal relationship between his parents.

22. To foster quicker enforcement of child right, the alternate dispute resolution techniques need to be developed for addressing the related issues.

23. Collaboration among all the stakeholders having impact on the lives of children are to be promoted and strengthened.

24. It is suggested to developing a special cadre of professionals for the protection and care of children in the country.

25. Sustained efforts are to be made to implement related laws to ensure a balanced sex ratio in the country.

26. More stress has to be given on proper implementation of the Integrated Child Protection Scheme.

27. There is a need to establishment a dedicated research and analytical wing to constantly study the limitations of the present systems, programmes, legislation
related to children and harness the amelioration of the conditions of children in the country.

6.2. Concluding Remarks:

The study in my research indicates that despite several developments in the child rights in last five decades in India, the Indian juveniles are yet to be viewed as a key stakeholder in the society. Though the Indian judiciary is making an attempt to make a meaningful difference in the juvenile justice in the country, the juveniles are still merely considered as a fait accompli at the hands of the adults in the society. However, a robust child right and a sound juvenile justice system are the basic ingredients for the sustained human development in a country. Two pronged approaches are to be taken for management of better juvenile justice in India – one is facilitation approach and the other one is deterrence approach. In facilitation approach, more and more mass awareness programmes are to be undertaken to sensitize people about the need for better upbringing of juveniles, need to continuously instill values and ethics in the minds of children, perils of crimes against juveniles and child rights. In deterrence approach, promulgation of laws, its continuous modifications in tune with changing times and its strict implementation must be sustained. The right of the child should be protected and the rule of the law should be implemented through collaborative efforts of all the stakeholders.