CHAPTER II

LEGAL FRAMEWORK

The aim of this chapter is to trace the research problem in the existing legal framework for juvenile justice in India. An attempt has also been made to locate the argument that the Juvenile Justice Act 2000 has made a modest attempt to make a change over the predecessor Act of 1986 by giving a clear distinction between the subjects of law. Nevertheless it is a piecemeal legislation. It retained the fundamental problem of clubbing together the distinct categories of subject, which was identified as a major problem in the predecessor Act on the ground that the criminal orientation of juvenile justice legislation stigmatises the children who are not offenders but due to their neglected position they need care and protection. Besides, the objective of law for a separate system for dealing with children who come in conflict with law lacks clarity. This fundamental aspect of the Juvenile Justice Act 2000 shall be examined in this chapter to advance my argument. The empirical study conducted under the present research is also based on this chapter. The present legal framework in India for juvenile and children has been analysed empirically in this research. For that purpose a review of existing law is made.

Background of this Chapter:

In India, like many democratic states across the globe, there exists a separate arrangement with separate procedure and institutions for children in conflict
with law, which is recognised in Indian law as the juvenile justice system. In many instances like India, such institutional measures with different regulatory provisions have further enlarged the scope for coverage of children who need care and protection. Such special arrangement with separate procedure and institutions are created under statutory provisions whereby legal sanction is explicitly provided for its regulation. In case of Indian State, a law is in place to regulate the Juvenile Justice System under the title of Juvenile Justice (Care and Protection of Children) Act 2000 which replaced the first uniform legislation of the country enacted by Indian Parliament in 1986 in the nomenclature of Juvenile Justice Act. The legal framework for Juvenile Justice System in India in its present form originated consequent upon various developments on the subject worldwide as well as in the domestic sphere, both in the colonial and post independence period. Circumstances that led the Indian State to finally have a special uniform legislation for justice for juvenile could be attributed to several international and national ideological discourses on the subject and of course practical application of the concept in various nations. Broadly, the juvenile justice system evolved with a purpose of decriminalising children and prevents punitive measures for the act of omission or commission which infringes penal law by children in a separate framework which is different from criminal justice system as applicable to adults.

82 Like USA where as early as 1899 a separate court for juvenile was established in the state of Illinois and Colorado and in Canada the Juvenile System made a headway in 1908 with enactment of Juvenile Delinquents Act which recognised that children and youth are different from adults and should not be held accountable for violation of the criminal law.
In the present context, in accordance with definition under existing international\textsuperscript{83} and municipal laws,\textsuperscript{84} children in conflict with law denote to describe children who are alleged as, or accused of; or recognized as having infringed the penal law of the country.\textsuperscript{85} Under Indian law the definition encompasses a Child who is alleged to have committed an offence\textsuperscript{86} and has not completed 18-years of age on the date of commission of such offence. With regard to children who need care and protection as provided for in Indian Juvenile Justice law, there is no explicit proclamation about a particular kind of situation which might constitute the definition of children in need of care and protection, at least in international instrument like what exists for children who come in conflict with law, in spite of the fact that a separate guideline of United Nations exists since 1990 for the prevention of Juvenile Delinquency which mostly focuses on prevention of criminalizing and penalising a child\textsuperscript{87}. However at a broader contextual level analogies can be drawn from the existing framework, when it is stretched to its widest possible echelon, to equate variety of conditions which are identical to the present definition of children in need of care and protection in Indian law. Even though such provisions are diversely recognised in the canvas of rights of children\textsuperscript{88} under different nomenclature without any interrelationships between various situation or condition of children where they need care and protection, there is

\textsuperscript{83} Especially the United Nations Convention on Rights of the Child.
\textsuperscript{84} For Example the Juvenile Justice (Care and Protection of Children) Act, 2000 in India.
\textsuperscript{85} The UN Convention on Rights of the Child in Article 37 and 40 provides an extended definition of children who come in conflict with law in this manner.
\textsuperscript{86} Section 2 (I) of Juvenile Justice (Care and Protection of Children) Act, 2000.
\textsuperscript{87} Adopted and Proclaimed by General Assembly resolution 45/112 of 14th December 1990.
\textsuperscript{88} Like the provisions in Article 23 which recognises that mentally and physically disabled child should enjoy a full and decent life, Article 38 and 39 relating to Armed Conflict which are relevant to the child and Article 33 in respect of protection of children from illicit use of narcotic drugs etc. which are part of the definition of child in need of care and protection in the Juvenile Justice Act 2000.
no clear assertion of specific situation or condition in the framework of Rights of the Child. In fact the law framed in India for securing juvenile justice encompasses a multitude of conditions which are regarded as circumstances where children need care and protection, which are peculiar to Indian condition. At the same time these conditions which Indian law recognises as a situation where children need care and protection have been differently recognised in international instruments. The Indian definition of child in need of care and protection, thereby transcends specific situations which otherwise finds mention among a wide gamut of rights of children.

**Subject covered:**

In the previous chapters I have extensively dealt with the position of juvenile justice in the rights of the child framework and the growth of juvenile jurisprudence in various parts of the world so also in India over little more than a century in the modern states, therefore that is not the subject of discussion in this chapter again, with a view to avoid reiteration of already discussed theme, except occasional references which is essential to theorise the subject and also when circumstance arises to approach the theme for which it is grounded on historical evidences or reference of those instruments. On the other hand, adequate engagement into exploring the legal framework in accordance with the normative structure of juvenile justice legislation in India has primarily been made in this chapter for purposes of understanding the legislative arrangement presently available in India in the matter of Juvenile Justice and its interface with the framework concerning Rights of the Child as envisaged under the United Nations Convention.
For this purpose, at the beginning, in order to explore the legal framework in India in its totality a thematic exploration has been made into the constitutional provisions in relation to children which have a substantial bearing on juvenile justice, as it does not use juvenile directly. Similar references about other major criminal procedural laws like Code of Criminal Procedure 1973, Indian Evidence Act 1872, Limitation Act and Indian Penal Code 1860 having direct bearing on children in conflict with law as well as civil procedural and special laws on the subject of child in need of care and protection like Code of Civil Procedure 1908, CARA Guideline on Inter-country Adoption 2006, Hindu Adoption and Maintenance Act 1956 and Guardians and Wards Act 1890 which directly relates to the present subject, has been given. Apart from it substantive and special laws enacted in India for children or having dealt with matters relating to children which comes under the existing purview of juvenile justice law like Child Marriage Restraint Act, Child Labour Prohibition and Regulation Act, Immoral Traffic Prevention Act and Narcotic Drugs and Psychotropic Substances Act 1985 have also been assessed in course of analysis of the normative structure of the law relating to juvenile justice in India. Primarily, in this chapter engagement into the Juvenile Justice (Care & Protection) Act, 2000 has been attempted for purposes of better appreciation of the legal safeguards under the statute for the target beneficiaries of this law consisting of Juvenile in conflict with law and children who need care and protection, followed by a comparative analysis of the first uniform legislation of India enacted in 1986 and the reincarnated law of 2000. This review also attempts to provide an introduction to the juvenile justice legislation in India and describes the principles and major provisions of the Juvenile Justice
(Care and Protection of Children) Act 2000 while analysing the normative structure. An exploration has also been made to ascertain the extent to which the Act is consistent with the provisions of UNCRC and especially how the notion of the best interest of children is protected with a view to discover how far the Indian State made progress in bringing its legislation in conformity with its obligation under the present International law concerning Children. For this purpose, the provision of UNCRC under Article 37 and 40 along with Article 16 are also discussed vividly. The children's right to be heard as envisaged in Article 12 of the UN Convention which is consistent with the present discussion concerning legal framework for juvenile justice has also been addressed, as the right to representation and the right to have a say in matters of them is significant in the process of disposition of cases of juvenile and child. Article 12 of the UN Convention relating to Children's Right to be heard has a substantial amount of bearing on the present discourse as it provides adequate insight into the status of the Right of Child to have a say in course of determination of their best interest in the process of adjudication and disposition of cases that involve children. Besides, the present International instrument concerning juvenile justice such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice- the Beijing Rules, 1985, United Nations Guidelines for the Prevention of Juvenile Delinquency- the Riyadh Guidelines, 1990 and United Nations Rules for the Protection of Juvenile Deprived of their Liberty, 1990 have been traced in the Indian law relating to Juvenile Justice to understand the extent to which these instruments impacted the legislation in India in its amended version.
1. AN INSIGHT INTO INDIAN CONSTITUTION:

The Indian constitution which came into effect from 26th January, 1950, after independence of India from British regime on 15th of August, 1947 accorded a special status to children through various provisions made especially in Chapter – III under the Fundamental Right Chapter and Chapter – IV relating to Directive Principles of State Policy. It envisages for children a secured childhood free from exploitation and injustice. While the Fundamental Rights are guaranteed to both persons and citizens, the Directive Principles are fundamental in the governance of the country and it shall be the duty of state to apply these principles in making laws. In some cases these Directive Principles have a positive aspect as it supplement fundamental rights in achieving a welfare state.

A review of Indian constitution reveals that it provides ample scope for the state to undertake special schemes for children both as a fundamental right and as a Directive Principle. While doing so it cannot be construed as discriminatory as Article 15(3) empowers the state to make special schemes for children, which are to be considered as positive discrimination in an affirmative action. Even though the constitution does not see juvenile as a separate subject from children, as there is no use of the word juvenile, under Article 39(e & f) the constitution mandates the state to take the tender age of children as well as providing opportunities and facilities for children to develop

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89 The Indian Constitution in Chapter-IV titled Directive Principle of State Policy provides certain areas for which State Policy needs to be contemplated. It is stretched from Article 36 to 51. The Constitution in Article 37 provides that these principles are fundamental in the governance of the country, however, not enforceable by any court. Therefore, it is termed as non-justiciable rights. These Directives have been held to supplement Fundamental Right enumerated in Chapter-III of the Constitution in achieving a welfare state.
in a healthy manner and in conditions of freedom and dignity. It desires the state to protect childhood and youth from exploitation as well as moral and material abandonment. Provisions of the constitution of India, which have a bearing on the juvenile justice out of the broad spectrum of rights of children, are excerpted below:

**Article 15**: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:

15(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

15(3) Nothing in this article shall prevent the State from making any special provision for women and children.

**Article 20**: No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor he subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence.

20(2) No person shall be prosecuted and punished for the same offence more than once.

20(3) No person accused of any offence shall be compelled to be a witness against himself.

**Article 21**: No person shall be deprived of his life or personal liberty except according to procedure established by law.
Article 39: **Certain principles of policy to be followed by the State**: The State shall, in particular, direct its policy towards securing;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

When the Indian constitution lays down a broad framework for addressing the needs of children, which shapes a general overview of a legal framework that can protect children from exploitation, and that children are offered facilities and opportunities, a detailed description can only be augmented by a statutory provision. In fact, constitutional guarantee is very often prescriptive and not descriptive. In the modern law making the constitution is the fountain of all legislations. Legislation as a source of law is well established in the legal theory, whereas legislations of a state itself draw sanction from the constitution. The Indian constitution therefore, recognises the need for statutes to protect the rights of children. Juvenile justice as a part of child right, hence well recognised under the constitution. Now that it is permissible to have special legislation for children, there is a need to understand the Indian constitution for the powers of law making of union parliament and that of state assemblies. This review of Indian constitution shall help in identifying
the reason for repealing Children’s Act of different state and the need for a uniform law.

The authority of the Indian parliament can also be established to enact legislation for children. The scheme of distribution of legislative power between union and state in India is governed by the provision of Article 246 of the Indian constitution. This Article provides subject matter of laws made by Parliament and by the legislature of states. According to this provision the union of India can make law with respect to any of the matter enumerated in union list whereas the state govt. can make law as per List II of 7th Schedule. The Parliament and state legislature under Article 246(2) have the power to make laws with respect to any of the matter enumerated in List III in the 7th Schedule referred as Concurrent List. In accordance with this distribution of power the legislative authority is divested both with centre and state, as it is a subject matter of Concurrent List. That was the reason why in the pre-juvenile justice Act phase most of the states have their respective legislations under the title of Children’s Act which was subsequently vested with the union govt. for enactment of a uniform law on the subject of juvenile justice.

2. LAW ON JUVENILE JUSTICE IN INDIA:

As far as legal protection is concerned, the first ever uniform law concerning juvenile justice in India was enacted in the year 1986. Prior to enactment of uniform legislation for the entire country, most of the States\(^\text{90}\) in India had special legislations in the nomenclature of Reformatory Schools Act and

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\(^{90}\) At the time of colonial rule the States in India were known as Provinces.
Children’s Act\textsuperscript{91} which governed the subject of regulation of acts of delinquencies committed by children and their reformation. To some extent the Probation of Offenders Act 1958 in the post colonial period also had a provision to discharge a person over 16-years who has not attained 21-years on probation at the time of conviction, provided that where a person is convicted of an offence for which a specified minimum sentence or mandatory minimum sentence of imprisonment or fine or caning is prescribed by law, the court may make a probation order [Section- 5 (1) (a)]. Before making a probation order, the court shall explain to the offender in ordinary language the effect of the order (including any additional requirements proposed to be inserted therein under subsection (2) or (3)) and that if he fails to comply therewith or commits another offence he will be liable to be sentenced for the original offence; and if the offender is not less than 14 years of age the court shall not make the order unless he expresses his willingness to comply with the requirements thereof.

While the Reformatory Schools Act 1897 made provision for establishment of the reformatory schools for male delinquent children up to the age of fifteen who were sentenced for an offence punishable with transportation or imprisonment for life, the Children’s Act mostly made provision for establishment of special schools with provision of care, protection, maintenance, welfare, training, education and rehabilitation of neglected and delinquent children along with manner of trial of the delinquent children\textsuperscript{92}. Considering, the unequal treatment meted out to Children under different

\textsuperscript{91} Such as Madras Children Act 1920, Bengal Children Act 1922 and Saurashtra Children Act 1954 etc.

\textsuperscript{92} Children Act 1960 enacted by Union Parliament for Union Territory.
state legislations under the title of Children's Act along with the central legislation enacted by Indian Parliament under the same title in 1960 only for Union Territories, the Supreme Court of India in Sheela Barse vs. Union of India observed that instead of different state having different law there should be a uniform legislation on the Subject. Accordingly, the first ever uniform legislation for children in conflict with law was enacted by the Parliament of India, which has of course termed such children as Juvenile Delinquent along with a provision for neglected child, under the title of Juvenile Justice Act 1986 which came into operation in 1987. However, due to several deficiencies inherited in it the Act of 1986 was replaced in the year 2000 by the India Parliament. The changing attitudes towards criminality by children which was reflected in Supreme Court decisions like Amrutlal Someswar Joshi, Ramdeo Chouhan and Arnit Das as well as the need for a child friendly juvenile system were some of the factors that also led to the passing of the new Juvenile Justice (Care and Protection of Children) Act 2000 (Bajpai, 2003:299).

The Juvenile Justice framework presently in operation in India has been structured under the Juvenile Justice (Care and Protection of Children) Act, 2000, which replaced the Juvenile Justice Act of 1986 as a review of the working of Juvenile Justice Act 1986 (53 of 1986) had indicated that much greater attention is required to be given to children in conflict with law or those

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93 Sheela Barse v. Union of India, AIR 1986 SC 1773.
95 (1994) 6 SCC 488.
96 (2000) 7 SCC 455.
in need of care and protection. The criminal justice system as available for adult is not considered suitable for being applied to a juvenile or the child. It is also felt necessary that the juvenile justice system must be easily accessible to a juvenile or the child or anyone on their behalf including the police, voluntary organisations, social workers or parents and guardians through out the country. There is also an urgent need for creating adequate infrastructure necessary for the implementation of the proposed legislation with a larger involvement of informal systems specially the family, the voluntary organisations and the community. In this context the Bill sought to repeal and re-enact Juvenile Justice Act 1986 with a view to lay down the basic principles for administering justice to juvenile or the child, to make the juvenile justice system meant for a juvenile or the child more appreciative of the developmental needs in comparison to criminal justice system as applicable to adults, to bring juvenile law in conformity with United Nations Convention on the Rights of the Child, to prescribe a uniform age of 18 years for both boys and girls, to ensure speedy disposal of cases by the authorities within a time limit of 4 months, to spell out the role of the State as a facilitator rather than doer by involving voluntary organisations and local bodies in the implementation of the Act, to create special juvenile police unit with a human approach through sensitisation and training of police personnel to enable increased accessibility to a juvenile or the child by establishing Juvenile Justice Board and Child Welfare Committee as well as Homes in each district or group of districts, to minimise the stigma and in keeping the developmental needs of the juvenile or the child there shall be two parts one for juvenile in conflict with law and the other for the child in need of care and protection and
finally to provide for effective provisions and various alternatives for rehabilitation and social reintegration such as adoption, foster care, sponsorship and after care of abandoned, destitute, neglected and delinquent juvenile and child. It can be construed from the above discussion that the former legislation becomes obsolete and inadequate to provide special treatment to a determined segment of child population in the criminal justice system and also to prevent juvenile delinquency.

3. NORMATIVE STRUCTURE OF JUVENILE JUSTICE ACT 2000:

While examining the normative structure, it comes to the notice that the law provides a statement of objective of law at the beginning of the Act describing the context in which the present Juvenile Justice Act is enacted. It says this is an Act 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 enactment. It further adds that it was felt expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nation's Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nation's Rules for the Protection of Juvenile deprived of their Liberty and all other relevant international instruments. In order to bring the law in conformity with the UN

98 Statement of Objects and Reasons of the Juvenile Justice (Care and Protection of Children) Bill 2000.
Convention, it emphasises on social integration\(^99\) of child without resorting to judicial proceedings,\(^100\) and seeks to realise practical implementation of it. The legislation does not define explicitly the principle of best interest of child but it does recognise the notion of best interest of the child in the objective statement itself. The most significant aspect of this law is, as noticed from the normative structure that, it only recognises separate adjudication and disposal mechanism to avoid criminalising and penalising children but it does not focus on accountability of the State towards victims of such act and protection of public at large from offences committed by children except a provision of imposing condition in the supervision order under section 15 (3) for due supervision of the juvenile in conflict with law in the interest of public. Otherwise, the law is completely silent over the matter of protection of public from crime committed by children. Thus the focus of the Act is predominantly on the interest of children to treat them differently from adults in the criminal justice system.

This statement also reiterates the constitutional guarantee in various Articles for children particularly Article 15(3), Article 39(e), 39(f), 45\(^101\) and 47 considering that these provisions impose on the state a primary responsibility of ensuring that all needs of children are met and their basic human rights are fully protected. In fact Article 15(3) authorises State to make special provision for children which cannot be viewed as discriminatory on the consideration

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\(^99\) Article 40 Sub-section 1 focuses on re-integration of child and affording more constructive role in the society to the child.

\(^100\) Article 40 Sub-section 3(b) desires the State Parties not to resort to judicial proceeding wherever appropriate.

\(^101\) During the time of enactment of Juvenile Justice Act 2000 the constitution under Article 45 provided for compulsory primary education for children. However, by virtue of 86th Constitutional Amendment Act, 2002 now free and compulsory education is a fundamental right for all children of 6-14 years. At present Article 45 is replaced with the provision of early childhood care and education for children below the age of 6 years.
that this is a constitutional mandate of positive discrimination in favour of children for which affirmative actions can be made by the State in India.

Applicability:

The Juvenile Justice (Care and Protection of Children) Act 2000, No. 56 of 2000\(^{102}\) came into force with effect from 1.4.2001.\(^{103}\) It extends to whole of India except the State of Jammu and Kashmir. Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under such other law.\(^{104}\) Certain amendments have been effected in the Act recently in 2006\(^{105}\) and 2007.\(^{106}\) The Juvenile Justice framework now in operation is a uniform system across the country with only one exception of excluding Jammu and Kashmir.

Amendments:\(^{107}\)

The important amendment\(^{108}\) of Juvenile Justice Act 2000 includes definition relating to child in conflict with law and the definition of adoption. The definition of child in conflict with law in its amended form provides that it means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such

\(^{102}\) Published in the Gazette of India, Pt. II, Section 1, dtd. 30.12.2000.
\(^{103}\) Vide S.O. 177 (E) dtd. 28.2.2001.
\(^{104}\) Section 1(3(ii)) inserted by Act 33 of 2006.
\(^{105}\) As Amended by Act 33 of 2006.
\(^{107}\) Amendments made to the Juvenile Justice Act, 2000 is discussed here so that subsequent analysis can be made on the basis of the present actual content of law.
\(^{108}\) Amendment made in 2006 by Act 33 of 2006 which came into force from 22.08.2006.
offence which replaced the previous definition structured as a juvenile who is alleged to have committed an offence. Such an amendment becomes inevitable in view of the persisting problem about adjudicating cases and imposition of penalty on children or juvenile who at the time of occurrence of offence was a juvenile but by the time of disposal of case attained majority.\(^\text{109}\)

It has also been felt that adoption needs to be defined under the Act, as the law suggests adoption as a method of social reintegration under Section 41, to make the provisions relating to it more meaningful. The law was silent about the meaning of adoption in its original text. Therefore, the definition of adoption is introduced by incorporating Section 2(aa) “Adoption” which now defines adoption as the process through which the adopted child is permanently separated from his/her biological parents and becomes the legitimate child of his/her adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship. An amended to the provision under Section 16 regarding ‘order that may not be passed against juvenile’ is also made with insertion of the provision that no juvenile in conflict with law shall be sentenced to death or imprisonment for any term which may extend to imprisonment for life.\(^\text{110}\) In the original Act this section provided that no juvenile in conflict with law shall be sentenced to death or life imprisonment, or committed to prison in default of payment of fine or in default of furnishing security.


\(^{110}\) Substituted for words "or life imprisonment" by Section 13 (i) of Act 33 of 2006 w.e.f. 22.08.2006.
Subjects\textsuperscript{111} of Law:

The Juvenile Justice (Care and Protection of Children) Act 2000 mostly serves two different categories of children, who can be termed as beneficiary of the present Act. They are placed as beneficiary as the law provides safeguards for protection of their best interest in the process of adjudication and disposition. In fact every law invests some titles on persons, whose rights are protected by law, the violation of which is a legal wrong.

A clear distinction has been made in this Act between the children in conflict with the law,\textsuperscript{112} and children who need care and protection.\textsuperscript{113} Thus, the Juvenile Justice legal framework of India broadly covers two vital aspects and does not restrict itself to child who comes in conflict with penal law only. Firstly, it deals with children who are in conflict with law. Secondly, it has a provision of care and protection of a certain class of children who are living in a difficult circumstance or are exposed to moral danger. While the former provides a different treatment to juvenile in the criminal justice system, the later aspect creates opportunity for rehabilitation of children with measures like care and protection. For Juvenile who comes in conflict with law, the law provides for juvenile justice boards to adjudicate their cases. These juveniles are sent to observation home or special home when an occasion arises with regard to remand or custody. The relevant age governing ‘children in conflict with law’ is 18 as per Juvenile Justice Act, however, when it is read with the provisions of Section 82 of Indian Penal Code, it is revealed that the actual

\textsuperscript{111} I have used the term Subject of law which denotes to describe the Right holder or the beneficiary of the law.

\textsuperscript{112} As per the Juvenile Justice (Care & Protection) Act, 2000 Child in conflict with law means a Child who is alleged to have committed an offence. (Ref. Sec.2 (i). A Child means a person who has not completed 18 years of age.

\textsuperscript{113} It encompasses a variety of categories. Broadly it means a child who is found without home or settled place or abode and without any ostensible means of subsistence. Ref. Sec. 2(d) of Juvenile Justice Act.
age that is governed is 8-18 years even with conditional relaxation or flexibility for a higher age group up to 12 depending upon their mental maturity (IPC).\textsuperscript{114} This is in view of the provision of Indian Penal Code which has already afforded protection to children up to 08 on the ground of \textit{doli incapax}.\textsuperscript{115} It suggests that the law actually covers the adolescent stage of a person in the overall childhood period. For neglected children, the law provides for care and protection through Child Welfare Committees. The Child Welfare Committees send them to shelter homes. The relevant ages covered by this are under 18 years.

Apart from these broad two categories of groups, the law also brings to its orbit certain kind of offences against children like begging, giving intoxicant liquor, narcotic drug, psychotropic substance, child labour, mental or physical suffering etc. under Section 23 to 28 with a peculiar kind of arrangement of alternative punishment which shall be cognisable and where such an act or omission constitute an offence punishable under Juvenile Justice Act 2000 and also under any other Central or State Act, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offences shall be liable to punishment only under such Act as provides for punishment which is greater in degree (Section-28).\textsuperscript{116}

\textsuperscript{114} Sec 82 and 83 of Indian Penal Code provides that nothing is an offence, which is done by a child under 7 yrs of age. So special protection has been afforded to children in the sphere of criminal jurisprudence.

\textsuperscript{115} A conclusive presumption.

\textsuperscript{116} In spite of the fact that the objective statement only talks of two categories of children to be addressed this law deviates from its original intention and tried to deal with cruelty on children as well. Nowhere it is made clear about the forum to hear this cases.
Definitions:

The laws in India defines various words and terms used in the body of the text at the beginning which serves the purpose of understanding the meaning of terms used in the text of the legislation. Such definitions are also incorporated in the law relating to juvenile justice. The Juvenile Justice (Care and Protection of Children) Act, 2000 contains a number of definitions in Section 2 which provides expressions to various terminologies used in body of the statutes. These definitions are succinctly reviewed below:

The Juvenile Justice Act of 1986 defined juvenile in case of a boy a person below 16 years whereas in case of a girl it was 18. However, in the 2000 Act Child has been defined as one who has not completed 18 years [Sec. 2 (k)]. The new Act of 2000 takes a broad base definition by bringing all persons below 18 under the ambit of the law as child, for both the purpose of children in conflict with law and children in need of care and protection. Again a Juvenile in Conflict with Law is defined as a Juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of such offence [Section 2(l)].

The perpetual doubt relating to determination age of a juvenile in conflict with law is taken care by the Juvenile Justice Amendment Act, 2006, which re-defined the term “Juvenile in Conflict with Law” as a juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of the commission of such offence”. Such an Amendment of the Act becomes inevitable as it was observed the decisions of Judiciary have been contradictory of one with another.
The expression “delinquent juvenile” in Juvenile Justice Act 1986 seemed too derogatory, which might have impacted the new law, which in result substituted "delinquent juvenile" by the word “Juvenile in Conflict with Law” in the Juvenile Justice Act, 2000. Besides, by use of such terminology the law adheres to UNCRC. Over all the new definition is in conformity with Article 1 of the UN Convention of Rights of Child. It needs to be reiterated once again here that even though the law defines a child in conflict with law, in terms of age is a person who has not completed 18 years, but when it is read with the provision of Indian Penal Code it is clear that 0-7 years of children are already exempted from any kind of criminal liability. Similarly between the age group of 8-12, further relaxation may be afforded, if there is no sufficient mental maturity which is to be determined in course of adjudication. Thus while examining the legal framework concerning juvenile justice in India, one must bear in mind that a further division exist on the ground of doli incapax much prior to enactment of Juvenile Justice Act 1986 and 2000. Thus, in spite of the new definition of child-in-conflict with law that any person who has not completed 18-years of age, actually the law addressed children between 8-18 with circumstantial relaxation up to 12 years, where the age group is 12-18.

However, the Legal definition of juvenile delinquency does not conform to its psychological definition, as, from the legal viewpoint, a juvenile delinquent is a person between the ages of 8 to 18 who indulges in anti-social activity. In U.S.A., the Ohio Code defines juvenile delinquency in some such manner as this: a juvenile delinquent is one who breaks the law, is a vagrant, persists in disobeying orders, whose behaviour endangers his own moral life as well as the moral life of others or one who tries to marry without the consent of his
parents. It may as well be pointed out that the age of the so-called juvenile delinquents has not been similarly determined in all countries. It varies from country to country but is within the usual limits of 16 and 20. Normally, it is the 17 years old adolescent who qualifies for this term, but in India, according to the prevalent laws, the maximum age of a juvenile delinquent is fixed at 18. Laws under different title pertaining to this subject have been passed in U.P., M.P., Maharashtra, Tamil Nadu, Mysore, Delhi, West Bengal, Orissa, and East Punjab prior to the uniform law on juvenile. In those states the Reformatory Act of 1897 and Children's Act prevailed until enactment of Juvenile Justice Act 1986. In these legislations the maximum age of a juvenile delinquent had been determined at 15. In Maharashtra and Madhya Pradesh it was 16. According to the Reformatory Act, the term Youth Offender could have been appended to any individual below 15 who has been sentenced to life imprisonment or has been convicted of some crime.

The definition of Child in need of Care and Protection is given in Section 2-(d): according to which a child; who is found without any home or settled place or abode and without any ostensible means of subsistence; who is found begging or who is either a street child or a working child\textsuperscript{117} who resides with a person (whether a guardian of the child or not) and such person-has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person, who is mentally or physically challenged or ill children or children suffering from terminal diseases or

\textsuperscript{117} Inserted by Act-33 of 2006, Section-4 (ii) (I) with effect from 22.08.2006.
incurable disease having no one to support or look after, who have a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child, who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable injury, who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts, who is found vulnerable and is likely to be inducted into drug abuse or trafficking, who is being or is likely to be abused for unconscionable gains, who is victim of any armed conflict, civil commotion or natural calamity.

According to the Act, adoption means the process through which the adopted child is permanently separated from the biological parents and become the legitimate child of the adoptive parent with all the rights, privileges and responsibilities that are attached to be relationship [Section-2 (aa)]. 118 The law recognises that the primary responsibility for providing care and protection to children shall be that of the family. Adoption shall be resorted to for the rehabilitation of such children as are orphaned, abandoned, neglected and abused through institutional and non-institutional methods. No child shall be offered for adoption until two members of the Committee 119 declare the child legally free for placement in the case of abandoned children and till the two months period for re-consideration by the parent is over in the case of surrendered children. Consent is necessary where the children can

118 Inserted by Act 33 of 2006, Section-4 (i) with effect from 22.08.2006.
119 The Law only refers Committee which means Child Welfare Committee constituted under Section-29. It does not elaborate how this could be enforced.
understand and express their consent. The Board\textsuperscript{120} may allow a child to be given in adoption to a single parent and to parents to adopt a child of same sex irrespective of the number of living biological sons and daughters (Section-40). In keeping with the provisions of the various guidelines for adoption issued from time to time by the State Government, the Board shall be empowered to give children in adoption and carryout such investigation as are required or giving children in adoption in accordance with the guidelines issued by the State Government from time to time. The children’s home or the State Government run institution for orphans shall be recognised as an adoption agencies both for scrutiny and placement of such children for adoption in accordance with the guidelines issued by State Government from time to time.

In India inter-country adoption is regulated by a guideline framed by Central Adoption Resource Agency\textsuperscript{121} (CARA), which is known as CARA Guideline. The guideline is based on the norms and principles laid down by the Supreme Court of India in the series of judgments delivered in L.K. Pandey vs. Union of India and Others between 1984 and 1991. The guideline is revised in 2006 following ratification of the Hague Convention on Inter-country Adoption 1993 by India\textsuperscript{122}. The goal is to find a family for as many orphan children as possible and to safeguard their interest as visualised in the UNCRC and the Hague Convention on Inter-country Adoption.\textsuperscript{123}

\textsuperscript{120} Board means Juvenile Justice Board. Again no procedure has been suggested with regard to its enforcement.

\textsuperscript{121} Agency is renamed as Authority. Now it is Central Adoption Resource Authority which functions as a nodal body and Central Authority for adoption matters.

\textsuperscript{122} Ratified by Govt of India on 06.06.2003.

\textsuperscript{123} SI. No 1.2, Chapter-I, Guidelines for Adoption from India- 2006.
The law defines begging as soliciting or receiving alms in a public place or entering into any private premises for the purpose of soliciting or receiving alms, whether under any pretence; exposing or exhibiting with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal [Section-2 (b)]. The Indian Constitution prohibited traffic in human beings and forced labour in Article-23 and 24 by providing that traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.\textsuperscript{124} It is true that beggar is not defined in the Constitution, but it is well understood term which means making a person work against his will and without paying any remuneration.\textsuperscript{125}

Under the Juvenile Justice Act 2000, Guardian in relation to a child, means his natural guardian or any other person having the actual charge or control over the child and recognised by the competent authority i.e., Child Welfare Committee and Juvenile Justice Board as a guardian in course of proceedings before that authority. The Guardians and Wards Act 1890 defines Guardian as a person having the care of the person of a minor or of his property, or of both his person and property. Similarly the Hindi Adoption and Maintenance Act 1956 explained the term guardian as a person having the care of the person of a child or of both his person and property and includes a guardian


appointed by the will of the child's father or mother and a guardian appointed or declared by a court.

While the Juvenile Justice Act 2000 has defined juvenile in conflict with law and child in need of care and protection, the subjects of law, its has also defined Juvenile and Child separately in Section-2 (k) which says juvenile or child means a person who has not completed 18 years of age. Such a separate definition might have essentially required as in the definition of the subjects of the Act, such as child in need of care and protection and Juvenile in conflict with law, the age of the subjects were never provided for in the original text. Subsequently, through amendment of the act the age of juvenile in conflict with law has been prescribed. The definition of juvenile and child in Section-2 (k) guided determination of juvenile and child for the purpose of the Act on the basis of prescribed age in this Section until such amendment. Besides this definition still defines the term juvenile or child for various purposes of the Act including child in need of care and protection. This definition is also relevant for other provisions of the Act which addresses issues like cruelty against child in Section 23, employment of juvenile or child for begging in Section 24, Giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child in Section 25, exploitation of juvenile or child employee in Section 26 etc.

The Act makes a provision of penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child and declares it a special offence. Therefore, the Act provides for a definition of narcotic drug and psychotropic substance in Section 2 (n). The Act says narcotic drug or
psychotropic substance shall have the meanings assigned by Narcotic Drugs and Psychotropic Substances Act 1985 (Act 61 of 1985). For this purpose there is a need to refer the above Act to trace the definition. It says "Narcotic drug" means coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured drugs [Section 2(xiv)]. "Psychotropic substance" means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule [Section 2 (xxiii)].

While giving definition of offences, the Act says an offence punishable under any law for the time being in force. There are various criminal laws in force in India which describes various forms of offences for which punishment is prescribed. The Indian Penal Code denotes a thing punishable under this Code or under any special or local law (Section 40). The Juvenile Justice Act itself in Section 27 describes special offences which are referred in Section 23, 24, 25 and 26 and makes it cognisable offence.

According to Section 2 (q) a place of safety means any place or institution (not being a police lock-up or jail), the person in-charge of which is willing temporarily to receive and take care of the juvenile and which in the opinion of the competent authority, may be a place of safety for the juvenile. As per this definition the place of safety is applicable only for juvenile in conflict with law for the reason that it provides for temporary reception and taking care of the juvenile. In this case the competent authority deems to refer Juvenile Justice Board constituted under Section 4 of Juvenile Justice Act. Similarly in this context a place of safety refers to observation homes and special
homes to be constituted by State Government either by itself or under an agreement with voluntary organisation under section 8 & 9. Under Section 12 (3) when a Juvenile in conflict with law is not released on bail after production, the Juvenile Justice Board shall, instead of committing the juvenile to prison, make an order sending the juvenile to an observation home or a place of safety for such period during the pendency of the enquiry.

As per the Juvenile Justice Act, 2000, when a Juvenile Justice Board is satisfied on inquiry that a juvenile has committed an offence, the Board may pass an order, if it is of the opinion that in the interest of juvenile and the public, it is expedient so to do, that the juvenile in conflict with law shall remain under the supervision of a probation officer for a period not exceeding three years. Similarly in order to pass an order the Board may obtain a social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise [Section 15 (2)].

In view of the use of term "Probation Officer", the definition is provided for in Section 2 (s). It says probation officer means an officer appointed by the State Government as a probation officer under the Probation of Offenders Act, 1958 (20 of 1958). In order to find out the provision with regard to appointment of Probation Officer, there is a need to refer the above Act. The Probation of Offenders Act, 1958 in Section 13 defines a Probation Officer shall be a person appointed to be a probation officer by the State Government or recognized as such by the State Government; or a person provided for this purpose by a society recognized in this behalf by the State Government; or in any exceptional case, any other person who, in the
opinion of the court, is fit to act as a probation officer in the special circumstances of the case (Section 13).

For purposes of defining public place the Juvenile Justice Act says that it shall have the meaning as prescribed under the Immoral Traffic (Prevention) Act 1956 (104 of 1956). Such a definition is essential both for child in need of care and protection as the definition of it covers a child who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts, or who is being or likely to be abused for unconscionable gains as well as Juvenile in conflict with law which means a juvenile who is alleged to have committed an offence. Prostitution in public place is an offence, where if a juvenile is found to have violated the provisions of the Act comes in conflict with law. This might be the reason for referring Immoral Traffic (Prevention) Act 1956 while defining public place. The Immoral Traffic (Prevention) Act 1956 in Section-2 (h) defines public place as any place intended for use by or accessible to the public and includes any public conveyance. A place in order to be a public place must be open to the public, a place to which the public have lawful access by right, permission, usage or otherwise. Public place means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage.

127 Prakash Chemicals Pvt. Ltd. V. Krishna Singh, A.I.R 1993 Guj. 121 at 129.
The Juvenile Justice Act, 2000 has also defined "fit institution" and "fit person". A fit institution is defined as a Governmental or a registered Non-Governmental Organisation or a Voluntary Organisation prepared to own the responsibility of a child and such organisation is found fit by the competent authority [Section 2 (h)]. Fit person means a person, being a social worker or any other person, who is prepared to own the responsibility of a child and is found fit by the competent authority to receive and take care of child.128 In this context it is necessary to know why the Juvenile Justice Act, 2000 defined fit institution and fit person. It needs to be pointed out that in Section 8 (2) the Act says where the State Government is of opinion that any institution other than a home established or maintained under sub-section (1) of 8, is fit for the temporary reception of juvenile in conflict with law during the pendency of any inquiry regarding them under this Act, it may certify such substitution as an observation home for purposes of this Act. Similarly under section 9 (2) where the State Government is of opinion that any institution other than a home established or maintained under sub-section (1) of 9, is fit for the reception of juvenile in conflict with law to be sent there under this Act, it may certify such institution as a special home for the purposes of this Act. Under Section 15 of Juvenile Justice Act, 2000. The Juvenile Justice Board may pass an order after satisfaction on inquiry directing the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the

128 In this case competent authority includes the Juvenile Justice Board in relation to Juvenile in conflict with law and Child Welfare Committee in relation to child in need of care and protection.
juvenile for any period not exceeding three years or may direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years. In the case of a juvenile or the child, whose ordinary place of residence lies outside the jurisdiction of the competent authority before which he is brought, the competent authority may, if satisfied after due inquiry that it is expedient so to do, send the juvenile or the child back to a relative or other person who is fit and willing to receive him at his ordinary place of residence and exercise proper care and control over him, notwithstanding that such place of residence is outside the jurisdiction of the competent authority; and the competent authority exercising jurisdiction over the place to which the juvenile or the child is sent shall in respect of any matter arising subsequently have the same powers in relation to the juvenile or the child as if the original order had been passed by itself (Section-50).

**Institutional Arrangement:**

The Act seeks to establish a number of authority and institution, which can cater to the needs of children and protect their best interest. Therefore, the Act provides for establishment of institutions like Observation Home, Special Homes and After Care Organisation by the State Government for temporary reception and rehabilitation and follow-up of the child in conflict with law. For purposes of Children who need care and protection another set of institutions have been conceived under act in the nomenclature of Children’s Home and Special Homes. Thus there are different kinds of Institutions for two different kinds of children, which were not provided for in the Juvenile
Justice Act, 1986. Under the predecessor Act there was a common provision of institutions both for delinquent and neglected juveniles.

**Juvenile Justice Board:** As per the provision of Juvenile Justice Act 2000, the State Government may constitute three members Juvenile Justice Board comprising of a Metropolitan Magistrate or Judicial Magistrate of First Class and 2-Social Workers of whom at least one shall be a Woman for a District (Section 4(2) or a group of Districts. Under Section 4 (1) of Juvenile Justice Act, 2000 (as Amended in 2006), the respective State Government of Indian Union is empowered to constitute Juvenile Justice Board to deal with Juveniles in Conflict with Law. The magistrate who is appointed must have special knowledge or training in child psychology or child welfare and the social worker should have minimum seven years of involvement in health, education or welfare of the children [Sec. 4 (3)]. Thus the law requires the appointment of magistrates not only with knowledge of laws but more importantly he must understand child psychology. Probably the provision of having a female member is made with the belief that the child would feel comfortable in interacting with a woman, who has been symbolized as a mother with love and affection in Indian culture or woman can understand the psychology of child in an appropriate manner. The Board is empowered to obtain social investigation reports on a juvenile from probation officer or even through a recognized voluntary organisation [Sec. 15 (2)]. These three members shall constitute a bench and every such bench shall have the powers conferred by the Code of Criminal Procedure 1973 on a Judicial Magistrate of the First Class. The Magistrate on the Board shall be designated as Principal Magistrate. The term of office of members is to be
prescribed by rules. However, a member of the Board may be terminated who fails to attend to proceedings of the Board for consecutive three months without any valid reason or if fails to attend less then three-fourth of the settings. A child in conflict with law may be produce before an individual member when the Board is not sitting. Similarly a Board may act notwithstanding the absence of any member. No order made by the Board shall be invalid by reason only of the absence of any member during any stage of proceeding. At the time of final disposal of case there shall be at least two members present including the Principal Magistrate. In the event of difference of opinion among the members of the Board in the interim or final disposition the opinion of majority shall prevail. Where there is no such majority the opinion of the Principal Magistrate shall prevail. The Board shall have the power to deal exclusively with all proceedings under the Juvenile Justice Act 2000 relating to Juvenile in conflict with law.

**Establishment of Observation Home:** Observation Home means a home established by a State Government or by a Voluntary Organisation and certified by that State Government under Section 8 for the Juvenile in conflict with law. For the temporary reception of any juvenile in conflict with law during the pendency of any inquiry, the respective State Govt. are required to establish Observation Homes in every district or group of districts [Section 8(1)].

Any State Government may establish and maintain either by itself or under an agreement with voluntary organisation, observation homes in every district or a group of district, as may be required for the temporary reception
of any juvenile in conflict with law during the pendency of any inquiry regarding them under this Act (Sub-Section-1). Where the State Government is of opinion that any institution other than a home established or maintained under Sub-Section 1 of Section 8 is fit for the temporary reception of juvenile in conflict with law during the pendency of any inquiry regarding them under this Act, it may certify such institution as an observation home (Sub-Section-2). The State Government may, by rules made under this Act, provide for the management of observation homes, including the standards and various types of services to be provided by them for rehabilitation and social integration of a juvenile, and the circumstances under which, and the manner in which, the certification of an observation home may be granted or withdrawn (Sub-Section-3). Every juvenile who is not placed under the charge of parent or guardian and is sent to an observation home shall be initially kept in a reception unit of the observation home for preliminary inquiries, care and classification for juveniles according to his age group, such as seven to twelve years, twelve to sixteen years and sixteen to eighteen years, giving due considerations to physical and mental status and degree of the offence committed, for further induction into observation home (Sub-Section-4).

**Establishment of Special Homes:** According to Section-2 (v) special home means an institution established by a State Government or by a Voluntary Organisation and certified by that Govt. under Section-9. Any State Government may establish and maintain either by itself or under an agreement with voluntary organisations, special homes in every district or a group of districts, as may be required for reception and rehabilitation of
juvenile in conflict with law under this Act (Sub-Section-1). Where the State Government is of opinion that any institution other than a home established or maintained under Sub-Section-1 of Section-9 is fit for the reception of juvenile in conflict with law to be sent there under this Act, it may certify such institution as a special home for the purposes of this Act (Sub-Section-2). The State Government may, by rules made under this Act, provide for the management of special homes, including the standards and various types of services to be provided by them which are necessary for re-socialisation of a juvenile, and the circumstances under which and the manner in which, the certification of a special home may be granted or withdrawn (Sub-Section-3). The rules made under Sub-Section–3 may also provide for the classification and separation of juvenile in conflict with law on the basis of age and the nature of offences committed by them and his mental and physical status.

Special Juvenile Police Unit: Special Juvenile Police Unit is a unit of the police force of a State designated for handling of Juveniles or Children under Section–63 [Section-2 (w)]. Section 63 provides (1) in order to enable the police officer, who frequently deal with juveniles or are primarily engaged in the prevention of juvenile crime or handling of the juveniles or children under this Act, to perform their function more effectively, they shall be specially instructed and trained, (2) in every police station at least one officer with aptitude and appropriate training and orientation may be designated as the “Juvenile or Child Welfare Officer” who will handle the juvenile or the child in coordination with the police, (3) special juvenile police unit, of which all police officer designated above, to handle juvenile or children will be members, may be created in every district and city to co-ordinate upgrade
the police treatment of the juveniles and the children. As soon as a Juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the Special Juvenile Police Unit or the designated police officer who shall immediately report the matter to the member of the Juvenile Justice Board [Section-10 (1)]. Any child in need of care and protection may be produced before the Child Welfare Committee by any Police Officer or Special Juvenile Police Unit or a designated police officer [Section -32 (i)].

In the Juvenile Justice Act, 1986, only police was authorized to apprehend and produce the child before the competent authority, which was found to be one of the serious drawbacks in the act. The lacuna has been rectified in the Juvenile Justice Act, 2000 which speak of the creation of special juvenile police unit for dealing with juvenile crimes.

**Child Welfare Committee:** A Child Welfare Committee under the Act is constituted under Section-29. Section-29 empowers State Government to constitute for every district or group of districts one or more Child Welfare Committees for exercising the powers and discharge the duties in relation to child in need of care and protection under the Act. The Committee shall consist of a Chairperson and four other members, of whom at least one shall be a woman and an expert on matters concerning children. The Committee shall function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class [Section-29 (5)]. A child in need of care and protection may be produced before an individual member for being placed in safe custody or otherwise when the Committee is not in session. Decisions in the Committee
shall be arrived at the time of interim decision on the basis of majority. Where there is no majority the opinion of the Chairperson shall prevail. The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights [Section 31 (1)].

**Children's Homes**: Children's Home is an institution established by a State Government or by Voluntary Organisation and certified by the Govt. under Section-34. The State Government may establish and maintain either by itself or in association with voluntary organisations, children's homes, in every district or group of district, as the case may be, for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation (Sub-Section-1). The State Government may, by rules made under this Act, provide for the management of children's homes including the standards and the nature of services to be provided by them, and the circumstances under which, and the manner in which, the certification of a children's home or recognition to a voluntary organisation may be granted or withdrawn (Sub-Section-2).

**Shelter Homes**: An Institution to be named as Shelter Homes shall be established which shall be a drop-in-centre for the children who need urgent support [Section-2 (u)]. The State Government may recognise reputed and capable voluntary organisations and provide them assistance to set up and
administer as many shelter homes for juveniles or children as may be required [Section-37 (1)].

**Advisory Board:** Advisory Board means a Central or State Advisory Board or a Districts and City Level Advisory Board to be constituted by Central Government or State Government in a name of Central or State Advisory Board, as the case may be, constituted under Section-62 [2 (a)]. The Board shall advise the Govt. on matters relating to establishment and maintenance of homes, mobilisation of resources, provision of facilities for education, training and rehabilitation of child in need of care and protection and juvenile in conflict with law and co-ordination among the various official and non-official agencies [Section-62 (1)]. The Central or State advisory board shall consist of such persons as the Central Government or the State Government, as the case may be, may think fit and shall include eminent social workers, representatives of voluntary organisations in the field of the child welfare, corporate sector, academicians, medical professionals and the concerned Department of the State Government (Sub-Section-1). The district or city level inspection committee constituted under Section-35 of Juvenile Justice Act shall also function as the district or city advisory board (Sub-Section-3). It is in this regard necessary to refer Section-35 which provides for provision relating to inspection. As per the provision State Government may appoint inspection committees for the children's homes for the State, a District and City as the case may be for such period and such purposes as may be prescribed. The inspection committee of a State, District or of a City shall consist of such number of representatives from the State Government, Local Authority, Committee, Voluntary Organisation and
such other Medical experts and Social worker as may be prescribed (Section-35).

**Central Adoption Resource Agency:** As Juvenile Justice Act 2000 views adoption is one of the alternatives for rehabilitation and social integration of orphaned, abandoned and surrendered child, it has made provision a Part-IV in Section-41 for Adoption. In the original text of the legislation adoption was not defined for which adoption has been inserted in the definition clause in Section-2 by an amendment under Act 33 of 2006. However, in India adoption are by and large regulated by the guidelines framed by Central Adoption Resource Agency (CARA). Therefore, the Juvenile Justice Act, 2000 explicitly provided that while resorting to adoption the provisions of various guidelines framed by State Government must be considered [Section-41 (3)] in the original Act. Subsequently by an amendment of Sub-Section-2, 3& 4 of Section-41 the provision relating to adoption as prescribed by CARA has been re-defined. It says Adoption shall be resorted to for the rehabilitation of the children who are orphaned, abandoned or surrendered through such mechanism as may be prescribed (Sub-Section-2). In keeping with the provisions of the various guidelines for adoption issued from time to time, by the State Government, or the Central Adoption Resource Agency and notified by the Court after satisfying itself regarding the investigations having been carried out, as are required for giving such children in adoption (Sub-Section-3). The State Government shall recognise one or more of its institutions or voluntary organisations in each district as specialised adoption agencies in such manner as may be prescribed for the placement of orphan, abandoned or surrendered children for adoption in accordance with the
guidelines notified under Sub-Section-3 (Sub-Section-4). Provided that the
children's homes and the institutions run by the State Government or a
voluntary organisation for children in need of care and protection, who are
orphan, abandoned or surrendered, shall ensure that these children are
declared free for adoption by the Committee and all such cases shall be
referred to the adopting agency in that district for placement of such children
in adoption in accordance with the guidelines notified under Sub-Section-3).
Govt. of India has created CARA which not only acts as a clearing house for
in country and inter-country adoption but also is entrusted with power to
issue guidelines for adoption from time to time (Section 41).

Apart from the above provisions relating to different kinds of institutional
mechanisms, the Juvenile Justice Act, 2000 also includes the definition of
competent authority in Section 2 (g) which is essential factor to appreciate
the law as in the entire body of the text of legal provisions, the Act refers to
competent authority for various purposes of implementation of the Act. The
Act says Competent Authority means in relation to children in need of care
and protection of a Committee and in relation to juvenile in conflict with law a
Board. The Committee and Board stand for Child Welfare Committee and
Board refers to Juvenile Justice Board respectively.

The separate Institutional Mechanisms contemplated under the Act, both for
children in conflict with law and children who need care and protection, can
be well understood with role and functions conferred on them from the
diagram presented below:
JUVENILE JUSTICE FRAMEWORK

Juvenile in Conflict with Law
(Defined in Section 2 (1))

Institutional Mechanism:
Juvenile Justice Board
3 - Members

FUNCTION
To deal exclusively with Children in Conflict with Law for adjudication and disposition

Special Home:
For reception and rehabilitation of Juvenile

Observation Home:
For temporary reception of Juvenile in Conflict with Law during the Pendency of Enquiry,
Special Juvenile Police

Children's Home:
Reception of Child in Need of Care and Protection during the pendency of enquiry and subsequent care.

Shelter Home:
Acts as Drop-in Centre for Children in need of urgent support.

Child in Need of Care and Protection
(Defined in Section 2 (D))

Institutional Mechanism:
Child Welfare Committee
5 - Members

FUNCTION:
Discharge duty in relation to care and protection of Children. (It includes Care, Protection, Treatment, Development, Basic Needs and Human Rights and Rehabilitation of the Children)

Rehabilitation and Social Integration:
(a) Adoption, (b) Foster Care, (c) Sponsorship and (d) After Care
A further understanding of Juvenile Justice Act 2000 in accordance with the normative structure is being endeavoured, with above elaboration about the definitions and institutional mechanisms. As has been stated earlier, the Act creates a couple of mechanisms, both adjudicative and rehabilitative institutions, to give expression to various provisions in course of its enforcement. Broadly, two sets of institutions have been contemplated to deal separately with Children in Conflict with Law and Children who need Care and Protection. Such a distinction is made in the law as there was apparent criticism about the first uniform juvenile justice legislation of 1986 on the ground that the penal orientation of the Act treats both the categories of children in same scale, thereby children who need care and protection are being seen as criminals.129 It is pertinent to mention here that in 1986 Act, there was only a provision of Juvenile Justice Court which was conferred with power to deal with both juvenile delinquent and neglected juvenile.

The following provisions have been conceptualised by the Act which is discussed under two broad heads framed on the basis of the subjects of law being addressed under the Act under two different separately constituted mechanism; that is:

(a) Children in conflict with Law.
(b) Children who Need Care and Protection.

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129 Savitri Goonesekere in Children, Law and Justice- A South Asian Perspective brings to our attention that Experience in the South Asia region particularly in India suggest that it is important to de-link the law on neglected children and “in care” proceeding from legal proceedings involving children in conflict with law. This is necessary to prevent penal orientation of “in care” proceedings, even though it may be necessary in many cases to use “in care” proceedings with regard to children in conflict with law.
In the following paragraphs, a discussion pertaining to procedural aspect in the institutional mechanism created under the Act to address the above categories of subject, would be made which can help in understanding the both processual and procedural aspect of law.

(a) Children in Conflict with Law:

As per the Juvenile Justice Act, 2000 a Juvenile or Child when found to have committed an offence and has not attained 18-years on the day of commission of offence is termed as Juvenile in conflict with law. When such a situation arises, the juvenile shall be dealt separately which is different from the trial procedure in the criminal justice system as applicable to adults. For this purpose, the Juvenile Justice Act, 2000 has a provision for establishment of Juvenile Justice Board constituted under Section 4. The production of the juvenile in conflict with law upon arrest shall be brought to Juvenile Justice Board by the Officer-in-charge of Police Station or the special juvenile police unit\textsuperscript{130} to be called as Special Juvenile Police Unit in accordance with Section 63.\textsuperscript{131} The Board, after making enquiry either allow the child to be released on bail, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law in force, with or without surety, whether the offence is bailable or non-bailable. However, if there appears reasonable grounds for believing that the release is likely to bring the juvenile into association with any known criminal or expose him to moral, physical or psychological danger or that the release of juvenile would defeat the ends of justice, in such circumstance bail may be refused (Section 12). In the event of any juvenile or

\textsuperscript{130} As per Section 13 of Juvenile Justice Act 2000.
\textsuperscript{131} Special Juvenile Police Unit means a unit of the Police force of a State designated for handling of juveniles or children as per Section 63.
child is brought before a Magistrate who is not empowered to exercise the powers of a Juvenile Justice Board, it shall without any delay record such opinion and forward the juvenile or the child along with the record of the proceeding to the competent authority i.e. Juvenile Justice Board or Child Welfare Committee as the case may be, having jurisdiction over the proceeding (Section 7). When a juvenile is arrested and not released on bail, the Officer in charge who has effectuated arrest shall cause such juvenile to be kept only in an Observation Home until the juvenile is brought before a Board. Similarly, after production before the Board, when such juvenile is denied bail, the Board instead of committing the juvenile to prison shall make an order sending the juvenile to an Observation Home or a place of safety for such period during the pendency of inquiry [Section 12(2 & 3)]. The Observation Home is established by State Government or by a Voluntary Organisation certified by the State Government for temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding the juvenile. It is pertinent to underline that every juvenile who is not placed under the charge of parents or guardian and is sent to an Observation Home shall be kept in a reception unit of the Observation Home for preliminary inquiries, care and classification for juveniles according to age, physical and mental status and degree of the offence committed before induction into Observation Home [Section 8(4)]. Where a juvenile having been charged with the offence is produced before a Board it shall make an inquiry on the basis of social investigation report on juvenile which shall be obtained through a Probation Officer or a recognised voluntary organisation or otherwise, which shall be completed within a period of 4 months from the date of commencement of
inquiry. The Juvenile Justice Board upon completion of inquiry if satisfied that the juvenile has committed an offence, the Board may pass order including making an order directing the juvenile to be sent to a Special Home [Section 15(g)].

**Production of Children in Conflict With Law:** A juvenile in conflict with law has to be produced before the Juvenile Justice Board. The Act has also taken care of the least detention of a Juvenile in police custody at par with the fundamental rights of habeas corpus in Constitution securing right against arbitrary arrest of a person. Section 5 (2) speaks that a juvenile shall be produced before an individual member when the board is not sitting. Section 7 (1) of the Act entrust the responsibilities of any magistrate beyond the jurisdiction of this Act. It ultimately speaks that when the juvenile or child is produced before any magistrate who is not empowered to exercise the powers of a Board under this Act, the magistrate concerned shall without any delay records the opinion and forward the child to the concerned juvenile justice board.

**Claim of Juvenility:** The amendment of Juvenile Justice Act in 2006 has inserted a new section after section 7 of the principal Act, which deals with procedure to be followed when claim of juvenility is raised before any court of law. Section 7A (1) of the Act speaks “Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of offence, the court shall make inquiry, take such evidence as may be necessary so as to determine by age of such person, and shall record a finding whether the person is a juvenile or a child,
stating his age as nearly may be. Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determine in terms of the provisions contained in this Act and the rules made there-under, even if the juvenile has ceased to be on or before the date of commencement of this Act. Sub-Section 2 of the same Section provides that "if court finds a person to be a juvenile on the date of commission of the offence under Sub-Section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect".

**Apprehension of Children in Conflict with Law:** The sole philosophy of the enactment of Juvenile Justice System is neither to detain the juvenile in conflict with law in the police custody nor to place juvenile and adult criminal in the same jail. As an ultimate to this, the children in conflict with law should be kept in the healthy environment of observation home, special homes, shelter homes etc, free from the influence of criminals. Section 10 (1) of the Amended Act, 2006 rightly speaks "as soon as a juvenile in conflict with law is apprehended by the police, he shall be placed under the charge of special juvenile police unit or the designated police officer, who shall produce the juvenile before the Board with out any loss of time within a period of 24 hours of his apprehension excluding the time necessary for the journey, from the place where the juvenile was apprehended, to the Board. Provided that in no case, a juvenile in conflict with law shall be placed in a police lock up or lodged in a jail".
Section 12 says when any juvenile is accused of an offence either of bailable or non-bailable and brought before Juvenile Justice Board or detained in police custody, shall be released on bail with or without surety or placed under the supervision of probation officer or under the care of any fit institution or fit person. Release on bail is not permissible under the circumstances of reasonable ground for believing that release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the end of justice. If a juvenile is arrested, in-charge of the police station concerned or the special juvenile police unit shall immediately inform to the parent or guardian of the juvenile. In order to save the child from social disgrace the Act prohibits the disclosure of name, address or school or any other particulars of a juvenile in conflict with law or a child in need of care and protection, involved any proceeding under the Act (Section 21). Any contravention to this provision amounting identification of the juvenile or child shall be liable to a penalty of maximum Rs. 25,000/-. However, a further relaxation is allowed in this respect by the Act under the provision that for reasons to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in the opinion such disclosure is in the interest of the juvenile or the child [Section 21 (1)].

The Act has been aiming at speedy inquiry of the cases relating to juvenile and timely administration of justice. Section 14 of the Act says that the enquiry

132 Prohibition of Publication of Identity of juvenile or child was only applicable to juvenile in conflict with law. By amendment through Act 33 of 2006, Section 15 which came into force from 22.08.2006 now disclosure of identity is prohibited of both juvenile in conflict with law and child in need of care and protection.

133 In the Original Juvenile Justice Act 2000 the penalty for contravention of Section 21 (1) was Rupees 1000/-. It is substituted by Act 33 of 2006, Section 15 as Rupees 25000/-. 
shall be completed within a period of four months from the date of commencement unless the Board having regard to special circumstances of the case extends the period. A sub-section has been inserted in the principal Act following to the amendment in 2006, which says “The Chief Judicial Magistrate or the Metropolitan Magistrate shall review the pendency of the case of the Board at every six month, and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards”. Considering the fact in mind; that childhood is a period of absolute innocence and complete immaturity or lack of mental aptitude in assessing the consequence of any act of omission or commission; the actionable wrong of a child or juvenile shall be pardoned. Sentencing penalty or punishment has been undergone a sea change in the Juvenile Justice Act. Section 16 of the Act says that no juvenile shall be sentenced to death or imprisonment for any term, which may extend to imprisonment for life or committed to prison in default of payment of fine or in default of furnishing security. After a juvenile is found guilty he or she may be allowed to go home after due admonition or after counselling his/her parents or guardians. He / She may be released on probation of good conduct or he/ she may be placed under the care of parent or guardian or other fit person on executing a bond without surety for a period not exceeding three years.

**Safeguard against search, arrest and (pre-trial) interrogation:** In India, criminal proceeding usually begins with search with or without warrant based on nature of crime followed by arrest and pre-trial interrogation. The procedure in relation to search, arrest and interrogation has been described in the Code of Criminal Procedure. The Apex Court and the National Human
Rights Commission also prescribed various rules to prevent violation of basic human rights by police, which are binding on the enforcement officials. Therefore the Juvenile Justice Act only suggested that when a Juvenile is brought to Police custody it is the duty of the Officer-In-Charge to put the juvenile in the custody of special unit trained for this purpose.

*Right to Representation by a Lawyer:* Right to be defended in a criminal proceeding by a Lawyer of once choice is a basic tenet of criminal proceedings. However the Juvenile Justice Act is completely silent on the subject, perhaps due to the fact that the law does not intend to undertake a trial and enquiry is prescribed only for purposes of preparation of report. However the Criminal Procedure Code and the Indian Constitution permits person to be represented in the Court of Law to defend themselves as otherwise it will violate the underpinning notions of natural justice on which the justice system is founded. This aspect of juvenile justice system is widely contested in USA in the re Gault where a larger bench decided to allow a juvenile the right to obtain legal counsel considering the fact that due process of law needs to be respected. The Supreme Court of America reaffirmed its commitment to due process of law while delivering its verdict by upholding that youth had a right to receive fair treatment under the law for which they have Right to receive notice of charges, to obtain legal counsel, to confrontation as well as cross examination, privilege against self incrimination, to receive a transcript of the proceeding and right to appellate review. In the Indian Juvenile Justice System of course provides for review and appeal against the higher court which is only available to the juvenile accused and not to the prosecution.
**Right to be Heard:** Right to be Heard in all proceedings against any accused is an established fundamental principle in human right framework. The UNCRC requires the State Parties to assure to the child who is capable of forming his or her own views the Right to express those views freely in all matters affecting the child in accordance with the age and maturity of the child. For this purpose, the Convention envisages that child must be provided with opportunity to be heard in any judicial or administrative proceeding affecting the child either directly or through their legal representative consistent with procedural rules of national laws. Looking at Indian laws provides adequate understanding that such a principle is already reflected in the procedural law. The Indian Penal Code while giving exemption to children below 7 years from criminal liability it also permits recording of witnesses of person between the age of 8-12 who can form their opinion. Overall a person above 8 years if made an accused in the criminal law he or she has the Right to express her views in the appropriate authority. Similarly, a child can be represented by a lawyer to conduct his/her case but in a circumstance where a legal representative is necessary the power of giving authority to legal representative rests with parents or guardian who is a major. The Indian law relating to affidavit also authorises a major to take on oath before a court of law, which he/she feels desirable to communicate to the court. However, a child is not recognised as a legal person not having attained majority, hence cannot make an oath.

**Role of Parent:** Both the original Juvenile Justice Act 1986 and 2000 amendment Act require the involvement of parents in judicial proceedings right from the beginning of arrest. Where a juvenile is arrested, the Officer-in-
Charge of the Police Station to which the juvenile is brought shall, as soon as possible inform the parents or guardian of the juvenile of such arrest and direct them to be present in the Juvenile Justice Board before which the juvenile will appear [Section 13(1)]. However, when the child is present before the Board, it reserves the right to require their presence once formal proceeding begins. The Act says any competent authority before which a juvenile is brought under any of the provision of this Act may whenever it so thinks fit require any parent or guardian having the actual charge of or control over the juvenile to be present at any proceeding in respect of juvenile (Section 46). The uniqueness of the Indian system is that it holds the parents liable once sentencing commences. If the child requires retention, the court has the power to direct the parents to contribute to maintenance of the child while he/she is in custody (Section-60). When these juveniles belong to poverty-ridden families, the law on the other extreme makes provision even for their travel expenses to be borne by the Superintendent or the Project Manager of the Home [Section 60(2)].

**Process of Imposition of Penalty:** The Juvenile Justice Act has done away with any kind of punishment for children. However, a Juvenile having been charged with any offence once produced before the Board, it shall hold inquiry under section 14 which shall be completed within a period of 4 months unless otherwise extended stating the reason. When the Board is satisfied on inquiry

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134 Information about arrest needs to be communicated in accordance with the provision of Criminal Procedure Code under Section – 50 and 51-A which is inserted by amendment through Act 25 of 2005 w.e.f. 23.06.2006 . As it is very often trespassed by the police official the apex court laid down guidelines in D.K. Basu case that the family members will be intimated about any arrest forthwith. Thus, such provision extends to all accused who are taken to police custody.

that a Juvenile has committed an offence, the Board may pass any of the following orders, instead of imposing any penalty even though in any other law a contrary provision is contained:

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile; (b) direct the juvenile to participate in group counselling and similar activities; (c) order the juvenile to perform community service; (d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money; (e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years; (f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years; (g) make an order directing the juvenile to be sent to a special home,- (i) in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years; (ii) in case of any other juvenile for the period until he ceases to be a juvenile: Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit. When order to the effect of fine, probation either under the care of parent or guardian or any fit person or probation under the care of fit institution is made, the Board if is in
the opinion that in the interest of juvenile and of the public it is necessary then it can pass an order that the juvenile shall remain under the supervision of a probation officer to a maximum period of three years. In the event of absence of good behaviour by the juvenile, according to report of the probation officer in such an occasion the Board may send the juvenile to a special home. The Board is required to pass an order after taking into consideration a social investigation report on juvenile either through a probation officer or a recognised voluntary organisation.

**Order that may not be passed against juvenile:** Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or imprisonment for any term which may extend to imprisonment for life,\(^{136}\) or committed to prison in default of payment of fine or in default of furnishing security [Section 16 (1)].

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is of so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government. On receipt of such a report from a Board under sub-section (1) of Section 16, the State Government may make such arrangement in respect

\(^{136}\) As Amended by Act 33 of 2006, Section 13 (i) came into force from 22.08.2006.
of the juvenile, as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit [Section 16 (2)]. However, the period of detention so ordered shall not exceed in any case the maximum period under Section 15 of the Juvenile Justice Act 2000.\footnote{Provision substituted by Act of 33 of 2006, Section 13 (ii) w.e.f. 22.08.2006.} Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974) no proceeding shall be instituted and no order shall be passed against the juvenile under Chapter VIII of the said Code about security for keeping the peace and for good behaviour (Section 17).

A juvenile in conflict with law shall not be tried together with any adult person accused of the same offence committed in the course of the same transaction, or accused of abetment or attempt to commit such offence. If a juvenile is accused of an offence for which under section 223 of the Code of Criminal Procedure, 1973 or any other law for the time being in force such juvenile and any person who is not a juvenile would have been charged and tried together, the Board taking cognisance of that offence shall direct separate trials of the juvenile and the other person in accordance with the provision of prohibition contained in Sub-Section 1 of Section 18. Thus the Juvenile Justice Act lays down principle for separation of adult from proceeding in respect of juvenile or child (Section 18).

In a comparable dimension, it is provided that no separate proceeding shall be instituted against any Juvenile who has escaped from a special home or an observation home or from the care of any person under whom he was placed. But after giving information to the Board which passed the order in
respect of the juvenile, such home or person under whom the juvenile was placed may take such steps in respect of juvenile as may be deemed necessary under the provision of the Act (Section 22). In case of such an event, any police officer may take charge without warrant of a juvenile who has escaped and shall be sent back to the home or person under whom he was placed by the order of the Board. It is noticed that a similar provision was also formed a part of Juvenile Justice Act 1986 under Section 50.

Right against disclosure of identity: The Act under section-21 prohibited disclosure of name, address, school or any other particulars like photograph calculated to lead to the identification of the juvenile in any newspaper, magazine, newssheet or visual media. When such a disclosure becomes inevitable in the interest of juvenile permission may be granted in writing with reason by the authority holding inquiry. Contravention of this provision attracts punishment with fine up to twenty five thousand rupees.

Conviction review and appeal: One of the cardinal principles of natural justice is that a person aggrieved by a decision of the subordinate judicial forum must have access and representation in higher courts of a country as per its law. There is no exception of this rule in the juvenile justice system in India. Provisions relating to Appeal and Revision are provided for in Section 52 and 53. The subsequent provisions in 54 and 55 also make allied measures in this regard. So far as an appeal is concerned the law provides that any person who is aggrieved by the order by a competent authority may prefer an appeal to the court of session within 30-days from the date of such order, unless otherwise relaxed by the appellate court upon its satisfaction.
that appellant was prevented by sufficient cause from filing the appeal in time. Of course no appeal shall lie from an order of acquittal made by the Juvenile Justice Board or finding of the Child Welfare Committee that the person is not a neglected juvenile. The law does not allow any second appeal from any order of the Court of Session. However scope of revision is vested with the High Court. The High Court may either of its own motion or on an application received call for record of any proceeding in which any competent authority or Court of Session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit. While doing so the High Court cannot pass an order, which is prejudicial to any person without giving him a reasonable opportunity of being heard. For purposes of appeal or revision as far as possible the procedure contemplated under the Code of Criminal Procedure shall be followed. The competent authority has also the power to amend any order as to the institution to which a juvenile or the child is to be sent or as to the person under whose care or supervision a juvenile or the child is to be placed. Similarly, the competent authority may also correct clerical mistakes or errors in the order from any accidental slip or omission. It is pertinent to mention here that the Juvenile Justice Act 2000 empowers High Court and Court of Session to exercise powers conferred on the Juvenile Justice Board by the Juvenile Justice Act 2000 in relation to proceedings which comes before them in appeal, revision or otherwise [Section 6 (2)].

(b) Children in Need of Care and Protection:

The Juvenile Justice Act 2000 addresses children who need care and protection, apart from making provision for juvenile in conflict with law. As per
the provisions of law under Section 2 (d) child in need of care and protection means a person who has not completed eighteen years of age\textsuperscript{138} and who is found without any home or settled place or abode and without any ostensible means of subsistence; who resides with a person whether a guardian of the child or not and such person has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out or has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person; who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after; who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child; who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable inquiry; who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts; who is found vulnerable and is likely to be inducted into drug abuse or trafficking; who is being or is likely to be abused for unconscionable gains; who is victim of any armed conflict; civil commotion or natural calamity.

The Act in Chapter-II from Section 29 to 39 contemplates provisions in relation to child in need of care and protection. When a child who needs care and protection is found he or she shall be produced before a Child Welfare Committee constituted under Section 29. Such production can only be made by any police officer or special juvenile police unit or a designated police

\textsuperscript{138} Section 2 (k) defines "Juvenile" or "Child" means a person who has not completed eighteen years of age.
officer; any public servant; child-line,\textsuperscript{139} a registered voluntary organisation\textsuperscript{140} or any agency as may be recognised by the State Govt.; any social worker or a public spirited citizen authorised by the State Govt.; or by the child himself [Section 32 (1)]. The Act requires the State Govt. to make Rules consistent with this Act to provide for the manner of making such report to the police and to the Child Welfare Committee {Section 32(2)}.

When such a child who need care and protection is produced before the Child Welfare Committee consisting of a Chairperson and 4-other members in every district or group of district the Committee shall hold an inquiry in the prescribed manner and may pass an order to send the child to the Children's Home for speedy inquiry by a social worker or Child Welfare Officer. A Children's Home is an institution established by State Govt. or by voluntary organisation and certified by the State Govt. for the reception of child in need of care and protection during pendency of the inquiry and subsequently for their care, treatment, education, training, development and rehabilitation {Section 34(1) read with Section-2(e)}.

The Inquiry under Section 33(2) shall be completed within 4-months of the receipt of the order or within such shorter period as may be fixed by the Committee. After completion of the inquiry if the Child Welfare Committee is of the opinion that the said child has no family or ostensible support, it may allow the child to remain in the Children's Home or Shelter Home till suitable rehabilitation is found for him or till he attains the age of eighteen years. A

\textsuperscript{139} Child-Line is a 24 hour telephone assistance operating in India. However, the law does not clarify its status.

\textsuperscript{140} It is understood in India that a voluntary organisation is a legally registered body under Societies Registration Act, 1860 or Indian Trust Act or under Section 25 of Companies Act etc.
Shelter Home is a home or drop-in-centre set up to render urgent support to juvenile or children who have been brought to such home. Similarly, the Act says the rehabilitation and social reintegration of a child shall begin during the stay of the child in a Children's Home or Special Home and the rehabilitation and social reintegration of the children shall be carried out alternatively by adoption, foster care, sponsorship and sending the child to an aftercare organisation.

**Provision regarding Rehabilitation and Social Re-integration:**

As the Juvenile Justice Act seeks to achieve ultimate rehabilitation through various institutions for children who need care and protection and juveniles in conflict with law, it has a separate Chapter within the body of the legislation i.e. Chapter IV under the sub-title Rehabilitation and Social Reintegration. The main objective behind this is to provide a family environment to such children who do not have one and also ensure after care facilities. The Act says the process of rehabilitation and social reintegration begins during the stay of the child in a Special Home or Children's Home. These two institutional arrangements are made for reception and rehabilitation of juvenile in conflict with law and reception and subsequent care, treatment, education, training, development and rehabilitation of children in need of care and protection respectively. The law prescribes 4-alternative measures like adoption, foster-care, sponsorship and after-care organisation for purposes of carrying out the provision of rehabilitation and social reintegration (Section 40). The State Governments may make rules to ensure effective linkages between various Governmental, Non-governmental, Corporate and other community agencies for facilitating the rehabilitation and social reintegration of the child (Section
45). Thus, the law merely lays down various kinds of measures for rehabilitation and social reintegration, but does not make any provision for its implementation.

4. COMPARATIVE ANALYSIS:

A comparative analysis of Juvenile Justice Act 1986 and Juvenile Justice (Care and Protection of Children) Act 2000 is made to take account of changes in the approach of Indian State towards preventing criminality, avoid criminalizing and penalising children and the method of progressive prevention of juvenile delinquency. It would help understand the methodological assumptions underlying the normative structure.

Some of the improvements in the new Act of 2000 are in relation to the title of the statute, distinction between subjects, uniform age group, separation of adjudicative institutions for both the subjects, period of inquiry, nature of rehabilitation, special juvenile police unit, constitution of Child Protection Unit responsible for implementation of the Act141 and also in the definitions. The new law provides for uniform age group for both boys and girls without making any separate age group. The predecessor Act defined the age group on the basis of sex. The definition included juvenile boys as a boy who had not completed 16 years of age and girls who had not completed 18 years. This uniform definition in the new Act, not only for boys and girls in conflict with law but also for children who need care and protection, conforms to the standard prescribed under UNCRC.

141 Amended and inserted by Act 33 of 2006, Section 24.
Regarding separation of institution for both the kinds of the subject, Narrain observes that the law provides for separate treatment for children in need of care and protection and juveniles in conflict with the law. Under the old Act the classification of delinquent juveniles and neglected juveniles was meant to separate the two categories of children with the Juvenile Welfare Board and the Juvenile Home meant for the neglected juvenile and the Juvenile Court and Special Home meant for the delinquent juvenile. However the separation was only a partial separation as pending inquiry both categories of children were kept in an Observation Home together. Thus the argument went that often children who had committed serious offences were kept in the same institution as children whose only crime was that they were neglected children as per the Act. Keeping this argument in mind, the state has now ensured a complete separation between the two categories as now juveniles in conflict with the law are kept in the observation home and children in need of care and protection are sent directly to the children’s home. However this shift itself seems a cursory attempt at really changing the deeply custodial nature of the entire juvenile justice system. If one was serious about decriminalizing at least the child in need of care and protection then, one needed to intervene at every level starting from the police. In fact the police are still empowered to come in contact with both categories of children. The police have more power vis a vis the category of child in need of care and protection as under Sec 33 of the enactment they are now even empowered to inquire into the situation of the child. With regard to the role of the police, what has happened is really a deeper level of recriminalisation rather than decriminalisation. What is also important to keep in mind is that the distinction between the two categories is
illusory as the way the law treats both categories is by prescribing custodial care as one of the options (Narrain).\textsuperscript{142}

Pande (2000) believes that the problems of conceptualisation of juvenile justice begin with its definition. In terms of the special jurisdiction created by the Juvenile Justice Act, it relates to the two specific and pre-defined categories, viz., Delinquent Juvenile and Neglected Juvenile. Such a technical view of juvenile justice is supposed to be narrow because it is in respect of specific proceedings provided under the Act, but in view of the wide definition of the neglected juvenile category, the jurisdiction and the concept of juvenile justice tends to get extended considerably. Another view understands juvenile justice in a broad and holistic way. This perception would require going beyond the straitjacket of the Juvenile Justice Act, which is essentially prohibitive and disability creating. Furthermore, it would relate juvenile justice to many other empowering and enabling laws such as the Child Labour (Prohibition) Act 1986 and the Persons with Disabilities Act 1995. The broad perception raises questions regarding substantive justice on the essence of justice to children, which would have immense value for those who are for the happiness of children. This observation of Pande (2000) is very much relevant even in the context of replacement of Juvenile Justice Act 1986.

Ved Kumari (2004) has located some of the changes like the terms ‘care’, ‘protection’, ‘treatment’, ‘development’, and ‘rehabilitation’ which were not defined by the JJ Act. She further identified that the JJ (C & P) Act is also silent on the matter. According to her these terms, however, may be

\begin{footnotesize}
\textsuperscript{142} Narrain, Arvind, The Juvenile Justice (Care and Protection of Children) Act 2000- A Critique.
\end{footnotesize}
understood with 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 ought to be made for proper programmes for reforming the behaviour and attitude of the delinquent children. Such programmes ought to aim at instilling in children the values of honesty and industrious life so that they become robust citizens, physically fit, mentally alert, and morally healthy, endowed with the skills and motivations needed by society. Measures necessary for their all-round development and growth ought to be made part of the juvenile justice schemes and programmes. The Scheme for the Welfare of Children in Need of Care and Protection conceives of rehabilitation in terms of ameliorative services of food, shelter, clothing, medical attention, and curative services of education, prevocational and vocational training, vocational guidance, recreation and cultural development, and citizenship education to make the children, when they grow up, job-worthy.

Ved Kumari (2004) also pointed out, unlike the JJ Act, the JJ (C & P) Act does not specify any authority/body that may deal with children or juveniles in the absence of a board or a committee. Hence, it is assumed in the scheme that there will be, without fail, a board and a committee covering the whole of India, except the State of Jammu and Kashmir. That perhaps explains the provision that provides for the establishment of boards and committees for a district or a group of districts. All inquiries under the JJ (C & P) Act should be completed within a period of four months. The competent authority has to follow the summons procedure for holding inquiries, subject to other
provisions of the JJ (C & P) Act and any rules made under it. No appeal lies
against a finding that the child did not need any state care or had not
committed an offence. In other cases, one appeal lies to the court of sessions
and the High Court may exercise its power of revision in any case. There has
been a significant change in the role and responsibility of police. Each police
station is now required to have at least one police officer specially trained to
deal with children in conflict with law as well as those who need care and
protection. All such police officer will constitute Special Juvenile Police Unit.

In substance, the Juvenile Justice Act, 2000 has adopted the scheme and
special features of the Juvenile Justice Act, 1986 with some minor changes.
As appears from the formulation of law that the relevance of juvenile justice
has not been properly understood in the broader context of childhood theories
and the state of condition of a person in the early stages of life. It has also not
taken seriously the fact that children are supremely important asset and their
well-being is the paramount consideration in shaping the future of the nation.

**Conclusion**

**From Punishment to Reformation:**

As the emerging or the new jurisprudence on juvenile justice for children
especially those who come in-conflict with law is in built in the broader canvas
of Rights of Children, it is therefore viewed in the same setting that is
conceived for children as right holder which appears to be a departure from
the welfare notion to right-based approach to address the issue of the
children. However a close analysis of the whole concept and legal provision
brings to focus that even though it is an area of broader child right but when
juvenile justice system is construed it is more a departure from the punishment to reformation then from welfare to right. The Indian law earlier had provisions, both in colonial and postcolonial legal system, to treat all offenders in the same scale without any consideration on the basis of age. It provided for imposition of penalty for offences held as breach of penal law. Imposing punishment on children cannot be held as a welfare approach as giving punishment does not secure welfare rather it serves the purpose of working as a deterrent against certain acts, which are considered by existing norms as a penal offence. Further, in a larger consideration even reformation is not a right in itself but the opportunity provided for special treatment of children in the criminal justice system in the event of conviction for reformation can be held as a right. The UNCRC casts upon the State Party a duty to create these opportunities as special treatment for children who come in conflict with law through institutions and authorities. The Indian law also paved the way for reformation of child offenders by virtue of JJ Act. In its totality the juvenile justice system is all about a right of children. This analysis can also be pondered over on the history of reformist legislations for children. Those laws, which were relaxed for children both in colonial and post colonial stage cannot be held to be welfare laws as in such a situation the present law is nothing but relaxed system for children. If this law is a right then how that law could be welfare measure. Both the laws provided children with opportunity, which created a legal right with statutory back up. In both the cases this opportunity of relaxed provision for children could be secured for children as right established by law.
Alternative Justice System:
The Juvenile Justice Act does not only intend to separate children from adult in course of hearing, trial or custody it also attempted to build a separate justice system, which is different from adult centred criminal justice. This is secured mostly through making them free from criminal liability. If the Indian laws are examined, mere separate treatment in the justice system is also available in various other contexts like in matrimonial cases and sexual offences. Similarly even relaxation is permitted on grounds like degree of mens rea, culpability, habitual act and even probation or exoneration but mostly these are circumstantial rather then universal, whereas in case of juvenile justice law it is universal for children. Therefore the Juvenile Justice System in its present form is clearly a separate jurisprudence, which does not consider children as criminal but as off-shoot of circumstance.

Yet to be an Omnibus Legislation:
The Juvenile Justice Act is however not an omnibus legislation as many of its provisions can only be implemented with the support of allied legislations including the procedural aspect. When the law intends for social integration it refers to adoption, custody and rehabilitation, which are subject matter of the laws concerning adoption especially the newly framed guideline by CARA. Similarly, the offences and various nature of crime committed by juveniles have not been defined separately and still governed by Indian Penal Code. The entire process of adjudication and disposition is being regulated in accordance with the procedural laws enumerated under the Code of Criminal Procedure and Indian Penal Code which are more adult centric and cumbersome. Juvenile Justice Act cannot be dealt in isolation and there is a need for harmonious coexistence of other laws.

Undeniably, this new Act is a substantial improvement over the JJ Act, 1986, but it merely outlines the legal framework.