Chapter-I

INTRODUCTION

1. Prelude

The Parliament, in the 37th year of Republic of Indian State, enacted the first ever uniform legislation for the entire country for neglected\(^1\) and delinquent juveniles\(^2\) under the title Juvenile Justice Act, 1986 (hereinafter JJA 1986).

This legislation was significant in the history of legislation for children in India, as all previous legislative attempts to address the issue of children in conflict with law culminated in a uniform law giving birth to juvenile jurisprudence in India. Prior to enactment of this Act, the laws on the subject were hardly designed to address the issue in a comprehensive manner; sporadically present in different forms\(^3\) and every state in India had addressed those subjects according to their state legislations.\(^4\)

Juvenile Justice Act 1986 had thrown enormous challenges as it was not high on the agenda of governance.\(^5\) Both the implementation of law as well as its implication upon the life of a juvenile became a matter of debate and judicial activity in the years following the passing of the Act of 1986 (Ved Kumari

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1 A neglected juvenile means under Section 2 (I) - The Juvenile Justice Act 1986 a juvenile who is found begging, without having any home or settle place of abode and without any ostensible means of subsistence and is destitute, or has a parent or guardian who is unfit or incapacitated to exercise control over juvenile, or lives in a brothel or with a prostitute or who is likely to be abused or exploited for immoral or illegal purpose.
2 The Juvenile Justice Act 1986 under Section 2 (e) defines delinquent juveniles as a juvenile who has been found to have been committed an offence.
3 Like the Reformatory Schools Act, the Brostal School Act and in the post colonial period the Probation of Offenders Act, 1958 etc.
4 Until 1985 almost all the states of India had Children's Act like Children's Act, Madras.
2004, Pande 1998, Goonesekere 1998, Kethineni and Klosky 2000). Such deliberations culminated with the replacement of 1986 Act with Juvenile Justice (Care and Protection of Children) Act 2000 (hereinafter JJA 2000). The new statute brought several amendments to improve upon its predecessor to make the system more meaningful by identifying the crucial difference between a juvenile in conflict with law and a child in need of care and protection (Goonesekre 1998). With the incorporation of the much desired provisions in the new Act, there is an occasion arises to verify the manner in which it is implemented to accomplish the desired objectives of providing care and protection to the children who need such support from the state. In the above mentioned backdrop it becomes pertinent to describe and explain the state of juvenile justice in India, as it exists now, and the manner in which the executive agencies of the State give expression to the implementation of legislative measures. The real challenge unfolds when the law encounters the enforcement mechanism envisaged under it for purposes of giving expression to the provisions of the Act, which remains largely apathetic to the notions and issues associated with juvenile justice.

In the above premise, this research seeks to focus on the following objectives, a) to explore the present legal framework for the protection of juveniles who are in conflict with law and those who need care and protection under Juvenile Justice (Care and Protection of Children) Act 2000, b) to take a stock of the progress of Indian state, from an operational perspective, in the matter of rendering justice to juvenile and to bring in to focus the grassroots situation of juvenile justice systems and c) to locate the present law and practice within the framework of rights of the child and various dimensions accruing out of the
existing framework for juvenile justice. Broadly it reviews law and investigates a network of governance institutions.

2. Introduction to the Problem

The genesis of conducting a research on the theme of Juvenile Justice, Child Rights and the State in India stems from filing of a Public Interest Litigation in April 2003 in the Orissa High Court to contest the administrative belief that the juvenile justice system is functioning in Orissa smoothly, whereas in reality this researcher experienced that the juvenile justice system was still regulated in accordance with the provisions of JJA 1986 even when this Act was already pronounced redundant and it was replaced by JJA 2000. There was no change of law in practice when there was already a change in the statute.

The immediate reason for this research emanates when it was ironically found that some high-level officials of police department who were dealing in a case of a girl child in conflict with law who belong to an underprivileged family held a press conference to expose the identity of this girl and show their success in solving a case of double murder in the state capital Bhubaneswar. This was in blatant disregard of the JJA 2000 in Section 21 which prohibits disclosure of identity of juvenile in conflict with law. In this context there was a need to venture into the arena to unravel the state of juvenile justice system in Orissa. This endeavour primarily intended at ascertaining the source of authority of an agency of the state to disclose the identity of a juvenile girl who came in conflict with law when the law prohibits such actions.
The engagement in the practical level revealed that the JJA 2000 in its amended form had not been enforced in Orissa. It is pertinent to mention here that the amended law was enacted in the year 2000 and came into force from 1st April, 2001. The incident of disclosure of identity of a juvenile girl by police was made in March 2003. This incidence occurred two years after the JJA 2000 came into operation, apart from the previous experience of almost 15 years of enforcement of the central uniform legislation under the title JJA 1986 which also prohibited disclosure of identity. This case evidently made it clear that the state in India did not make adequate arrangement for sensitisation, training and capacity building of implementing agencies at various phases of time of legislative history.

Accordingly a writ in the form of Public Interest Litigation was filed in the Orissa High Court bearing no. W.P.(C) 2404/2003 by the present researcher. Following which, a notice was issued by the High Court to the government of Orissa. In response to the notice, the government counsel informed the High Court through an affidavit that meanwhile the government has published a Gazette Notification bearing no. 19081/W&CD, dated 12/09/2003 with regard to enforcement of the law and constituted the institution of Juvenile Justice as per the law. Without reviewing the reason for delay in enforcement of the law, surprisingly the High Court preferred not to proceed further issuing any Writ in this regard, on the ground that the sole prayer for implementation of the act is acceded to by the state government with the constitution of juvenile justice
institutions in the state. Accordingly the writ petition was disposed off.\textsuperscript{6} By the above discussion, it leaves an impression that the systems of governance are neither sensitized about the state of children and the requirements of juveniles nor do they take sufferings of children seriously. As a result there is no visible change in the situation of children, in spite of protection provided for even under the amended law relating to children and juveniles. The above cited example is illustrative and instructive of cases in which children suffered due to non-enforcement of law. It is only a tip of the iceberg about the controversies surrounding the legal status of children and how far children are capable of securing the legal entitlement. In fact the Indian State has turned its attention away from gross violation of rights of the children as a regular institutional phenomenon defeating the very objective of law that it formulated in the form of JJA 2000.

Looking from the above perspective, my research will argue that change in the legal status of children could only be brought about through actual implementation of law at the ground level according to the letter and spirit of law. In this regard my research through an empirical study conducted in Cuttack district of Orissa will also bring out that currently it remains merely rhetoric to hold that there has taken place a change in the approach of law in which children are seen as holder of rights. This hypothetical position explains the need of this research to investigate into what is the real change that occurred in the status of children being holders of rights. Discursively understood, this exercise thus engages in exploring the normative structure of

\textsuperscript{6} To investigate into what all happened to those juveniles who suffered due to non-implementation of the JJA 2000 for two years from 1st April 2001 up to the constitution of the mechanism by the government is a matter of great concern although the present research could not take it up into its purview.
the law, and to analyse empirically the extent to which such provisions impacted upon the functional aspect. Also to state precisely, as the ultimate premise of the JJA 2000 is to secure reformation and rehabilitation of the child and the juvenile, to that end this research will revolve around conceptual questions and legal dimensions of the justice to juvenile and rights of the child.

3. Survey of Literature and Case Laws Review

The basic idea which informs the pertinence of this section hinges on the following words of Pande (1999:32-35). 'Though the idea of juvenile justice has already become a part of the official discourse pertaining to formal dealings with the juveniles in conflict with law and children who need care and protection, it is riddled with confusion at the operational level', to say the least.\(^7\) As a result the juvenile justice system thrives under the shadow of the adult criminal justice agencies and institution at the operational level. Looking beyond the specificity of India, this becomes more important in the light of what Martin has argued that juvenile justice is driven with contradictions and inequalities throughout the world. The law remains evasive on addressing such operational issues.

3.1 Contemporary Debates over the Juvenile Justice System

Juvenile Justice is not a one shot remedy as is perceived in the various legal measures adopted by the State. It is a continuously evolving mechanism as the State improves its perspective of rights and accountability norms of state

\(^7\) Although Pande made this statement in the context of pre-JJA 2000 era, but according to me the statement carries weight even with regards to the scenario as it exists in the post-JJA 2000 times.
structures and governance. It is interwoven with the perspective of rights in general which the Constitution of State is capable of delivering to people. Major problem which becomes the focus of this research emerges from the fact that India is in the process of transforming its law, procedures and institutions for the treatment of juvenile and thus the right standard need to be put in place to substantiate and complement the effort. Juvenile Justice needs to be seen in a more holistic sense than it currently is. However, the new Juvenile Justice Act of 2000 overlooked the present knowledge about criminological approaches. Narrain (n.d) observes “what is shocking that in an age when our knowledge about wrongdoing has increased exponentially wherein the traditional criminological approaches of classical/positivist have long been contested by other explanatory frameworks, which locate the reason for wrongdoing in societal structures, the Act bears no trace of any new thinking. If for example the labelling theory were taken seriously, then the aim of the Act would really have been to minimise the contact of the child with the criminal justice system as being processed by the system contributed to the child becoming criminal. Diversion would have had to be a mandatory part of the juvenile justice system at all levels right from the police officer, to the prosecutor, to the judge. However, the Act reflects no such theoretical shift in thinking. If social control theories were even considered then, the juvenile justice would have focused more strongly on ensuring that one concentrated on building the social bonding between the juvenile and society, rather than subjecting the juvenile to a prison regime of limited contact with the outside world which in effect alienates him/her even further from society.”

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Labelling theory, which is based on symbolic interaction to describe the importance of meaning that people attached to the messages they receive through communications with other people, calls attention to the fact that children feel singled out, and are labelled "bad kids" once they come in contact with law enforcement agencies. They could internalise such a label, and self fulfilling prophecy becomes realised. Children may begin to act to the label that has been applied to them. For some labelling theorists, the less said about some childhood behaviour or misconduct, the better. If juveniles can be diverted from the criminal justice system, there is a better chance that they will escape the labelling process. Balance and restorative justice programme bring together the youth offenders with their victims through mediation with an objective attempt to shame the offender, without further stigmatisation, thus, trying to ward off the negative effects of labelling (see Sims, 2006).

Juvenile justice is about fairness and justice standards relating to physical, mental and emotional well being of children. However, in India it is by and large enforced through special statutory measures which follow civil and quasi criminal proceedings. It compounds the problem further. This shows that Juvenile Justice has not fully evolved or a common understanding of the concept is lacking. This incipient and half baked conceptual piece of law has obliterated boundaries of ethics and state agencies. Pande claims fairness and justness is rarely debated within the context of juvenile justice system. Justice to a juvenile is a dependent variable of the larger framework of democratic state with the principles enshrined in the 'Preamble' of the constitution. The constitutional guarantees of 'fair' and 'just' processes need

www.dwcd.kar.nic.in/dwcd_english.
to be accorded even in the juvenile justice system. Pande further raises a vital question: How can juvenile justice get degenerated to such an extent, that it instead of serving as a means of care and protection, turns into a means of oppression? Is such aberration confined only to a few ‘bad’ police officers, unmotivated magistrates and cynical correctional officers? 9 Indian juvenile justice system needs to find answer to Pande’s queries.

In this regard the view of the apex court is significant. The Supreme Court of India in Bandhua Mukti Morcha Vs Union of India and others observed as follows: 10 “A child of today cannot develop to be a responsible and productive member of tomorrow’s society unless an environment which is conducive to his social and physical health is assured to him. Every nation developed or developing links its future with the status of the child. Childhood holds the potential and also sets the limit to the future development of the society. Children are the greatest gift to humanity. The parents themselves live for them. Neglecting children means loss to the society as a whole. If children are deprived of their childhood socially, economically, physically and mentally the nation gets deprived of the potential human resources for social progress, economic empowerment, peace and order, social stability and good citizenry”.

In view of the above observation of the Supreme Court in relation to the future of children, there is a latent need to improve upon the vision as well as the capacity of personnel engaged in administration of juvenile justice system for its effective implementation. It bears significance in view of the outcome of

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10 AIR 1984 SC. 802.
studies which suggest that "people working in the juvenile justice system have the best interest of the child in mind".\textsuperscript{11} However, in the case of India the major preoccupation with non-implementation of juvenile justice system has been identified as serious drawbacks in the administration and capabilities. Ved Kumari (2004:301-305) brings to our attention factors like absence of database, coordination, training programme and community participation as lapses in the process of execution of law. She observes that basic data relating to the number of juvenile and their location continues to be non-existent. Similarly, fragmentation occurs at the implementation level as judicial matters are connected with departments which are separate from child welfare and development. It happens in spite of the fact that the Juvenile Justice Act 2000 made provision for coordination among various agencies functioning under it. Besides even though the Juvenile Justice Act 2000 makes provision for training of police personnel and even the members of the Juvenile Justice Board, in practice there is no continuous pressure from any quarter for holding regular training programmes for capacity building of functionaries of the system.

On many occasion, the verdict of apex court also underlined the importance of effective system with capable worker to implement the provisions of law for children. The judicial response to effective administration could be found in \textbf{Sheela Barse \textit{vrs.} Union of India}\textsuperscript{12} when the Supreme Court observed that "the Child Welfare Officer (Probation) as also the Superintendent of the


\textsuperscript{12} AIR 1986 SC 1773 at 1778.
Observation Home must be duly motivated. They must have the working knowledge in psychology and have a sense of keen observation: on their good functioning would depend the efficacy of the scheme. Without this aspect being assured, the conditions of these Homes could not improve. Dedicated workers have to be found out, proper training to them has to be imparted and such people alone should be introduced into the Children Homes”.

As with regards to Pande’s argument one needs to understand what Supreme Court pointed out further in Sheela Barse vs. Union of India: “The detention and maltreatment of children in violation of the law is far too serious a matter to be looked at with any complacence, and unfortunately a stage has now been reached where this court cannot be content with the expectation of compliance with its orders in these proceedings, but would have to go further and exact it. The States have to be more honest about their obligations to the delinquent children. Children misbehave because, perhaps, the society and the elders have behaved worse. Society is becoming increasingly inhospitable to its weak. By ignoring the non-custodial alternatives prescribed by law and exposing the delinquent child to the trauma of custodial cruelty, the State and the society run the serious risk of sending the child to the criminal clan. This is no more a matter of concession to the child, but its constitutional and statutory right”.

This thesis argues that the present juvenile justice system for juveniles in conflict with law operates like conventional criminal courts for adults. It is characterised as growth of a subsystem within the broader system of criminal
justice at the operational level. It performs functions in adherence to the
precedent of the criminal court. The most fundamental problem in the law is
the clubbing together of two distinct categories such as a juvenile in conflict
with law and child in need of care and protection under the same law. The
implication of this is that the aspect of care and protection of children in need
of care and protection gets less attention than children who are in conflict with
law in the process of implementation.¹³

For the purpose of examining the hypothesis this research relies on a number
of studies, which revealed that the juvenile justice system did not fulfil the
fundamental objectives of legislation¹⁴ (Goonesekere¹⁵, 1998:137, Ved
These scholarships of course pointed out at the Juvenile Justice Act 1986. It
is important to point out that in this research, through an empirical method an
attempt has been made to substantiate, build and expand the subject in its
changing form by virtue of the Juvenile Justice (Care and Protection of
Children) Act 2000. Also, significantly, the past studies mostly examined the
Juvenile Justice Act 1986 whereas in this research the new Act has been
examined.

¹³ This should be seen as a sub-context of my main hypothesis.
¹⁴ These studies often referred to the system under Juvenile Justice Act 1986.
¹⁵ Goonesekeere pointed out that The Juvenile Justice Act 1986 had dealt with children in conflict with law together
with child victims of abuse which created a general perception that victims are also offenders (Page-137).
¹⁶ Ved Kumari observed the malfunctioning of the Juvenile Justice System in India has been caused by a non-
systematic approach (Page 293).
¹⁷ Pande identified the problem of juvenile justice at the operational level (Page 32-33).
¹⁸ Kethineni and Klosky ascertained the fact that the Juvenile Justice Act 1986 has produced few noteworthy
changes. Their study suggested that the system did not bring about the intended reform (Page 324).
3.2 Rationale of having Juvenile Justice System

The ideological exposition that children deserve differential treatment in the criminal justice system when they come in conflict with law is a derivative of studies in childhood psychology. It brought to focus the idea that children do not commit crime in the same scale as adults do and penalisation of any degree would adversely affect interest of the Child. Children with delinquent behaviour need care and social reintegration rather than punishment.

The subject of differential treatment in the criminal justice system to children in conflict with law assumed significance in all modern democratic States considering the fact that children cannot be treated in the same scale like adults due to their less development of mind, absence of mens rea\textsuperscript{19} and also culpability. Friedmann observes, "A revolution of far greater proportion has, during the last generation, taken place in the treatment of juvenile offenders. Almost universally today, in civilised countries, the juvenile offender (usually a person between the age eight to eighteen) who not so long ago used to be subjected to the harshest penalties and thrown together with hardened criminals – is now subjected to a special procedure.\textsuperscript{20}"

This liberal approach to deal with children in the criminal justice system when they come in conflict with law was also largely influenced by the understanding that criminality among children is the result of the circumstances in which they grow and develop. This understanding about

\textsuperscript{19} Mens rea means that "the act does not make a person guilty unless the mind is also guilty".

criminality among children demanded that they should have special measures with authority of law, which can protect them in the criminal justice system. The growth of laws in several modern democratic states to address the problem of youthful offenders in the criminal justice system consequentially evolved into juvenile jurisprudence. It is primarily concerned about reformation and social reintegration to void criminality among children who come in conflict with law, on one hand and on the other it makes an attempt to avoid penalisation. Thus, penalisation, which has so far been considered as a measure of controlling crime with the understanding that punishment can act as deterrent against "Individual Will" to commit legal wrong paved the way for reformation.

Hague (2006) observes that in early 19th century reformers believed that there was a serious poverty issue which caused crime particularly in the large cities. In such reformers' view poverty or pauperism and crime were the cause and effect. They saw many homeless, vagrants, pauper children of impoverished and underprivileged families roaming the street and committing crimes. Because impoverishment caused crime, they believed that children should be removed from these conditions while they were still pre-delinquent (see Fox 1970), so that, they would not grow into adult criminals. Prisons were viewed as schools for criminals, where children would come under the influence of adult criminals. Adult punishment and institutions were thought to be too harsh for juvenile criminals. They also recognised that other current methods of dealing with these problems, such as the use of poor houses and acquitting juveniles or otherwise, allowing crime of guilty juveniles to go

21 Pauperism caused, or was the precondition to crime (see Hague 2006:35).
unpunished was not working. Reformers wanted to save or rescue children from pauperism, crime and harsh treatment under the criminal law. They believed that pauperism and crime prone children represented a threat to the society.22

A change in the perception of the causes of delinquency at the late 19th century emerged which were grounded in the newly emerging sciences of sociology, criminology, psychology and psychiatry. Rather than behaviour being determined by social and environmental forces as viewed by sociologists, psychologists and psychiatrists looked explanations within the person’s psychological make up. The deterministic theory of behaviour considered that behaviour was determined by causes like one’s environment or by psychological determinants. This was analogous to catching a disease and needed the medical model approach of diagnosis, prescription and treatment directed at those causes. There was a shift away from a free-will, moralistic explanation of pre-delinquency and delinquency to a deterministic one of social illness. Before and during the nineteenth century, efforts at reform were aimed at changing the moral point of view of children and adolescents (Hague, 2006).

Gibbons attributes several factors that play a part in delinquency and the way these intertwine in complex ways with other variables to produce juvenile misconduct.23 The prevailing public conception of juvenile delinquency is that delinquency is the undesirable opposite of some unnamed state of affairs

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characteristics of the majority of youths. Delinquency is seen as juvenile crime. Juvenile delinquents constitute a social problem about which something must be done. These children must be converted into normal, non-delinquent individuals by rehabilitative tactic. Juvenile delinquency is not a relatively homogeneous form of behaviour made up of a few similar acts which are prohibited in criminal laws. If we regard delinquency as juvenile crime we will therefore have to pay attention to a heterogeneous mixture of youthful transgressions.

Vandergoot (2006) astutely observes, Canadian society has a history of using the criminal justice system to address the social and mental health issues of youth. They have been built on questionable presumptions with feeling that involving youth in the criminal justice system will be a means by which to get them mental health treatment. On the other hand Youth with mental disabilities are more likely to get caught, be arrested, found guilty and formally processed – often because of a misunderstanding around behaviour and capabilities. It describes the cumulative effect of systemic biases at all stages of the criminal justice system in relation to these disabilities. In this consideration a liberal approach needs to be followed.24

Zietz (1996) observes the child who is aggressively delinquent by legal definition may also be emotionally or physically ill, dependent or neglected. Conversely, the dependent and neglected child who comes to the attention of law enforcement authorities and juvenile court may never have engaged in a

delinquent act at all. The problem of juvenile crime is subsumed within the larger problem of deprivation. This deprivation is defined not as a consequence of objective class inequality but rather as a self perpetuating subjective culture of poverty which is out of tune with political reality. Thus juvenile crime emerges as a temporary pathological phenomenon amenable to social engineering (Pitts, 1988). Pitts (1988) writes "The Fabians transformation of crime into a socially determined pathology renders the category of crime, with its connotations of culpability and choice, irrelevant. If then the major mechanism established to deal with illegal youthful misbehaviour is still geared to questions of guilt, innocence, culpability and mitigation, it is clearly not only anachronistic but a pernicious stigmatising mechanism wherein the problem of juvenile crime is actually worsened. It therefore becomes necessary to transform the juvenile court into an agency which addresses the real problems of deprivation and pathology rather than the false problem of criminality. It follows that the juvenile criminal justice system must be decriminalised" (Bottoms 1974:319-45, Clark 1980: 72-95).

Archard (2004) argues the associated immaturity with children due to their age is a determinant factor for fixing criminal responsibility as a child protection issue. This factor raises distinction between welfare and justice approaches for children. In a welfare model the needs of children are addressed viewing these as a source of misdeeds. Therefore, it seeks to rehabilitate or treat the child and not to punish them for their errors. By

contrast, the justice model focuses on the deeds of the child viewing those which are misdeeds as meriting appropriate penalties. He cited the Scottish Children's Hearing System as a classic example of welfare model which addresses needs of children and not deeds by them. Finally, he suggests under his modest collectivism that children need to be brought into the public domain out of the private shades of the family. It would help them to be monitored for their psychological and physical progress\textsuperscript{27}. This argument of Archard (2004) can be grounded on Theory of Legislation where Bentham proposes the cases in which punishment ought not to be inflicted.

Bentham (1975) explains Punishments are inefficacious when directed against individuals who could not know the law, who have acted without intention, who have done the evil innocently, under an erroneous supposition, or by irresistible constraint. Children, imbeciles, idiots, though they may be influenced, to a certain extent by rewards and threats, have not a sufficient idea of futurity to be restrained by punishments. In their case, laws have no efficacy. Those punishments were termed by Bentham as inefficacious which have no power to produce an effect upon the will, and which, in consequence no tendency towards the prevention of like acts.\textsuperscript{28}

Punishment is regarded as a method of protecting society by reducing the occurrence of criminal behaviour. Punishment can protect society by deterring potential offenders, by preventing the actual offender from committing further


offences and by reforming and turning him into a law – abiding citizen. Although the general substitution of the reformatory for the deterrent principle would lead to disaster, it may be argued that the substitution is possible and desirable in the special case of the abnormal and degenerate. The reformatory element must not be overlooked. How much prominence it may be allowed is a question of time, place and circumstance. In case of youthful criminals the chance of effective reformations are greater than in that of adults. The rightful importance of the reformatory principle is therefore greater in case of youthful offenders.\(^{29}\)

Friedmann (2003) observes, the increasing understanding of the social and psychological causes of crime has led to a growing emphasis on reformation rather than deterrence in the older sense, as the best way to protect both the individual criminal from himself, and society from the incidence of crime. In practical terms, this has meant the increasing use of corrective and educational measures, either in addition to, or in substitution for, punishment proper.

The Supreme Court of India also held that “progressive criminologists across the world will agree that the Children diagnosis of offenders as patients and his conception of prisons as hospitals – mental and moral – is the key to the pathology of delinquency and the therapeutic role of ‘punishment’. The whole man is a healthy man and every man is born good. Criminality is a curable deviance. The morality of the law may vary, but is real. The basic goodness of

all human beings is a spiritual axiom, a fallout of the advaita of cosmic creation and the spring of correctional thought in criminology.\(^{30}\)

Krishna Iyer (1999) quotes from the verdict of the Supreme Court that “infliction of harsh and savage punishment is thus a relic of the past and regressive time. We strongly feel that the humanitarian winds blow into the prison barricades. More in this decade when jail reforms, from abolition of convicts costume and conscript labour to restoration of basic companionship and atmosphere of self-respect and fraternal touch, are on the urgent agenda of the Nation. Our prisons should be correctional houses, not cruel iron aching the soul.”

According to Justice V.R. Krishna Iyer (1999), “From Jesus to Gandhi, before and after, every sublime soul has beheld divinity in juvenility, God Writ large on the crying babe as its emerges into life; and yet with the march of mankind this glorious gift has suffered culpable neglect and callous cruelty for so long and so lawlessly that the conscience and compassion of the peoples of the earth have been awakened to this terrible, harum-scarum inhumanity inflicted upon the toddler bracket which holds in its naughty innocence and unkempt kinks a wondrous potential for great good, given a humane milieu and promotive impetus. A generation which fails to recognise that the baby is its first charge is lost in barbarity and the hallmark of culture and advance of civilisation consists in the fulfilment of our obligation to the young generation by opening up all opportunities for every child to unfold its personality and rise to its full stature physical, moral, mental and spiritual. That is the birthright

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of every child that cries for justice from the world as a whole. Ages of criminal neglect, despite protests by sensitive souls, humanists, thinkers and sages in every country and clime, have given place at long last to a gentler perception of juvenile justice and a chastened jurisprudence of the rights of the child."  

Bala (2004) argues "Historically, the rationale for establishing a juvenile justice system that was separate from the adult criminal justice system was the belief that youths are more vulnerable than adults, as well as more amenable to rehabilitation. It was believed that long-term social protection can best be achieved by concentrating resources on their rehabilitation and by protecting them from the glare of public accountability. At the very least, concerns about the corruption or abuse of youths placed in correctional facilities with adult offenders offered a justification for the separate confinement of youth."  

The exposition of jurists, reformists and criminologist about the theoretical understanding and the judicial pronouncements had an impact on laws relating to crime and punishment. Thus, emerges a need to treat children in conflict with law separately from adults in a less punitive way with emphasis on reformation and reintegration into the mainstream of the society.

3.3 Epistemological and Conceptual Understanding:

By and large juvenile justice is understood in the present context as preventing criminality among children. As societies have grown progressively more 'civilized', punishment has ostensibly given way to 'reform'. In the case of children particularly, criminology has veered from seeing them as offenders on the same scale as adults to seeing them as victims of circumstances. Nowadays in every nation efforts are made to correct and rehabilitate rather than punish a juvenile delinquent and transform him/her into a healthy and responsible citizen of society. Some of the institutions employed for this purpose include reformatory schools, probation periods etc. India is no exception to this worldwide trend of treating juveniles through a different approach.

Juvenile Justice is commonly understood as a notion of fairness and justice and also an alternative system of dealing with children through laws. However, it is rarely debated and gets marginalized in the Juvenile Justice debate. This also leads to Juvenile Justice degenerating from a means of care and protection into a means of oppression. The idea of fairness concerning children is the fundamental ideological premise of Juvenile Justice, which takes into account the mental and physical incapability of the child. Fairness and justice not only demands that their liability ought to be diminished but also ordains that they must be subjected to protective and restorative measures as are most conducive to their re-integration into society (Pande, 1999).
Juvenile justice is an umbrella term used to refer to a varied jurisprudential approach to delinquents and juvenile court is responsible for rehabilitation of juvenile. The juvenile justice system reaffirms its positive faith in fundamental human right and in the dignity and worth of individuals. It recognizes that children by reason of their physical and mental immaturity need special safeguards including appropriate legal protection. The ideological postulate of juvenile justice lay a considerable stress on the duty of society to provide adequate services to children especially who are in need of care and protection as well as welfare services (Kapoor 1991).33

The concept of juvenile justice originates with the understanding that the problems of juvenile delinquency and youth in abnormal situations are not amenable to resolution within the traditional criminal justice system and law. The juvenile justice system, therefore, is not designed to respond to the needs of young offenders only. The principal role of it is to render specialised preventive treatment for children and young person as a means of prevention, rehabilitation and improved socialisation.34 In its wider perspective it includes provision for the welfare and well being of children in need of care and protection, while the formal system of juvenile justice merely deals with those who are already in conflict with law. Juvenile justice implies fairness and justice and is therefore used to refer to social, psychological, emotional as well as juridical justice. India seeks to provide social and juridical justice to neglected and delinquent children (Ved Kumari 2004: 3-4). Thus the

33 Scheme of Preventing Social Maladjustment by Payal Kapoor in ‘Rights of the Child’ edited by A.L. Rahi deals with the issue of juvenile justice.

safeguard provided under statutes of the state to juvenile, at a broader level of understanding is protection of children. As has been stated above, both the term mostly used interchangeably in the legal and policy framework. Both ‘Juvenile’ and the ‘Child’ run concurrently in childhood. Therefore understanding juvenile behaviour is also about understanding the emotional, psychological and physical needs of child for purposes of legislation. In view of such seemingly virtuous division of childhood for categorisation often ends with contradictions and overlaps while formulating policies. It is in this regard essential to understand the way childhood is shaped under policies of the state and the discontents debated in various disciplines.

Freeman (1996) holds that childhood, like gender, is a social artefact and the adult-dominated society has an overwhelming say in defining it, but that alone would not lead to disappearance of childhood. Prof. Freeman draws more useful social scientific conclusions from Postman’s analysis in the following conclusion: “If childhood is a social construction then there are ‘childhoods’ rather than a single, universal cross cultural phenomenon”. This should lead us to accept the fact that the idea of childhood can be most meaningfully understood in a particular context along with order variables like class, caste, gender and culture. The second, and more profound, implication of realising childhood as a social artefact is that in the structuring and re-structuring of childhood by social institutions like the law, culture, religion, the economy, the media, educational institutions and practices need to be more carefully examined. Therefore, as opined by Prof. Freeman, there is a greater need to
take into account the part played by children themselves in the construction of their own social lives, the lives of others and societies in which they live.\(^3^5\)

The above analysis makes us believe that the period of childhood in the life of a person is both a social construction as well as legal formulation. It is surrounded with confusion as there is neither any similarity exists between social and legal construction, although both derive support for their understanding of childhood on the basis of human behaviour, physical growth and mental maturity, nor conforms to psychological definition. Broadly there is no uniformity of understanding in any of the discipline. Even there is no universal approach towards childhood under law. Within this contestation, the idea of treating children differently from adults in the criminal justice system emerged with a view to decriminalise children. This liberal formulation created a special category of children in the nomenclature of juvenile. It was mostly conceived in the domain of law with a purpose of special treatment in the criminal justice system and also in the discipline of psychology for understanding delinquent behaviour among children. As the present research deals with the legal aspect a further analysis would help tracing the growth of the idea for purposes of understanding the concept of juvenile justice.

The juvenile court as the major device for dealing with young offenders has roots in the English common law, which distinguished between adult offenders and the young, who could not sufficiently distinguish between right and wrong to be held responsible for their illegal actions. Even today, however, the

definition of juvenile delinquency is tautological: the delinquent is he who has been adjudicated as such by a court of proper jurisdiction, and juvenile delinquency is any act, course of conduct, or situation which might be brought before a court and adjudicated as such. Many juvenile cases are settled by the police without going to court, and others are handled by the court unofficially. Court procedures resemble regular criminal proceedings, but there are a number of important differences, some of which suggest constitutional questions. Guilt is not generally considered an issue; a greater effort is made to discover why the youth has come into the hands of the court, regardless of whether or not he is delinquent. In most juvenile court hearings, no counsel appears for the child, and case law holds that he is not entitled to counsel. In most states, the child cannot demand jury trial. Broadly, it can be said that due process is not strictly followed. Also, the validity of corrective measures can be questioned. The extent of juvenile delinquency and its recent growth suggest the desirability of a thorough and objective reconsideration of the means and the methods hitherto employed in dealing with young law violators (Tappan, 1949).36

The Seventh UN Congress on the Prevention of Crime and Treatment of the Offenders identified three approaches to Juvenile Justice as follows:37

i) Due Processes Model.


iii) The Participatory Model.

The Due Process Model places justice for juveniles in the protection of substantive and procedural rights of young persons involved with legal processes. The Welfare or parens patriae Model considers juvenile justice primarily in terms of intervention that foster the economic and social wellbeing of young persons in contact with the legal system. The Participatory Model views juvenile justice as requiring the active participation of the community in containing the harmful behaviour of young persons, the integration of marginalised youth or young offenders into the mainstream of social life and the minimisation of formal legal intervention (Ved Kumari, 2004:2).

Historically the rigours of juvenile justice system were slackened and mellowed down to a concept where the child was not to be punished but to be cared, protected, treated, developed and rehabilitated. The principle of mens rea and parens patriae were the culmination of the process which introduces separate institutional facilities. The treatment of juvenile delinquent in the light of adults in the matter of crime and punishment had a history of about 300 years. The process developed gradually and now has come to a more human approach for children through special schemes developed for them (Kapoor, 1991).

3.4 Construction of Childhood: Position of Juvenile:

For epistemological purposes it is necessary to understand the origin of the term juvenile. The word “Juvenile” has been derived from the Latin word juvenis, which means young. Although the word “child” and “juvenile” have been used interchangeably as both falls in the same age group, yet in common parlance they are different. While the child relates to the image of
"simplicity", "innocence" and "need of care & protection", the word "juvenile" is obdurate due to its relation with the court and the offence. A distinction can however be made between children who come before law alleged as, accused of or recognised as having infringed the penal law of the country in one hand and in the other children who come to court as a victim seeking protection. While the former is looked upon as delinquent in the later case the child is a victim. In case of juvenile offenders, there was a paradigm shift in the approach towards juvenile delinquencies with emergence of new philosophies on the cause of crime and method of treatment during the age of enlightenment and Industrial revolution (Pantenaude, 2006: 10).

The social and cultural construction of a child fundamentally differs from the definition conceived in the domain of law. This is paradoxical but bears significance. The social and cultural characterization of Child and construction of childhood differ on the basis of context and position of a person. In general, a person is viewed as a child of their parents without any age disaggregation through out their life. The parents often hold that it is my child or my children without making any difference on the basis of age or attainment of maturity of human life or as person goes older. Similarly, a person is referred as the child of a particular parent. No age matters when a person is identified

38 Prof R.Debre in Children in Tropics, pages 117-118, International Children's Centre holds that the Child is a modern invention.
39 Dr. Ben White, Professor of Rural Sociology, Institute of Social Studies, The Netherlands in "A World Fit for Children- Children and Youth in Development Studies and Policy" in Dies Natalies Address delivered on 9th October 2003 holds that there is no universal agreement as to when childhood ceases and adulthood begins.
40 In L'Enfant et la vie familiale sous l'ancien Regime, Paris (1960) Philippe Aries which was translated into English by Robert Baldick as Centuries of Childhood, London (1962) summarises the argument by holding that in medieval society the idea of childhood did not exist, this is not to suggest that children were neglected, forsaken or despised. The idea of childhood is not to be confused with affection for children, it corresponds to an awareness of the particular nature of childhood, that particular nature which distinguishes the child from the adult.
as child of any parents. Only a biological differentiation is used to indicate a person like "he is the son of" or "she is the daughter of" so and so.

In contrast, the legal construction of the definition of child is fundamentally based on age of the person. The conceptualisation of definition of child in the framework of law is a deliberate artificial attempt to categories persons on the basis of age to address a variety of factors which are essential for the State and its instrumentalities as common ingredient or elements for identification of individuals for purposes of vesting facilities as well as opportunities for governance of the country which is not viewed as a differential treatment or leads to inequality or discrimination among citizens and persons because the state addresses the individual needs or fixes responsibilities which can easily help law to identify categories of persons on the basis of their age.

Childhood can be viewed both as a concept and conception. Concept of childhood is reasonably believed to have been present in all societies whereas the conception of childhood is a modern creation. The conception of childhood rests with understandings like the maximum period of upper line of age, qualities among various age groups and human behaviour among age group etc.

In the words of Archard (2004:32) "A conception may not fix a firm upper limit and thus leave it vague when exactly a child becomes an adult. If, as seems reasonable, children cannot be thought of as legal agents in the same way as adults, then it is up to the law to draw the required distinction. There are several vantage points from which to detect a difference between children and
adults. These include the moral or juridical perspective from which persons may be judged incapable, in virtue of age, of being responsible for their deeds; an epistemological or metaphysical viewpoint from which persons, in virtue of their immaturity, are seen as lacking in adult reason or knowledge; and a political angle from which young humans are thought unable to contribute towards and participate in the running of the community”.

Aries is at least right to observe that the most important feature of the way in which the modern age conceives of children is an meriting separation from the world of adults (Archard 2004:37). Of course there are apparent exceptions even in the legal definition of Child based on age of a person and there are examples of flexible approach of law like, various laws defines child on the basis of different age group and there is no uniformity in legal definition, sometimes law itself confers the status of child to a person in the later-stage of life to locate and identify persons and individuals as child (being the son or daughter of certain individuals). Such deviation within the law is essential for various purposes like to confer parentage, establish family lineages, inheritance, and succession and to secure title or to disentitle a person from property by examining of ancestry or genealogy. Thus the legal construction of child is essentially made to create a segment of persons or individuals who can be differently viewed in laws either for purposes of giving them rights or to fix their capacity being individuals.
In the modern day law, especially the UN Convention on the Rights of the Child, 1989 a person is considered as a child who is below 18 years of age. Actually of course there is no universal agreement as to when childhood ceases and adulthood begins. In Indian context there are various definitions of Childhood and Child in different laws. In the post ratification of UN Convention on the Rights of the Child it is increasingly appear that the laws are brought in conformity with the Convention by making the period of childhood up to 18. By and large in the contemporary society the legal definition in both international treaty bodies and municipal laws construe child as a person below 18 years of age.

In another dimension a person in the early stage of life is also known in various nomenclatures like baby, kid, ward, child, minor, infant, adolescent, juvenile and young child etc. Mostly such nomenclatures are conceptualised for the purpose of law and policy to differentiate various segments of persons. In societal order hardly anyone refer their child as juvenile, a minor or adolescent, but very often the term baby and not so frequently kid as well as infant and young is put to use. In similar way every child is known by name given by their parents and families, whether adoptive or biological which is recognised by the State through a process of Birth Registration or other

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43 Indian Laws like Indian Majority Act while confirms 18 as age of majority different ages are prescribed in Indian Penal Code under Section 82, 83, 317, 363-A – 4(b), Factories Act, Minimum Wages Act, Indian Contract Act etc.
44 For practical purposes policy makers and practitioners do break the category down further into Pre-Conception, Pre-Natal, In-fancy, Early Childhood Middle Childhood etc.
forms of recognition of Identity of persons by the State. It is worth noting that at least 6 different notions are included in the definition of the child in Indian laws such as minor, ward, infant, child, adolescent and juvenile. These concepts indicate age dis-aggregated groups for various policy purposes. The Indian Constitution as well as the Indian laws has not evolved a common principle regarding the maximum age limit up to which childhood can be claimed. Among the variety of nomenclature of persons in their early stage of life the term child is universally accepted as a common identity of those persons. The UN Convention on the Rights of the Child also exemplifies by making the title of the Convention as Rights of the Child.

Locke described those as minors who, lacking a certain amount of reason and understanding can neither be free as adults or as their equals. Children ought to be protected. Therefore, to them as much freedom as adults would be to harm them. He observed: "To turn him loose to unrestrained liberty, before he has reason to guide him, is not the allowing him the privilege of his nature, to be free; but to thrust him out amongst Brutes, and abandon him to a state as wretched, and as much beneath that of Man as theirs". 45

Even the ardent classicists, who treated all human beings as rational calculating creatures, acknowledged that children were to be exempt from the demands of utilitarian principles and subjected to different standards of moral evaluation. Jeremy Bentham, in An Introduction to the Principles of Morals

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and Legislation, described infancy as a state during which an individual is not
to be regarded as capable of calculating actions.46

Similarly, in his 19th century essay On Liberty, John Stuart Mills wrote: “It is
perhaps hardly necessary to say that this doctrine is meant to apply only to
human beings in the Maturity of their faculties. We are not speaking of
children or of young persons below the age which the law many fix as that of
manhood or womanhood. Those who are still in a state to require being taken
care of by others must be protected against their own actions as well as
against eternal injury.”

Rawls (1971), seems to adopt a somewhat similar stance to that taken by the
earlier thinkers on the lack of experience and less developed psychological
and physical capabilities of children. But his treatment of the subject goes
much deeper because he related these diminished capabilities with degrees
of autonomy the child can be said to enjoy and the demands it raises on the
parents and the state to protect it against its lack of reason and
incompetence. Rawls concedes to parental intervention in the lives of the
children, but only till such time when their autonomous capabilities remain
impaired.

According the Rawls (1971), children from birth to the age of majority
gradually develop their decision-making ability. Therefore, as children become
more competent, parental interference ought to diminish. He argues that
since the child is not in a position to make an autonomous decision, “we try to

46 See, supra.
get for him the things he (the child) presumably wants whatever else he wants. One helps children obtain primary goods such as wealth, opportunity, self-respect and other things that would make them capable of exercising autonomous choice. Children therefore have not the same liberty rights as adults, by have higher protection rights based on need”.

Matthews (1996) explains that the simplest theory as to what a child is we could call the little person theory of childhood. According to that theory, a child is just a very small, because very young human being. There is a significant size difference between children and other human beings. Children are larger than infants but smaller than adolescents and adults.47

3.5 Juvenile Justice in the Rights of the Child Perspective:

The case for the protection and promotion of the rights of the child is so strong that it almost argues for itself. It is an instance of what lawyers call res ipsa loquitur meaning “the thing speaks for itself”. Imparting meaningful rights to children so as to create an environment conducive to their growth and well being can no longer be regarded as a matter of government largesse but a fundamental social requirement. How a State treats its own children has today become a legitimate concern of International Law. International developments in the realm of rights of the child have resulted in an increased awareness as to the significance of these rights at the domestic level and have been used as a starting point in the pursuit to eliminate the worst forms of deprivations that characterise the lives of a vast majority of children in our society.

Juvenile Justice cannot be considered, in the modern day society in isolation. It is viewed as a fall out of recognition of rights of children. It is in this regard important to emphasize that the subject of Rights of the child has assumed great significance in the contemporary society. With the adoption of Convention on the Rights of the Child in the year 1989 by the United Nations General Assembly and it has witnessed remarkable progress in recent times in several parts of the world as it is almost a universally ratified convention. India has ratified the Convention in the year 1992 as a State Party to it. A country can become a State Party to the Convention either by ratification or accession. Both of these acts signify an agreement to be legally bound by the terms of the Convention. A country in favour of the convention signs shortly after it has been adopted and follows up with ratification when all procedures required by domestic law have been fulfilled. India has ratified the Convention as a State Party in 1992. As required under the Convention each State Party has to bring their domestic laws in conformity with the provisions of the Convention. The State Parties are also required to take appropriate measures for reform in their legislative and administrative mechanism making it conducive for the child right framework. India also made effort to bring its administrative, judicial mechanisms and laws in conformity with the provisions of the convention.

The United Nations Convention on Rights of the Child offers a vast array of rights which are categorized under four divisions like Survival, Development,

50 Article 47 and 48 of the Convention on Rights of the Child.
51 The domestic laws of each country requires some procedures to be followed for entering into treaty bodies at the international level and UNO.
Protection and Participation Rights of Children. The subject specific rights are covered under various Articles of the Convention between 1-40. The broader categories of rights are made subject specific rights like education, health, nutrition, parental care, identity, situation of emergency, freedom from economic exploitation and rights of children who come in conflict with law for which the UN Convention desires appropriate measures of administrative and legislative arrangement by the State. While conferring rights on children the convention also made specific provision for children who come in conflict with law under Article 40 which is required to be read with Article 37 as both are interwoven with each other. In fact in a broader context most of the rights under various articles of the convention have a positive bearing on Article 40 like the Registration of Birth under Article 7, Right to Identity under Article 8 which is essential as a proof of age to seek relief for child where there is a dispute over age, Parental care under Article 9 and 10, Right to be Heard under Article 12 and for protective measure under Article 19. There are many things to say about the very many rights given to children by the CRC. Article 2 affirms the principle of non-discrimination of any kind and Article 6.1 accords to every child the 'inherent right to life'. However, two other articles in the CRC are worth commenting on. These underpin everything else that is said in the Convention. However, the import of each of the articles is far from clear and, moreover, they are in tension with one another. The two articles in question, first require the promotion of the child's best interests and, second,

52 There are 54 Articles in the UNCRC out of which from 1 to 40 are considered as Substantive Rights where as Article 41 to 54 are Procedural Provisions such as accession, ratification, country reporting and constitution of UN Committee on the Rights of the Child.
accord the child’s views on matters affecting its interests a certain weight (Archard, 2004:61).

This growth of binding international law\textsuperscript{54} necessitates special treatment of children who are accused of, alleged as or recognized as having infringed the penal law of the country. This is in fact the most significant defence in support of juvenile justice in the present day modern state. Protection of children in conflict with law is a right of child as envisaged under the Convention which the State Parties are obliged to perform.

Besides the obligation under UNCRC, throughout the globe, in almost all modern States\textsuperscript{55} a process of reform in the laws and policies has started giving a special status to the child so that children can receive a differential treatment by the State while dealing with its subjects. This global phenomenon of treating children differently from adults originates with the understanding that children as a class are innocent, immature both physically and mentally as well as vulnerable to world outside.\textsuperscript{56} Even Childhood was described in Article 25(2) of Universal Declaration of Human Rights as a 'Status entitled to special care and assistance'.\textsuperscript{57} Modern States regard that a child or children cannot survive and develop unless protection is afforded

\textsuperscript{54} Binding, or “hard law”, comprises treaties like Convention and Covenants that carry obligation for those states that officially notify their agreement to be bound by ratifying or acceding to them. Here binding law refers to United Nations Convention on the Rights of the Child, 1999.

\textsuperscript{55} Like Canada and USA who have a democratic history and diverse population, Chile and Colombia in South America, United Kingdom and Germany in Europe, In Middle East Israel and Syria, India and Japan in Asia and Australia all these Countries have contemplated some or other forms of special provision for children at least for juvenile.

\textsuperscript{56} This view of Child as Innocent and Immature even recognised in the earlier UN Declaration on the Rights of the Child of 1959 which is retained in the 1989 UN Convention on Rights of the Child.

\textsuperscript{57} Article 25(2) of Universal Declaration of Human Rights describes childhood akin to European and American legal tradition.
through special measures in the legal and institutional framework.\textsuperscript{58} In this process of reform, children are, by and large, seen as right holders and the adults in the family especially parents\textsuperscript{59} both father and mother are perceived as duty bearers. In case of failure of duty bearers to preserve positive identity and protection of the children, the State stands as ultimate guardian as {	extit{paren partie}}. In this process of reform, children are separated from adults and provided with a differential treatment in the criminal justice system as well.

The UN Convention on the Rights of the Child is a significant milestone towards establishing international standards for judging domestic laws and the actual conduct of States within their own territories.\textsuperscript{60} The Convention on the Rights of the Child reflects a new vision for the child. Children are neither the property of their parents nor are they helpless objects of charity. They are human beings and are the subject of their own rights. The Convention offers a vision of the child as an individual and as a member of family and community, with rights and responsibilities appropriate to his or her age and stage of development. By recognising children's rights in this way, the Convention firmly sets the focus on the whole child. Children are individuals. They have equal status with adults as members of the human family. Children are neither the possessions of parents nor of the state, nor are they mere people-in-the-making.\textsuperscript{61} Governments in the contemporary world are both legally and morally obliged to recognise the full spectrum of human rights for all children.

\textsuperscript{58} The Indian Constitution in its Fundamental Right Chapter under Article 15(3) makes special provision for Children which is largely seen as an affirmative and positive discrimination clause.
\textsuperscript{59} The UNCRCD recognises Parental Care as a matter of Right under Article 3, 5, 9 and 10.
\textsuperscript{60} John Barnavas Lecture delivered by Arun Jaitly being hosted by National Institute for Public Co-operation & Child Development, New Delhi.
Using the Convention's definition of children as all human beings, being below the age of 18, a large portion indeed of the world's population must be considered. Thus, a separate construction of childhood has been construed as legal definition, considering age of a person as a method of differentiation which is fundamentally different from the social and cultural construction of childhood.\textsuperscript{62}

Some legal instruments do see children as fundamentally different from adults. They are entitled to the possession of basic rights. The United Nations Convention on the Rights of the Child (CRC) is just such an instrument. It represents children as the subjects of rights. Children are recognised in a major international covenant as moral and legal subjects possessed of fundamental entitlements. They are acknowledged as having agency and as having a voice that must be listened (Archard 2004:58). The concept of child rights that has been accepted internationally today does not go so far as to reject the concept of adult rights and duties with regard to children. It rather seeks to balance the perspective of child rights with a perception of adult responsibilities, rights and duties that diminish and alter with the evolving capacities of the child as he/she grows from childhood to maturity (Goonesekere 1998:23).

Recognition of children's rights involves imposition of responsibilities on parents, communities, the state and children themselves. The creation of

\textsuperscript{62} In the Philosophy of Childhood Gareth B. Matthews explains that the simplest theory as to what a child is we could call the little person theory of childhood. According to that theory, a child is just a very small, because very young human being. There is a significant size difference between children and other human beings. Children are larger than infants but smaller than adolescents and adults. See page 22, Theories and Models of Childhood:2, The Philosophy of Childhood, 1996, Harvard University Press, Massachusetts.
these responsibilities suggests that law and legal systems will be used so as to impact on social practice and strengthen the ongoing efforts on behalf of children (Goonesekere 1998:17).

The Convention did not introduce a purely adversarial concept of child rights, but tried to maintain a balance between the concept of a child's rights to liberty and personal autonomy, and a protective approach that accommodated adult and state responsibility for children in the familiar role of parent, guardian or parens patriae (Goonesekere 1998:28). Discussions of the substantive articles of the Convention will show that its value base prevents children's rights from being used to launch an aggressive campaign for personal autonomy so as to undermine family privacy and the community's and state's role in the care and development of children (Goonesekere 1998:29).

The framework of rights articulated in the Convention does not entail a departure from the basic concepts of family privacy and the state's role as parens patriae in the care and development of children. The Convention confers (a) rights of survival and development, (b) protection from abuse and exploitation, and (c) participation rights. The first two fall within the traditionally accepted area of child welfare, but are given a new dimension. Survival and development-the traditional areas for policy planning and intervention in many countries- are recognised, but equal weight is given to the aspect of protection. There is a movement away from the perception of the child as a beneficiary of privileges conferred at the discretion of parents, the family, the
community and the state towards a perception of the child as a repository of legal rights under international law (Goonesekere 1998:28).

This Convention confers a wide range of Rights on Children making them the right holder and parents, family and state as duty holder towards them. Within the broader framework of Rights of Child an epitomized category of person who come in conflict with law are termed as juvenile in the laws of most of the modern state including India whereas many laws merely pronounces such categories of children as children in conflict with law63 including the UNCRC. Thus protection of children who are in-conflict with law is also termed as a Right of the Child. Justice to Juvenile is a Right of every Child who is alleged as an accused or recognised as having infringed the penal laws. This is the fundamental understanding in the present context in the larger consideration of the United Nations Convention on the Rights of the Child.

In view of the above most of the literature on Rights of Child primarily deals with the different aspect and dimension of the Rights of Child in the context of adoption of the United Nations Convention on the Rights of the Child. The growth of literatures is mostly made around the theme of Rights of Child as expressed in the Convention.64 In case of Juvenile Justice, most of the discourses in the contemporary society revolve round the ideal of rights of the child.

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63 While the UNCRC only used children in conflict with law, in Canada the title of law is Young Offenders Act and in majority of States including India the title is Juvenile Justice Act.
64 For example Savitri Goonsekere in her book Children, Law and Justice – A South Asian Perspective critically evaluates the assumptions underlying current national legal systems. She discusses the principle of Best Interest of Child and elucidates the key rights viz. Survival, Development, Protection and Participation.
4. Historical Growth of Indian Juvenile Jurisprudence

In order to appreciate the development of juvenile justice system in India it is advantageous to comprehend how the legislative rule making started in India even before its independence as a modern State. The Charter Act 1833 enacted by the British Parliament vested for the first time legislative power in a single authority, namely the Governor General in Council. By virtue of this authority and the authority vested under him under section 22 of the Indian Councils Act 1861 the Governor General in Council enacted laws for the country from 1834 to 1920. After the commencement of the Government of India Act 1919 the legislative power was exercised by the Indian Legislature constituted there-under. The Government of India Act 1919 was followed by the Government of India Act 1935. With the passing of the Indian Independence Act 1947 India became a Dominion and the Dominion Legislature made laws from 1947 to 1949 under the provisions of Section 100 of the Government of India Act 1935 as adapted by the India (Provisional Constitution) Order 1947. Under the Constitution of India, which came into force on 26th January 1950, the legislative power had been vested in Parliament to enact laws having federal significance whereas Assemblies of the State are responsible to legislate in matters affecting them in accordance with the constitutional provision of division of legislative power between Union and State.

Law Reform has been a continuing dynamics process particularly during the last 300 years or more in Indian history. In the ancient period, when religious and customary law occupied the field, reform process had been ad hoc in nature and not institutionalised through duly constituted law reform agencies.
However, since the third decade of the nineteenth century, Law Commissions were constituted by the British Government from time to time and were empowered to recommend legislative reforms with a view to clarify, consolidate and codify particular branches of law where the Government felt the necessity for it. The first such Commission was established in 1834 under the Charter Act of 1833 under the Chairmanship of Lord Macaulay, which recommended codification of the Penal Code, the Criminal Procedure Code, and a few other matters. Thereafter, the second, third and fourth Law Commissions were constituted in 1853, 1861 and 1879 respectively which, during a span of fifty years contributed a great deal to enrich the Indian Statute Book with a large variety of legislations on the pattern of the then prevailing English Laws adapted to Indian conditions.

After independence, the Constitution of India with its Fundamental Rights and Directive Principles of State Policy gave a new direction to law reform geared to the needs of a democratic legal order in a plural society. Though the Constitution stipulated the continuation of pre-Constitution Laws (Article 372) till they are amended or repealed, there had been demands in Parliament and outside for establishing a Central Law Commission to recommend revision and updating of the inherited laws to serve the changing needs of the country. The Government of India reacted favourably and established the First Law Commission of Independent India in 1955 with the then Attorney-General of India, Mr. M. C. Setalvad, as its Chairman.

This brief analysis of legislative history in India with the process of law reform both in colonial and post-independence period sets a cue to further discuss
the growth of law regarding juvenile justice which started in the late 19th century. This development has been attributed to 5 phases by reference to legislative or other landmark developments (Ved Kumari, 2004). They are (a) prior to 1773 (b) 1773-1850, (c) 1850-1918, (d) 1919-1950, (f) post 1950.

Prior to 1773 various personal laws for religious communities provided for the maintenance of children. Parent and family had the primary responsibility to bring up their children and responsible for taking care of their children. The second phase between 1773-1850 saw opening up of school for reformation of neglected and delinquent children and encouragement of apprenticeship which provided ground for Apprentice Act 1850. Between 1850-1918, in the third phase several legislations were enacted in relation to children like the Female Infanticide Act 1870, the Vaccination Act, 1880, Guardianship and Wards Act, 1890. The Apprentice Act 1850 emerged as the harbinger of social legislation for children. Similarly, the Factories Act 1881 laid down special provision for child labour and the Indian Penal Code 1860 made the provision of doli incapax of children below 7 years\(^{65}\) and giving benefit to children between 7 – 12\(^{66}\) relaxation on the ground of mental maturity in understanding the act. The formation of Indian Jail Committee in 1864, after passing of the Whipping Act could also been seen where change in policy and administration was sought necessary. Reformatories were among the agenda connected to the jail administration and education was considered to be method of reformation. The review of legal history concerning children provides an understanding that the laws made under British regime were

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\(^{65}\) Section 82 of Indian Penal Code exempts children below 7 years from criminal liability.

\(^{66}\) Section 83 of Indian Penal Code holds that act of child above 7 and under 12 is not an offence on the consideration that insufficient maturity of understanding to judge the nature and consequence of once conduct.
mostly considered children as separate class of person for whom protection under legislation was necessary for their welfare. Therefore, most of the laws intended at segregation of children from adult. The notion of segregation mellowed down to jail administration, which laid the foundation for reformation of children involved in delinquency.

The legal history also witnessed emergence of two types of approaches of law, in the first instance, humanitarian provisions had been created like in case of labour legislations the laws made it a point to provide a conducive work environment whereas in the second instance reformist laws were enacted for children so that social stigma attached could have been treated in different approaches. An initiative for protection to children in custodial mechanism had also started at the fag end of 19th century as visible from the Reformatory Schools Act 1897. The establishment of Reformatory School under the said Act probably the first step to replace prison with school. These were meant for the male delinquent children up to the age of 15 who were sentenced for an offence punishable with transportation or imprisonment for life. They did not serve the purpose of reformation or rehabilitation of the young offender. They were no more than custodial detention institution. These institutions were housed in a prison building and were under prison administration. They just segregated the young offenders from adult offenders. The youthful offenders were sent there after they were sentenced for the offence. The order for their placement in the school was based on the nature of the offence and not upon the need of intensive training to reform the
offender. In 1929, the Bombay Borstal School Act was passed. When an offender is found guilty of an offence for which he is liable to be sentenced to transportation or imprisonment, or is liable to imprisonment for failure to furnish security under Chapter VIII of the Code of Criminal Procedure, 1898, whether any previous conviction is proved against him or not, and it appears to the court that the offender is less than 16 years that by reason of his criminal habits or tendencies or association with persons of bad character it was expedient that he should be subject to detention for such term and renders such instruction and discipline as appears most conducive to his reformation, it should be lawful for the court, to pass an order for the detention of the offender in a Borstal School for such term, not being less than 3 years nor more than 5 years, as the court thinks fit.

Although Juvenile Justice Act, 1986 is considered to be the first central legislation on the subject of justice to juvenile, similar conceptual reference can be traced from the Probation of Offender’s Act 1958 (Act 20 of 1958) which was initially drafted in 1931 as a bill and circulated it to the then local Govt. for their views. However, owing to preoccupation with other more important matters the bill could not be proceeded with. Later in 1934 the Govt. of India informed provincial Govt. that there was no prospect of having a central legislation. However, it was made clear that there would be no objection to the provinces undertaking such legislations themselves. A few provinces accordingly enacted their own Probation laws. It was revealed during post-independence period that most of the states did not have
separate Probation law. Where it existed there was no uniformity among the provincial law. In view of the widespread interest in the probation system in the country the need for a law had been re-examined, in the premises that reformation and rehabilitation of the offenders as a useful and self reliant members of society without subjecting them to the deleterious effects of jail life, and proposed to have a central law on the subject which should be uniformly applicable to all the states. Accordingly the Probation of Offender Act proposed to empower courts to release an offender after admonition in respect of certain specified offences where the offender found guilty of having committed an offence not punishable with death or imprisonment for life. This Act made a special provision in respect of offenders under 21 years of age putting restriction on their imprisonment in Section-669.

By the time the Probation of Offenders Act was enacted by Indian Parliament in 1958, many states in India had their own legislative arrangement under the title of Children's Act70. Under those laws state courts had been constituted and were entrusted with the power of discretion while dealing with persons below the age of 21 through measures like parole opportunity for reformation. In some of the Acts the age of the juvenile was fixed at 18 like the Children Act of West Bengal, Tamil Nadu, Haryana. The Haryana Act only raised the age of the female child to 18 years. The Saurashtra Children Act 1954; The West Bengal Children Act 1959; The Children Act 1960; The Madras Children Act 1920; and Haryana Children Act 1974; the Central Children Act and the Haryana Children Act have raised the age limit for a female child only. The

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70 In the provinces of Bombay and Madras Children’s Act were enacted separately.
Madras Children Act provides for separate schools for delinquent and neglected children, senior certified schools and junior certified schools. The senior certified schools were meant for training of youthful offenders whereas the junior certified schools are meant for protection and training of children. The classification was allowed by two more Acts i.e. the Bengal Children Act 1922 and the Cochin Children Act. It has again been adopted by the latest three Acts: The West Bengal Children Act 1959; the Children Act 1960 and the Haryana Children Act 1974. The West Bengal Children Act provides for three types of schools; Borstal school for delinquent children above the age of 14 years, and Industrial schools for neglected children above the age of 14 years; Reformatory schools for the reception of delinquent and other children who have not attained the age of 14 years. Separation of delinquent and other children under this Act is effected above the age of 14 years only as all younger children are considered to be in need of care and protection.\(^7\)

The Children Act, 1960 [Act No. 60 of 1960] was enacted by Parliament in the Eleventh Year of the Republic of India to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the Union territories. In this Act child means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.

In view of divergent laws, the Supreme Court suggested that in stead of each state having its own Children Act, different in procedure and content, it would

be desirable that a uniform legislation for the whole of the country. The decision of Supreme Court, in the case of Sheela Barse vs. Union of India held that instead of each State having its own Children's Act, different in procedure and content, there should be a Central Legislation on the subject to bring uniformity in regard to various provisions relating to juveniles in the entire country had fuelled the fire of thought for review. The review could indicate that the justice system available for juveniles was inadequate and at the same time it was thought that to fill the procedure and mechanism of administration of justice both for adult and the children in the same barrel would be futile for securing justice to the children in conflict with law. That had necessitated of making a uniform juvenile justice system through out the country with adequate provisions of reformation and rehabilitation for the juvenile delinquent in keeping the best interest of such children in mind. With the changing of the time and to harmonize the objects of international standards regarding to juvenile justice system, it was very imminent to put a thought for reviewing the Children's Act 1960.

The Juvenile Justice Act 1986:

The Juvenile Justice Act 1986 was the first central law, which provided a uniform legal framework for the entire country except Jammu and Kashmir. The Juvenile Justice Act addressed both neglected children as well as delinquent children with a fundamental distinction between these categories of children considering one category as delinquent and the other as the product of misfortune. Thus, the Juvenile Justice Act introduced a new concept, which

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72 Sheela Barse v. Union of India, AIR 1986 SC 1773.
brought changes in definition, separation of judicial forum, procedural aspect and dispositional options for dealing with delinquent and neglected children. It also created a two tyre system for processing delinquent and neglected children so also established separate institutions providing shelter both the categories of children (Hartjen and Kethineni, 1992). At a processual level the law suggested less punitive legal terms in place of a punishment-oriented vocabulary, for example the word trial was substituted with adjudication. The maintenance, welfare, training and education were replaced with treatment and development. Whereas on the surface these changes appear to be cosmetic, they show a general trend towards a social welfare approach. The changes were intended to portray a shift in philosophical thinking.74

The first and foremost intent of the law was not to lodge the juveniles with hardened criminals in the common jail with the strong perception that due to immaturity of mind the children were vulnerable to be influenced by the die hard criminals. Need was also felt for the larger involvement of informal organization including voluntary organization and community based welfare agencies for the care, protection, treatment, development and rehabilitation of such juveniles. In order to avoid the consequence of disaster of lodging juvenile and adult criminal in same jail or police lockup; to provide for a child friendly approach towards the prevention and treatment of juvenile delinquent; to establish special norms and standards for the administration juvenile justice in terms of investigation and prosecution, adjudication and disposition and care, treatment and rehabilitation; and render justice to the delinquent,

juvenile courts would function in a meaningful manner; the Juvenile Justice Act, 1986 was enacted and came into force on October 2, 1987.

**Drawbacks:**

The Juvenile Justice Act 1986 aimed to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles. However, certain glaring drawbacks still continue to mar its implementation:

(1) **Failed to meet UN Standard Minimum Rules:** Whatever the principles the Juvenile Justice Act 1986 had embodied, the act lost the vision of the standard prescribed in the United Nations Standard Minimum Rule for the Administration of Juvenile Justice, 1985. The Act had made discrepancy relating to fixation of age determining the category of juveniles. As defined in the Act, 'juvenile' means a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. The Act was primarily concerned with delinquent juvenile and neglected juvenile. 'Delinquent Juvenile' meant juvenile who had been found to commit an offence. 'Neglected Juvenile' broadly covered children in begging, children without any means of subsistence, children without parental care, children living in prostitute homes and sexual abused or economically exploited children.

(2) **Not Comprehensive:** Although the Juvenile Justice Act 1986 was highly innovative and least punitive in nature, this could not be comprehensive enough to address many closely attached issue. There were numerous constraints and most important of those, (i) restricted definition of delinquent
juvenile (ii) lack of infrastructural, human and technical support resources and institutions relating to implementation of the Act.

(i) Restricted Definition of Delinquent Juvenile: As regards to first, the definition of a “delinquent juvenile” given in section 2 (e) was very restricted to juvenile who was found to have committed an offence. In other words, act did not intervene unless child had been accused of an offence or criminal liability. The provision of the act did not take into consideration the contributory elements of abject poverty, separation of parents, broken homes or others, which would lead the children vulnerable to be conflict with law. The propelling activities in concomitant to the compelling socio-economic circumstances may not be termed an offence in the formal sense, but the exclusion of such activities would have dire consequences for such children.

(ii) Lack of Infrastructural, Human and Technical Support Resources and Institutions: The second problem had been more evident by the observation of the then Chief Justice, P.N. Bhagwati, in the case of Sheela Barse vs. Union of India (AIR, 1986, S.C. 1773), in reference to Article 39 (f) of the Constitution of India. To quote the observation, “it is a matter of regret that despite statutory provisions and frequent exhortations by social scientists there are still large number of children lodged in different jails of the country. Even where children are accused of offences, they must not be in jails. It is no answer on the part of the States to say that it has not got enough of number of remand homes and observation homes or other places where children can be kept and that are why they are lodged in jails. It is also no answer on the part of the State to urge the wards in the jail where the children are kept are
separate from the word in which the other prisoners are detained. It is the atmosphere of the jail, which has a highly injurious effect on the mind of the child, estranging him from the society and breeding in him aversion, bordering on hatred against the system, which keeps him in jail. We would, therefore, like once again to impress upon the State Government and they must set up remand homes and observation homes where children accused offence can be lodged, pending investigations and trial". Besides the complete absence of NGOs and civil society participations in the juvenile justice system, there were also serious flaws in the management of children’s homes and the Act could not be implemented in true norms and spirit through out the country for decade and half.

Further, the ratification of the Convention on the Rights of the Child by India in 1992 and changing social perceptions of judiciary towards criminality by children particularly in the progressive judgment like Amrutlal Someshwar (1994, 6: SCC, 488), Ramdeo Chauhan (2000, 7: SCC, 455) and Arnit Das (2000, 5: SCC, 488) and the urgency for a more child friendly juvenile system were some of the factors that propelled the cultivation for the drafting of juvenile justice (Care and Protection of Children) Act, 2000.

Finally, the Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted and was enforced with effect from April 1, 2001 and as a result the J.J. Act 1986 has been repealed. Both the 1986 and 2000 Act concerning Juvenile Justice have a common objective of bringing the Indian law in conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice adopted in 1985. The 2000 Act also
mentions the United Nations Rules for the Protection of Juvenile Deprived of their Liberty 1990. Thus both the legislation has made it clear that the intention of juvenile legislation is that juveniles are not to be incarcerated in jail pending enquiry or conviction. In India juvenile legislation since its inception has emphasised that a child charged with commission of a crime should be dealt with differently from an adult offender. The focus is on rehabilitation rather than punitive action, therefore, a separate adjudicating mechanism and manner of disposition has been envisaged to meet this objective. The Juvenile Justice Act 1986 which repealed Children’s Act prevailing in different states had categorically included as one of its statement of objects and reasons, to lay down a uniform legal framework for juvenile justice in the country so as to ensure that no child under any circumstance is lodged in jail or police lockup. This basic tenet of the juvenile legislation continues in the Act presently in forced when it states that a child pending enquiry must be kept in an Observation Home and that on guilty being proved the child must be dealt with under the provision of Section 15(1) of Juvenile Justice Act 2000 which provides for various modes of disposition including incarceration but in a special home\textsuperscript{75}.

5. Methodology

This is an empirical research based on field work (refer Chapter- III for empirical work). It mainly followed observation\textsuperscript{76} method to understand the processes involved in adjudication and disposal of cases in juvenile justice institutions. It also used interview method to seek the views of personnel.

\textsuperscript{75} Adenwalla. M, Beyond the Protection of Juvenile Legislation, Page 76-78, Combat Law, June-July 2004.

\textsuperscript{76} The technique of observation was employed in course of hearing of the cases in the Juvenile Justice Board.
engaged in these institutions in various capacities like the police officials, lawyers, members of juvenile justice institutions and supervisors of Homes established under the Act. Besides it employed the technique of reviewing case records of Juvenile Justice Institutions like Juvenile Justice Board and Child Welfare Committee to collect vital information like age of child or juvenile, nature of crime, date of arrest, order passed by institutions and the inquiry report of Probation Officer or Social Worker about the background of the child. The researcher being a lawyer participated in course of hearing of cases which contributed to the process of observation. Secondary information like reports, data and statistics had been used for corroboration of fact.

For the purpose of field research, the institutions of juvenile justice system in the District of Cuttack, in the State of Orissa had been covered. The Research focuses only on those subjects who have come before the Juvenile Justice Board as juvenile in conflict with law or before Child Welfare Committee as child in need of care and protection.

The methodology includes observation during the proceeding in the Juvenile Justice Board and Child Welfare Committee, interview with Members of both the institutions, interaction with juveniles and their family members, discussion with Public Prosecutor appointed especially for Juvenile Justice Board\textsuperscript{77} and Senior lawyers of Orissa as well as visit to various institutions established under the Act. A thorough discussion with NGOs working on juvenile justice

\textsuperscript{77} I am deeply obliged to Bikash Mahapatra, a former Public Prosecutor who served the Juvenile Justice Court constituted under JJ Act 1986 for 3-years who had given me enough insight into the functioning of the Court and the procedural aspect.
was also another major dimension of the study. The discussion with NGOs was further explained in a workshop on Juvenile Justice System in Orissa attended by representatives of NGOs who have been appointed as members of Juvenile Justice Board and Child Welfare Committee of various districts including Cuttack District.

Period:
The field research was spread over in different phases from January 2006 to December 2007 completely over two years with a further extension of period up to end of 2008 only for purposes of reviewing the progress and action taken on cases. Prior to it a pilot study was conducted for a period of three months between August to October 2005. During the field research in 2006 and 2007 I have observed the proceedings in the Juvenile Justice Board. The case records were referred and followed up during this period. Similarly proceeding of Child Welfare Committee was also observed. The records of Child Welfare Committee were verified and matters were followed up as it progressed. Information from the Govt. was also collected for this period.

Universe of Research:
This research work has focused on Cuttack district of Orissa. The major institutions of juvenile justice system such as Juvenile Justice Board and Child Welfare Committee which were studied are based in Cuttack city. These institutions were

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78 My discussion with the Counsels of Committee for Legal Aid to Poor (CLAP), a legal support human right group, representatives of Basundhara, Open Learning System and the Coordinator of Child Line, a telephone assistance for children in distress helped me to reach out to the children and a comprehensive picture about juvenile justice system.

79 This workshop on Juvenile Justice System in Orissa was organised at the behest of Committee for Legal Aid to Poor (CLAP) on 27-28 December, 2005. A complete workshop report titled "Juvenile Justice System in Orissa" was prepared and published by CLAP.
visited approximately seventy times over two years. Two numbers of Home for Children which are recognised as Children's Home by Government are based in outskirts of Cuttack city, mostly in rural areas. The researcher visited these institutions on two occasions separately. The Home for juvenile in conflict with law is based in Berhampur which 200 km away from Cuttack city. The researcher paid visit to it with prior permission of the Superintendent twice. The researcher also visited 31 police stations which took almost 23 days. The present research is an engagement with juvenile justice institutions and agencies. Consequentially, it makes an objective study of the subjects of law consisting of Juvenile in conflict with law and Children in need of care and protection based on case records of each of the subject covering a total number of 55 case records on juvenile and 34 cases of children. These case records provided information that a total number of 112 juveniles were made party under 55 cases. All the cases that had come before the Juvenile Justice institutions had been covered as the universe of study.

Area Covered:

Although there was a plan to make a comparative study of juvenile justice system in two set up by covering Cuttack district in Orissa and New Delhi, the national capital of India, but for time factor finally it is restricted to Cuttack district only. Cuttack has been identified for the reason that it is the erstwhile capital of Orissa, a major economic centre and trade hub, the Orissa High Court is based in the city and for the primary reason that it comprises a population which predominantly rural at the same time in the city of Cuttack the populace is educated and urban centric. So it is a conglomeration of rural and urban society. As the research proposed to explore

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80 I have observed almost all cases during production of juvenile and child. It was possible to know about the production because I am a lawyer and due to close association with the institutions.
the juvenile justice system in both urban and rural situation to review the actual position of enforcement of law, therefore, Cuttack district had been identified for field research. Besides it is the place of practice of the researcher as a lawyer for which the researcher decided to undertake this area as the researcher had previous knowledge about the functioning of juvenile justice institutions.

Most of the information was collected through the means of the Right to Information Act 2005; hence the data are authentic to the extent of believing the correctness of official data.

Another significant aspect for selection of Cuttack District is most of the research in India relating to juvenile is made mostly in advanced cities and metropolis (Kethineni and Klosky: 2000)\textsuperscript{81}. This study can contribute to this field by bringing material facts from a less or no covered region.

6. Design of Chapters

In this research work there are six chapters with a conclusion and recommendations. The Chapters in this research are designed and presented under the following framework:

**Chapter - I: Introduction.**

This chapter locates the background of the study. It begins with an argument that the State in India has not done substantially enough to bring about a change in the real life situation of juvenile who come in conflict with law and also for children in need of care and protection. For that the research explored the theoretical

\textsuperscript{81} This study was conducted in the city of Madras of Tamil Nadu.
perspective on the subject and made a literature review along with a brief review of historical evolution of juvenile justice system in India.

Chapter- II: Legal Framework.

Chapter – II is a descriptive exploration of the existing legal framework concerning juvenile justice in India. It is an analysis of normative structure of law. As the first uniform legislation relating to juvenile justice made in 1986 was amended to bring a more effective law in place in 2000 by enacting the Juvenile Justice (Care and Protection of Children) Act, therefore, a brief comparative analysis of the first uniform law and the present legislation is attempted in this Chapter. This Chapter provides basis for the field work of this research.


Chapter- III contains the field work made under the present research and findings of it. It covered Cuttack district as its area of field work for which this chapter is named as State of Juvenile Justice in Cuttack. The field work is based on the existing legal framework for juvenile justice in India which is discussed in Chapter II. It investigated the major juvenile justice institutions like the Juvenile Justice Board, Child Welfare Committee and various Homes established under the Act.

Chapter IV: Juvenile Justice in Rights of Child Framework.

In Chapter- IV on Juvenile Justice in Rights of Child Framework, an analysis of the UN Convention on the Rights of the Child in its totality has been made. The measures that had taken by the Indian State to make its administrative, legislative and judicial systems work for children for realisation of rights, as a consequence of ratification of the convention, is the theme discussed in this Chapter. The empirical
work under this research (refer chapter-III) is also reviewed from the perspective of rights of the children.

Chapter V: Dimensions of Juvenile Justice.

Chapter V is devoted to understand the notion of juvenile justice as envisaged under the existing international standards. These international standards have been contemplated with the effort of United Nations Organisations. These are United Nations Standard Minimum Rules for Administration of Juvenile Justice, 1985, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 and United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990. The broader understanding of juvenile justice as envisioned in the above framework finally informs the empirical work.

Chapter VI: Conclusion and Recommendations.

This Chapter summarises the various aspects of juvenile justice and the present state of institutions in the field area. On the basis of the experience and the feedback received from various groups and individuals a set of recommendations have been offered in this Chapter.