CHAPTER 5

JUVENILE DELINQUENCY AND THE JUVENILE JUSTICE SYSTEM.

5.1

JUVENILE DELINQUENCY AND CRIMES

Juvenile delinquency is seen as a new developed branch of criminology. Delinquent behavior among the juvenile is increasing day by day giving an indication of a sick society. There is a question whether a Crime and Delinquency is same or different? The answer to it is very simple because there is actually no difference between both of them, whereas Delinquency is a part of crime.

Crime means any anti-social behavior which punishable by law. Crime is inevitable in any human civilization. Human being is born with selfish nature and to get the means or the desired things, human comes in conflict with other parts of society and so crime gets originated. Hence to satisfy the selfish urges of human beings, they violate or break the norms and commit crimes.

In primitive time, the crimes were not rampant as it is today, because people used to live in clans and so problems were limited.

Today, with the modernization the human life has become very complex, the increase in population and scarcity in regards to the needs of people has led to increase the crime rate.

The term Delinquency was not known till 19th century. Children and adults were treated alike for and anti-social act. The punishments wee mere corporal or social banishments. The punishments like public shaming, incarceration, whipping and sometimes even execution by hanging were prevalent in India. Delinquency is not defined on the bases of the performance of offence but it is analyzed by the behavior of an offenders is harmful it is called as delinquency.
Delinquency is not always punishable. When delinquency is punishable it is called as crime. Hence all crimes are delinquent acts but all delinquent acts are not crimes.

Delinquent act is an act done by a person below a specific age given by statute, which is dangerous to society or to the offenders himself. Hence the act done by child or juvenile is termed as Delinquent and not the criminal.

The psychiatric view on Juvenile Delinquency was given by A.C. Woodmansey; understanding Delinquency, in BJC, 2, PP (55-166 1971). According to him it is a mental state which is characterized by a tendency to behave in opposition to the welfare of others.

The term Delinquency can be understood from its origin. It is taken from the Latin word ‘Delinqure’, which means to leave or to abandon. So originally the Juvenile Delinquents were the children, who were neglected or abandoned but as the passage of time and realization by society the term is used for children who are committing anti-social activities.

In U.S.A and U.K, efforts have been taken from 18th Century onwards to ameliorate the conditions of young offenders. They have taken efforts to keep the young offenders separate from adult and hardened criminal. Even in India the separate arrangements system for juvenile is established by the Juvenile Justice Act.

The overall criminal justice system in India is different for juvenile offenders. The terms used for them are also different. For e.g. the juvenile is not ‘arrested’ but “taken into custody”.

In India the age of juvenile was not uniform. The Bombay children Act 1948 defined ‘child to mean a person who is under 16 years of age for boys and 18 years of age for girls. The age of child is different for the purpose of child labors.
The J.J.A 1986 defined Juvenile or child means a person who is below the age of 16 years in case of boy and 18 years in case of girl.

The J.J. Act evolved two classes of children one is JCWL and other is CNCP. The J.J. Act 1986 was repealed by the J.J. (C&P) Act 2000. It removed the distinction both boys and girls offenders and made it 18 yrs. for juvenile in conflict with law.

There are many views against the age of Juveniles determined under J.J. (C&P) of Children Act 2000. It was argued that, age of juvenile to be on the basis of their criminal liability.

The issue of reducing the age of juvenile to 16 from 18 was raised In the Case of Salil Bali Vs U.O. I & others AIR 2013 SC 3743.

It was contended to lower the age of juvenile for criminal liability. But SC held that the age of juvenile as fixed to be 18 years for criminal liability is proper and it is determined so after taking into account the observations and opinions of child psychology experts.

It is well said by experts on child psychology that child continues to grow till he reaches 18 years and so that it is the fully developed age for child to make him criminally responsible.

Juvenile Delinquency is not developed in child in one day; it is a process and depends on upbringing and development of a child.

A child is a very important part of society, as rightly quoted by Abraham Lincon that “if you want to develop nation, develop child”.

Children due to their immature mind, they get influenced by the things they see in society and try to imitate it. Hence social environment of a child plays a key role for making a child deviant or a better citizen.
5.2 JUVENILE DELINQUENCY – PROBLEM AT RISE

Juvenile delinquency is increasing at an alarming rate. Children from urban area are seen more inclined to commit crimes, due to less control from family as well as community. In Urban Areas, nuclear families are at raise. In nuclear families, most of time both the parents are working and so they get less time to pay attention toward their children. Parents of such middle class families are thus busy arranging basic amenities to their family, due to this their children gets ignored and consequently crush children get involved in antisocial activities. Poverty and illiteracy is the factor for the child to turn delinquent. In urban area the attractive life turns a child delinquent. Due to poverty and insufficient money, child commits theft or indulges in immoral activities to earn money. Trafficking, prostitution is breeding to a large extent in urban areas with the children of very young age.

Juvenile delinquency can be better understood by studying it at Individual level and social level.

Figure 5.1

1. Personality traits
2. Understanding
3. Characteristic
4. Regular activities of child

1. Peer Group
2. Neighborhood
3. Family
4. Society
The child by birth has its own personality; he adapts the social environment by way of his understanding of the benefits he will get from it. The child due to his/her immaturity easily gets motivated or attracted by seeing the acts of his/her surroundings, Media and others entertaining factors provoke the child’s actions.

In India, since we are still developing country and the level of population is keep on increasing, the children are easily getting influenced by their social environment. Due to increased level of population, the problems like unemployment, gender inequalities, feticide, and child marriage, Child labour, sexual exploitation of children, human trafficking is mostly seen in India.

Since there is less control by parents, there is a less fear of parents, the children’s gets influenced by media, television and lavish lifestyle and since there is less fear and control by parents and have good freedom to do things of their choice. This is the situation which is prevalent in society, which makes children indulge in criminal activities to satisfy their needs. Sometimes due to peer pressure, the adverse effect is created on child’s mind and they get into bad habits like alcoholism and drug addiction.

The child when gets addicted to drugs and alcohol, they lose control over mind and body and so commits crimes like rape, pornography, sex rackets etc. It has been observed that, the abandoned children in the search of shelter get involved in anti-social activities for their survival in society. In such cases, the adults take advantage of children and lure them for committing anti social activities. The prostitution is increasing by such reasons in the society.

Girls of very young age are forced into prostitution and give earning to the adults. Under Indian law, Sec. 82& 83 of IPC, 1860 decides the criminal liability of a child. But still, in India such children are not punished as like adults. Children who are found to commit crimes are rehabilitated and reformed for their better development and taken back in society.
5.3 CAUSES

It is very difficult to differentiate during an early childhood between the infractions in the behavior which going to become delinquent. Some behavior like stealing small amount of money from home, striking siblings, running away from home, bunking schools etc. are to be keenly observed and timely correction is needed by elders. These above mentioned behavioral patterns are developed into delinquent acts when it is exposed in a peer groups and society, and so the behavior pattern no more remains misconduct but turns into a crime.

To understand Juvenile Delinquency, it is pertinent to understand the theory of social deviance. In every society, the behaviour of individual is regulated by certain norms. When the individual fail to follow these norms, they said to be deviant. In society, behaviour may be approved, tolerated or disapproved, which help to decide the deviance in society.

Juvenile Delinquency (J.D) is taken in the personal disorganization. Individual disorganization affects the other members of the society. The member who is disorganized becomes unable to perform his duties towards the other members of society.

The psychologists are of the view, that the children between the age of 15 & 18 yrs. and committing crimes are a 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.

The following are some of the important causes of Juvenile Delinquency:

1) Family:

It is very important factor for the good upbringing of the child. If a child is gifted with good family, the child develops into good citizens. The home
environment of the child plays very crucial role in molding a child in future. The behavioral pattern of the parents with the child and amongst themselves is to be maintained peacefully and at ease. This is an important factor to develop a psychological progress in child. The child to be provided with the love and affection by his/her parents, and all the basic needs of the child to be made out by parents. The home, where the parents use filthy language use drugs and alcohol, do unfair dealings in front of child creates a bad impact on the mind of child.

The families where conducive environment is not provided to a child, for development, the child in such families tend to commit wrongful acts. The families where the parents use bad language, drinks liquor, fights with each other or get involved in any unlawful behavior, creates a very bad impact on the minds of children. The children too tend to get involved in such things. So, such the family gives a start kick to a child to adopt delinquent behavioral. The quarrelsome environment at home also creates negative effect on the mind of child and a child detaches himself from a good society.

2) Wrong Association

The children also get exposed to a social life after a period of time. The child after a certain age move out of his family and gets into contact with people of different age, gender and of different thinking or class. Sutherland has rightly pointed in his Differential association theory about the adaptability of delinquent behaviour. Sutherland was an American Criminologist and he has described that, the Differential Association is the cause of developing criminality. According to this theory, if an association of people, indulging in any unlawful act, the child learns the same and does it. If the child does not get caught up for the same, he repeats it and becomes habitual to it. Criminal tendencies are not inculcated by birth in a child, but they are developed or learnt in an interaction with others. The child, if gets into association of other children who are elder to him, he gets the desire to imitate them. Example: if a friend circle of a child are having people who
are habitual smokers, the child will also smoke to prove that he is a fit and identical person for this group. If a child gets good association, they really turn up to be a good citizen, but if the association of a child is bad, the child turns delinquent. The delinquent child starts behaving according to the behaviour of his associates. The child adapts the culture and habits, where he spends more and more time. This delinquency may turn ultimately to criminality, when the child attains the mature age. Such delinquent child then becomes a criminal.

Sometimes the child in distress approaches some deviant groups and then the child has to stand for them whenever they call him. Such deviant groups take the advantage of such children for illegal activities. These incidences prove to be degeneration of the future of the child. If the parents are negligent for keeping the child in discipline, the child gets into delinquency very easily. Associational impact play important role in child’s development. If the parents are negligent towards children, then children may associate themselves with their favourable company. The children at their tender age fall prey to the unethical and illegal activities very easily and if the parents do not stop them, it hampers the life of child. Such child may develop delinquency and then turns criminal at their mature age.

3) Early abuse-

The children who are abused at their early age gets early disappointments and develop feeling of revenge in them. Such children when turns adult repeats these acts on their children or on other children for the sake of revenge. The children who got abused sexually, got an early experience of sex and they may develop tempt to get it every day. In their crave to get sex, they do undesirable things. To show off smartness and trendy look, the children do unethical and illegal things to get money and to have a lavish life. The cases of kidnapping and rapes by juveniles are reported on daily basis. This is a result of too much avarice for sex, because the young age of child cannot understand the changes and demand of his/her body. The girls, who get abused sexually at an early age, may also choose to get into prostitution. To earn easy money, the girls get
lured by the pimps and ruin their future life. Sometimes the child becomes violent to achieve their desired things in life, if he/she does not get it easily.

4) Movies-

The movies and T.V serials are the easy source of learning and adaptability for a child. Nowadays, movies and T.V serials are full of unlawful things and the obscenity. The Children from nuclear family take advantage of their parents’ work schedule and remain in front of television, watching it for a long hours. The child watches the movies and serials where the hero and villains do the acts in extreme way to achieve their goals. The child imagines themselves as a hero or villain and then sets the same pattern of behaviour in their daily life. The children get influenced by the short cut methods shown in movies to earn money and try to adapt the same in movies. The child also behaves the same with his/her friends or classmates to release anger or to express love as depicted in movies.

Example: Fight with friends or threatens to get the work done, imitate the obscenity with friends etc.

In such way, in a struggle to adopt these shortcuts shown in the film, the child becomes delinquent. Today, the movies and media is dominated by sex oriented and violence related stories. The glamour which is shown in the movies creates a great impact on the tender mind of the child. The lifestyle depicted to the villains in movies may create an ill effect on child. The child by seeing this develops a thought that the shortcuts adopted by villains give them richness and all lavish things of life. This makes the child commit crime to satisfy their needs.

5) Failure in School-

School is the next home for a child. School is the place where the child spends more time after his home. Some children may not like to go to school due to many reasons. The parents without understanding the reasons force them to go to school. The teachers also sometimes use very harsh language and
physical force on children, due to which children feel to skip school. The child develops a feeling of cruelty against them. The poor schooling system, is making child insecure and unhappy in a school environment. The child due to force by parents, may leave for school but go somewhere else and pass their time. During this time they develop other delinquent behaviors. The child due to force by parents, may leave for school but go somewhere else and pass their time. During this time they develop other delinquent behaviour. The child due to the failure in examination and fear from parents develop a habit of concealing facts from parents and due to which a child suffers many psychological problems. In order to curb the mental disturbance the children leave home and take help of drugs other unlawful things to get over with their mental stress.

6) Poverty-

Poverty is the main cause of juvenile turning delinquent. The children from poor families do not get access to the comforts of life. When the children see other people with all the comforts of life and better living conditions, they feel disappointed. Due to this, the child develops a desire to get comforts in life and then consequently the child resorts to illegal activities to earn money. The crimes like theft and gambling is the starting outcome of the poverty. To earn easy money, children adapt such means. This type of behavioural change in the child to be prevented on time or the child may become habitual to get easy earning by indulging in such crimes.

7) Adolescence Instability-

The adolescent behaviour depends upon the sociological, biological and psychological factors. The adolescence is an age when changes take place in person’s body as well as mind. The child develops intolerance against the restrictions in this age. The child becomes more instable as if he is kept in less happy environment. The child feels in such instability that the means of development are not provided to him as per his desires. This instable behaviour
ultimately results in the commission of anti-social acts and so the child turns delinquent.

5.4

STATISTIC ON JUVENILE DELINQUENCY

According to the Report by NCRB 2012, there is an increase in the involvement of children in crime commission. The findings of NCRB show an increase of 0.8 to 11.8% since 2001 to 2011. The crimes like kidnapping and abduction are more likely to be committed by juveniles. Even it is surprisingly observed that girls are also committing crimes at an increased level. Juveniles are found to be committing crimes like theft, burglary, rape and riots in India.

According to a News Report published by Dwaipayen Gosh on 14-6-2013 in the Times of India Newspaper, it was found that in New Delhi Juvenile crimes have increased and many are apprehended for rape and Murder. Also states like Andhra Pradesh, Bihar, M.P, and Maharashtra shows a hike in rate of crime by juveniles.

It was observed In the Case of Ratan Lal Vs. State of Rajasthan, 2004 Cri LJ 734 (Raj) (Jaipur Bench)

That the accused had abducted the victim and raped her. It was observed that the accused was minor on the day of commission of offence. Due to low age the accused even if had committed grievous offence had to be tried by juvenile Justice Court and not by session court.

The above case shows that the juveniles are easily escaping punishments, since the current legal provision are protecting them. There is a very thin layer between Adolescence and Adult and so some juveniles are on the ground of less age are freely committing crimes and escaping punishment. This is very horrified situation, which was tackled very skillfully in recent case of Nirbhaya. Where the
S.C, even though rejected the petitioner for lowering the age of juveniles but said that it would examine the juvenility on case to case basis of the offender and of maturity of accused and heinousness of the crime.

The S.C. in Nirbhaya case convicted Juvenile for rape and murder and gave, maximum punishment of 3years imprisonment in a reform facility.

The Indian Courts should consider a Global practice, where in most of the foreign countries Juveniles are punished as adults. In U.S. most of states, where a Juvenile is above certain age like 13 or 15 and commit crime which is violent in nature, their case is transferred to adult court.

In U.K. for those below the age of 18 yrs. are tried by youth court. And for cases like Murder and rape, the case initiates in youth court and then transferred to crown court.

And we should also consider the U.N. rules for Juvenile Justice (Beijing Rules) which states that punishments to juveniles shall be according to the severity of offence. The brutal Act of juvenile was reported in greater Noida, where student of twelve standard was murdered by his four minor friends and police found the dead body 27 km away in Aligarh.

This Act shows that the juveniles are committing crimes not out of mistake or provocation but with pre-determined plan.

The current situation needs us to rethink the legal definition of juvenile and adolescence. According to data released by Government of India, the crimes like rape and abduction of women are rising to a large extent in last 10 years.

The children both of 16 to 18 years involved more in crimes. It was found that it was 4.87% in 2002 and by 2011 it went at 63.9%

As per the latest statistic released by NCRB for 2012, U.P. was reported with 2nd highest number for juvenile rapist, among which 123 arrests are reported. In Rajasthan 109 arrests are reported. In Maharashtra 106, in west Bengal 89, 87
arrests are reported in Odisha and 81 arrests are reported in A.P. In Delhi only 63 arrests are reported for rape charges.

According to the NCRB analysis, more than 78% of the Juvenile in conflict with law belonged from families having less than Rs. 50,000 annual income.

If we classify the Juveniles as per their attributes 81.4% of the children who are living with their parents are found be involved in Juvenile crimes.

The children who are homeless and involved in crimes are 5.7% and the remaining percentage of children involved in crimes are living with their guardians. If we see the categorization of juvenile on the basis of education, the 18.1% juveniles are not even provided with basic education and are committing crimes.


The SC held that if there is question to be determined as to the age of accused, who is at the borderline of 16 years then court give the preference for holding him juvenile.

According to Dileep Majumdar, a Psychologist, with the use of Internet, the aspiration level of Juvenile and adult are becoming the same.

It has been observed by data released by the National Crime Record Bureau, the cases against the juvenile in conflict with law are rising steadily from last three years. The cases reported were 31,973 in 2012 and it went to 35,861 in 2013 and in 2014 it went to 38,565. This data was released by the NCRB.

The following chart shows the incidences of juvenile crimes in India as per the data released by the NCRB.
Graph 5.1: Juveniles who committed crimes and their family income

It has been observed by the data released from NCRB, that the juveniles from families with an annual income up to 25000 committed more crimes. 22% of the total 48,230 juveniles apprehended last year had committed crimes belonged to the low income groups.

It has been observed by the data released from NCRB 2014 as per the reports of TOI of 23rd December 2015, that the juveniles are committing majority of crimes against women.
The crime rates against women committed by juvenile rose to 92% in India between 2012-2014.

Table 5.1

<table>
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<th>CRIMES</th>
<th>CASES 2012</th>
<th>CASES 2013</th>
<th>CASES 2014</th>
<th>TOTAL</th>
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<td>Rape</td>
<td>1175</td>
<td>1884</td>
<td>1989</td>
<td>5048</td>
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<tr>
<td>Assault on women with intent to outrage her modesty</td>
<td>613</td>
<td>1423</td>
<td>1591</td>
<td>3628</td>
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<tr>
<td>Kidnapping</td>
<td>789</td>
<td>1121</td>
<td>1455</td>
<td>3365</td>
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<tr>
<td>Murder</td>
<td>990</td>
<td>1007</td>
<td>841</td>
<td>2838</td>
</tr>
<tr>
<td>Attempt to commit Murder</td>
<td>876</td>
<td>825</td>
<td>728</td>
<td>2429</td>
</tr>
<tr>
<td>Insult to modesty of women</td>
<td>183</td>
<td>312</td>
<td>113</td>
<td>608</td>
</tr>
<tr>
<td>Acid attacks</td>
<td>.....</td>
<td>.....</td>
<td>3</td>
<td>3</td>
</tr>
</tbody>
</table>

The above data shows that the juvenile offenders are more into committing crimes against women. They are more involved in committing crimes rape, kidnapping etc. It shows the changing attitude of juveniles towards the society. They are no longer remained to be immature by mind or physical health. The
offence of rape cannot be committed by child. The very nature of the offence shows the maturity of the offenders.

5.5

RECOMMENDATION OF INDIAN JAIL COMMITTEE-

In 1919-20 the India Jail Committee recommended various measures for reforming the child offenders. It was found by the committee that it is very critical to detain children, and children can be easily reformed was the findings of the committee. The committee gave recommendations to adapt an English outlook for dealing with child offenders in India.

It was recommended to establish children Courts. It was recommended that, if child offenders are not more, then the Magistrate may hear the cases in special rooms to clearly understand the child’s problem. The Magistrate should have information about the child’s home, his habits and circumstances lead him to commit crime. Until the magistrate gets the information, the child either should released on bail or sent to a remand home. The committee also recommended to widen the discretion of courts in regards to release the child offender on probation.

The probation officer under whom a child is placed for supervision should not be overburdened. The committee recommended establishing reformatory school within or near prison. The committee also recommended to provide trainings of inmates. There should be regular examination of Mental and Physical conditions of offenders and if any defect is found they should be sent to concerned institutions. It was recommended by the committee to keep contact with the offender even if he is released so that to help or assist them in future.
5.6 LEGAL METHODS TO DEAL WITH CHILD OFFENDERS-

It is noteworthy that the J.J. system in India is based on basic assumption.

It is an accepted fact that juveniles and adults cannot be said to be equal. They differ from each other in biological, psychological as well as maturity level. Juveniles are not socially mature as adults. Hence it is an indispensible condition to treat juvenile in a different manner than adults. It is to be noted that rather than proving a crime against juvenile, he/she should be educated, cared and trained well to develop their potential for future.

The followings are the statutory provisions dealing with the child offenders-

1. Protection from Criminal Liability:

   The history reveals a fact that child offenders were treated same as an adult criminals under the old criminal law. However in the course of time, children were found to be incapable to understand what they were doing and so started to immunize the children from criminal liability. There is a well – established presumption of doli incapax on the basis of which children below the age of 7 yrs are completely protected from criminal liability in India. Section 82 of IPC, 1860 gives immunity to a child who has not completed the age of 7 yrs from criminal liability. However if a child is more than 7 years and below 12 years of age and commits crime, then a child will be immune from criminal liability however he should have not attained the maturity to judge the consequences of his act.

2. Probation Laws:

   The probation laws are very much beneficial to deal with juveniles. In India, the Probation of offenders Act, 1958 is made applicable to a person under the age of 21 yrs. and has found to commit an offence. This law is not applicable if such person has committed an offence punishable, with imprisonment of life. Under this Act, the court if not satisfied to release the offender after admonition,
shall subject the offenders under the supervision of the probationary officer. If in such cases, the court decides to pass a sentence of imprisonment then the court have to record the reasons. The probation laws aim to give sensitive and not harsh attitude for the young offenders, so that they may be reformed.

3. Young offenders to be kept in separate confinement:

The Prison Act 1894 makes the provision for separate confinement of young offenders. Sec. 27 of this Act has made it clear that women offenders to be kept in separate prison from male offenders and young offenders should also be kept separately, so that they do not get mixed with the adult prisoners. This provision was made to avoid contamination of young offenders due to the effects of adult criminals and also to protect the young offenders from exploitation by the adult criminals.

4. Whipping:

Whipping was a punishment for young offenders to avoid them the punishment of imprisonment. Whipping was made a punishment by Whipping Act 1900. It was applicable only for minor offences. However it was repealed by the Abolition of Whipping Act 1955.

5. Borstal School System:

Borstal School System originated in 1902 from the Borstal village in England where the prison was converted into a reformatory school. It was meant to reform the delinquent boys in, the Borstal schools where they may settle themselves to live a peaceful life. Borstal institution are meant not to be prisons to detain the offenders but it was established for young offenders so that they may be provided with industrial training and kept under discipline and moral guidelines so that they may be reformed. The India Jail Committee recommended to establish Borstal School in various states. Accordingly in States like Madras, Punjab, Bengal, Bombay, Kerala established Borstal Schools by Borstal school Act.
The Borstal schools were established in India from 1926. The District Magistrate had a power after making enquiry to depart a person to Borstal institutions instead of imprisoning him.

6. **Reformatory Schools:**

The Reformatory Schools Act was enacted to empower state government to establish Reformatory schools. Initially Reformatory school Act was not applicable to whole country, however, Section 399 of Cr.P.C 1898 made it applicable to all areas. Reformatory schools are meant for Young offenders especially for those less than 15 yrs of age and convicted for an offence punishable with imprisonment. Every Reformatory school was provided with good sanitation facility, food, bedding and other necessities for Young offenders. No young offenders were kept in Reformatory school after attainment of 18 years of age.

7. **Remand Homes and Certified Homes:**

Remand homes were meant to keep the young offenders for a short term of 3 to 6 months or till the trial gets over or for keeping the young offender in Borstal or other institution for training. This was a practice in England. In Remand home only Juvenile Delinquents were kept. Certified schools were meant for keeping destitute and delinquents. The object of certified school was to give training to the children until they are in custody, so that after their release they may live peacefully with their own earnings. The child offenders who are not released on probation are also kept in certified school. After a period of time, under the children Act 1960 certified schools got replaced by the special schools and observations homes. The J.J Act also has a provision of establishing observation homes for children.
8. **Children Act:**

After the Recommendation of the Jail Committee 1919-20, various states took initiative to pass children Acts. The children Act 1960, passed by the parliament was operative only in U.T. It was to provide care, protection & training to the delinquent children. It also had provision for trial and punishment of young offenders.

In 1986, the Government of India passed an Act named the Juvenile Justice Act 1986 which was centrally operative. The Act defined the juvenile and was applicable to both neglected as well as delinquent juveniles. The Act established J.J.B, which had same powers as Magistrate under the Cr.P.C to try delinquent juveniles. The Act had provision to establish different homes and After care organization.


The Act is differentiating juveniles as JCWL and CNCP. The Act has a provision to establish J.J.B for JCWL and CWC for CNCP. The Act has a provision for Rehabilitation of JCWL and CNCP.

This Act is amended in 2006.
5.7

OVERVIEW OF JUVENILE JUSTICE ACT

The phenomenon of J.J. is developed in 19\textsuperscript{th} 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.

India has always strived for giving justice system to children. India is a signatory of many international conventions and has enforced the justice system in India through different legislations. The first ever legislation which was made for children is Children Act 1960, then it was J.J. Act 1986 which was too a welfare legislation.

The J.J. Act was amended in 2000 as the J.J. (C&P) of Children Act 2000 as is presently followed for dealing with the children. This Act was further amended in 2006; this Act deals with two groups for children, the CNCP and the JCWL. The division is made to clearly impart the Legal Aid and the rehabilitation system to children. The children are vulnerable sections of society and irrespective of different legislative provisions they are the least protected section of society.

Overview of J.J. Act:

It is rightly said by Kofi Annan, that the most sacred trust is the one which the world has in children and the most important duty is towards realizing the rights of children and keeping the children in peaceful and fearless environment.

Children form most of the part of India’s population. The constitution of India is well equipped with the welfare provisions for children also there are many protective legislations for children. The children in India even though being protected through such legal measure are facing widespread discrimination and
deprived of even the basic needs of life. The Government of India is concentrating a right based approach, they are fighting to get the rights of children in particular dealings but the approach towards the children, which is actually needed in India, is a Rehabilitation based approach. The protective laws are needed for children, who are not even getting the basic needs of life, but unfortunately these legislative measures are not reaching towards them, and even they are not aware of them.

The children who commit crime are to be dealt with the penal provisions, so that they will deter from committing the crime in future. The Juvenile Justice Act which deals with juvenile in conflict with laws is nowhere applying the penal provisions for dealing with delinquent juveniles.

The J.J. Act 2000 aims to treat juveniles and major offenders differently. It works towards rehabilitation and reformation of the offenders.

In 2006, the law was amended to define JCWL as person who is below the age of 18 yrs.and committed offence. So, the juvenile has to be eighteen years of age or below the eighteen years of age at the time of commission of offence. According to this new law, J.J.B has been restructured, and established as a special court for treating juvenile offenders. It was made to have first class judicial magistrate in rural area and two social workers, of whom one should be woman. The new law protects the juvenile from not being placed in regular police lock up or jail.

Under this Act, the identity of the offender, in the form of name cannot be revealed to media. This is to protect the future interest of the juvenile.

According to the new laws, the JCWL can be awarded maximum of three years punishment in a special remand home.

On the background of the gang rape committed on 16 December 2012 in Delhi triggered many changes in the criminal law in India. The changes were specially made in rape laws and laws dealing with juvenile offenders. In 2015, in the month
of December very important step was taken by Rajya Sabha, which gave constructive amendments in the area of juvenile laws. This Amendment brought the juvenile between the ages of 16-18 years, charged with the heinous crimes to be tried as adults.

The J.J. (C&P) of Children Amendment Bill 2015 gave following new amendments-

The juveniles of 16 years of age or older to it are to be tried as adults for heinous offences like murder and rape. The heinous offences are defined as those which are punishable with imprisonment of 7 years or more.

This Bill made it compulsory to establish J.J.B and C.W.C at every district. It is made compulsory to have at least one woman member each. The discretion is given to the J.J.B to take decision regarding the juvenile in conflict with law. The J.J.B can make an inquiry and decide whether the juvenile has to be treated as adults or send him to the rehabilitation.

The institution care to be provided by the CWC, which will be presided by the chairperson and four other members. The adoption related regulations are eligibility criteria of adoptive parents are given under the new amendment.

5.7.1

DEVELOPMENT OF J.J. SYSTEM IN INDIA:

The ICCPR is a pillar stone for realizing the rights of children in the development of J.J.S in India. The Article 10(2) of ICCPR gives a specific provision which separates juvenile offenders from adults for expeditious adjudication. Article 14(4) provides that during the trial procedure of juveniles, the age of the juvenile and the desirability of rehabilitation of juvenile to be taken into consideration.
These provisions are indicative facts that at International level efforts were taken for special treatment and for training purpose. The juvenile justice system is not yet developed in India and it is lacking in proper judicial and legislative interpretation. The minors in India are not punishable equally to that of adults, because of the view that there is a difference in the level of understanding of the situation.

Today, the immunity for child offenders or juvenile offenders in India is prevalent because of the Juvenile Justice Act.

The Constitution of India also has a special provision for protecting children. Through Art 15(3) the state shall make laws regarding Women & Children. Article 39 as it is directive principle, directs the state in clause (a) not to abuse the tender age of children and clause (f) directs the state to provide the children opportunities and facilities to develop in a healthy manner.

It states that the youth to be protected from exploitation and against exploitation and against abandonment. Child labour is prohibited by Art 24 of Constitution of India. It is preventing children below the age of 14 years from working in hazardous conditions. The right of children of free and compulsory education is realized by the directive principle in the Constitution of India, as provided under Article 45. The Constitution also envisaged the duty of state and parents to protect children in Article 51 A through Fundamental duties. So, the Constitution has the protective provisions by affirmative action by assigning special status to the children for their better upbringing.

The penal laws in India also treat children separately from adults when administering punishments on them. Section 82 of IPC states about the principle of ‘Doli Incapax’, which means incapacity of children to understand the situation. Children under 7 yrs. of age are taken in the purview of this principle and so they are never liable for commission of any criminal act or any wrongful act. Further Section 83 protects the children above 8 years and below 12 years, if they do not understand the consequences of the act committed by them. The above section
gives the principle of ‘Mischievous discretion’ of English law. In such cases, the burden of proof lies on the child. The child if proves that he had not attained maturity of mind, at the time of commission of crime, he will not be held guilty of that crime. It was held In the Case of Harilal Mallick Vs. State of Bihar, AIR 1917 SC 326, that it is not only a condition that a child should be under 12 years of age for taking the benefit of Doli Incapax, but a child should also prove that he had not got maturity to realize the consequences of his act. Thus, in this case, a child who was under 12 years of age, used a sharp sword for killing a person. He could not produce any evidence of his immaturity and so held liable.

The IPC also protects children from sexual abuse under section 354, 375 and 509. The IPC protects children from being sold for prostitution under section 366, 366 A, 366 B and 372. The act of buying a minor for prostitution is punished under section 373 and the act of non-consensual assault of male child is punished under section 377 of IPC.

5.7.2

BACKGROUND OF JUVENILE JUSTICE SYSTEM IN INDIA

The JJS in India can be traced from the development of juvenile laws in India. The J.J. Act 1986 which was the first comprehensive Central Act included delinquent juveniles as well as neglected children in its ambit. The CRC provides for children’s rights- i.e. Right to survival, Right to protection, Right to participation and Right to development. These rights were not fully realized by the J.J.A, 1986. The J.J.A, 1986 hence was replaced by the most comprehensive Act to deal with the rights of child i.e. The J.J (C&P) of Children Act 2000.

The J.J Law in India is evolved from the ancient Hindu script, but it was not developed. Prior to 1773, it was the responsibility of the parents and the family to maintain and supervise the children. There were criminal and non criminal systems, which were governed by the existing Hindu and Muslim Laws. The acts
of children were taken in the overview of these laws. There was no specific reference of juvenile delinquent under these texts. The Hindu law of Manusmriti has made punishable some acts of children, but the punishments were not harsh.

Example – if a child litters on a public road, the punishment was reformative. The child then was made to clean the litter.

So the approach was reformative while giving punishment to children from the ancient times.

During the period of 1773 and 1850, the British were in influence. They established the ‘Ragged School’ the first orphanage in 1843. The object was to provide free education to destitute children. Then, as the Britishers were slowly settling down their empire in India, there were rapid social changes taking place. The population of country was also rapidly increasing due to which a new class of delinquent, neglected children came into existence. There was a need to redress their problems through legislations. So some important laws were passed between 1850 and 1919. They are Apprentice Act, 1850, IPC 1860, Criminal Procedural Code 1861 and The Reformatory Act 1846 and 1897.

The Apprentice Act was to deal with children between the ages of 10 to 18 years. This Act provided a punishment to children for petty offences in the form of service as an apprentice to businessman. The IPC 1860 set up a special status for children. It excluded children below 7 years from criminal liability on the principle of ‘Doli Incapax’. And for children between 7 years to 12 years, the test of understanding of circumstances was laid down. Under Cr. P.C, a provision of separate trial for children younger than age of 15 is made. It made them to keep in reformatories than the prisons. The Act further made a provision to place a child on probation. Then the Reformatory schools were introduced for juveniles by the Act of 1876, further the Act of 1897 provided for the rehabilitation of young offenders. The boys below 15 years of age were to be kept in reformatory schools till they attain 18 years of age. This was the reforms which were made
applicable to male delinquents and young delinquent girls were not covered by this Act.

5.7.3

DEFINITION OF JUVENILE OR CHILD UNDER THE J.J.ACT:

According to the Act ‘Juvenile” or ‘child’ is a person who is below 18 years of age.

The term ‘Juvenile in conflict with law’ means a juvenile who has committed an offence and is under 18 years of age.

The definition of Juvenile is given under Section 2(k) and Juvenile in conflict with law under Section 2(l) of the Act.

The definition of JCWL reflects the concept of Protective discrimination for children as enshrined in Art. 15 (3) of the Constitution. Children are termed Juvenile for the sake of making it clear that they are at the age of becoming adult since they are committing offences like adults. Juveniles were termed as adolescents. The JCWL actually means that a child has committed anti-legal and anti-social act, which is punishable by law. The Juvenile in conflict with law are to be treated in a special way so that they can be taken back to the society. Children are the future assets of country, which has to be nurtured, cared and develop in such a way that they will develop a nation.

Hence under J.J. Act children are treated not as criminal but as a patient and provide reformation and rehabilitation to them.

The Act defines CNCP under Sec 2(d). In this child are defined under IX subheadings. The CNCP under this Act hence means a child who is homeless, abandoned, without any guardian, who is mentally or physically unfit, who is orphan or who has a threat to get abused or vulnerable or who is begging or trafficked.
The child here is a victim of circumstances. The child here is also below 18 years of age and in very vulnerable condition, who needs a shelter and protection. Under this Act, under different heads, child under different situations is made inclusive to provide them protection and care.

Today, there are many cases of abandonment of child or using child for begging or in sexual rackets. Such children need protection and better care to heal them of such tragedies.

5.7.4

ADJUDICATING BODIES AND PROTECTIVE HOME-

Section 4 of J.J. Act gives composition, of J.J.B. The J.J. Act made provision for the establishment of J.J. Board to deal with the cases of JCWL. The J.J. Board exercises power as a court and decides the cases of JCWL.

The J.J.B has to be established in every district as it is a provided in J.J.A. The Members of the board include Metropolitan Magistrate or J.M.F.C., 2 Social Worker amongst one shall be woman. So the J.J.B forms a bench of 3 members. The Magistrate to be appointed on a board should have special knowledge in child psychology or child welfare. Also the social worker to be appointed must have actively involved in health, education and welfare activity of children for at least 7 years. It is very important to appoint a Board with sensitive view, because a person to be adjudicating on child should have knowledge on child law.

The Member of the board may be terminated by the state government if it is found after inquiry that they are misusing their power, or are found to be convicted of offence for moral turpitude. The members of the board may also be terminated if they fail to attain the proceedings of Board for 3 connective Months, without any valid reason, or if they have not attended 3/4th of the sittings in a year of the board.

Sec 5 states that if the board is not sitting, the Juvenile offender may be produced before a single member of the board. It is important, while passing a final order that at least 2 members of the board including Principal Magistrate to
be present. The opinion of Principal Magistrate is final opinion, when there is no
majority at the time of interim or final disposal of the case.

The powers of the J.J.B. are exclusive power conferred by the J.J.(C&P) of
Children Act 2000.

The H.C and Court of Session in appeal, revision or in any other case coming
before them may exercise the powers as like Board under this Act.

If a child in conflict with law is brought before magistrate after confirming that a
person brought before him is a juvenile, shall record the opinion and forward him
to the competent authority.

The competent authority shall hold the inquiry as if a fresh case is brought up
before it. Hence under the J.J. Act competent authority means a J.J. Board for
Juvenile in conflict with law and child welfare committee in relation to children in
need of care and Protection.

5.7.5

HOMES UNDER J.J. ACT FOR JCWL -

The state government has a power to establish Observation Homes for
temporary reception of JCWL during pendency of inquiry required under the J.J.
Act. The observation home can be established by State Government in every
district or in group of district under an agreement with voluntary organization.

The state government can also certify any institution as an observation home, if it
finds it fit institution for temporary reception of juvenile in conflict with law. The
Management of such observation homes is maintained by state government. The
observation homes has a reception unit, where after preliminary inquiries,
juveniles are segregated in age group of 7 to 12, 12 to 16, and 16 to 18 years.
While segregating, their physical and Mental state and the degree of offence
committed is given due consideration. This is done for further giving them
admission to observation home.
**Special Homes:**

Special homes are established by State Govt. for reception and rehabilitation of JCWL. Special homes are also established by agreement with voluntary organization in every district or group of districts. Any institution may also be certified as special home for keeping children on the basis of their age and the nature of offence committed by them. Physical and Mental status of juvenile is also given due consideration before keeping juvenile in conflict with law in special homes. The establishment of observation homes and special home is given under Sec 8 and Sec 9 of J.J. Act respectively.

5.7.6

**PROCEDURE ON APPREHENSION AND ARREST OF JCWL**

A juvenile on apprehension of being in conflict with law is arrested and placed, under the special juvenile police unit or under the designated police officer. Such police unit or officer shall without any delay place the juvenile before the J.J.B. The Juvenile shall never be kept in a police lock up or in jail. The Special Juvenile Police unit means a unit of police force handling juvenile cases. The police officers under this unit are well trained for handling juvenile cases.

**Bail**

The Juvenile if is accused of bailable or non bailable offences shall not be released under the supervision of probation officer or under the fit institution or fit person. The provisions of Cr.P.C. are not applicable for dealing with juveniles. Sometimes juveniles are not released on bail, to prevent them from getting into with the association of criminals or to save them from any kind of danger which may affect their moral, physical or mental status. Such juveniles, who are not released on bail, are kept in observation homes until they are brought before the J.J.B. If there are again denied bail by J.J.B, then instead of sending a person to
prison, the order shall be made to send a Juvenile in observation home or place of safety.

The officer in charge of police station on the special juvenile police unit has to inform to the parent or guardian of the Juvenile, on the arrest of the juvenile and also have to inform about the arrest to the Probation officer, so that the probation officer shall furnish the information about the arrested juvenile to the Board.

The Board shall complete the inquiry within period of 4 months.

The period can be extended in special cases and by recording the reasons for the same in writing. The Chief judicial Magistrate or The chief Metropolitan Magistrate supervise over the working of the Board in every six months and direct the Board to expeditiously dispose of the cases.

Order that may be passed Regarding Juvenile

Section 15 of J.J.A 2000 states which orders can be passed for juveniles. When the J.J.B after an inquiry finds that the offence has been committed by the juvenile the J.J.B if it thinks fit may:

1. Let the juvenile go home after giving him/her counseling and understanding and counseling to the parents or the guardian of the juvenile.
2. Direct the juvenile to take part in group activities like counseling or other.
3. Direct him to serve society.
4. Order the juvenile or his/her parent to pay fine, if a juvenile is above 14 years of age and earns money.
5. Make the juvenile to release on probation of good conduct and keep him/her under the care of parent, guardian or other fit person by executing a bond, with or without society, that a juvenile will keep good behavior for a period not more than 3 years.
6. Place the juvenile under the care of fit institution by releasing him/her on probation of good conduct. This period will not exceed 3 years.
7. Make an order to send juvenile in special home for 3 years.
The J.J.B. can reduce the period of punishment of the juvenile, according to the nature and circumstances of the offence committed. The Board will also take into consideration the reports of the investigation done on the juveniles before passing an order. If the juvenile is ordered to be released then the board may keep the juvenile in conflict with law under the supervision of the probation officer, if the J.J.B., feels that it is in the interest of the Public. The period for which the juvenile in conflict with law has to be kept under the supervision of Probation Officer, shall not exceed 3 years.

If during an inquiry, it is found that Juvenile in conflict with law is not of good behavior, J.J.B may send him to special home, in the interest of juvenile.

Order that may not be passed against Juveniles-

The Juvenile in conflict with law shall never be sentenced to death or life imprisonment. The Juvenile shall never be sent to prison if they have not paid fine or have not furnished security. Sec .16 of the J.J. Act has a special provision wherein it is stated that if a juvenile who is 16 years of age and has committed grave offence and so it is not pertinent to keep him/her with other juveniles, then J.J.B. may keep such juvenile in place of safety as it thinks fit and report the same to govt. Afterwards the state govt. shall make arrangement to keep such juvenile in conflict with law.

No juveniles should be tried according to the procedure of Cr.P.C. The juvenile shall never be tried of an offence together with a person who is not juvenile.

The Juvenile Justice Act under section 21 protects the juvenile from being disclosed by name, or address to ensure that his identity shall be kept in secret. There is a prohibition even on publishing a picture of juvenile. The identity of the juvenile can be disclosed only in the interest of juvenile. Any one contravening this provision is made punishable under this Act.
5.7.7

OFFENCE AGAINST JUVENILE:

Sec. 23 to 28 Prescribes offences against Juvenile and make such offences punishable to ensure protection to juveniles.

Sec. 23 – gives punishment to an act of cruelty to juvenile or child, which, can be in the form of assault, abandonment, exposure or neglect, which may cause a juvenile mental or physical cruelty. The punishment may extend to 6 months imprisonment or fine or with both.

Sec. 24 – Prohibits an employment of child for begging-

Whoever employing a juvenile or child for begging or making him beg is made punishable with imprisonment of 3 years and fine. And a person abetting such act is made punishable with 1 year imprisonment and fine.

Sec. 25- Punishment for giving intoxicating liquor etc.

Whoever gives juvenile or child any intoxicating substance or drug except upon the direction by the medical practitioner shall be made punishable with imprisonment which may extend to 3 years and fine.

Sec. 26 gives punishment for exploiting child labours.

Whoever is exploiting child labour by giving him hazardous work or keeping him under bondage or using his earnings for his own purpose is made punishable with imprisonment which may extend to 3 years and fine.

The offences mentioned under J.J. Act are cognizable

According to Sec. 28

If such, offences mentioned above are also made punishable by any central or state Act, then while deciding the punishment, the Act which provides were harsh punishment is to be made applicable.
5.7.8

CHILD WELFARE COMMITTEE:

According to the J.J. (C&P) of Children Amendment Act, 2006 every district should have a C.W.C, which is to be established by the state Government. This committee has a power to take decisions and rehabilitate the child in need of care and protection.

According to Sec. 29 of the Act, there shall be a chairperson and 4 other members to form the committee, among these members at least one member shall be a women and there shall be the experts for the child related problem. The members of the committee are subject to the termination if they found guilty of misusing their powers or any offence of moral turpitude or if any member is failed to attend the proceedings for three consecutive months without showing a valid reason or if he has failed to attend less than $3/4^{th}$ sittings in a year.

Procedure of the Committee is given under section 30 of the Act.

If a committee is not in session, then a CNCP can be brought before an individual member of the committee for the safe custody of the child.

Just because if the member of the committee remains absent it does not make the proceedings of the committee invalid.

When the committee is sitting to give its decision, the majority views shall prevail, but if there is no majority, the opinion of the chairperson shall prevail.

The Committee has final authoritative power to dispose of matters related to the custody and rehabilitation of the children. This committee has also powers to provide for the basic needs of the children.

The child in need of care and protection may be produced by any of the following persons as given under section 32 of the Act.

a) Any police officer.
b) Any public Servant  
c) ChildLine or any other voluntary organization or agency recognized by State Govt.  
d) Any social worker or public Spirited citizens or  
e) By child himself/ herself.

It is necessary to produce a child before the committee as soon as found to be in need of care and protection.

The procedure followed by the committee is very precise, as it first holds an inquiry on the receipt of the report on the child. The report may be given by the committee itself or by any person or agency which enables committee to pass an appropriate order for the child. The child then sent to the children’s home for more speedy inquiry, which may be conducted by a social worker or child welfare officer. The time limit to complete the inquiry is given up to 4 months, which can be extended if the situation requires so.

The pendency of the cases shall be reviewed by the state government. In every 6 months, after which the state Govt. directs the committee to expedite the disposal of the cases.

The Committee if finds that the child has no other support, it may make the child to be in children home or shelter home till he attains 18 years or till he gets rehabilitated.

**The Children Homes:**

The children homes are established by the State Government or with the voluntary organizations. As provided under the juvenile justice act it is mandatory to establish children home in every district. The object of its establishment is to keep the children who are in need of care and protection. The children whose enquiry is pending are also kept in children home. The children here are provided with proper care and development activities and further these children are rehabilitated. All institutions whether of state government or of voluntary
organization need to be registered. The central government or state government may evaluate the functions of children homes. The provisions for establishment of children home are given under Section 34 of J.J. Act.

**Shelter Homes:**

Shelter homes are established for the urgent drop in centers for children in need of care and protection. Shelter homes are also established by the State Government. The State government directs the voluntary organizations for setting up of shelter homes, and provides assistance to it. The provision for establishment of shelter homes is given under Section 37 of J.J. Act.

If the children's home or shelter home finds the parents of the child then they have power to restore the child to his/her parents. The main objective of such shelter home or children home is to protect the child and to take all required steps to restore the child back in his/her family. The Restorations is not only limited to biological parents but a child may be restored by rehabilitating him/her in adoption to any fit person for the welfare of the child.

**5.7.9 REHABILITATION AND SOCIAL REINTEGRATION:**

The child when in children’s home or special home is meant to undergo rehabilitation and social reintegration. The ways in which Rehabilitation and Social integration is executed is given under Section40 of the J.J. Act. Adoption, foster Care, sponsorship and After care organization are the ways by which a child may be rehabilitated and Socially integrated. The detailed explanation is given as follows:

- **Adoption:**

  The child can only be developed in the family, under proper care and protection. The adoption is the way for rehabilitation of the children who are
orphan or abandoned or who are destitute or surrendered as prescribed under Section 41 of the Act.

The guidelines for giving the child in adoption are given by the State Government or CARA which is then notified by the Central government. The court may give the child in adoption after checking the required fulfillments carried or not.

The specialized agency for adoption shall be established by the State Government in each districts for placing the children who are Orphans, abandoned or surrendered in adoption.

The children need to be declared legally free for adoption by the two member committee. In case of surrendered child two months' time period is allotted to the parents of the child for reconsideration on their decision of surrendered child. And in cases where the child understands and can express consent, the consent of the child is very important and hence a precondition before a child is given in adoption.

Even if a person is married, court may allow a person to take a child in adoption or if a person has biological children of same sex, still a court may allow a person to adopt a child.

The process of adoption is with the objective to give a child a new family where he/she will get the love and affection and very important environment to develop them. It is an effort of government to protect the children from being spoilt or ruined by their exposure to society.

Foster Care:

It is actually for the infants who will be ultimately given in adoption. It is for the temporary placement of the children. In this a child may be placed in another family for some time or for long period. It is observed whether the parents of children who are placed under foster care come to visit them or not. According to Sec. 42 of the J.J. Act the State Government may from time to time make rules for the foster care program.
Sponsorship:
Sponsorship programs are the supplementary support programs for the CNCP and through these programs the children who are in children home and special home, their educational, medical and other nutritional needs are satisfied. The State Government may make rules for sponsorship. There are different sponsorship programs i.e. Individual to individual sponsorship, group sponsorship or community sponsorship.

After Care Organization:
This management is made for a juvenile or child who is above 7 yrs. of age and under 18 yrs. of age. They shall stay in such organization only till they attain the age of 18 yrs. The rules for the after care organization, may be made by the State Government. By such rules the organizations are recognized as after care organization. The report also contains the progress of each juvenile or child, and the necessity and period till when the juvenile or child requires after care.

Linkage and co-ordination:
The rules are made by the state government for effective Linkages and co-ordination between various governmental or non-governmental organizations, corporate and other community agencies which gives future scope for rehabilitation and social integration of child.

This provision is made under Sec 45 of the Act. It is a step ahead for co-operating for a common intention of rehabilitation of a child, by different authorities.

Sec 46 exempts a juvenile or child for their presence of any proceedings before competent authority. This is for the juveniles who are under the charge of their parents or guardian and so they can be presented before such authority. Sec 47 authorizes the competent authority to exempts the presence of inquiry if they are satisfied that their presence is not required.

Sec 49 of the Act deals with the presumption and determination of the age of juvenile. Whenever a person is brought by a competent authority and it is found
that he/she is a juvenile or a child, then the competent authority makes inquiry regarding the age of juvenile and takes evidence but does not take and affidavit. The age recorded by the competent authority shall be deemed to continue as the true age of the juvenile. The subsequent proof of age other than recorded by competent authority will not be considered.

Sec. 50 authorize the competent authority to send the juvenile or child who is brought before it to other competent authority, if it is found that the place of residence of juvenile is outside the jurisdiction of competent authority.

Sec 51 makes the provision to keep all the reports of the juvenile or child to be confidential by the competent authority may disclose the information of such report to the juvenile or the child or to the parent or guardian of such juvenile or child in their interest.

According to Sec 52 of the Act, Any person may appeal against the order of the competent authority to the Court of Session within a period of 30 days. This period of filing an appeal can be condoned by the court in its discretion after being shown a cause of delay. There will not be appeal against an order of acquittal given by board of Juvenile or on a finding of committee that a person is not a neglected child.

There will not be a second appeal from the order given by COS.

Sec 53 gives revision power to High court by which HC may on its own motion or an any application may summon the record of proceedings of competent authority or Court of Session and may pass an order as it thinks fit, but HC shall not pass an order which shall prejudice any person by not giving him reasonable opportunity of hearing.

According to Sec 54 all the procedures in inquiries appeals or revision shall be in accordance with the provisions of Cr. P.C 1973.

Sec 55 reserves the power to amend with the competent authority in regards to the juveniles or child.

Sec 53 gives power to the competent authority to discharge a juvenile. It also has power to transfer the juvenile for one children home or special home to another in the interest of the juvenile.
According to Sec 62 of the Act, the Central Government or State Government may set up a Central or State Advisory Board to give advice to the government on the issues of maintaining the homes for children and other facilities to be provided for the education and rehabilitation of children concerned. The Advisory Board shall consist of such person as the concerned government thinks proper to appoint, but it shall have eminent social workers, academicians, people of medical profession, people representing voluntary organization in the child welfare field and other related departments of State Government.

The bodies working under district or city as an inspection committees shall function as advisory bodies in that area.

Sec 62 A provides for the constitution of Child Protection Unit for every State and at district level to be appointed by the Government.

These units will help the CNCP and JCWL and protect them. These units will ensure that the Act is being implemented properly and so the homes are established according to the Act. These units will co-ordinate to rehabilitate the children with the official and non-official agencies.

5.8

The J.J. Act 1986 is being amended by the J.J. (Care & Protection) Act 2000.

The following are some features of them which are different from each other.
Table 5.2: Difference between the J.J Act 1986 and J.J Act of 2000

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>∑ The definition juvenile was not standard for both boys and girls.</td>
<td>∑ The definition of Juvenile is common for boys and girls.</td>
</tr>
<tr>
<td>∑ Juvenile means a boy who is below 16 years and a girl who is below 18 years</td>
<td>∑ Juvenile means any child who has not completed 18 years of age.</td>
</tr>
<tr>
<td>∑ This act had application for neglected and delinquent Juvenile.</td>
<td>∑ This is applicable to juvenile in conflict with law and children in need of care and protection.</td>
</tr>
<tr>
<td>∑ The definition of Delinquent Juvenile was very narrow and limited.</td>
<td>∑ The ambit of debt of Juvenile in conflict with law is made very wide and comprehensive.</td>
</tr>
<tr>
<td>∑ The definition of Neglected Juvenile was very limited.</td>
<td>∑ The definition of child in need of care and protection is very wide.</td>
</tr>
<tr>
<td>∑ The Competent Authority for neglected Juvenile was Juvenile welfare Board and for Delinquent Juvenile it was Juvenile Court and when no such Board or Court is established then any court empowered under this Act would deal with them.</td>
<td>∑ Competent Authority here means a child welfare committee for CNCP and J.J.B for JCWL. No other court was empowered to deal with CNCP or JCWL.</td>
</tr>
<tr>
<td>∑ Juvenile Homes, Special Home, Observation Home, and After care organization were established</td>
<td>∑ Children Home, Shelter Home, Special Home were established</td>
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5.9

OVERVIEW OF JUVENILE LAWS IN OTHER COUNTRIES

IN OTHER COUNTRIES THE JUVENILE LAWS ARE VERY DIFFERENT THAN INDIAN PERSPECTIVE.

The Juvenile Justice System in India and other countries differ from each other. In the research paper of Miss Ayushi Mittal, a student of 2nd Year B.A.LL.B (Hons)- NALSAR University of Law, Hyderabad in her article Juvenile Justice: A Comparative Study with U.K, explains the current J.J.S 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 J.J. Act, and also the current J.J.S. 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.

In U.S.A, there are special juvenile courts are established to deal with juvenile delinquents who are under 18 yrs. of age.

There are 20 states in U.S.A, which allow the juvenile to be tried as adults and even sentence them to life imprisonment.

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.

In 2012, the SC again barred the life imprisonment punishment without parole to be given to the juveniles.

In 2012, a 13 year old boy, was accused of beating his half-brother to death and had sexually abused the 5 yrs. old girl in Florida was charged and sentenced as adult.
In 2011, a Colorado boy had pleaded guilty of killing his parents at the age of 12 and had been awarded with 7 yrs. imprisonment in a juvenile facility and three years of parole.

In 2012, an 11 year old boy from Pennsylvania was accused of killing his father’s pregnant fiancée and her unborn child. He was sent to the juvenile facility to remain there till he turned 21 yrs. of age.

In France, there are Special Courts to try the offenders less than 18 yrs. of age. There is a separate court established to try the juveniles aged 16-18 yrs. for the serious offences.

In France, the children aged 7-13 yrs. cannot face punishments; however they are subjected to educational reforms. Children between 13-18 yrs. of age can be given punishments in special cases.

In 2002, a law was enacted to give a criminal response for the juvenile delinquency.

In United Kingdom, the age of adulthood is 17 yrs. and above. There is a separate court without jury to try the offenders below 18 years of age.

A person below 17 yrs. of age can be tried as adult in some serious offences. The serious offences like child sexual abuse or other offences of sexual assault are taken in the purview of this.

In U.K, children below 18 years are juveniles; however the children aged 17 yrs. of age are placed as adults under the Police and Criminal Evidence Act.

Under this criminal system, if a child is jointly charged with an adult, then the charge is heard by the regular courts.
5.10

PROVISIONS OF J.J. (CARE AND PROTECTION OF CHILDREN) AMENDMENT ACT, 2006:

This Act has amended the J.J. (C&P) of Children Act, 2000. There were 26 amendments added in the new Act and came into effect from 22nd Aug 2006.

The first ever legislation was given by the GOI in the form of J.J. Act in 1986. In 1989 U.N. adopted the CRC and India ratified the same in 1992. It had an idea of not to treating juveniles as adult offenders and even not to subject them under judicial proceedings. And so the GOI decided to amend the old Act.

Accordingly the Act was amended. In this Act a child or juvenile is defined as a person who has not completed his/her 18th year of age. This Act is not based on gender and it is same for both girls and boys. It gave two groups for the purpose of adjudication: CNCP and JCWL.

According to this Act, the juvenile offenders are termed JCWL. This Act establishes the JJBs by directing the State government to do the same. The members of the board are decided on the basis of their knowledge in child psychology. The members will be The Principal Magistrate and two social workers where one of the workers must be a woman. The cases on juvenile offenders to be heard only by the JJB and not by another court. The powers of the JJB can be exercised in a High court or Court of Session when an appeal has been made as part of the Act. The institutions for the reception of juvenile are to be established by the state. For the temporary reception of the juvenile Observation homes are established in every district. The institutions like children homes and special homes are established for the juveniles in every district and they play key role in the rehabilitation of the juveniles. The juvenile after the proceedings are over may be directed by the JJB to be kept in special homes for
not more than three years. It is the duty of the police officer to produce the juvenile immediately as soon as he comes in contact with a juvenile to place him with the SJPU who must report the child to the board without delay. Bail is available to juveniles as long as the board finds the safety of the juvenile not to be endangered by the societal factors. If the child is not released on bail he is only to be placed in an Observation Home. It is the duty SJPU to inform the juvenile's parents of the arrest, as well as inform the Probation Officer who will make the necessary enquires about the child.

If in inquiry the child is found guilty, then the JJB may release the child after advice and counseling. The child can be released either to his parents/guardians or into an institution, with or without a bond. The child if is above 14 years of age then he may be ordered to pay a fine or complete the community service. A social investigation report from the probation officer is required for the child to be discharged. The probation officers may be required to continue a follow up of the child even after discharge. A child cannot be charged with the death penalty, imprisonment which can extend to life imprisonment or committed to prison for inability to pay a fine or providing a security for the bond.

The juvenile is protected under this Act. The juvenile cannot be tried with the non-juvenile cases. He cannot be exposed to the media as newspapers or magazines and the information of the juvenile is not allowed to be published. The runaway Juveniles can be brought back without a warrant and without punishment. Cruelty (such as assault or neglect) towards juveniles in the home or by any person in charge of him/her is a punishable offence. This act also has provisions to penalize people who exploit children for a crime. A person, who employs a child in a hazardous industry, employs him/her for begging or provides a child with drugs or alcohol is liable to serve prison time and pay fines.

**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.**
This Act addresses Neglected juveniles as CNCP. The cases of the children in need of care and protection are heard by the CWC. The committee is meant to have a chairperson and four other members of whom at least one should be a woman and at least one expert in children's issues. The main purpose of CWC is to rehabilitate and provide development to the children. It is not necessary that only police officer has to bring the child in front of CWC, any person can bring the child in front of CWC, in the interest of the child. The child then may be sent to the children home or shelter home, if no support is found by the CWC. The purpose of Shelter homes is for those children, who do not have parents or any other person to look after. The object behind this system is to give the child the family or the environment like the family.

The main purpose of this Act is to rehabilitate and reintegrate the children. Under this Act some non-institutional solutions are given. The adoption, foster care and sponsorship are the types of non-institutional measures incorporated by this Act. The orphaned and abandoned children can be given in adoption, to provide them family environment. The child may be declared fit for adoption by the CWC, and may refer him/her to the adoption agency for placement. The adoption agencies set up by the government are required here. The foster care is the process of looking after the infants before the adoption. Sponsorship programs are to provide educational, nutritional and other related services to families and guardians of the child. Aftercare organizations are set up to look after the children after their release from homes.

This Act has other miscellaneous provisions. Some of the notable provisions are as follows. The children with special needs like mental and physically disabled children are given special attention and care. The advisory boards are established to advise the implementation of the Act. The Child has to be released by the JJB and CWC, if there is an emergency situation at the family of the child. The Child protection unit has to be established by the state. This unit works to see that the Act is properly implemented or not.
Despite the changes brought about the JJ (C&P) of Children Act, some provisions remains overlooked:

There are some issues which remains overlooked and which has been raised by the judiciary for interpretation. These questions were not clarified by the J.J Acts. The followings are the issues which were not touched by the J.J.Act-

1) The date of the application of the Act is not clear. There is no clear mention of the date of the application of the Act, which is the day on the offence committed or the date the juvenile is produced before the J.J.B.

2) There is no clear mention about whom the responsibility lies to prove the accused as child.

3) The provisions of this Act override the other legislations on the child.

5.11

TREATMENT OF YOUNG OFFENDERS:

There is a difference between punishment and treatment. Punishment means to give pain for the offence committed. It is a lesson to the offenders to deter him from commission of future crimes. The punishments are given for a definite end or sometimes punishments work as an end in itself. In this research punishment is viewed as a treatment to the offenders. The ideology of the modern penology is to treat the offender and not to punish them. But due to disagreement of many people, it could not be applied to everyone. However until now it is applied to the juvenile offenders. Individualization of treatment is applied to the juvenile offenders. It means that the personality of each offender is to be assessed, and help him to reform. In India, offenders below the age of 18 years are governed by the J.J. Act , 2000, according to which juvenile who has committed offence cannot be sent to jail, but to be sent to the observation home and if found guilty and no other order can be passed, then the juvenile can be sent to the special home. J.J. Act 2000 has provision of three homes, namely observation Home, Children Home and special home. Special home is a place where a care treatment and training is provide to the juvenile.
There is a difference between Special home and Observation Home. The concept of special home is to be a certified school or approved school. It is juvenile correction institute, where the juveniles are kept on the order of the J.J.B. The intention of sending them in special home is to give them deterrent effect and give them training for future development. The object of observation homes is to study and diagnose the problem of juvenile and to enable the juvenile board make a deposition of the case of juvenile, on the basis of social investigation report. The object of special home is to serve a center of recasting the attitude of juvenile, understanding his behaviour and ultimately rehabilitating him back in society. The object is achieved by conventional and non-conventional programs. The conventional programs include educational and vocational training programs. The juvenile is take care by the providing him clothing and other fundamental needs. The non-conventional programs include casework, group work and group therapy, counseling and other guidance and various processes from intake to release. The object of such programs is to understand the behaviour of juvenile with the inmates, for bringing about his rehabilitation. The treatment programs like giving vocational training to the juvenile, keep the juvenile equipped with work and it helps him to develop the habits of hard work. The regular educational Institution is more concerned with the programs which broaden the mental ability of juvenile.

THE FOLLOWING ARE THE TREATMENT OFFERED UNDER INDIAN LAWS TO JUVENILES:

The sentencing process in India towards children is very lenient. The role of court is to impart justice. Once the trial is over, the decision of the court comes out in the form of punishment to the convict or if the court is satisfied that the accusation on person fails then they acquit the person. The treatment offered to children is in the form of admonition, probation, sending person to correction home. Beyond this is fine, restitution and compensation are given as alternative to sentence. In sentencing process, lower degree of punishment is a rule and
higher is exception. The court should see the severity of the offence committed and give preference to the lower degree of punishment. If the court observes that the punishment has two options of giving imprisonment and fine, the fine to be given first preference. When the nature of offence is grave and the demeanor of offender demands more punishment than fine, then the judge should think about the alternative punishment for offence. While awarding higher degree of punishment, it is duty of the court to give reasons for not awarding lower degree of punishment. It is not only the duty of court to give preference to lower punishment but it is the right of accused as per fixed by law. There is presumption of not awarding more punishment than prescribed by law. The punishment for the offender is decided on the basis of the prescribed set of rules and not beyond that. Whenever there is an alternative punishment then lower degree punishment to be awarded is a rule. The nature of the offence should be taken as measure for deciding punishment whether to be deterrent, preventive, reformative or rehabilitative punishment.

It is very important to understand the antecedents of the offender before awarding sentence. It gives age, education, family details, health problems, addictions and previous convictions of offender.

The followings are the important factors in sentencing process and giving treatment-

1) Admonition:

It is an alternative sentence offered under Indian laws. The important duty of the court is to what offences have been committed by the offender. The first time offenders should be dealt with due care and not in harsh manner. Releasing person on admonition

Admonition means to release the offenders after the advice to not do an act against it. It is a warning to the offender not to repeat the same act or indulge in any act which is a legal wrong. It is purely the reformative punishment and gives
the offender full opportunity to expiate and be a good citizen and return back to the society.

According to the J.J. (C and P) of Children Act, 2000, definition of juvenile mentions any person to be below 18 years of age and has indulged in criminal activities. It is the duty of the J.J.B to initiate an inquiry and find out the same. If the board finds out in enquiry and thinks fit, they can allow the juvenile to go home after giving him advice or admonition. The parents or guardian too are given counseling before releasing the juvenile as per Sec 15(1) of the Act.

The POO Act 1958 also has the provision of releasing the offender on admonition as per Sec 3 of the Act. This provision is applicable to the offences under IPC for Sec 379, 380, 381, 402, 420 or any offence punishable with imprisonment for not more than 2 yrs. or with fine or with both under IPC or under any other law on condition that no previous conviction is proved against the offender. Previous conviction against a person shall include any previous order made against him for admonition or probation on good conduct.

There is a similar provision in the Cr. P.C, which says that if, any person is convicted of theft, dishonest misappropriation, cheating or any offence under the IPC, punishable with not more than 2 yrs. or any offence punishable with fine only and no previous conviction is proved against him, the court before which he is so convicted may, if it thinks fit, after considering the age, character, antecedents or physical or mental condition of the offender and to the nature of the offence, instead of sentencing him to any punishment release him after giving admonition as per Sec 360 (3) of Cr. P.C.

There is provision of releasing the offender on admonition with compensation under Section 5 of the Probation of Offenders Act 1958. Under this provision, when the court directing the release of an offender on admonition, if the court thinks fit, may direct the offender to pay a sum of compensation as it may deem fit. The amount so ordered may be recovered as a fine or in civil suit as compensation. This amount may be as per the injury or loss caused to the other party.
2) Release for a good conduct on probation:

The meaning of the probation is the behavioural supervision of the first time offenders or young offenders who had committed the first offence. The very procedure of this supervision is the offender who is under the supervision must not commit a further offence and he must report to the probation officer regularly. The other meaning of the probation is that the supervision of the person under the circumstances and his suitability for which he being tasted.

According to Sec 5 of the J.J.Act, if a juvenile has committed an offence and if the JJB is satisfied on an enquiry and if the board thinks fit then the juvenile has committed such an offence however it is necessary to release the offender on the probation then the juvenile may be released on the probation even if anything contrary is contained in any other law which is time being in force. The juvenile may be placed under the care of –

i) Any parent, guardian or other fit person, on such parent and guardian or other fit person by executing a bond with or without surety as a Board may require for the good behaviour of the juvenile, for a period not exceeding three years.

ii) Fit institution for not exceeding three years.

Sec 4 of the POO Act 1958 and Section 360 of Cr. P.C, empower the court to release certain types of offenders on probation of good conduct, if any person is not punishable with death or imprisonment of life or sentence of more than seven years. The court by which the person is found guilty has discretion to consider the circumstances of the case, nature of the offence and the character of the offender and release the person on probation of good conduct. This kind of punishment is applicable to a large extent to children below 21 years of age and women and it is extended to all offences other than death sentence and life imprisonment. The court may instead of sentencing the offender at once, direct the offender to be released on bond with or without surety and with direction to appear whenever called upon. In the meantime the person is directed to keep peace and good behaviour.
Before releasing a person on bond with or without surety, the court shall be satisfied that there is a fixed place of residence of the offender under the jurisdiction of the court and the offender is likely to be staying there during the period of bond.

The court before making the order to release a person on probation of good conduct, shall consider the report if there are any of the probation officer.

The court may order in the interest of the offender or in the interest of the public may keep the offender under the supervision of the probation officer.

The court while making a supervision order, direct the offender to enter into a bond, with or without surety, to observe the conditions specified in the order. The court making the supervision order, shall explain to the offender the terms and conditions of the order.

The above mentioned provisions are not applicable to the following offences:
1) Conviction under Prevention of Food Adulteration Act 1954
2) Conviction under Defense of India rules 1962
3) Conviction under Customs Act and Control Rules.

There is provision of releasing the offender on admonition with compensation under Sec 5 of the POO Act 1958. Under this provision, when the court directing the release of an offender on admonition, if the court thinks fit, may direct the offender to pay a sum of compensation as it may deem fit. The amount so ordered may be recovered as a fine or in civil suit as compensation. This amount may be as per the injury or loss caused to the other party.

3) Perform Community Service-

The J.J.B is empowered under Sec 15 of the J.J. Act, to give punishment to the juvenile in conflict with law to perform community service. This is a reformative treatment which is given to the juvenile to expiate to his deeds. Such types of punishments are not meant for juveniles but applicable to any other criminal as per the offence committed by him.

**Sentence to clean Ambaji Temple for ten days**
A man has been made to clean and wash the Ambaji Temple in Banaskantha. Judicial Magistrate, Patel has sentenced Mr. Shankarlal Joshi who was 53 years of age to clean and wash the temple floor for ten days. The convict Mr. Joshi was happy with the order of the court and mentioned that he received an opportunity to repent for the crime and offer service to the goddess.

[This has been referred from the TOI Newspaper of 1st Nov 2005.]

Gandhi Ashram plays a role of reformatory-

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 reformatory 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
4) Sending Juvenile to a Special Home-

The J.J.B may make an order under Sec 15 of the J.J. Act to send the Juvenile in Special Home.

This order is made when the juvenile is above seventeen and less than eighteen years of age. He is sent in special home for minimum period of 2 yrs. In other cases, the juvenile is kept for a period till he ceases to be juvenile.

The Board may after considering the circumstances of the case and the nature of the offence may reduce the period of stay of the juvenile in the special home, after recording the reasons for the same.

The above mentioned punishments are on the basis of the Reformative theory. This is also called as Utilitarian Punishment Theory. The theory has a word ‘Reformation’, which means improvement, transformation, change, development etc. Reform means change and improvement of a person by correcting the faults of the person, removing inconsistencies and abuses and using modern methods of correction of the offenders. Reformation is an act of reforming; it is an act or process of reforming somebody especially for an improvement of behaviour.

As mentioned in an Article on Criminal Law- Encarta Reference Library 2005, the object of punishment is actually only rehabilitation. The supporters of this try to prevent crimes by different reformative programs. The current system in prison provides education and treatments to remove their criminal tendencies. The skills developed in the prisoners during their period of sentence help them to become good member of society. The reformatory is an institution or reform school, meant to keep the young offenders. This is also meant to reform somebody who has committed offence. This theory expounds that a criminal can be reformed into a good citizen as a law abider by giving him treatment during imprisonment period. Under the theory of reformation, a criminal is treated as a patient and a mechanism to treat offender should be like doctor. The criminal is in need of doctor and not jailor. Under this theory punishment is not given to the criminal but
he is given reformatory treatment. He should be reformed by giving him training to go back in society after his sentence is over.

There are two things combined in this theory:

1) The offender should be treated in a form by which he can be converted into a good citizen.

2) He should be trained for some work during the period of sentence, so that after completion of that period he can re-establish himself in a society and he should be trained in such a way that he should not commit crime in future.

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.”

The Modern Law Methods are based on reformation of the offender and seeks to correct the criminals and transform them into good citizens. They should not be penalized for their wrong deeds.

As early as 1787, the Society of Friends named as Quakers in Pennsylvania started reform as a major program in prisons.

Prison came to be known as penitentiaries, because criminal become penitent that is remorseful when they are kept in prison and change their behaviour.

However, it was until the late 19th century that rehabilitation became a sole purpose under the Criminal punishment system in U.S.A.

The prisoners integrate through the reformatory programs in prisons and it helps to avoid future criminal activities.
With a passage of time, the criminal justice system developed, and brought a change in the punishment system. Individualized treatment started and the offenders were given reformative mode of punishment.

As against the other theories of punishment, reformative theory seeks to bring a change in the offender and rehabilitate him. Thus, this kind of punishment is used as a method to reclaim the offender and not to torture him or punish him.

The reformative view of penology suggests that, this punishment is the only one which can give a better future prospect to the offender. However it was observed that the hardened criminals do not respond favourably to the reformative methods.

The reformative punishment can be given as follows-

1) Keeping a person in a mental institution, where he can get a psychological counseling

2) Keeping a person in drug rehabilitative centers, where he can be subjected to get rid of drug habits and made aware about its ill effects.

3) Keeping a person under vocational training centers, where he will be taught about the skills of productive methods for future employment.

The punishments differ according to the personality of the offender. The reformatory methods are for the development and the benefit of the person and it should be reached till the person on right time. This will help the offender to come back to the society as a normal person.

In the conclusion, it can be said that if we look at JCWL, we should not call them offenders; they are those people who at tender age thrown by the society. The state and the society owe duty towards the juveniles to provide them good environment for their development. When the society lacks in its duty, the ultimate result is that of juvenile violating law and committing crime. So the society here is responsible for the criminal tendencies developed in the juvenile.
Children represent the future of society, so they should not be treated with harsh penalties, whereas given chance to reform.

The children who get deviated to be kept in correctional homes for reformation. In India, there is total exemption for a child, who is below 18 yrs. of age from death penalty, LI and other imprisonment. He is even exempted from paying fine, if he is below 14 yrs. But if he above 14 yrs. and earning then he will be made to pay fine. Such children are sent in homes as established by J.J.A for treatment, where they get reformed and come out as law abiding citizens of society.

5.11.1

VIEW OF INDIAN JUDICIARY ON REFORMATIVE THEORY-

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 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.

It can be analyzed that today, the human beings are using punishments for reshaping a person who has turned criminal and so the modern community is an agenda to rehabilitate him.

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.

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.

**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 reformatory punishments are the modes of punishment to be made applicable to the offenders as per the nature of crime committed by them.

**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.

**In the Case of Punchu Vs. State of Orissa, 1993 Cr.L.J 953**, it was 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 reformatory 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.

Concept of Corrective coercion and correctional cycle : This is given by Professor Lowell J. Carr, in Delinquency Control in 1940 and adopted 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 Juvenile court/Juvenile Board/Child Welfare Committee 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.

The young offenders can be treated by two different approaches-


The individual method of treatment is generally adopted by psychologist, psychiatrist, and social workers. They deal with the young offenders by personally interacting with them. They study the background circumstances of the young offenders and try to apply sympathetic method to correct them.
The Group Method is generally followed by sociologist, where they try to correct the social structure, which is the reason for a child turning delinquent.

Accordingly following are the therapies which are generally applied for treating the delinquents.

1) Psychotherapy
2) Reality therapy
3) Activity therapy
4) Behavior therapy
5) Milieu therapy

1) **Psychotherapy:**

   This is required when there is not a good relationship or handing both the child and his parents or his guardian. Due to this the mental and emotional development of child remains very low and sometimes completely absent. The child in such cases can not satisfy his personal demands from his parents which leads a child to turn aggressive and antisocial. In this therapy a child is provided with all the love and care which was not provided to him/her. A child is kept in very joyous environment with no fear around of being punished. The child is given an opportunity to express his/her views and given an atmosphere as per his/her behavior.

2) **Reality therapy**

   Sometimes it is very difficult for a person to fulfill the basic needs of the life, in reaction to commit them; the person may act in irresponsible manner. The reality therapy is one in which a person is delink the past experience and lives in present and so it helps the person to act in a responsible manner. Unlike the psychotherapy it is not concerned with the past of the person but it targets the present of the person. This proves very helpful to the delinquent children, because it does not treat them on the basis of their past behaviour but helps them to behave in a responsible manner and improves their present as well as
future. Under this therapy a child is expected to obey rules, but he does not obey it, he is not rejected. This is the very good way of treating a child; it gives child strength and opportunities to develop. The reality therapy can be used by any person whether a police officer, social worker, counselor, teacher or family member or a friend. This is a very easy and time consuming mode of treating delinquent juveniles.

Example: If a child is insulted by one of the friend, then a child may get angry and try to assault a friend. But in such situation he is made to understand that it is general thing and happens amongst friends, he should take it as a funny thing and ignore. Friends are always helpful to you. The child may understand the thing if put in a right manner.

3) Behaviour therapy

The object of this therapy is to bring changes in the behaviour of delinquent by positive or negative attributes towards them. By active or pleasant attribute the child will become positive. The negative attribute or negative way of behaviour with the child will reduce the negative attitude of the child. The behaviour therapy by positive attribute proves more successful. The act of giving physical punishment, threat, insult, confinement are the negative attributes and admission in school, giving money, freedom to play are the positive attributes.

4) Active therapy

This therapy is useful for those children who are verbally weak or lacking in communication in front of individual or group of people. In this a child is made to be in a group of six to eight persons. Here a child is given scope to play or to do some artistic work. The Child who is aggressive will reflect through his activity. And since there is no such competition or other way of retaliation his emotions will be discharged accordingly.
5) Environment therapy

This therapy is for those children who become deviant due to the reaction of the unfavourable social conditions. These children are provided with atmosphere, where they can satisfactorily adjust themselves and make a change in their behaviour.

These are therapies to treat juvenile delinquents, besides this there are three different methods by which juveniles are treated-

The table below gives the detailed description of the methods to treat juveniles.
<table>
<thead>
<tr>
<th>SOCIAL CASE WORK</th>
<th>INDIVIDUAL COUNSELLING</th>
<th>VOCATIONAL TRAINING</th>
</tr>
</thead>
<tbody>
<tr>
<td>This is somewhat similar like psychotherapy. However the only difference is in this a social case worker does a work of psychotherapist. A social worker who may be any person takes out the history of the juvenile delinquent, his family background and other related matters to him/her and then evaluates the strength and weakness of the juvenile for planning a treatment to him. This method however is not very successful, due to lack of trust and non cooperation from the juvenile and his/her family to the social worker.</td>
<td>In this the only target is made on the juvenile delinquent. He or she is made to understand the immediate situation where he/ she is standing and given guidance to solve it. This method is not applied to change the personality of the juvenile delinquent but just to make him/her understand what they are. There are child guidance clinics established for this purpose.</td>
<td>This is done to increase the knowledge of juvenile to choose a career. This gives juveniles training for a successful employment. They specify them the qualification and the type of job suited as per their qualification. The type of change a juvenile gets after being motivated towards career is very good for him/ her as well as society.</td>
</tr>
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Table 5.3: Different methods for treating juveniles
5.12

AMENDMENTS TO THE JUVENILE JUSTICE ACT

The J.J (C&P of C) Act, 2000 addresses delinquent juvenile as JCWL and neglected children as CNCP.

The Lok Sabha passed the J.J (C &P of C) Act, 2014. This Act has allowed children in the age group of 16-18, committing heinous crimes to be tried as adults. These amendments were passed after the protest of the Delhi gang rape case of 2012 in which a juvenile accused received a lesser punishment for the offence.

Accordingly the bodies like JJB and CWC will be constituted in each district. The juvenile to be rehabilitated or not is found out at the preliminary investigation conducted by the JJB. JJB determines whether the person has to be tried as adult or as juvenile only. The CWC will determine under which institutional care the CNCP to be deployed.

The amendment includes what will be the eligibility of adoptive parents and what procedure to be followed for adoption. The amendment has penalties for cruelty against a child. It has also penalized the act of giving narcotic substance to a child. The abduction or selling a child is made punishable under this 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 is 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 the authorities to be responsible for monitoring implementation, the publicity of the amended act, and to look into cases that arise out of the Act.
THE J.J. (CARE AND PROTECTION OF CHILDREN) AMENDMENT BILL 2015
GAVE FOLLOWING NEW AMENDMENTS -

1) The juveniles of 16 years of age or older to it are to be tried as adults for heinous offences like murder and rape. The new Juvenile Justice Act came forth with a provision that the juvenile between the ages of 16 years to 18 years are to be treated as adult criminals if they commit heinous crimes. The juveniles have to face minimum 7 years of imprisonment if they commit heinous crimes. The operation of these changes however is not retrospective. The juvenile after this amendment is not tried as adults only for heinous crimes but for even other crimes, they have to face punishment of three to seven years of imprisonment.

2) The heinous offences are defined as those which are punishable with imprisonment of 7 yrs or more.

3) This Bill made it compulsory to establish J.J.B and C.W.C at every district. It is made compulsory to have at least one woman member each.

4) The discretion is given to the J.J.B to take decision regarding the JCWL. The J.J.B can make an inquiry and decide whether the juvenile has to be treated as adults or send him to the rehabilitation.

5) The institution care to be provided by the CWC, which will be presided by the chairperson and four other members.

6) The adoption related regulations are eligibility a criterion of adoptive parents is given under the new amendment.

7) This new amendment has clearly mentioned that there should be no life imprisonment or death penalty inflicted on juveniles.

8) The responsibility is placed on J.J.B to ascertain at the preliminary inquiries whether the juvenile is to be placed in homes or tried as adults.
9) In after care, the juveniles to be provided with one time financial support after the release of juvenile, after completing 18 years of age.

10) The new law protects the rights of juveniles. It also deals with adoption of children and eligibility of adoptive parents. A CARA is assigned the work of framing rules in this regard. These rules have to be implemented by the state and district level agencies.

11) The new law will strengthen the provisions for CNCP and the JCWL

12) This new law has defined the heinous crimes; however the definition is not clear and is exhaustive.

13) The heinous crimes has been defined under new law as any offence that is punishable with seven years’ imprisonment under IPC, which includes rape, murder, gang rape, dacoity, kidnapping, drug trafficking, sedition.

14) The members of the J.J.B and C.W.C are required to be expert in matters of children. It has made compulsory to keep at least one woman member in both the bodies working for children.

5.13

CRITICAL APPRAISAL OF JUVENILE JUSTICE ACT

There is still no uniformity on the national level for the treatment and other procedures relating to juvenile The Institutions and the adjudication mechanism is not yet established as per the prescribed manner in the J.J. Act. The officers for the execution of the functions are also not appointed properly. This is a major setback of the Act. The officers handling the matters of the juveniles are also not fully trained and so the decisive factor is weak and hence the law is not properly implanted. The Police unit which is established under the Act is not present in all police stations. The police officers who are working in the police stations are the same who are dealing with juveniles. There should be a SJPU to look after the
juvenile offenders, who are trained to handle the cases relating to the juveniles. However, they are not appointed in the manner prescribed in the Act, in many police stations. The J.J.B in many areas in India is having members who are not specialized in the child psychology or other expert in the child related matters. The coordination between the various institutions involved in this process of JJS is not proper. The Institutions established for the reception of Juveniles and CNCP are not properly working on the guidelines. The juvenile legislation is a beneficial legislation and so the facilities to be provided by the Government to encourage the implementation of the Act. The Act has not given the minimum age below which the Act remains inapplicable. The Act fails to expressly lay down the age of innocence. The definition of juvenile is not inclusive and had a strict interpretation.

There are many incidences observed during the case review of the juvenile delinquency, that the parents are responsible for turning child delinquent. This aspect of the children turning delinquent due to the parental control or non-control forces is not included in the Act. Many a times parents are responsible for exploiting and abusing children.

The training facilities provided for the development of student in the observation home has not been provided properly to the juveniles. The education and recreation facilities are not provided properly. The institutions are not even providing basic school education. This institution should cover the higher education facilities and vocational training facilities for the children.

This Act has failed to provide provision of the speedy trial to the juvenile. There are many cases pending before the J.J.B.

The Provision of inter country adoption is not included in the Act of 2000. There should be coordination between the J.J. Act and the other legal provisions relating to child labour, child education, sexual assault, sexual abuse etc.
There is no right based perspective in the Act. The identification of the CNCP is not done properly.
The agencies of the government should work on the alarming increase of
the delinquent acts in India. However the agencies are not coordinating
with each other and so the provisions of J.J Act is not being implemented
properly.
The Act has not yet reached to the people where it should have reached.
The large number of people is still out of its purview. The children affected
by the drug abuse, HIV/AIDS, other disasters are not being redressed
under this Act. The issues like marriage, feticide, child labour, and street
children are not covered under the Act.
The police have a direct contact with the juveniles while apprehending
them. The police while apprehending the juvenile violate the procedures of
law. The police records the wrong age of the juvenile and presents the
same before the J.J.B.
The rehabilitation and reintegration of the juvenile is not implemented
properly.
The disabled children who need special care and protection are not given
importance and ignored the same by the Act.
The definition of the ‘CNCP’ should be made inclusive and elaborative.

5.14

ATTITUDE OF JUDICIARY TOWARDS JUVENILE AND THE LAWS TO
PROTECT THEM:

The role of judiciary is very crucial in determining the controversial
questions which is not redressed properly by the existing laws. The child abuse
and juvenile delinquency are the two sides of the same coin but the legislature
has not yet realized this aspect and so the laws pertaining to its prevention are
not being implemented properly by the law enforcing agencies. The SC as it is the Guardian for us, is very much alert and timely makes the pronouncements for the betterment and healthy development of children. Now a day even the other courts are very much sensible about the child issues and their good development and hence they are even giving harsh punishments for the perpetrators of child abuse and when it is the time to deal with JCWL, our judiciary is very much taking care of the young age and the developing mind of the juvenile before pronouncing a step to be taken against a juvenile delinquent and the courts are giving more emphasis to give a reformative way of punishment to the juvenile and directing the concerned agencies for their protection in custody and rehabilitation after they are release from the custody.

The following are some important and noteworthy judgments showing the prevalence of child abuse activities on which the judicial outwork for protection of children and their development is seen. The judicial attitude toward juvenile delinquent will be reflecting in some of the following judgments. The judiciary is an independent organ of the state and it has power to give precedents in the form of law. There are many noteworthy contributions made from the SC, as a guardian of the constitution to evolve new legal principles in the form of guidelines.

5.14.1

THE COURT HAS DECIDED IN THE FOLLOWING CASES ON THE JURISDICTION OF COURTS TO TRY THE CASES OF JUVENILES

1) In the case State of Karnataka Vs. Harshad 2005 Cr.L.J 2357 (Karnataka), the question arose before the High Court, was whether the COS or the Fast Track court has a power to decide on juvenile cases. The court held that, according to Sec 6(1) of the JJ Act, 2000, only the JJB has exclusive power to
deal with the JCWL. The High court henceforth directed to establish more JJB in the state.

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

In this case as the COS has declared the accused juvenile, he was not shifted to the Observation Home. His case was also not transferred to the JJB. When High Court 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

3) 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.

4) In the Case of Bijender Singh Vs. State of Haryana, 2005 AIR (SC) 2262, it was held by the SC, that the provisions of Act of 2000 would be applicable to those whose inquiry is pending for the offence committed under the Act of 1986. The condition for its applicability is that the person should be under 18 yrs of age as on 1.04.01.


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. Pc 1973.

6) 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 are found soliciting in a public place and 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, who is rescued from a brothel under the I.T. (Prevention) Act 1956 or found soliciting in a public place. 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. If the parents or guardian found to be unfit for custody of juvenile, then juvenile 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.

7) 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. The court held that the General Court Martial did not have jurisdiction to entertain cases of juvenile.

Hence from the above judgments, it is clear that the attitude of judiciary is making the juvenile to be tried as per the J.J Act, under the JJB for JCWL and CNCP to be brought before the CWC. The other regular courts have no jurisdiction to try the juveniles for the crime committed.
5.14.2

THE BELOW CASES SHOWS THAT THE STATE IS VERY ACTIVE AGAINST KEEPING THE JUVENILES IN JAILS

1) **In the Case of Sheela Barse Vs. Union Of India, (1986) 3 SCC 596; AIR 1986 SC1773**, the SC has given direction to the State Legal Aid Boards to give Advocates to 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.

2) **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 dispose of according to the provisions of JJ Act.

3) **In the Case of Master Salim Ikramuddin Ansari & Anr. Vs. Officer-In-Charge, Borivali Police Station,Mumbai & Ors: 2005 Cr.L.J 799( Bom)**, 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 was 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.
4) In the Case of Abhay Kumar Singh Vs. State of Jharkhand: 2004 Cr.L.J 453(Jharkhand) a juvenile had been kept in jail for 3 years and 8 months. The Court ordered him to release on bail without any surety. The court also directed that if the inquiry of the juvenile is not completed within 3 months, automatically the criminal proceedings stand quashed.

5) Sanjay Prasad Yadav Vs. State of Bihar 1995(1) Crimes 476 Patna

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 jail just because he extends the age of sixteen years.

6) 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.

7) 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.

8) The approach of the SC towards juvenile has been very liberal. It was way back in 1977 that when SC in a case Raisul Vs. State of UP, AIR 1977 (SC) 1822 held that penalty of death should not be imposed on a person below 18 years of age. Segregation of juvenile from adult offender has also been supported and protected by the judiciary.
The judiciary is keeping the juveniles away from the hardened criminal, so that they should not imitate them and become criminals in future. However they are kept in reformative homes to develop into a better citizen.

5.14.3

THE BELOW CASES SHOWS THAT THE CLAIM OF JUVENILITY HOW FAR ACCEPTED BY THE JUDICIARY:

1) In the Case of Bhoop Ram Vs. State of U.P. AIR 1989 SC 1329, the question to be determined before the SC, was whether the appellant, the original accused, was a juvenile on the day when offence committed. There was a conflict between the age of accused. The age recorded in the SLC was showing the accused as juvenile but the age as per the Medical Examination Report was showing that he has crossed the age of juvenile. The supreme for the benefit of the juvenile, held that he was juvenile, and he was immediately released.

2) 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.

3) 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 sentence of L.I and released him and his co accused, even though they were convicted. The court was of the opinion that, when an accused raises a plea that he is a ‘Child’, then it becomes obligatory on the court, to hold inquiry and determine the same.
4) Santenu Mitra Vs. State of West Bengal, 1999 AIR (SC) 1587.

In this case, it was held the entries made 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 for deciding the age of the juvenile.


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.

6) 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 relied on 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.

7) Munney @ Rahat Jan Khan Vs. State of UP, 2006 AIR (SC) 2902, 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 has given his age as 18 years, the accused is not a juvenile.

8) Chandra Shekhar Bind Vs. State of Bihar, 2001 AIR (SC) 4024, the court held that since the plea of juvenility was not raised during the trial and even in High Court and in SLP before Supreme Court, the accused cannot take be given benefit of it even if it is raised for the first time during the arguments.
9) **Murari Thakur & Anr. Vs. State of Bihar, 2007 AIR (SC) 1129**, 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.

10) In the case of **Arnit Das Vs. State of Bihar, AIR 2000 SC 2244**, the court held that, the age will be determined from the time when the juvenile is produced before the competent authority.

11) In **Pratap Singh Vs. State of Jharkhand and others, AIR 2005 SC 2731** the SC held that, the date will be ascertained for the application of J.J Act, after considering the age of the juvenile. The date when juvenile is produced before the court is irrelevant. The date when the crime was committed is relevant.

In the above cases, the view of judiciary is clear on the point of deciding the age for the claim of juvenility is the age as mentioned under the juvenile laws.

**5.14.4**

**THE FOLLOWING CASES GIVE THE INCIDENTS TO GRANT BAIL:**

1) 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 had to report to the J.J.B. The reporting to be done as per the direction of the JJB. The High Court held that for granting bail the provisions Sec 12 of J.J.Act to be complied with.

2) 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 get into the contact with the criminals.
3) **Navin Pawar Vs. State 1994(3) RCR (Cr.l.j) 577.**

It was held in this case that, the repetition of commission of crime should not be the ground to reject bail to the juveniles.

4) **Kishan Kumar@Jailer Vs. The State (NCT of Delhi), MANU/DE/0248/2005**

In this case a bail was prayed in appeal before the HC. 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.

5) 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 Session’s Court. The Session’s Court too rejected the bail to juvenile in the interest of the society. The High court was agreed with the decision of the Additional Session Judge and the Juvenile Justice Board.

It is concluded, thus that the provisions of bail are very lenient and the attitude of judiciary is to rehabilitate the juveniles.

5.14.5

**THE FOLLOWING CASES ARE ON THE ROLE OF JUDICIARY FOR THEIR PROTECTION AND REHABILITATION:**

1) **Vishal Jeet Vs. Union of India, AIR 1997 SC 699**

In this case, on a reaction to the PIL filed, the SC 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 the providing care, treatment and rehabilitation to the child victims.

2) **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 Sec 2 (1) of the J. J Act 2000.

3) **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.

4) **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. And the foremost obligation of state is to develop the child for a better future of the country.
5) **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.

6) **R. Rathinam Vs. Kamala Vaiduriam (1991) 3 Crimes 582 (Mad)**, 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 will be put under the safe custody. In such cases the court directed, the state government to provide the facilities of shelter and development to the child. The court emphasized on the duty of the state entrusted by J.J. Act to provide vocational training and educational facilities till the child attains majority.

7) **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.

8) **In the Case of Umesh Chandra Vs. State of Rajisthan, 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 while committing offence is of relevant age then the Act will be applicable on the child. Hence in the view of the Court, the date to be considered when the offence was committed and not the date of the trial.”
9) In the Case of Roper Vs. Simmons, 543 U.S. 551 (2005), the 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 16 years of age.

10) In the Case of Graham Vs. Florida 560 U.S. 48 (2010), the SC of U.S held, that the no juvenile offenders to be awarded the punishment of life imprisonment for non-homicide offences without giving them a benefit of parole.

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

12) 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.

13). Harilal Mallick Vs. State of Bihar AIR 1917 SC 3236, it was held, 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.

15) **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 JJ. Act was passed to give proper treatment and rehabilitation of JCWL and CNCP. This is also to adjudicate matters on them and rehabilitate them in proper juvenile homes as per the need.

16) In *Vishal Jeet Vs. U.O.I (1990) SCC 318*, the directions were given to eradicate child prostitution and to rehabilitate the children

17) **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 sexually abuse the children living in their shelter house. They were convicted and sentenced under section 377 of the IPC.

18) **In the Case of Thompson Vs. Oklahoma, 487 U.S. 815(1988)**, the S.C of U.S, held that execution of convicts of 15 yrs. of age and younger to them to be avoided.

19) **In the Case of Stanford Vs. Kentucky 492 U.S. 361 (1989)**, held the amendments to the U.S. Constitution for prohibiting the death penalty for crimes committed at the age of 16 or 17 years.

20) **In the Case of Brennan Vs. State, 754 So. 2d 1( Fla.1999)**, the SC interpreted their own state death penalty law. According to the approach of the state constitution, the Washington SC set the minimum age at 18 years as given **In the Case of State Vs. Furman** and in this case Florida SC set up the age at 17 years

21) **In the Case of Atkins Vs. Virginia, the U.S, S.C** held in 2004 that the there should not be death penalty to the mentally retarded people as they are not developed by mind like Juvenile offenders.
5.15

GROUND REALITIES ON JUVENILE JUSTICE:

1) 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 J.J.A in Maharashtra in May 1986. It has been found out that, the members of the J.W.B 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.A, 1986. The members of the 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 most of the 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 labours. 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 the vocational training in the 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 JCWL is loaded with neglected juveniles. In after care 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, a special police unit, named JAPU is established 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.A. 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.

2) 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 is violating the direction of Supreme Court be handcuffing him.

3) 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 reformatory 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, Ahmadabad, 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

4) 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.
5) 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.

6) 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.

**Conclusion:**

Although the J.J.A 1986 was enacted three years before the 1989 U.N.Convention, this Act has achieved most of the ideas for achieving J.J. The J.J has provided more specialized approach for investigation, prosecution, care, treatment and rehabilitation of child. This Act has also included voluntary organization for their assistance in the execution of the Act. After seeing the salient features of the J.J.A 1986, the Ministry of welfare, GOI issued a scheme for prevention and control of Juvenile social mal-adjustment. This scheme ensured that the child should not be put in prison. This scheme has provided their service throughout districts. This scheme has also provided for separate handling and dealing with non-delinquent children as covered under the J.J.A. It has been observed by the Ministry of welfare, that to achieve these objectives there should be participatory approach from the government bodies. The Central and State Government, the H.R.C, Judiciary, Academic institutions, experts in the field of child psychology and care, NGO’s should together work for removing the problem of juvenile delinquency. The programs adopted by the government should attempt to secure and give effect to maintain the dignity and rights of children. There should be directions issued by the government for more effective working of the Act. There should be establishment of advisory boards and J.J Fund. This kind of fund will finance the programs enumerated under J.J.A. The people who are working in a specialized care of children should be honored with awards.