Children in conflict with law belong to one of the most vulnerable sections of children in India. Rule of law and access to justice are the basic requirements for a country’s development and is as imperative for the reduction of social differences as the provision of basic services such as proper health and education systems. However, it has been recognised that children, when dependent on the same justice mechanism as adults may find themselves further victimised by the system itself. It is this recognition that has led to the development of a separate child justice system or juvenile justice system in many parts of the world. In some countries, despite recognition of the need of a separate juvenile justice system, children in the higher age group may be treated through the adult criminal justice system for certain offences and in many punishment for heinous crimes committed by juveniles is stringent and at par with that prescribed for adults. The stage of development of the understanding, discourse and even the law in the area of juvenile justice vary from one region to another, depending on the history and culture of its citizens, their approach to human rights, their legal and technical capacities and their government (HAQ, 2013). There are many aspects of a juvenile justice system, those who are involved in it, the way they act, the procedure, the physical and other facilities. For example, it is about the manner in which police apprehend or interrogate children, the attitude of lawyers and prosecutors; the way that judges make decisions about guilt or sentencing; handling by prison staff, the living; educational; recreational and safety conditions at places where children are being kept and programmes for rehabilitation and reintegration.

Three models or approaches have been identified in the Juvenile Justice System across the world, the welfare or the parens patrie model, the Due Process Model and the Participatory Model. Many countries of the world have combined all these models to evolve their own. Even the understanding of what constitute juvenile justice differs. For example, the juvenile justice system in most countries deals only with children in conflict with law, while other social and state-specific laws are used for children in need of care and protection. In India, the Juvenile Justice (Care and Protection of Children) Act, 2000 deals with two categories of children i.e. who are in
conflict with law and those who are in need of care and protection. The reason for including children in need of care and protection is that these are children who are living on the edge and are vulnerable to come in conflict with the law, if there is no timely intervention to prevent them from coming into such situation (HAQ, 2013).

Emergence of Juvenile Justice System in India
In India, the cause of the destitute has been championed by two stalwarts namely Krishna Chandra Ghoshal and Jai Narain Ghoshal. In 1787 they beseeched to Lord Cornwallis, the then Governor General of India, to establish a ‘home’ in the vicinity of Calcutta Fort for the protection of the destitute of Calcutta who happened to be beggars, widows and orphans. They appealed to the Governor General that steps should be taken immediately to help these sections of Calcutta. They also suggested some concrete steps to be taken to meet this end. Firstly, shelters for 500 destitute to be built near Calcutta and provided with wells and gardens. Secondly, an Orphan Committee to be set up for the protection of destitute and orphan children. Apart from these suggestions, Krishna Chandra Ghoshal and Jai Narain Ghoshal recommended that destitute and orphans should undergo compulsory schooling. This was the first effort on the part of the two Indians who were moved by the pitiable condition of destitute and delinquents of Calcutta and ventured to ameliorate the lot of the delinquents who were otherwise growing up in vagrancy and fall prey to crime. At Bombay, a nucleus for juvenile reformatories was established in 1843, with the conscientious efforts of an Englishman, Dr. Buist who has been instrumental in establishing a ragged school at Sewari to serve as an asylum for the orphans and the vagrant. This institution later came to be known as the David Sasson Industrial School. (Chatterjee, 1997). Before stepping of common law, laws relating to juvenile justice used to be governed by personal laws i.e. Hindu and Muslim Laws. In India, the first legislation dealing with the issues of juvenile justice came in the form of the Apprentice Act, 1850, and later on finds place in Indian Penal Code, 1860, in the form of section 82 and 83 (Malik, 2012). The Apprentice Act of 1850 which was promulgated by Lord Dalhousie proved to be a significant step in the direction of juvenile legislation in British India. The Act proclaimed that the binding of apprentices was for better enabling children and especially orphan and poor children brought up by public charity, to learn trade, crafts and employments, by which they come to full age, they may gain a livelihood. This Act was applicable to boys and
girls in the age group of 10 to 18 years. Under this very Act, a child could be bound as apprentice by his/her father or guardian to learn any trade or craft for a period not exceeding seven years. In addition, the Act empowered any Magistrate or justice of the Peace “to act with all the power of a guardian under this Act, on behalf of any orphan, or poor child abandoned by its parents, or of any child convicted before him/her or before any other Magistrate for vagrancy, or the commission of any petty offence.” This legislation enabled many a young orphan, destitute and petty offender, to earn a honest livelihood. The overall control of the apprentice was vested in the government so that the Act was not misused. This Act paved further legislative measures culminating in the enactment of the Indian Penal Code and Criminal Procedure Code which changed the course of British India’s legislative history (Chatterjee, 1997).

**The Indian Penal Code and the Criminal Procedure Code**

The Indian Penal Code (IPC) which came into operation on 1st May, 1861, was the first enactment of codified law in colonial India which dealt with both adult and juvenile offenders. Section 82 says, “nothing is an offence which is done by a child under seven years of age” and section 83 says that “nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his act on that occasion”. Apart from the IPC, the Act No. XXV of 1861 Criminal Procedure Code (CrPC) was subsequently amended in 1884 and 1898. The CrPC in its various sections while dealing with young offenders called for a humane treatment in comparison with other offenders. The significant sections of CrPC which dealt with juvenile delinquents were Sections 318, 399, 433 and 562. These codes were based on lofty ideals and envisaged some sort of socialised treatment to the juvenile offenders which also provided for a progressive approach towards them (Chatterjee, 1997).

Meanwhile, prison reports continued to point towards the need for change in policy and administration. Noticing the high rate of recidivism and the astonishing augment in the number of juvenile offenders (Poona reported an increase from one in 1860 to sixty-five in 1861), the then government asked for further explanation, as also the names of jails having separate provisions for juveniles. The Whipping Act of 1864 followed as a consequence. It was hoped that the Whipping Act would prove to be eminent service in thinning the juvenile population of the jails. The Indian Jail
Committee was constituted in 1864 after the passing of the Whipping Act. The constitution of the committee was intended to intimate that the Act was not to supersede the necessity for the larger measures of prison reform. Juvenile delinquents and reformatories were among the issues connected with jail management on which some legislative action appeared to be immediately called for. Many members of the Indian Jail Committee believed that if education was offered through reformatories in India, there was a great danger of unworthy parents urging their children to commit crimes to obtain government education. At the same time, the committee was clear that the segregation of juveniles from adult offenders was secured within prisons by modification in the prison codes of Madras, Bombay, North Western Provinces, and Bengal. Each of these codes adopted a different cut-off age for defining a child. In the period of 1872-75, Poona Juvenile Prison was reported to be running satisfactorily, with good health and conduct of juveniles, scholastic and mechanical education, and after-care facilities, but was as high as 10 percent, making segregation necessary. The idea of a reformatory school for delinquent children was in the air for long, in view of the bad prison conditions and the felt need for segregating delinquent children from adult offenders. The immediate impetus for enacting the Reformatory School Act 1876 was provided by the government of Bengal’s contemplation. Sir Richard Temple played a crucial role in the whole episode of the Act 1876. The non-delinquent were excluded from the scope of the said Act which permitted that a youthful offender (a child not above the age of 15 years) sentenced to imprisonment or transportation or undergoing imprisonment may be sentenced to a reformatory school instead of being detained in a prison. It was amended in 1897 to empower the local government to effect the reformation in a more cohesive manner. A year later, the Code of Criminal Procedure 1898 authorized magistrates to send juvenile offenders to reformatories instead of prisons in the specified circumstances along with provisions relating to grant of probation and trial of children by the juvenile court. Reformatory Schools were established at many places in India, Madras, Bihar, Orissa, the Central Provinces, Bombay and Delhi, but most of them were not considered to be appropriate (Kumari, 2004).

The Indian Jail Committee, 1919-1920
This committee is considered as one of the most significant developments in the history of the juvenile justice system in India. The committee made the first
comprehensive study of the problems in the present century and its report has been seen as a turning point of the prison reforms in the century. The committee departed from the classic theoretical basis of prison administration and advocated for a new outlook to the prisons. For the first time in the history of prisons, reformation and rehabilitation of offenders were identified as the objective of prison administration. The committee also recommended the care of offenders should be entrusted to adequately trained staff, rejected the idea of excessive employment of Convict Officers and recommended the reduction of such excessive employment. The committee condemned the presence of children in jails and recommended the establishment of children’s court and the juvenile homes. It condemned the practice of sending juveniles to jail and recommended setting up of separate machinery for the trial and treatment of children and youthful offenders. It held that imprisonment of child offenders should be prohibited and recommended the provision of Remand Homes, Certified Schools which matches other schools. The Committee recommended the creation of children Courts for hearing of all cases against children and young persons. It also suggested the children’s release on probation of good conduct with or without supervision of a probation officer and also suggested provision of supervision after release. (Malik, 2012). In order to abide by the vital recommendation put forth by the Indian Jail Committee and in pursuance to execute them all in letter and spirit, Madras, Bengal and Bombay enacted their Children Acts in 1920, 1922 and 1924 respectively. These three pioneer statutes were extensively amended between 1948 and 1959. The chief aims of these legislations generally were to extend the custody, trial and punishment of youthful offenders who come in conflict with law and also for the protection of children and young persons. After independence, Punjab, Uttar Pradesh, Hyderabad, Saurashtra and Mysore also enacted their legislations. A new Children Act was enacted by West Bengal in 1959 introducing some new provisions. Similarly, the government of India enacted Children Act 1960 with some novel attributes for the implementation in the Union Territories. It served as a model for many states which subsequently enacted their respective Children Acts introducing the new features of the Central Act. For the first time, it provided for two agencies at the trial level to deal with juvenile in conflict with law and those who were neglected, destitute and uncontrollable living in crime-prone situations. The earlier Children Acts of respective states had only one agency at
the trial level, i.e. juvenile court to deal with both delinquent and non-delinquent children (Bhattacharya, 2000).

Reckless Commission Report, 1952

Ever since India got independence, a number of jail committees have been appointed by the state governments but one report got much recognition. The report prepared by the United Nation’s expert namely Dr. W.C. Reckless in 1951-52 on Jail Administration in India. His recommendations resulted in the revival of the conference of Inspector General of Prisons after a lapse of 17 years. An All India Jail Management Committee submitted its report in 1960. This resulted in the setting up of the Central Bureau of Correctional Services, which was later redesigned as the National Institute of Social Defence. Dr. W.C. Reckless, a UN expert on correctional work, visited Indian during the years 1951-1952 to study prison administration in the country and to suggest ways and means of improving it. His report entitled ‘Jail Administration in India’ is another significant contribution in the history of prison reforms. He suggested a plea for transforming jails into reformation centres and advocated establishment of new jails. He opposed the handling of juvenile delinquents by courts, jails, and police meant for adults. He also advocated the detention of the persons committed to the prison custody and for their reformation and rehabilitation. He further suggested revision of outdated jail manuals (http://wbcorrectionalservices.gov.in/history05.html.) Another significant step was taken in the form of the Probation of Offenders Act, 1958 Act in the direction to reform justice system for children in India.

The Probation of Offenders Act, 1958

When a person under 21 years of age is found to be guilty of having committed an offence not punishable with imprisonment for life or death sentence, the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it would not be desirable to release the offender after admonition or on probation of good conduct, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so. For the purpose of satisfying itself whether it would not be desirable to release him after admonition or on probation of good conduct, when an offender under 21 years of age has committed an offence punishable with imprisonment (but not with the
imprisonment for life or death), the court shall call for a report from the probation officer to it relating to the character and physical and mental condition of the offender. In fact, the concept, origin and development of the probation in India developed periodically. In the first phase, it may be referred to in section 562 of the Code of Criminal Procedure, 1898, and thereafter many provisions were substituted and at the later stage it is the Probation of Offenders Act, 1958. The development in probation law may be discussed as follows.

(i) The Code of Criminal Procedure, 1898: In India, first legislative piece on probation was introduced in the Code of Criminal Procedure, 1898, which was limited in many ways. The Section 562 of the code provided that the first time offender who has committed a minor offence punishable upto two years of imprisonment may be released on probation at the discretion of the court.

(ii) The Code of Criminal Procedure (Amendment) Act, 1923: This provision has been liberalised in 1923 by the Criminal (Amendment) Act, 1923, to incorporate the offences punishable up to seven years imprisonment both under Indian Penal Code as well as under special or local laws. In case of woman and child under the age of twenty-one years, offenders extend to all the offences, except the offence punishable with death sentence and life imprisonment. Release after admonition also was possible in trivial offences i.e., punishable up to two months’ imprisonment.

(iii) The Probation of Offenders Act, 1958: After amendment in the Code in 1923, a bill was prepared by the Government of India, which could not materialise. Thereafter, in 1952 in Mumbai, an International Conference was held under the chairmanship of United Nations Secretary and where the famous scientist Dr. Walter Russcal was also present. He gave many suggestions, a bill was introduced in the Parliament on 11th November 1957, and the Probation of Offenders Act, 1958, was passed and came into force with effect from 16th May 1958. Under this very Act, the applicability of admonition has been augmented in some of the offences related to property and any offence punishable up to two years of imprisonment but restricted under some special laws. This Act has imposed a duty on the court to explain the reason why the benefit of probation had not been given.

(iv) The Code of Criminal Procedure, 1973: Some provisions like the Probation of Offenders Act, 1958, have been adopted by the new Code under sections 360 and 361.
According to the section 360 of Code of Criminal Procedure, 1973, and under sections 3 and 4 of the Probation of Offenders Act, 1958 there are two types of release (a) on probation of good conduct, and (b) after admonition. According to section 361 of the Code and section 6 of the Probation of Offenders Act, it is mandatory to the court to see all the aspects while sentencing the person below the age of 21 or woman, as to why the offender has not been released after admonition or on probation (Malik, 2012). Besides above mentioned efforts, another significant endeavour in reformatory approach to prison reforms and juvenile justice reformation had been put forth by Justice Anand Narain Mulla. His recommendations have been seriously undertaken while framing legislation aimed to reform juvenile justice

**All India Committee on Jail Reforms, 1980-1983 (Mulla Committee)**

The Government of India in 1980-1983 constituted an All India Committee on Jail Reforms under the chairmanship of Justice Anand Narain Mulla. The recommendations of this commission are known as “Mulla Commission” and the same has constituted a landmark in the reformatory approach to prison reforms. The commission made thorough study of the problems of the prison system and produced an exhaustive document, which is still considered as ‘Bible of Correctional Services’. The Committee examined all aspects of prison administration and made wide ranging recommendations, which if implemented would go a long way to make prison administration efficient, humane and professional. The recommendations of the Mulla Committee touched upon legislative, operational, security aspects besides matters like classification of prisoners, living conditions inside the prisons, medical and psychiatric services, treatment programs, vocational training for prison inmates, problems related to under-trials and other non-convicted prisoners, problems of women prisoners etc. The report laid emphasis on the management of prisons to be entrusted to a cadre of professionals.There is a fragmentation of correction on the basis of a number of factors. Main sources of fragmentation are as follows:

**By Jurisdiction: Central, State and Local**

**By Criminal Justice system: Police, Courts and Corrections**

**By Location: Institutional and Non-Institutional**

**By Age: Adult and Juvenile**
By Other factors: Size of Operation, Sex of Offender, type of Offence and Special programme.

All these fragments come under one master classification which is statutory and non-statutory. Statutory is the category covered under Indian Penal Code and other laws. Correctional work with adult prisoners comes under this category whereas minor prisoners are sent to welfare homes and Nari Niketan (in case of females). (Kumar, 2008). Correctional work with minor prisoners comes under the non-statutory category. In 1985, the United Nations contributed significantly towards juvenile justice, popularly known as The Beijing Rules.

**The United Nations Minimum Rules for the Administration of Juvenile Justice, 1985**

The United Nations Minimum Rules for the Administration of Juvenile Justice (also known as Beijing Rules, 1985) have been framed keeping two objectives in mind. The guidelines lay out general principles and specific rules for investigation and prosecution, adjudication and disposition, non institutional treatment and institutional treatment. The two crucial concepts which underpin the Beijing Rules were the concepts of (i) *Diversion*, which according to Rule 11, the fundamental premise behind diversion is that if children are processed through the criminal justice system, it results in the stigma of criminality and this in fact amplifies criminality of the child. Hence any intervention must aim at minimizing the contact with the criminal justice system. Second part of the rule empowers police, prosecution and other authorities to divert the child away from the system. (ii) *Detention*, the philosophy underlying the rules is that detention is a serious punishment, which is inflicted upon juveniles, and therefore it should be imposed only as a measure of last resort and for the shortest period of time.

**Juvenile Justice Act, 1986**

With the adoption of the Beijing Rules, for the first time the word ‘juvenile’ was used in international law and the term ‘juvenile justice’ was coined. This change in terminology was then reflected in domestic law with the passing of Juvenile Justice Act, 1986 (JJA, 1986). M.S. Sabnis has given the reasons for the change of terminology on the international platform. Firstly to denote that juvenile offenders need to be treated differently from adult offenders due to the special problems he/she
is constrained to face in traditional adult oriented criminal justice system (Adenwalla 2006, p.14) and secondly at the same time to caution against pure welfarism that denies a child due process and the basic legal safeguards with the advent of the Beijing Rules, the ‘welfarism’ era gave way to the ‘justice’ paradigm. Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society. Nations introduce separate legislations for juvenile offenders and children requiring care and protection. With the enactment of JJA, 1986, to distinct machineries were set-up to deal with ‘neglected juveniles’ and ‘delinquent juveniles’ (Adenwalla 2006). Under the very Act the definition of a child was a boy who had not attained the age of 16 years or a girl who had not attained the age of 18 years. The neglected children were those who were found begging, the homeless and destitute, those whose parent(s) or guardian was/were unfit or incapacitated, those living in brothels or with a sex worker or frequently going to such places, or those likely to be abused or exploited for immoral or illegal purposes or unconscionable advantage whereas, the delinquent juvenile was someone who had come in conflict with law by committing an offence (HAQ, 2009). Though the JJ Act extended to the whole of India except the state of Jammu and Kashmir, it virtually brought about a uniform system of juvenile justice in whole country. In addition, the JJ Act provided for prohibition of confinement of children in police lockup or jail, separate institutions for the processing, treatment and rehabilitation of the neglected and delinquent children, wide range of disposition alternatives, to family/community-based placement and a vigorous involvement of voluntarily agencies at various stages of the juvenile justice process (Kumari, 2004).

The UN Convention on the Rights of the Child, 1989
The United Nations Convention was adopted by UN in 1989, and ratified by India in1992. According to Article 37 of the Convention, the States Parties shall ensure that:

(i) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.
(ii) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

(iii) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

(iv) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

According to article 40 of the UNCRC, State Parties recognise the right to every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society. To this end, and having regard to the relevant provisions of international instruments, State Parties shall, in particular ensure that:

(i) No child shall be alleged as, be accused of, or recognised as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed.

(ii) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(a) To be presumed innocent until proven guilty according to the law;
(b) To be informed promptly and directly of the charges against him or her, and if appropriate through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(c) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to the law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(d) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(e) If considered to have infringed the penal law, to have this decision and any measure imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to the law;

(f) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(g) To have his or her privacy fully respected at all stages of the proceedings.

State Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of or recognised as having infringed the penal law, and in particular:

(i) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(ii) Whenever appropriate and desirable measures for dealing with such children without resorting to judicial proceedings providing that human rights and legal safeguards are fully respected.

A variety of dispositions such as care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programs and other alternatives to institutional care shall be available to ensure that children are dealt
with in manner appropriate to their well being and proportionate to both to their circumstances and the offence (Malik, 2012).

**United Nations Rules for Juveniles Deprived of their Liberty (1990)**
The United Nations further adopted the Rules for the Protection of Juveniles Deprived of their Liberty in 1990. The fundamental perspective of these Rules is that the juvenile justice system should uphold the rights and safety and promote the physical and mental well being of juveniles while incorporating the principles of the Beijing Rules. The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority. The United Nations rules for juveniles deprived of their liberty (JDL Rules) are applicable to all persons under the age of 18 who have been deprived of their liberty. These rules are non-binding and recommendatory in nature. It is important to note that this would incorporate children who are deprived of their liberty on the account of health and welfare reasons. Thus, the rules recognise that the philosophical notion of best interest cannot be interpreted to mean deprivation of liberty in most circumstances. It is also important to note that the Rules in effect provide detailed and elaborate human rights standards to be conformed to both on arrest and within the institution. These detailed human rights standards are to be made available to juvenile justice personnel in their national languages. The Rules also mandate the state to incorporate the rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries inflicted on juveniles.

UN Guidelines for the Prevention of Juvenile Delinquency followed immediately. These guidelines represent a comprehensive and proactive approach for prevention and social reintegration, detailing social and economic strategies that involve almost every social area: family, school and community, the media, social policy, legislation and juvenile justice administration. Prevention is seen not merely as a matter of tackling negative situations, but rather a means of positively promoting general welfare and well being. It requires a more proactive approach that should involve “efforts by the entire society to ensure the harmonious development of adolescents”.

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More particularly, countries have been recommended to develop community based interventions to assist in the prevention of children coming into conflict with law, and to recognise that ‘formal agencies of social control’ should be utilised only as a means of last resort. General prevention consists of “comprehensive prevention plans at every governmental level” and should include: mechanisms for the co-ordination of efforts between governmental and non governmental agencies, continuous monitoring and evaluation, community involvement through a wide range of services and programmes, interdisciplinary co-operation, and youth participation in prevention policies and process. The Riyadh Guidelines also call for the decriminalisation of status offences and recommend that prevention programmes should give priority to children who are at risk of being abandoned, neglected, exploited and abused.

United Nations Resolution on Administration of Juvenile Justice (the Vienna Guidelines, 1997)

This resolution provides an overview of information received from governments about how juvenile justice is administered in their countries and in particular about their involvement in drawing up national programmes of action to promote the effective application of international rules and standards in juvenile justice. The document contains as an annex Guidelines for Action on Children in the Criminal Justice System, as elaborated by a meeting of experts held in Vienna in 1997. This draft programme of action provides a comprehensive set of measures that need to be implemented in order to establish a well functioning system of juvenile justice administration according to the Convention on Rights of Child, Riyadh Guidelines and Beijing Rules (Malik, 2012).

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

Dr. Hira Singh voiced the general concern that in the JJA, 1986 there was a wide gap between the cherished principles and the actual practices. Most of the states had not setup the basic infrastructure consisting of juvenile welfare boards, juvenile courts, observation homes, juvenile homes, special homes and aftercare homes. For want of adequate measures for non institutional care such as foster care, sponsorship, non institutional probation etc, institutionalisation continued to be used, with all its effects. Despite mandatory requirements, the minimum standards for institutional care in terms of accommodation, maintenance, education, vocational training or rehabilitation were not spelt out in most of the states. There was no definite policy towards the man
power development of juvenile justice. A number of national consultations were held concerning juvenile justice administration during 1999-2000 to improve the existing unsatisfactory state of affairs (Kumari, 2004). The combination of a growing focus on the issue of juvenile justice as well as the pressure faced by the government to submit a Country Report to the Committee on the Rights of the Child, outlining concrete achievements, apparently inspired the Ministry for Social Justice and Empowerment to draft a new law, the final outcome of which was the Juvenile Justice (Care and Protection of Children) Act, 2000. The 2000 Act made the age limit of 18 years uniform for both boys and girls in consonance with the CRC and sort to facilitate speedy disposal of disputes. It also made state intervention essential in the case of a Child in Need of Care and Protection (CNCP), under the 1986 Act, such a child was called a ‘neglected juvenile’ as well as the Child in Conflict with Law (CICL), earlier called the ‘juvenile delinquent’. As the name suggests, the JJ (C&P ) Act 2000 was enacted to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this very enactment. The competent authority to deal with ‘juvenile in conflict with law’ is the Juvenile Justice Board and ‘children in need of care and protection’ is the Child Welfare Committee. The Board shall consist of a magistrate and two social workers, one of whom shall be a woman. All of them must have special knowledge of child psychology and child welfare. The constitution of the Board under the JJ (C&P) Act differs significantly from the juvenile court under the JJA. The two social workers, who were required to assist the magistrate under the JJA, have now been made part of the Board. This provision, if implemented in letter and spirit, has the potential to convert the legal and technical nature of the proceedings of the Board into care and welfare proceedings. All inquiries under the JJ (C&P) Act should be completed within a period of four months. A wide range of persons are allowed to take charge of children covered under the JJ (C&P) Act, namely the police, public servants, non-governmental organizations, authorized individuals or children themselves. There has been a significant change in the role and responsibilities of the Police. Now every Police Station is required to have at least one Police Officer specially trained to deal with children in conflict with law as well as those in need of care and protection. The
terms ‘care’, ‘protection’, ‘treatment’; development and ‘rehabilitation’ were not defined by the JJA. Unfortunately, the JJ (C&P) Act is also silent on the matter. These terms however, may be understood by the reference to the statements in the National Policy and other related schemes. Hence, care ought to include the survival needs of children, that is, adequate food, clothing and shelter. They ought to be protected against neglect, cruelty and exploitation. Provisions should be made for proper programmes for reforming the behaviour and attitude of the delinquent children. Such programmes should be aimed at instilling in children the values of honest life so that they become robust citizens fit in all aspects and endowed with the skills and motivations required to live peacefully in the society (Kumari, 2004).

Even though children in both categories come within the purview of this system, any person aggrieved by an order made by a competent authority under the juvenile justice law is allowed to take his/her complaint to the Session or High Court. This Act also envisages state protection and establishment of institutions for such children. For children in need of care and protection, there are Shelter Homes (Short-term stay) and Children’s Homes (Long-term stay). For children in conflict with law, there are Observation Homes and Special Homes. The former are where the accused are housed till the enquiry is completed and an order is passed for their rehabilitation. In most cases, a single institution serves as both these categories. Additionally, there are After-Care Homes to fulfil that special role of rehabilitating children leaving Special Homes and integrating them with the larger society. However, there are very few After Care Homes in the country. Even this act was seen to be weak on care jurisdiction and inadequate in after care and follow-up of the children in difficult circumstances, and was amended in 2006 to become the Juvenile Justice (Care and Protection of Children) Amendment Act 2006. The 2006 amendments attempt to strengthen and widen the juvenile care and justice framework as well as establish the premise that the best of institutions cannot substitute for care in a family, with the ultimate aim of promoting a child-centric rehabilitation and family restoration focused system (HAQ, 2009).

The Nirbhaya case (16th December, 2012) had a profound impact on public perception of the Act because one of the convicts was a juvenile and few months shorter than 18 years of age. Due to which he was sentenced to three years in a reformatory home. Several writ petitions were filed against the legislation’s “soft”
treatment to juvenile offenders even in heinous crimes but Supreme Court of India hold the Act to be constitutional. Public debates have been started about should the age of juvenility be reduced to 16 years as more and more children of this age group committing crimes. Of the 1163 murders by juveniles in 2014, 844 were committed by those in the 16-18 years age group as per data released by NCRB. Director of an NGO Childline was of the view that children are getting exposure of that kind of which they are unable to think about the consequences of their actions. Thus, when they commit serious crimes, they must be dealt with accordingly as it would send a right message in the society and will discourage organised gangs that are using juveniles for heinous crimes (Hindustan Times, 2015, December 23).

While on the other side, child right activists and scholars were of opposite views. They opposed the proposed Bill which aimed to reduce the age of juvenility form present under 18 to 16 years. Director of an NGO Aangan stood against the reduction of age of juvenility and so was the opinion of Professor V. Kumari. (http://www.dailyo.in/politics/december16_gangrape_jyotisingh_juvenile_rapist_walk sfree_nirbhaya.story/1/8029.html). However, the government came out in support of reducing the age of juvenility by passing a new Bill in December, 2014. The highlights of the Bill are:


The Bill permits juveniles between the age group of 16-18 years to be tried as adults for heinous offences. Also, any 16-18 years old, who commits a lesser, i.e., serious offence may be tried as an adult only if he is apprehended after the age of 21 years. Juvenile Justice Boards (JJB) and Child Welfare Committees (CWC) will be constituted in each district. The JJB will conduct a preliminary inquiry to determine whether a juvenile offender is to be sent for rehabilitation or be tried as an adult. The CWC will determine institutional care for children in need of care and protection. Eligibility of adoptive parents and the procedure for adoption have been included in the Bill. Penalties for cruelty against a child, offering a narcotic substance to a child, and abduction or selling a child have been prescribed. There are differing views on whether juveniles should be tried as adults. Some argue that the current law does not act as a deterrent for juveniles committing heinous crimes. Whereas others
are of the opinion that the UN Convention on the Rights of the Child requires all signatory countries to treat every child under the age of 18 years as equal. The provision of trying a juvenile as an adult contravenes the Convention. The Act 2014 is yet to see the light of the day (http://www.prsindia.org/billtrack/the-juvenile-justice-care-and-protection-of-children-bill-2014-3362/).

The increasing involvement of juveniles in crime has been a major cause of concern for Delhi Police for the past few years. According to the NCRB data of 2015, cases involving juvenile offenders have gone up by 16%. There were 2,332 cases reported in 2015 and 3,570 offenders were tracked down. In 2014, the figure was 2,876 in 1,946 cases. Last year, juveniles committed 338 cases of sexual assault, including rape, molestation and voyeurism besides 457 cases of robbery or snatching and 669 cases of theft. Among those apprehended, 80% were in the age-group of 16-18 years. Of the 3,039 juveniles apprehended, 949 were sent home after admonition and advice, while 723 were released on probation. As many as 438 juveniles were sent to special homes, 10 faced fines and 173 were acquitted. The number pending cases stood at 1,217. Among those apprehended, 756 were illiterate, 1,268 had dropped out of school at the primary level; 912 were secondary school dropouts. As many as 2,556 were found to be living with their parents, while 96 were homeless. A total of 1,625 children came from families with an annual income below Rs 25,000, while 149 belonged to the income group of Rs 1 lakh to 2 lakh per annum (Times of India, 2016).

Poverty has always bred resentment, a root-cause of many crimes. But over the years, a fast-changing and developing society has introduced other insecurities. “Across socio-economic and educational groups children are affected by parents not spending quality time with them, and by an increasingly competitive world,” says Dr Rajesh Kumar, director, Society for Promotion of Youth and Masses. According to him, there are a few factors that are specific to each group. In lower middle class families, for instance, where both parents are working, children grow up in a vacuum. In middle class families, parents have multiple expectations from the child, including high grades in school. This often makes the school environment a threatening one for the child. When children fail to cope, depression may lead to substance abuse, and then crime. In high-income families, almost every amenity is provided to the child either from a desire by parents to maintain their own status in society or to satisfy the ego of
the child. Children are also quick to pick up on friction between adults. Astha Mahajan, senior counsellor, Delhi Public School, Mathura Road, explains that in cases of marital discord or domestic violence, kids do not reach out to their parents. They consult their friends who may not give the best advice or worse, the child finds refuge in the virtual world where there is an information overdose. “Adults are struggling to control what the kid is getting exposed to,” says Mahajan. Constant exposure to aggression – verbal and physical – on television news, videos and games, works on an already heightened imaginations, making it seem ‘cool’ to the child at an age when he or she is seeking role models or patterns of behaviour to emulate. It either makes the child desensitised to violence or creates a curiosity to experiment with it. There have been reports of juvenile offenders confessing that they indulged in violence because they wanted to see what it felt like. The easy access to sexually charged or explicit content can have the same effect. “There are MMS sex videos being made and shared,” says Anuradha Sahasrabudhe, founder of Dnyana Devi, an NGO that works towards child-centred community development in Pune. “Zero sex education makes them more prone to all this.”

Often, juvenile crime can emerge out of sheer ignorance. A study done by the Delhi Commission for Protection of Child Rights in June last year found that “a majority (70.3%) of the children who were serving in the detention centres were quite unaware about the consequences of their acts. It is inferred that driven by the immediate rewards and other unique characteristics such as impulsiveness, adventurism/risk taking and susceptibility to peer influence, they tend to make wrong choices.” This is especially true of adolescent offenders, those who have reached puberty, says Mittal. “Those in the age group of 15-18 physically resemble adults. They have strength and sexual drive. But their brains are yet to develop logic or reasoning power.”

**THE WAY OUT**

The onus to ensure that children do not stray is with adults. At home and at educational institutions, they need to monitor the behaviour of children and behave like role models for youngsters. Paediatrician and Mumbai president of the Indian Academy of Paediatrics Dr Samir Dalwai feels that “one solution (to avoid juvenile crime) is for parents to be held legally responsible when their teenaged children break
the law.” Early detection and counselling for those with criminal tendencies is important so that they do not end up as offenders, and also so that they don’t influence others to do the same. This is possible only when parents are cognisant of what is wrong in the child’s behaviour and alert to correcting him/her. “Prevention of juvenile crime is also an important part of the juvenile justice system. But the Indian state has completely neglected this aspect,” says Mumbai-based advocate Maharukh Adenwalla. There is little involvement of psychological counselling during the reform procedure, says Dr Rajat Mitra, a clinical psychologist with experience in criminal psychology. Without getting into the debate of punishment and the age of criminality, it is important to instil respect for the law. Dr. Mitra says “By and large in India, we do not have rule of law and youngsters are finding out that it is easy to get away with breaking the law,” (Banerjee & Raza, 2016).