CHAPTER 2

REVIEW OF RELATED LITERATURE

The criminality in child is not inborn. There are several factors which are making the child delinquent. The factor may be the surrounding environment of a child, the peer group of child, improper social community and neglect of parent. The child for the better development not only needs to be developed biologically but it is necessary to provide proper social environment to them. The CRC given by the UN aimed at protecting and aiding children. For the sake of concern of children, four rights have been laid down, right relating to survival, protection, good health and participation. Accordingly the child rights are protected by various international and national instruments. However there are some elements in the society which are putting the survival of children at risk. They exploit the delicacy of the children and give them a lifetime injury.

2.1 SIGNIFICANCE OF REVIEW

Prabhu, R (2011) highlighted on significance of review by quoting review to be the main part of the investigation in research. It gives the researcher an outline to frame the study. It also prevents to copy and duplicate the work. It helps not to make a research again on the same topic. It helps to investigate the research in correct direction.

2.2 EARLY EFFORTS

From the critical review of the related literature, it is clearly observed that, there were earlier evidences to show that the incidences of the child abuse are prevailing. The existing literatures on the child abuse, which researcher seek to refer are-


And so other based on the thesis for evaluating the research problem comparatively.

### 2.3 NEED

There are many reasons why to explore in this problem. They are as follows:

1) The incidences of child abuse are on rise in India.
2) The child abuse victims mortality rate is on rise
3) The child abuse incidences show that these abusive activities are being committed to satisfy the personal greed.
4) The juvenile delinquency is the result of these abusive activities.
5) The rate of delinquent juvenile is high on committing heinous crimes.

### 2.4 REVIEW OF THE LITERATURE

The Child abuse is alarmingly increasing due to many factors like poverty, family environment, neglect by parents and some other factors. It is argued by some people that it is important to recognize the measures which will control such abusive activities.

Information and sources are collected for the purpose of review of related literature from various sources such as journal articles, periodicals, books, reports and internet. The available literature in relation to the following areas has been critically reviewed, analyzed and presented as follows:
1. Nature of Child abuse

2. Forms of Child abuse

3. Prevention of Child abuse

4. Juvenile delinquency and Child abuse

5. Juvenile system in India

6. Legislative control over child abuse in India

7. Child abuse, Juvenile Delinquency and Indian Judiciary.

2.4.1) NATURE OF CHILD ABUSE

1) It was observed in *Balbir Singh Vs. State of Rajasthan*, 1994 Raj Cri 256, that in good olden days, every home was the best ‘child court home’ where a child used to get basic education and care for development. The school and family environment gives child a place for development. The character of the child gets properly developed in such good environment. Due to advancement of society the children are being neglected. Due to their tender age and lack of proper knowledge they become easy victims. Most of the children are termed criminals but they themselves are the victims of circumstances.

2) **As per study conducted by MWCD in 2007**, 53.22% of child in India are victims of sexual abuse. (The Hindu, 14 July 2010)

3) **The Author Prof(Dr.) K.C.Jena, Prof and Dean, P.G.Dept of law, sambalpur University, Burla(Odisha), speaks in his research paper “Female feticides and infanticide in India : The emerging issues” which is published in Law profile ,vol 3,issue 2, Feb 2012**, about the discriminatory practices against the female child. The author stressed on the point that in Indian society, female feticides has emerged as a burning social
problem during the last few years. The author has made mention of the census of 1991, 2001 and 2011, indicating a grim demographic picture of declining female to male ratios.

4) In a research paper, given by Basu and Van (1998) argued that the main cause of the child labour is the poverty of the parents. On this they recommended that ban on child labour is need of an hour but at the same time the wages for the adults should me increased so that they can satisfy their family demands. This will also lower the level of putting children under labour by the parents. If the family needs are being completed, then there will be no need of sending children out for work to earn money.

5) The author Dr. Geeta Shrivastava in her research paper “Child labor”, published in Vol XIII, Jan-Mar 2000 Part I published in Central India Law Quarterly has rightly highlighted on the empowerment of children by quoting a sentence said by Abraham Lincon that “If you want to improve the nation improve the child”. The author highlights on the practice of child labour which is very ancient one. In India more than 20 million children are working for their livelihood. Most of them are being used by criminals and made to work illegally. They then indulge in criminal activities like theft, smuggling and other immoral acts. The author has referred constitutional, legislative and judicial aspects for the welfare and protection of children. The author finally concludes with her recommendations that the government of Indian must be vigilant enough for the enforcement of the various enactments and laws pertaining to the child labour. The government must ensure such measures to rehabilitate such children and provide them proper education and other facilities in regard to their protection and their development.

6) A Rally was organized by more than 400 Girls of Higher secondary School to aware about the child abuse to spread awareness on International Day on Prevention of Child Abuse They gave helpline numbers to the public at
large. They made awareness on how to react when such incidence of abuse takes place. This rally made awareness of the types of abuse. This is retrieved from the **Times of India, dated 20 November 2014 of Tamil Nadu State.**

7) **In Sarath Chandra Pottala Vs. Union of India,** the constitutional validity of POCSO was challenged by the petitioner, that the special court has power to determine the age of the accused. However if there is a dispute, the special court has no power to determine the same.

8) **According to the WHO,** Child Sexual Abuse is such a forceful act which is executed on child without the consent of the child since the children are unable to give informed consent for such acts. It violates the law as well the social norms of society.

9) **Incestuous abuse is very not newly recognized form of abuse in India.**

   A study conducted by RAHI in 1997 revealed that 76% of the victims were sexually abused when they were child, among whom 71% were abused by their relatives or near and dear ones.

10) **According to the Report of the COI 2011,** the sex ratio of children has dropped and girls are less in number. This is not a good indication for the better future of the country. The pregnant women are sometimes by their own, willing to undergo pre-natal sex determination and abort the girl child and sometimes they are forced to do so by their family members.

**2.4.2) FORMS OF CHILD ABUSE**

11) **According to the ANCPCA in 1997,** they were cases reported of child abuse, sexual abuse, physical abuse and neglect.
12) Smt. M.P. Chandrika, Lecturer, S.C. Nandimath Law College, Bagalkot, in her paper “Child Sexual Abuse Versus the Protection of children from Sexual offences Bill, 2010” which is published in Law Profile, in Vol 2, Issue 7, July 2011, speaks of how sexual abuse of children is a burning problem in India and emphasizes on the situation which is aided by the absence of effective legislation and the silence of the victims. The author speaks about variety of sexual offences in child abuse such as sexual assault, sexual exploitation and sexual grooming. The author also speaks about the effects of CSA and its preventive measures.

13) According to the Report of NHRC on the “Trafficking in women and children, the factual increase of child sexual abuse is found out.

14) The author Dr. Ravulapati (T) Madhavi, M.A. LLM, PhD. Asst. Professor of Law, K.V. Ranga Reddy Law college Hyderabad. 500029, Stated in her research paper “Feminine honour and Masculine Dishonour” Published in Vol 2, issue 10, October 2011, in Law profile a monthly Legal Journal, the concept of honour killing in the view of Humanity. The author in the very beginning of this research paper has given instance of Bhagvan Das who was convicted for life sentence by the Apex Court, who had killed his daughter for defying an arrange marriage. The author rightly explained in this that honour killings are inhuman violations of the fundamental tenets of Art. 3 and 16 of UDHR and also are repugnant to the UDEVVW 1993. The author has explained the difference between Honour, Shame and Culture in this research Paper.

15) According to Save the Children, 2009, the research has found that children placed under institutional care are prone to physical, emotional and sexual abuse and neglect.

16) According to the report released by the, MWCD, GOI in 2007, 56% of children in institutional care were subjected to physical abuse and 47%
reported sexual abuse. The JJA lays down minimum standards on infrastructure and quality of care for each child care institution, but often these are not adhered to. Many issues such as overcrowding, lack of hygiene and dysfunctional infrastructure are widespread.

17) The Author Jonathan Rosener, in his book on Cyber law- The law of the Internet, has given in general terms, the meaning of the copyright, but emphasized its importance by saying it an exclusive Right. The author has distinguished between the direct infringement and Contributory infringement. The author had describes the concept of fair use of the internet.

18) The author, David lazer, in his book DNA and the criminal Justice system (The technology of justice) has quoted a link between uses of DNA in the criminal justice system for achieving success in the case study. The author rightly point out that, by the DNA testing, it is easy and quick to identify the guilty person from among the suspects.

19) The Miranda case is famously known for the case of self-incrimination. It emerged in 1966 by the U.S, Supreme Court; in this case the conviction of the accused was overturned on the ground of incriminating confessions. The Miranda case, instituted requirements to the police to inform detainees of their rights.

20) As per the Newspaper report of Indian Express, Ahmadabad on 26-11-2004, The NHRC, has took note of newspaper photograph of a handcuffed child and has directed Bihar police to explain the reason of doing so. It is a violation of the guidelines of the Supreme Court. This boy of 12 years had been apprehended for demanding extortion money in Bihar. However the police are violating the direction of Supreme Court in handcuffing him.

21) Gandhi Ashram was used as Community Service:
This was the first effort of implementing the J.J Act 2000 after it was passed. It happened in Gujarat. The Ahmadabad Metropolitan Court has ruled that, Mr. X, who is a minor, had raped the minor girl before three years. He was given a reformative treatment by making him clean the Sabarmati Ashram library every Sunday. This was a punishment to him, but it has an effect of molding him into a disciplined person. When Mr. X was asked, when he was 19 years of age, he said that he found very much peace at Ashram. He spends every week at least three hours at the Ashram, since the judgment was pronounced. The incident had occurred when the boy was 16 years of age, in 2001.

The judgment was so pronounced because, the counsel for defense had argued that the boy is studying and so should be allowed to stay with parents. Since the IPC prescribes no punishments for crimes committed by juveniles, the courts have discretion to suggest the punishments for juveniles in the benefit of juveniles. It was observed that the behaviour of Mr. X had changed a lot. During those days in Ashram, he developed liking for books. He was asked about his punishment after a period of time, and his reply was very positive, He said, it helped him to develop in a sensitive manner and gave him immense confidence.

This had reported in TOI, Ahmedabad, Ed, 20-11-2004 and retrieved by the researcher from the book named Penology: Sentencing Process, treatment of offenders, authored by Kailas Rai, published in the year 2006

2.4.3) PREVENTION OF CHILD ABUSE

22) According to the Hungama Survey Report 2011, it provides that 20% of Indian Children are having nutrition. According to the report, positive
changes in the nutrition of children are taking place in India. But still in many parts of India, children are malnourished and underweight.

23) The Union cabinet on August 28 2012 gave a clean chit to ban the child labour in all occupations and processes. According to it, if child labour still takes place, then the punishment will be of three years imprisonment or fine up to rupees 50000.

24) The International Centre for missing and exploited children (ICMEC) took a review of the child pornographic laws in the year 2010 in 187 countries. It came out that 93 countries have no laws on pornography. Out of remaining 94 countries 36 countries do not criminalize the possession of pornographic material regardless of their intent to distribute.

25) Some countries like Canada and Australia have laws banning Cartoons, manga or written child pornography and others require ISP’s (Internet Service Provider) to monitor internet traffic to detect it.

26) The study conducted in Chennai indicates the CSA rate is 42%. The boys are more sexually abused than girls. Boy’s rate of abuse is 48% and of girls are 38%.

27) Concept of Corrective coercion and correctional cycle: This is given by Professor Lowell J. Carr, in Delinquency Control in 1940 and adapted by MS Sabnis in juvenile justice and correction in 1996.

Professor Carr, gave a nine stage journey of the alleged juvenile offender, who was either apprehended by police or referred or diverted to the clinic or the welfare agency. According to Carr, this is a correctional cycle. The cycle begins with the apprehension of the juvenile offender and ends at the clinic or welfare agency.

The nine stages are as follows-

1) Apprehension or referral of the offender to the juvenile court
2) Detention of the juvenile in the observation home

3) Probation officer’s social investigation into the juvenile’s past and the circumstances led to the offence.

4) Examination by the JJB/CWC of the legal facts submitted by the prosecution.

5) Examination by the Board or committee, of the probation officer’s social investigation report and other clinical reports available on the juvenile in respect of his deviant behaviour.

6) Adjudication and disposition by the Board, or determination concerning need of treatment by the Juvenile welfare committee.

7) Treatment Institutional (Sending to the institution) or non-institutional (Probation with supervision or without supervision) and placement to a fit person or foster parents.

8) Gradual attenuation of treatment, in probation it means decrease of supervision and in Institutionalization it mean release on license.

9) Aftercare and follow up of the discharged offender. Termination of and discharge from treatment in case of offenders successfully rehabilitated.

According to Carr, the agencies involved in this are police, the detention homes, the board, the probation officers and the institutions. They help in moving the correction cycle.
2.4.4) JUVENILE DELINQUENCY AND CHILD ABUSE-

28) The author Mr. Saurabh Malhotra, in his research paper “Juvenile Justice System: An overview”, published in Vol XIV, Part III, in April – June 2001, Central India Law Quarterly, has through this paper highlights the concept of juvenile justice, which is developed in the 19th century. The Author has explained the overall scheme of dealing with juvenile delinquents, their punishment strategy, and their rehabilitation in India. The author has given recommendations for better juvenile system in India.

29) The author Pt. Parmanand Katara, Senior Advocate, Supreme Court of India, Eminent Criminal Lawyer, nominated for a Nobel Prize, stated in his research paper “Supreme Court illegally confirmed child hanging. (A fair criticism)” Published in Vol 3 Issue 9, Sept 2012 in Law profile a monthly legal Journal about the illegal hanging of a juvenile and stressed to the point that how the judiciary has ignored its duty of giving a fair trial. The author in this article has given suggestions for better judicial administration. In conclusion the author states that even one minute illegal detention in police custody and judicial custody is violation of rights of citizen. The author in this has appreciated the efforts made by a Human Rights activist, Shri Vijay Hiremath, Additional Session Judge Shri R. N. Joshi of Nashik District Court who has conducted an inquiry about the age and declared that the convict Shinde was a juvenile and he should be released from jail and be brought before the juvenile board.

30) The author Dr. Jagdish Kumar Malik LL.M, Ph.D. Asst Professor, Department of Law, University of Rajasthan, Jaipur (Rajasthan), in his research paper “Testing a child witness evidentially today”, published in Vol III, Jan-March 2005 part I of Central India Law Quarterly, rightly highlighted the very important aspect of Indian society that it is very difficult to get a competent witness and relevant evidence. The author in this article has presented two views on child to be witness, with the help of relevant
case laws. The author in the conclusion comes to the view that evidence of a child witness, who can understand the nature of the questions and give a rational answer is of a great tensile strength, which cannot be broken down merely on the grounds of infancy, forgetfulness, inconstancies and the like.

31) **According to the Hirschi 1969**, the children who have good family and social environment have a less chances to commit crimes. The social binds of a child will prevent a child to turn deviant and commit anti-social activities.

32) **According to Karen (1995)**, the relationship between mother and child should beloving. The child should be brought up in the environment of trust and respect in the family. The child should never be treated in a harsh manner. The incidences of distrust should never be created in front of child. This will help child to be away from the anti-social activities.

33) **According to the view of Zigler et al (1996)**, the abused children, develop fear, anxiety and stress which ultimately turn them delinquent.

34) **According to study made by Ervin Freyon on some Swiss delinquents, which is given by Dr. S.S.Srivastava, in the book Criminology, Penology & Victimology published by Central Law Agency, fourth edition 2012 on p no. 451**, that the children who start delinquency before 10 years of age, have tendency to become habitual offenders, and those who start after 14 years of age have a tendency to drop out the crimes.

35) **As per the Indian jail committee 1919-20**, the report shows that the mental and physical health of the offenders must be examined and then only to be sent in jail. If the offenders are found to be unfit then they are to be sent to the proper care center. Once the offender is released, he should be provided with care and assistance as on need.

36) **The author Mr. Amit Dubey ,in research paper “Cyber-crimes and its jurisdiction”, published in Vol. 3, Issue 6, June 2012 Law profile , a**
monthly legal journal, emphasized the scope of criminal activities through
the use of computer technology in the form of cybercrimes. The author
explains in this article how the Information technology Act 2000 and
amended IPC 1860 prescribes various penalties and offences.

37) The author Ms. Anubha Singh, in her research paper “India efforts to
combat Human Trafficking”, published in Law profile, a monthly law
journal, states the existing laws in India for the trafficking issues. The
author put forth her recommendations by saying that there should be strong
unit of central government to fight against this issue.

38) The report brought very horrific result which was published in 2005
targeting trafficking in India, it showed 44,476 children missing and only
11,008 could be traced, other remained missing. It was found that India is at
the top in providing the girls for the prostitution in other countries.

39) Miss Ayushi Mittal, A student of 2nd Year B.A.LL.B NALSAR in her
article Juvenile Justice: A Comparative Study with U.K, explains the
current Juvenile Justice system in India. The Author explains it with the
help of relevant provisions of IPC. The author explains in the article the
concept of Juvenile according to Juvenile Justice Act, and also the current
Juvenile Justice System. In U.K and makes a comparative study of them.
The author for doing a comparative study explains the reasons, age factor
and punishments for the juvenile crimes. The Author in conclusion states
that, children to be reformed and rehabilitated and not subjected to penal
process.

40) The incident covering a story in Indian Express News in Chandigarh
dated 13 July Wednesday 2011, which reveals the arrest of four juveniles
for murdering a minor boy. The killing took place out of family grudges. They
killed him by using sword and knife. As they were sent in juvenile home, they
have confessed the crime.
41) According to view of Jahangir M. Sethna, as expressed in ‘Society and Crime’ 4th edition pp 301-302 on crime and delinquency, any act dangerous to society or to himself and one by a person below the specified age is termed as delinquent act and the act committed by person above that age is termed as criminal. Hence an act committed by a person below a certain age, even if incorrigible act is not termed as criminal.

42) According to the report of UN in 2006 there are around eight million children around the world who are in institutional care. In India there are 40,000 children in conflict with law who are staying in institutions meant for them. Mostly around 32,000 children who are apprehended and produced in the courts every year spend at least a week to a year under institutional care.

43) As mentioned in the book named Criminology, Penology and Victimology, authored by Dr. S.S.Srivastava, 4th edition 2012 pp no 479, the report of Hartwell regarding Worcester Child Guidance Clinic, observed that, it was very difficult to measure success and as per his observation when the success of treatment is measured by the child himself is shown a great result. The rating by the child himself is better than to be rated by the police, social worker parents or teachers.

44) According to Dr. Nathaniel Hirach, 65% of Juvenile Delinquent in America suffers from emotional and psychological problems. The Company of the child plays very important role in turning a child delinquent. Earning money is also the reason for the child to turn delinquent.

45) According to the study of Sheldon and Glueck, made on 100 juvenile delinquents, after completion of five years of treatment, 88% continued delinquent activities. The same study was followed up by them on same
children after fifteen years and it was found that 40% of them had ceased to be criminals. And there was decline in their criminality.

46) **According to the view of Witmer and Tufts**, the juvenile delinquents are the children from the middle class status than the lower class status

47) **According to Dr. Cyril Burt**, a study of young delinquent found that in London 19% of the delinquent children belongs to the poor families and 34% of the delinquent children are from the middle class families. Most of the delinquent children from comfortable class avoided inquiry.

48) **The scientific study undertaken by Dr.Peri** produces result that the neglect of parents on children results in the growth of cortex region of brain, which makes the child, commits violent activities.

49) **The psychologists are of the view**, that the children between the age of 15 & 18 yrs. and committing crime are Juvenile delinquent. Delinquency cannot be regarded as criminal behaviour, it is an abnormity in the child.

   **According to the view of Dr. Sushil Chandra as expressed in the book authored by S.R.Myneni, named Sociology**, J.D is a branch of social science which studies the anti-social behaviour.

2.4.5) **J.J.S IN INDIA**

50) **According to the view of Richard J. Lundman**, expressed in his book on delinquency that the punishment results the attack on the freedom of the child. The lenient punishment system is applied for the children by putting them in reformative institution but the children feels it as well as violating their freedom. The reason for such was the rehabilitation and giving vocational and other trainings to the child to make him able to earn when he/she is freed from the institution.

51) **M.S. Sabnis on view about juvenile correction**, said that the intention of the After care organizations is to provide care and protection with the future
training to the juveniles. After care has an ultimate end to rehabilitate the JCWL and CNCP

52) **Rule 38(5) of the Model Rules states that**, the intention of these organizations and homes is to make and train the child in such a way that a child be able to adapt the society after coming out. These homes will assure that the child released from here will lead normal life.

53) **According to the view of Asutosh Mookerjee as expressed in the Juvenile Justice- An in depth study on matters relating to children, published in 1989**, that the role of Probationary Officers is to work as social workers. The care takers of the children in homes and organizations are also academically trained for the child care. Their role is very important in developing a child into a good citizen.

54) **According to a news article published on 31.7.2006 in Times of India on p 1.**, the caption was ‘Mob storm house off butcher doc’. Under this it was found that the doctors from Noida, Ghaziabad, New Delhi used to offer price to people and amputate their limbs for making them beggars. The matter was revealed through a television sting operation.

55) **According to a news report published on 1.09.2006 in Times of India**, under the caption ‘Death for killer sisters’, in which a horrific news came out in which the two sisters used to kidnap children and used to murder them. They used to do it in Maharashtra in Sholapur and Nashik District.

56) **The report of CRY** indicates that there are thousands of children go missing every year. According to the report millions of children are forced into sex trade. The report revealed a number of children forced into commercial sex. 40% of total children are found to be involved in commercial sex and most of them are found in metro cities likes Mumbai, Delhi, Chennai, Kolkata, and Bangalore. 71% of these children are illiterate.
57) **According to the National Crime Records Bureau, 2012**

Chhattisgarh has topped with 107 cases of incestuous rape. In 2004, the cases have reached to 505, in 2005 it was the highest 750, in 2006 431 cases reported, in 2007 it was 405, in 2008 there were 309 cases reported, in 2009 it was 404 cases reported, in 2010 it was the second lowest that is 288 cases were reported and the lowest reported case that is 267 in 2011.

58) **As per the Newspaper report of Indian Express, Ahmedabad on 26-11-2004**, The NHRC, has took note of newspaper photograph of a handcuffed child and has directed Bihar police to explain the reason of doing so. It is a violation of the guidelines of the Supreme Court. This boy of 12 years had been apprehended for demanding extortion money in Bihar. However the police is violating the direction of Supreme Court be handcuffing him.

59) **As per the report published in Mumbai mirror newspaper dated 16 July 2014, on the case of Shakti mill gang rape**, two juveniles were apprehended for the rape. They were pronounced guilty by the J.J.B and sent to Nashik in Boston school for three years. This school is meant to provide development facility to the offenders. One juvenile was held guilty for rape of photojournalist and the other was held guilty for raping a phone operator in Shakti mill compound in Mumbai.

60) The aim of the reformatory theory as found in the poem of George Bernard Shaw, as quoted by the Hon’ble SC In the Case of Mohd. Giasuddin Vs. State of A.P, AIR, 1977 SC 1926, that if a person has to be punished retributively, he must be given injury.

If a person is to be improved, he must be given opportunity to improve.

Because men cannot be improved by injury.

61) The phenomenon of J.J. is developed in 19th century. During past period, there was a concept of ‘No right for children’. The joint family system was prevalent, so the children had to be under the supervision of parents all the
time. Due to industrialization, the nuclear family system started growing which ultimately led to the breaking of social system. The treatment of child and adult started being at same par. **This is a view of Pande, B.B. expressed in “J.J.S in India”, training program on J.J. Administration, U.P academy of Administration, Nainital, Feb 1997, and page 3.**

62) The pre-juvenile attitude can be seen in IPC, where Sec.82 and Sec. 83 protects children from criminal liability. The children are immuned as per these sections, due to immature understanding. Sec 29(b) of Cr. PC also restricted the ordinary courts to have jurisdiction over JCWL. There is also a provision of keeping a child under 15 yrs. of age who is found to be committing an offence in reformatory school or other fit place of confinement. **This is expressed by S.K. Bhattacharya, in “J.J.S. in India” in Journal of Indian Law Institute 608 (1981).**

63) **As per the study conducted by Devakar on “Implementation of J.J.A 1986 in Delhi”, it has been felt a need to reorganize the setup of correction programs for juveniles and adult prisoners. It has been found that the motivational activities and capabilities developing programs to be undertaken. There should be such a training program which may give future prospect to them. The Government department should co-ordinate to set up juvenile units at different places.**

64) **As per the study conducted by V.P.Sahni on “Implementation of J.J.A 1986 in M.P”, it has been felt a need to appoint an ombudsman to monitor the working of J.J.S. It is an observed fact that once the juvenile is free from rehabilitation home, he is not taken care by anyone. The need of today is the rehabilitation of children and then their reintegration in society. There is lack of financial support to carry on the work of juveniles. There should be strong support through finance by the Government, so that Juvenile Welfare Fund can be set up. N.G.O’s should encouraged to be appointed as a ‘Fit person**
institution’ in the area of After Care System. The efforts should initiate from district level for co-ordinating in the area of J.J.

The homes set up under Government, needs improvement and there should be check on the officers indulging in the J.J and other posts being filled. The children in homes should be provided vocational and job oriented training.

65) As per the study conducted by Dr. Onkar Nath on the “Implementenation of J.J.A 1986 in Lucknow”, it has been felt that ‘A Separate Juvenile Wing’ to be established. It has been found that the staff and the personnel are inadequate under the J.J.S. The identification of children has to be made with due care. The children should not be brought only through raids and detained, those who are genuine to be brought in the homes. The CNCP and JCWL should be separated in observation home. The homes should pre-inform about the minimum age of children to be taken under homes. The CNCP should be sent to the ‘Child guidance Centers’ instead of sending in observation homes. The JCWL should be classified into the first offenders and habitual offenders. There should be counseling and guidance service to be provided at homes. There should be trained teachers to give education and levels of training to the children. The income generation opportunities should be provided to children who are above 18 years.

There should be courts established at district level rather than regional level. The judges appointed to deal with children should be expert in understanding the child psychology. There should be speedy disposal of cases, the time period of three months should be stipulated to dispose of the cases on children or else the child should be given in rehabilitation. The integration of child back to his/her family to be the prior agenda or if not they should be reintegrated. The children to be monitored even after their release.
2.4.6) LEGISLATIVE CONTROL OVER CHILD ABUSE IN INDIA

66) The Author Ms. Neelu Mehra, in her Research paper “Probation as a mean to reform the offenders: A comparative study of probation, published in Vol. 3, Issue 11, Nov 2012, Law profile, a monthly legal journal, has emphasized particularly the line given by Mahatma Gandhi "Hate crime not the criminal". The Author explains the probation system. The author in this article explains the development of probation laws in India. The Author here makes the comparative study between the Probation of Offenders act 1958 and the Code of Criminal procedure 1973. The author also explains the mutual differences and applicability of both the statutes. The author concludes that, the view that section 360 and section 361 would not be operative in the presence of the Act and if is not in consonance with the intention of the legislature.

67) The author Dr. C. P. Gupta ,LL.M, DLL,DCL,PH.D, Guest faculty University Law College and Guest Faculty department of Law, University of Rajasthan, stated in his research paper “Children’s right to education : Legal framework” , with the help of major international tradition, that taking education is a right. The Author traces a vision to the historical background about the traditional Indian Knowledge system.

68) In an Encyclopedia of Laws of the child in India, by S.P.Shaw, published in Allia Law Agency in its first edition of 2000, the author points out the view of L.Schultz, which was given in a research paper named ‘The Child Sex Victim: Social, psychological and legal perspective’, that incest is not the assault that causes trauma but the parent’s behaviour upon discovery with a child.

69) The author S.P. Shaw gives the view of Sarah Nelson which she analyses in Incest: Fact and Myth asserting that, either incest is damaging and undesirable or it is not. She asserts that if professionals take the first
view, it should be worked to surmount the barriers of it being unreported and stopped.

70) **In the Case of M.G. Kakkad Vs. Naval Dubey 1992 AIR SCW 1480**, the SC, convicted the accused who had raped a minor girl and had also committed a similar sexual assault on his niece and other girls in locality. The accused was awarded sentence of 7 yrs. of imprisonment and fine.

The judges have observed in this case, that the abuse on girls is not reported and so they are increasing day by day. The judge observed the reason behind it as children are not aware of the act of rape and so are not able to resist the act. The judge expressed that the offenders of such acts to be punished mercilessly.

71) **In Abdul Wahid Bahadur Ali Shaikh Vs. State of Maharashtra, 1993 Cri. L.J 977**, the father was charged with having committed a sexual assault on his eight year old daughter. The Bombay High Court, in this case awarded 10 yrs imprisonment, instead of life imprisonment which was awarded by the trial judge.

72) **POCSO 2012**

This Act made the evidences of children to be recorded in 3 days for the speedy disposal of trial. (4) The attempt to commit an offence is taken under the ambit of punishment. (5) Trafficking for sexual offences is made punishable under this Act. (7) Identity of the child victim is not disclosed and media is kept out of it. (8) The Act has made compulsory reporting of child sexual offences.

73) **CRIMINAL LAW (AMENDMENT) ACT 2013**

This came into force on 2nd April 2013. The following are the main features-

(1) The consenting age for sex is fixed to 18 years. (3) The minimum punishment prescribed under this Act is 20 years and if a victim dies or goes
in permanent vegetative state, then a death penalty is given. (8) This Act punishes the hospital authorities if they do not give treatment to the rape victims with 1 year of imprisonment. The hospital whether private or public should give treatment to the rape victims immediately and free of cost.

74) **Amendments on Juvenile Justice Act**

The followings are the important points added by the Amendment Act-

- If a child is found guilty of committing an offence, then he/she is to be sent for the preliminary inquiry for a period of three months.
- It is cleared that this preliminary inquiry is not trial but a session to see the capacity of child of committing crime.
- Children are given fair trial with the speedy disposal of cases
- Under this Act, the child will not suffer from any disqualification that arises from any conviction.
- The records of conviction are only applied to the heinous crimes.
- The Biological parents are given time to reconsider their decision for three months of giving children in adoption
- The after care of the child in the institutional care is not limited to only one time
- The child will be provided financial support while in institutional care
- The Disabled children will be given precedence in inter-state adoption.
- Abandoned children, found by the childcare facilities, will be kept for 60 days before being given up for adoption and for 30 days for giving in foster care.
- If a child is abandoned by the biological parents due to any unavoidable condition, then that will not be considered willful abandonment.
∑ For dealing on the appeal against an order passed against the child, the experienced psychologists and medical specialists will be consulted by the Board

∑ Proper training will be provided to the special juvenile units in the police force.

∑ NCPCR and SCPCR will be responsible for implementing the Act and look into the cases arising out of Act.

75) According to the National Police Commission, Second Report (Hindi Version) P 19, the role of public has been emphasized for social security in crime prevention. The role of other social agencies has been made clear for the crime prevention under this report.

76) The book Criminology, Penology & Victimology, authored by Dr. S.S.Shrivastava, 4th Edition 2012 of Central laws Agency mentions the role of police is not only limited to work as law enforcement agency but also help in rehabilitation and reformation of the offenders.

77) According to P.K.Basu, ‘Public Co-operation’, Calcutta Police Journal, Vol 3, January-June 1995, pp 39(42), quoted in Dr. S.S.Shrivastava : Criminology, Penology & Victimology 2012, In a welfare state the police has a special duty towards juveniles. They should give them healthy atmosphere to shape their future. By this the juvenile will not turn delinquent and get involved in anti social activities.

78) According to the News report published under the caption ‘Beggars in U.P. do not want to be counted’ in Times of India of 12 July 2005 at p 4, It was found that, since the U.P government was taking the census of beggars for their rehabilitation, it was found that the beggars were refusing to give their identity. It was felt that the rehabilitation of beggars will help in crime reduction.
This survey report is retrieved from the Central India Quarterly Law Journal. It is really appreciative that the government is taking efforts to give a proper juvenile justice system to the juveniles. The judiciary is also very active to protect the interest of the juveniles for their betterment. The following data is must to be produced as it shows the reports submitted by some experts to the UNICEF on the basis of their survey. The reason for still the study on this problem is because the children are still vulnerable and facing some or other hurdles in the justice system.

The survey has been conducted by Asha Bajpai, on the implementation of Juvenile Justice Act in Maharashtra in May 1986. It has been found out that, the members of the Juvenile Welfare Board, do not sit on all five days. This makes the continuity of matter to be lost. 80% of the children coming under the Juvenile Justice are dealt with the Board. Many members of the Board are not aware of the provisions of the J.J.Act 1986. The members of Board are not having legal knowledge due to lack of legal qualification, find it difficult to handle some cases on juveniles. The physically and mentally disabled children are kept in observation homes for long period of time, without giving them any facilities of development. The JWB has no funds for any miscellaneous expenses or any contingency. The record keeping is very poor. The cases are disposed of hastily and there is no scope for child counseling. The JWB has no infrastructure of its own. There is no mechanism to ascertain the age of the children. There is a problem of insufficient police force to deal with juveniles.

There are 28 Juvenile courts in Maharashtra, but all the districts in Maharashtra do not have Juvenile Courts. In the juvenile Court of Pune and Mumbai, there are no social workers and cases are pending since 1986. The courts do not sit in Bench. The atmosphere of court is crowded.

The superintendents of the observation homes are overburdened. There was no involvement of the children, in the management of the institution at all. The mentally and physically disabled children are in pathetic condition.
The distinction between the observation homes and juvenile homes does not exist at all. The observation homes are overcrowded and under staffed. Many children of observation homes are child labourers. The members of the JWB had no special training for handling the cases and implementing the J.J.Act 1986. There is no provision for providing vocational training in observation home. There is no separate arrangement for keeping the delinquent and neglected girl juveniles. The facilities in the form of food, medical and vocational training is inadequate. There are problems of physical abuse also. There is tremendous work load on the child welfare officer. The child attendants are in lack of knowledge in child psychology. The special home which is meant for the JCWL is loaded with neglected juveniles also. In aftercare institution only food and shelter is provided. There are no training, counseling and education facilities provided to the children. The training which is provided is inadequate and outdated.

There are no special training provided in the special homes. No written material, notes or background paper or reference material were prepared. There were no ongoing programs and no follow ups. Since there is tremendous power given to the judge under the J.J.Act 1986, the judges should be trained in the child psychology or welfare of the children. In Greater Mumbai, special police unit, named Juvenile Aid Police Unit (JAPU) has been formed to deal with the neglected children under J.J .Act. The children are to remain in observation homes, till the JAPU is free to attend their matters. The JAPU have other work to do as well. This leads to delay.

In Pune, it is normal police along with the Mahila Vibhag that deal with children under J.J.Act .The squads have no vehicles and there is no allowances given to them to take the child to the JWB. The Probation officers are not in proportion to the number of institutions.

80) As per the Newspaper report of Indian Express, Ahmedabad on 26-11-2004, The NHRC, has took note of newspaper photograph of a handcuffed child and has directed Bihar police to explain the reason of doing so. It is a
violation of the guidelines of the Supreme Court. This boy of 12 years had been apprehended for demanding extortion money in Bihar. However the police are violating the direction of Supreme Court is handcuffing him.

81) **Gandhi Ashram was used as Community Service:**

This was the first effort of implementing the J.J Act 2000 after it was passed. It happened in Gujarat. The Ahmadabad Metropolitan Court has ruled that, Mr. X, who is a minor had raped the minor girl before three years. He was given a reformative treatment by making him clean the Sabarmati Ashram library every Sunday. This was a punishment to him, but it has an effect of molding him into a disciplined person. When Mr. X was asked, when he was 19 years of age, he said that he found very much peace at the Ashram. He spends every week three hours at the Ashram, since the judgment was pronounced. The incident had occurred when the boy was 16 years of age, in 2001. The judgment was so pronounced because, the counsel for defense had argued that the boy is studying and so should be allowed to stay with parents. Since the IPC prescribes no punishments for crimes committed by juveniles, the courts have discretion to suggest the punishments for juveniles in the benefit of juveniles. It was observed that the behaviour of Mr. X had changed a lot. During those days in Ashram, he developed liking for books. He was asked about his punishment after a period of time, and his reply was very positive, He said, it helped him to develop in a sensitive manner and gave him immense confidence.

This had reported in TOI, Ahmedabad, Ed, 20-11-2004 and retrieved by the researcher from the book named Penology: Sentencing Process, treatment of offenders, authored by Kailas Rai, published in the year 2006

82) **The study conducted by TISS, Mumbai in 1999** shows that 39% of street girls are raped before they turn 10 years of age.
83) The study conducted by SVIC, Delhi in 1997, revealed that most of the girls are abused by their family members.

84) The Delhi based RAHI, organization conducted survey on higher and middle class college students through interview. It was found that 76% of them were abused at their childhood. Among them 50% were abused before the age of 12 years. The study revealed the fact that the abusers were known to the victims. The families are not protecting boys from abuse.

85) As per the study conducted by Devakar on “Implementation of J.J.A 1986 in Delhi”, it has been felt a need to reorganize the setup of correction programs for juveniles and adult prisoners. It has been found that the motivational activities and capabilities developing programs to be undertaken. There should be such a training program which may give future prospect to them. The Government department should co-ordinate to set up juvenile units at different places.

86) As per the study conducted by V.P.Sahni on “Implementation of J.J.A 1986 in M.P”, it has been felt a need to appoint an ombudsman to monitor the working of J.J.S. It is an observed fact that once the juvenile is free from rehabilitation home, he is not taken care by anyone. The need of today is the rehabilitation of children and then their reintegration in society. There is lack of financial support to carry on the work of juveniles. There should be strong support through finance by the Government, so that J.W.F can be set up. N.G.O’s should encourage to be appointed as a ‘Fit person institution’ in the area of After Care System. The efforts should initiate from district level for coordinating in the area of J.J.

The homes set up under Government, needs improvement and there should be check on the officers indulging in the J.J and other post being filled. The children in homes should be provided vocational and job oriented training.
As per the study conducted by Dr. Onkar Nath on the “Implementation of J.J.A 1986 in Lucknow”, it has been felt that ‘A Separate Juvenile Wing’ to be established. It has been found that the staff and the personnel are inadequate under the J.J.S. The identification of children has to be made with due care. The children should not be brought only through raids and detained, those who are genuine to be brought in the homes. The CNCP and JCWL should be separated in observation home. The homes should pre-inform about the minimum age of children to be taken under homes. The CNCP should be sent to the ‘Child guidance Centers’ instead of sending in observation homes. The JCWL should be classified into the first offenders and habitual offenders. There should be counseling and guidance service to be provided at homes. There should be trained teachers to give education and levels of training to the children. The income generation opportunities should be provided to children who are above 18 years.

There should be courts established at district level rather than regional level. The judges appointed to deal with children should be expert in understanding the child psychology. There should be speedy disposal of cases, the time period of three months should be stipulated to dispose of the cases on children or else the child should be given in rehabilitation. The integration of child back to his/her family to be the prior agenda or if not they should be reintegrated. The children to be monitored even after their release.

The report has given conclusion of finding a large gap between the legal principles and J.J.S. The above reports were submitted to UNICEF.

2.4.7) Child Abuse, Juvenile Delinquency, Indian Judiciary.

In the Case of Sanjay Suri & Anr. Vs. Delhi Administration, Delhi & Anr, AIR 1988 SC 414, it was held by the SC that, it is the duty of the jail authorities to keep a check on the admission of prisoners. The SC directed
that, the young person shall not be admitted in the adult prisons. This was held by the SC, because in Tihar Jail inquiry revealed that the juveniles were sexually assaulted by the adult prisoners. Subsequently a separate structure was constructed to keep the juveniles. The SC made it clear through this judgment that the jail authorities have a right to refuse the warrant of a person to be taken in jail if his age is not indicated thereon.

89) In the case State of Karnataka Vs. Harshad 2005 Cr.L.J 2357 (Karnataka), the court directed to establish more JJB in the state.

90) In the Case of Sheela Barse Vs. Union Of India, (1986) 3 SCC 596; AIR 1986 SC1773, the SC gave direction to the State Legal Aid Boards to appoint Advocates for the delinquent children to appear before the court. The presiding judge Mr. Bhagwati C.J. had observed in this case, that the constitutional mandate given in Art 39(f) will only be satisfied when a child shall be protected by the state and given opportunity to develop by the state. The child oriented legislation therefore prohibits the children to be kept in jail. The environment of jail is very much injurious for the better development of the child. And that's why the provision of observation home is made under the J.J. Act 1986.

91) In this case of Sanat Kumar Sinha Vs. State Of Bihar & Ors.: 1991(2) Crimes 241, which is a PIL, which was being filed for the long term pending cases of juveniles and pending investigations of the juvenile cases. It was found out that there are juvenile cases pending for more than five years and many juveniles are still kept in prisons. On this the court directed to quash all the trials pending since three years. It was directed to release the juveniles from the custody. In relation to the trials of juveniles which are pending less than three years was to be disposed of according to the provisions of JJ Act.
92) In the Case of Bhoop Ram Vs. State of U.P. AIR 1989 SC 1329, the SC for the benefit of the juvenile, held that he was juvenile, and he was immediately released. The strict investigation should not be followed and given benefit to children.

93) In the Case of Rajinder Chandra Vs. State Of Chhatisgarh& Anr: (2002) 2 SCC 287; AIR 2002 SC 748, there was question before the court, as how to deal with the accused who are on the boarder of 16 years. The court by referring to the decision of Arnit Das, held that for determining the issues of determination of age of juvenile, very simple method to be followed. And when there are two possible opinions then the view of holding the accused to be juvenile is given preference.

94) In the Case of Ex. Gnr.Ajit Singh Vs. U.O.I :2004 Cr.L.J 3994( Delhi), it was held that the juvenile even if guilty of offence under Army Act, is not liable to be tried by the Army Court, but has to be dealt by the J.J Act as a juvenile.

95) In the Case of Bhola Bhagat Vs. State of Bihar: (1997) 8 SCC 720; AIR 1998 SC 236, it was held by the SC, that the Bhola Bhagat and his co accused are juvenile. The accused should be given the benefit of the J.J Act. The age of Bhola Bhagat and his co accused was disputed and the High court had not given them benefit of the J.J. Act. The SC quashed the punishment and released Bhola Bhagat and his co accused, even though they were convicted. The court was of the opinion that, when accused raises a plea that he is a ‘Child’, then it becomes obligatory on the court, to hold inquiry and determine the same.

96) Master Salim Ikramuddin Ansari & Anr. Vs. Officer-In-Charge, Borivali Police Station, Mumbai & Ors: 2005 Cr.L.J 799( Bom), In this case the accused was awarded with the compensation of one lakh rupees by the High Court and directed to release him on bail. This was given because the
juvenile, due to the mismanagement of the jail authorities had to remain in jail for seven months and could be transferred only after that. The order of the session court to transfer the accused was misplaced by the jail authorities.

97) Abhay Kumar Singh Vs. State of Jharkhand: 2004 Cr.L.J 453(Jharkhand) in this case the juvenile had been kept in jail for 3 years and 8 months. The Court ordered him to release on bail, because if the proceedings are not completed within 3 years then the proceedings automatically stands quashed.

98) In this case of Dattatray G. Sankhe Vs. State of Maharashtra & Ors. : 2003 All .M. R(Cri) 1693 (Bombay) the High Court gave a decision on the condition of granting Bail. In the present case a juvenile was granted bail but made to report the same to the J.J.B.

99) In the Case of Sahabuddin Alias Shaboo Vs. State Of U.P : 2002 Cr.L.J 4579 (Allahabad), the SC held in this case, that the detention of juvenile is dangerous for the wellbeing of the juvenile. The juvenile to be released on bail immediately to keep the juvenile back in society. When the father of the juvenile is furnishing a bond for his release then there are very less chance to getting the juvenile in contact with the criminals.

100) Master Rajeev Shankarlal Parmar & Anr. Vs. Officer-In-Charge, Malad Police Station& Ors.: 2003 Cr.L.J 4522 (Bom)

The High Court in this case intervened and found that the juvenile was not yet shifted to the observation home; it directed immediate transfer of the juvenile. The High Court awarded compensation of 15,000/- to the juvenile for the delay in the execution of the order.

101) Vishal Jeet Vs.Union of India, AIR 1997 SC 699
In this case, on a reaction to the PIL filed, the Supreme Court issued appropriate directions to the state Governments and all Union Territories to eradicate the evil of child prostitution and to develop schemes and programmes for them.

102) M.C. Mehta Vs. State of Tamil Nadu, (1999) 6 SCC 591

In this case the Supreme Court gave direction to abolish Child labor and issued appropriate guidelines to the Government of India to make programs to affect the compulsory education of children and to develop activities to maintain health, nutrition, etc. of the child laborers.

103) In Sakshi Vs. Union of India, AIR 199 SC 1412

The Supreme Court directed the government/ Law commission to do study on the child abuse and find out the means to curb the incidences of child abuse.

104) State Vs. Nandan Prasad Shah, Tis Hazari Court, New Delhi, January 24 2012

In this case Mr. Nandan shah had abducted a six year old girl, who belonged to his family. Court convicted him and awarded life imprisonment.


In this case, there was a question to be determined whether a juvenile who is accused of murder and kept in observation home during his inquiry, shall be shifted to jail if he cross the age of sixteen years. On this Court directed to keep the juvenile in the observation home and not to shift him in jail just because he extends the age of sixteen years.


In this case, the court directed that the juveniles to be tried by the juvenile courts only, and if there are no juvenile courts then the Court of Additional
session judge has a power to deal with the juvenile offenders. He can exercise the powers as given under the Cr. P.C 1973.

107) **Krishna Bagwan Vs. State of Bihar** AIR 1989 Pat. 217

It has been held in this case that, there are different sections has been added under juvenile laws, of which benefit to be given to the juveniles whose inquiry is pending but has ceased to be juveniles. This benefit of not to keep juveniles in jail custody has to be applied in the betterment of juveniles and to provide them protection.

108) **Raghuvir Bajaj Vs. State of Haryana** AIR 1981 SC 2037

The SC observed in this case that the juveniles are prohibited to be tried as adults and shall not be made to undergo imprisonment in jails as adults. In the present case the juvenile had undergone seven years of imprisonment on attaining majority.

109) **Munna Vs. State of U.P.** (1982) 1 SCC 545

This case is reflecting the dangerous situation in which children are given jail custody and the sexual abuse of children in jails. Due to a newspaper report and subsequently writ petitions filed on this issue made Allahabad High Court to make an inquiry in this issue. The allegation was of lodging more than 100 children in Kanpur Central jail and of sexually exploiting them. Even the under-trial juveniles were kept in Kanpur Tihar Jail. The SC observed in this case that it is the duty of the magistrate to be very careful while sending the people in jail custody. If a juvenile is appearing in front of them, they must send them to the observation home and children homes. The child is a future of country and in no way they were to be exploited, but to be offered protection.

110) **In the Case of H.B. Singh Arsi Vs. State of Bihar** (1991) 1 Crimes 535 (Pat), the court directed to take the good care of neglected juveniles by
providing them food and other health care services. The neglected juvenile means a juvenile as per defined under section 2 (1) of the J. J Act 2000.

111) Parvathy Vs. Supt. Corporation Relief Centre, 2002(1) ALJ (Cri) 316 (Ker)

In this case the court has directed to the Presiding Officers of the CWC which is appointed by section 29 of the J.J.Act 2000. The direction is to prepare the list of children’s Homes with consultation of public prosecutor, by taking help of police. The presiding officer should also monitor the child so admitted before CWC.

112) Supreme Court Legal Aid Committee Vs. Union of India AIR (1989) SC 1278

In this the SC directed and felt a need of protecting the children. The SC directed that the society has to give necessary care and scope for the development of children. It is the obligation of the country to develop the child for a better future of the country.

113) Sunilkumar Vs. State 1983 Cr. L.J. 94(Ker)

In this case, the court directed that the intention of establishing the children home is to receive the neglected children and provide them accommodation and maintain their educational and other needs. The children home is a place where such neglected children get a chance to develop in a better person. If a juvenile court is directing a juvenile to be kept in children home then it is for the betterment of a juvenile.

114) R. Rathinam Vs. Kamala Vaiduriam (1991) 3 Crimes 582 (Mad)

In this case the court held that when a child is produced before the juvenile court and if he/she is not delinquent juvenile then if such child is not claimed by any persons, the child is kept in safe custody. The court directed the
state government to provide the facilities of shelter and development to the child. It is the duty of the state entrusted by J.J. Act to provide vocational training and educational facilities till the child attains majority.

115) Sanat Kumar Sinha Vs. State of Bihar (1990) 2 B.L.I. 137

In this case, it is held that court should not do unnecessary delay in executing the cases of juvenile. All unnecessary adjournments to be avoided which cause delay in the trial of the juveniles. All the cases of the juveniles to be concluded within a year.


In this case, it was held that the entries recorded in the register of birth, which are recorded by officials, cannot be doubted, and so it was given preference over the application and the date on which the father has filled the form and filled the date of birth.


In this case, Accused had claimed to be juvenile and for the same he produced school certificate and horoscope, which were found to be forged. The court held that in such case, the medical reports of the accused should be relied to determine the age of the accused, even though they are not conclusive proof.

118) Pappu Vs. Sonu & Anr. 2009 (2) RCR (Crl) 293.

In this case, the accused claimed to be juvenile. But the school record and the evidence of mother proved him to be not juvenile. The trial court noted the evidence of doctor and hold the accused to be juvenile. The SC held that, the report of doctor was not clear and failed to show the observations for the conclusion and so cannot be relied against the mother’s evidence and school record.
119) **Munney @ Rahat Jan Khan Vs. State of UP, 2006 AIR (SC) 2902.**
In this case the court held that since the plea of juvenility was not raised by the accused during the trial, and it was seen in the fact that the accused in his statement had given his age as 18 years, the accused is not a juvenile.

120) **Chandra Shekhar Bind Vs. State of Bihar, 2001 AIR (SC) 4024.**
In this case the court held that since the plea of being juvenile was not raised during the trial and even in HC and in SLP before Supreme Court, the accused cannot be given benefit of it even if it is raised for the first time during the arguments.

121) **Murari Thakur & Anr. Vs. State of Bihar, 2007 AIR (SC) 1129.**
In this case the SC made it clear that the claim of juvenility is to be raised only during the trial and not directly before the SC at the later stage.

122) **Navin Pawar Vs. State 1994(3) RCR (Crl.) 577.**
It was held in this case that, the repetition of commission of crime should not be the ground to reject bail.

123) **In the Case of Raj Singh Vs. State of Haryana, (2000) 6 SCC 759.**
The SC held that for dealing with the juveniles, only juvenile laws will be applicable and no other special Act will be made applicable.

124) **In the Case of Arnit Das Vs. State of Bihar, AIR 2000 SC 2244,** It was made clear that when the juvenile is produced before the competent authority is the day to determine the age of the juvenile.

125) **In the Case of Umesh Chandra Vs. State of Rajasthan, AIR 1982 SC 1057,** the Court held that, the Children Act is passed for the welfare of the children. Even though a child commits crime, but he/ she should be offered protection and not to be tried as adults. The issue of the application of the Act will be resorted on the basis of age of the child. The child if at the time of
commission of offence is of a relevant age then the act will be applicable on the child. The court therefore gave its view that the applicability of the Act is the date of commission of offence.

126) In the case Duryodhan Chaitu Meshram Vs. State of Maharashtra 2009-ALL MR (Cri)-995 the offence of Rape was committed by father on a minor daughter. This act was not a story of one day but the father used to do it on a regular basis with the minor girl. This was recorded as a very serious crime by the court. The complaint was filed by the victim and her mother. The girl became pregnant and when the abortion was executed the samples of foetus was taken to match with the DNA of the father. It was found that the accused is a biological father of that aborted foetus. The father was held guilty of offence of rape.

127) In the Case of Sebastian Chevithiyan Vs. State of Kerala 2009-ALL SCR-2448, a two year old child was taken away and raped and murdered by the accused. The accused was found to be pedophilic and convicted and sentenced for such similar case on many occasions. The Court sentenced the accused to the death penalty which subsequently was substituted for imprisonment till rest of his life.

128) In the Case of State, Through Police Inspector, Mapusa Police Station, Goa Vs. Shaikh Mohammad Rafiq S/O. Shaikh Amrul Hassan, 2009-ALL MR (Cri)-3489, it was ruled out that the children who are the victims of offences when gives statements or evidences, they need not to be corroborated. The statement of the victim is sufficient to register the offence against them. In this case the word ‘Kidnapping’ has been interpreted.

The persuasion of an accused, which creates willingness on the minor to accompany the accused, is sufficient situation to make an offence of kidnapping. The offence is completed as soon as the minor is being taken out of the custody of parent or guardian.
129) In the Case of Bandhua Mukti Morcha Vs. Union of India, AIR 1997 SC 2218, the SC laid down that the forced labour means a bonded labour. The case was about the employment of children in weaving industries in India. The Court took a note that this condition of putting children to labour can be eliminated if the parents and society take efforts to protect the children and not make them victims of circumstances.

130) In the Case of Salal hydro project Vs. State of J&K (1983) 2 SCC 188, the SC, is reconfirming its decision by stating that even after so many years of the passage of C.L (P&A) Act 1986, it is continued to exploit children for labour purpose. The apex court expressed its view that to prohibit the child labour, the primary education of children is made compulsory, but still the problem has not been eliminated completely.

131) In the Case of Prerana Vs. The State of Maharashtra & Ors. 2002-ALL MR (Cri)-2400, the Court has laid down guidelines in case of a girls below 18 years who solicit in a public place and if brought before the court. The directions of the court are worth for the welfare of juveniles, who are forced in to such activities. The court directed that, in such cases, the age of the juvenile to be found out and if it is found that the juvenile is below the age of 18 years then immediately to be transferred before the JJB or CWC.

The release of such juvenile is conditional, that is only after the completion of the inquiry by the probation officer.

Also the while releasing the juvenile the condition to be fulfilled, that is the parent or guardian to be fit person to take custody of the juvenile and it is to be determined by the CWC. The parents and guardian if are found fit by the CWC, the child is sent with them or otherwise is sent for the rehabilitation. No person except the parent or guardian has a right to represent the
juvenile before the CWC. The advocates are also not entertained here for representing juveniles.

132) **In the Case of Roper Vs. Simmons, 543 U.S. 551 (2005),** which is a landmark decision of SC of U.S held that Imposing Capital Punishment on the juveniles is very bad in law and against the constitution The majority overruled the prior decision of awarding capital sentence to the offenders above age of 16 years.

133) **In the Case of Graham Vs. Florida 560 U.S. 48 (2010),** it was held by the Supreme Court of the United States, that the no juvenile offenders to be awarded the punishment of life imprisonment for non-homicide offences without giving them a benefit of parole.

134) **In the Case of Munna Vs. State of U.P. (1982) SCC,** It was held by the SC that the nation who is not concerned for the welfare of a child, can never look forward to develop it for a bright future.

135) **The 2012 Delhi gang rape** case is a heinous act committed against a physiotherapist who was travelling with her friend in a bus on 16 December 2012. The name of a girl was Jyoti Singh Pandey who became victim of rape and heinous assault on her. There were 6 people who were present in the private bus and all of them raped her and beat her friend. All the accused were arrested and convicted for the rape, and murder of the girl. Among them one accused was the juvenile, who was also convicted and sentenced to three years imprisonment in the reform institution. One accused died in the Tihar jail and other four were sentenced to death penalty by hanging.
136) Kishan Kumar@Jailer Vs. The State (NCT of Delhi), MANU/DE/0248/2005, in this case a bail was prayed before HC by filing appeal. The Court considered the report of the social investigation officer and released the juvenile on bail by furnishing a personal bond of five thousand rupees. The Court emphasized on the point that 'Bail and not Jail' is intention of the J.J Act and that has to be complied with, if the releasing of juvenile is not against the interest of the society. The court observed that the juvenile cannot be rejected bail, only because he has committed grave offence.

137) In Sandeep Kumar Vs. State 119 (2005), In this case, the bail was rejected by the Juvenile Justice Board to a juvenile who had been booked for the offence of rape. The accused had committed rape on a 6 years old girl. The juvenile then filed a petition in COS. The COS too rejected the bail to juvenile in the interest of the society. The HC was agreed with the decision of the Additional Session Judge and the Juvenile Justice Board.

138) Harilal Mallick Vs. State of BiharAIR 1917 SC 3236. It was held, in this case that it is not enough to show that the child is under 12 years of age, but also to show that the child did not have understanding of the consequences of his/her act was immature. If there is no proof showing the immaturity of the child, then the court will presume that the child did the wrongful act intentionally. In the present case, the child of 12 years of age was held liable, because he used a sharp sword to kill his brothers, and there were no evidences to show that the child was immature or with lack of understanding.

139) In the Case of Md.Giasudin Vs. State of A.P, AIR 1977 SC 1926, it was recommended by Justice Krishna Iyer, that sports, games, Artistic activities and meditational courses proved helpful in reformation and crime prevention.
140) In the Case of Childline India Foundation Vs. Allan Johut Walers. 2011, Cr. L.J 2305 (SC) at p 2317, The Court observed that the J.J .Act was passed to give care and protection to juveniles. This is also to adjudicate matters on them and rehabilitate them in proper juvenile homes as per the need.

141) In Vishal Jeet Vs. Union of India (1990) SCC 318, the directions issued to eradicate the child prostitution and to rehabilitate the children.

142) In the Case of Childline India Foundation Vs. Allan Johut Walers. 2011, Cr. L.J 2305 (SC), there were two accused persons who used to be sexually abuse the children living in their shelter house. They were convicted and sentenced under section 377 of the IPC.

143) The Hon'ble SC has stressed on the rehabilitative aspect of the punishment In the Case of Mohd. Giasuddin Vs. State of A.P, AIR 1977 SC 1926

That the crime is a pathological way and a criminal can ordinarily be taken back to the society by rehabilitating him rather than punishing him to take revenge. The reason to turn antisocial has to be countered not by treating the offender with cruelty but by reculturing him with a good training. Hence the goal of reformative punishment is the training of offender to take him back in society.

144) The Hon'ble SC, In the Case of T.K.Gopal alias Gopi Vs. State of Karnataka (2000) 6SCC 168, has observed that the theories of punishment has different approaches, the reformatory theory has a therapeutic approach. It regards the criminal as a sick person, who requires treatment and try to eliminate those conditions which are responsible for his crime commission.

145) In the Case of N. V. Rao Vs. State of A.P., AIR, 1978 SC 480, the Hon'ble SC, held that the main object of punishment is curative. More stress should
be given on rehabilitation rather than retribution and keeping persons under rigorous prison terms.

146) In the Case of Rajendra Prasad Vs. State of U.P, AIR 1979 SC 916, the SC gave a view that the retributive punishments are no longer valid. The deterrence and reformative punishments are the modes of punishment to be made applicable to the offenders as per the nature of crime committed by them.

147) In the Case of Saradhakar Sahu Vs. State of Orissa, 1985, Cr.L.J 1591, the court cleared its view by stressing on the modern modes of punishments. The reformatory punishments are emphasized by the court for the rehabilitation of the offender.

148) In the Case of Punchu Vs. State of Orissa, 1993 Cr.L.J 953, the court held that, it is always good to extend to the modern method of penology for treating the delinquents. The reformation of the delinquent should be the ultimate for bringing back in the society. The probation is a part of reformative theory. Many criminal commit crimes due to the circumstances, so they should be extended benefit of probation. The young offenders to be rehabilitated for their better future.

2.5 INFERNECE:

An evaluation of the related literature on various aspects of the child abuse and juvenile delinquency, provides an outcome of the review as following-

1) Total more than 140 studies based on the child abuse and juvenile delinquency are selected from journals, books, reports, relevant statutes, case reporters and from websites are covered in this research.

2) The published work related to child abuse and juvenile delinquency have been grouped and presented under the headings like:
a) Nature of Child abuse
b) Forms of Child abuse
c) Prevention of Child abuse
d) Juvenile delinquency and Child abuse
e) Juvenile system in India
f) Legislative control over child abuse in India
g) Child abuse, Juvenile Delinquency and Indian Judiciary.

3) The research on various facets of juveniles in India is on growing stage and needs to be further strengthened in this area by the researchers.

4) It is also noticed that most of the research in this area has been doctrinal in nature.

5) There is no comprehensive and exhaustive study reports on child abuse and JD in India.

From the critical review of the related literature, it is clearly observed that there were earlier evidences to show the incidences of child abuse in India and in other countries.

Today the evils of child abuse have become a global problem due to various reasons and uncontrolled responsible factors. Initially this problem of child abuse was not being redressed, due to social stigma but as this problem is getting severe, the children are redressing this with courage and in hope to get justice, so that prospective incidences of child abuse will be reduced.

Over the years due to the urbanization, the problem of child abuse has raised to its peak. The higher the cases of child abuse, the higher the rates of juvenile delinquency is the pattern being followed in all.

Therefore, the present study attempts to bridge the gap and proposed to conduct the comprehensive study on child abuse and juvenile delinquency with respect to the judicial attitude towards it.