CHAPTER I
INTRODUCTION

1.1 Introduction

“What can we do to promote world peace?” - When this question was asked to Mother Theresa, she responded saying ‘Go home and love your family’. Now it is time to say, ‘Go home and love your family including children’.

The survival, protection, development and participation are the four rights that each human being should ensure to every child. The cry of the child is portrayed in the following poem:-

“I am the child
All the world waits for my coming.
All the earth watches with interest to see what
I shall become.
Civilization hangs in the balance,
For what I am, the world of tomorrow will be.
I am the child.
You hold in your hand my destiny.
You determine, largely, whether I shall succeed or fail;
Give me, I pray you, these things that make for happiness.
Train me, I beg you, that I may be a blessing to the world.”  

The cry of the child and the warning of the child that the destiny of the child is in the hands of the elders should sound a wake up call to each and every one of us. It is not enough by paying lip service by describing children as the greatest gift to humanity. It is essential to protect the rights of the children in order to ensure development and peace. It is rightly said

that you cannot create the future for the youth, but you can create the youth for the future. It is our responsibility to create the youth in such a way that they do not come in conflict with law and do not get branded as juvenile offenders.

The National Charter for Children, 2003 adopted on 9th February 2004, underlined the intent to secure for every child its inherent right to be a child and enjoy a healthy and happy childhood, to address the root causes that negate the healthy growth and development of children, and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse, while strengthening the family, society and the Nation.

India has a better advantage of demographic dividends, comparing with other countries. The youth population is very high, comparing with the other segments of the population. These demographic dividends should be converted into economically feasible, viable and employable human resources, only through imparting skill development, and appropriate good quality education. Otherwise, these dividends will become a disadvantage and it will be a burden upon the Indian Economy.

No doubt, the entire journey of human life starts from the childhood and after passing through several stages ends with senior citizenship. Today’s children are hoped to be the tomorrow’s leaders of the society or community at large. That is the reason, the constitutional framers and Pandit Jawaharlal Nehru, the First Prime Minister of this Country, devoted much of his attention towards the children.

Declaring its children as the nation’s “supremely important asset” in the National Policy for Children, 1974, the Government of India reiterated its commitment to secure the rights of its children by ratifying related international conventions and treaties. These include the Declaration of the Rights of the Child, Universal Declaration of Human Rights and its

It is stated by a popular poet, Kannadasan, “That every child is a good child when it is given birth; the good character and the bad character in the child depends upon the way the child is being reared by the mother”. The child rearing by the mother should not be given a narrow construction. It should be construed as the child being reared by the parents. Bearing and rearing the child is considered as the greatest gift to motherhood. Mother plays a pivotal role in child bearing and child rearing. However, in the process of child rearing, the society per se plays a greater role in moulding and shaping the character of the child.

The socialization of the child takes place right from the home and it continues in various walks of life of the child, for example, family, school, friends and other places, depending upon the socio-economic background of the child. No doubt, all these stakeholders have a greater role in contributing to the development of the child. On the other hand, the State has a constitutional mandate and the legal mandate to work for the betterment of the child.

Having said that mainly it is the responsibility of the parents to take care of the child and incidentally society also plays a crucial role in shaping the character of the child, it is essential to justify the interference of the State in taking care of the interest of the child. The theoretical framework for the justification is provided by the doctrine “parens patriae”.

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2 Articles 15 (3), 21, 21(A), 39(E) & (F), 45, 47, 51(A) and other provisions of the Constitution of India.
“parens patriae” (in Latin, it means Parent of the country) – is a doctrine that grants the inherent power and authority for the state to protect persons who are legally unable to act on their own behalf. The connotation of the term "parens patria" differs from country to country, for instance, in England it is the King, in America it is the people, etc. According to Indian concept parens patria doctrine recognised King as the protector of all citizens as parent. The Government is within its duty to protect and to control persons under disability. Conceptually, the parens patriae theory is the obligation of the State to protect and take into custody the rights and privileges of its citizens for discharging its obligations. Our Constitution makes it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution. It is necessary for the State to ensure the fundamental rights in conjunction with the Directive Principles of State Policy to effectively discharge its obligation.

The National Policy for Children, 2013, in its preamble recognizes the rights of children and the necessity to protect them. The following criteria have been recognized in the National Policy:

- a child is any person below the age of eighteen years;
- childhood is an integral part of life with a value of its own;
- every child has universal, inalienable and indivisible human rights including the right to life, survival, development, protection and participation.
- the rights of the children are interrelated and interdependent, and each one of them is equally important and fundamental to the well-being and dignity of the child;
- a multi-dimensional, integrated and inclusive approach is necessary for the overall and harmonious development and protection of children, which acknowledges their heterogeneity and different needs;
right to life, survival and development goes beyond the physical existence of the child and also encompasses the right to identity and nationality, and mental, emotional, cognitive, social and cultural development of the child;

- family or family environment is most conducive for the all-round development of children and they are not to be separated from their parents, except where such separation is necessary in their best interest;

- the best interest of the child is of paramount concern in all decisions and actions affecting the child, whether taken by legislative bodies, courts of law, administrative authorities, public, private, social religious or cultural institutions;

- children, especially girls, are free to express their views and their voices are heard and their opinions are respected in all matters affecting them in any way they are able to communicate, in particular, judicial and administrative proceedings and interactions, in accordance with their age, maturity and evolving capacities;

The following rights are reaffirmed in the Policy:

- All children have equal rights irrespective of place of birth, sex, religion, caste, class, language, and disability, social, economic or any other status;

- All children have the right to a loving family, a dignified life free from exploitation and that families are to be supported by a strong social safety net in caring for and nurturing their children;

- Safety and security of all children is integral to their well-being and children are to be protected from all forms of harm, abuse, neglect, violence, maltreatment and exploitation;
Government of India reiterates its commitment to safeguard, inform, include, support and empower all children within its territory and jurisdiction, both in their individual situation and as a national asset. The State is committed to take pro-active measures for inclusion of all children in accessing their rights, especially those marginalized or disadvantaged; to ensure that all children have equal opportunities; and that no custom, tradition, cultural or religious practice is allowed to violate or restrict or prevent children from enjoying their rights.

The aforesaid mandate will be applicable to all the children in general, more particularly, the children who have been abandoned, neglected and who are in conflict with law\(^4\). It has been stated by Mahatma Gandhiji, said “hate the crime and not the criminals”. When this is applicable for normal adult criminals, why not to the innocent children\(^\text{“} \) a Poet laments the cry of the child, as asking “you celebrate the children’s day; When you will celebrate the children themselves”.

The children is always considered equivalent to God in various Religious and cultural practices. On the other hand, some children may turn into anti-social elements because of certain circumstances. Instead of reforming them, if we punish them, they may become hardcore criminals and become burdensome to the entire community in the future. On the other hand, if they are treated, reformed or rehabilitated, the entire juveniles who are in conflict with law can be converted into good human resources and their contributions could be used in the process of the National Building Exercise\(^5\). In fact the protection of the interest of the child is the paramount duty of the State recognized under the Constitution of India\(^6\).

\(^4\) Relevant provisions of the Juvenile Justice Act, 1986 which is being substituted by the Juvenile Justice Act, 2000, as amended by 2006 Amendment Act.
\(^6\) Articles 15(3), 21, 21(A), 39(E) & (F), 45, 47, 51(A) and other provisions of the Constitution of India.
However the rights of the juveniles or children should be a shield and not a sword. This statement is more important in the context of Nirbhaya case, which created the perennial fear in the mind of all concerned that the rights of juveniles would become a sword and that there is a need to reduce the protection level from the age of 18 to 16. Particularly, the Juvenile Justice cannot operate in conflict with other segments of the weaker society, as such, it shall not be in conflict with the gender justice or other victims. The State has to play a balancing role in recognizing, protecting and enforcing the rights of the juveniles. On the other hand, it should provide justice not only to the juveniles, who are in conflict with law, but also to the victims, who have been aggrieved with the activities of the Juveniles who are in conflict with law. That is the reason, our Constitutional framers have placed gender justice and juvenile justice in the same category. However, it is an enabling and permissive provision not a mandatory one. That means, it is a discretionary one. Such a discretion cannot be exercised arbitrarily so as to favour one section of the society and to cause injustice to another section of the society. Accordingly, our criminal justice system has been totally streamlined both in the pre-constitutional era, more so, in the post-constitutional era, in general, and after the enactment of Juvenile Justice Act, 1986, which is being substituted by the Juvenile Justice Act, 2000, as amended by 2006 Amendment Act. It has been rightly stated by the Supreme Court of India in *Hariram vs. State of Rajasthan*, that the entire criminal justice machinery working in the country and the stakeholders involved in the system should necessarily change their attitude and to try to change their mentality in dealing with the juveniles who are in conflict with law. They shall not be treated as if they are criminals. In fact, the High Court of Madras has rightly given a direction that juveniles who are in conflict with law should not be viewed or should not be treated as a criminal and this

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7 Article 15 (3) and related provisions of the Constitution of India.
8 Article 14 of the Constitution of India.
9 The Madras Children Act, 1920, Bengal Children Act, 1922, Bombay Children Act, 1924 and others.
10 2009 (2) SCC 311.
attitude has not been changed even after six decades after the commencement of the constitution and more than two decades after the enactment of the Juvenile Justice Act, 1986. This should be rectified immediately. Otherwise, it will defeat the entire object relating to the beneficial provisions embodied in the Constitution relating to the juvenile justice and created through the Juvenile Justice Act, 1986 which is being substituted by the 2000 Act and various international treaties which have been adopted by the International Community and ratified by India.

The Judge has rightly pointed out the various stakeholders including the Public Prosecutor, Investigative Machinery and the Judges should change their mindset and should have a new approach relating to Juveniles. They shall not view them through the normal criminal justice system, which we follow for the other adult criminals.

1.2 Background of the Study

In the ancient era, Manusmriti prescribes lesser punishment for the children in certain offences and exempts the children from certain kind of offences such as spitting in the public places. The Sangam literature shows that, various sort of justice has been provided to the juveniles who are in conflict with law e.g., Manuneedhi Chozhan and Kovoor Kizhar. The modern juvenile justice system which we follow owes its origin from the British. Lord Cornwallis, then Governor-General of India, established a center for destitute children in Calcutta. As a result, the first orphanage, Ragged School, was established in 1843. The Ragged Schools (special name given to orphanages) were charitable schools, dedicated to providing free education of destitute children which was the first ever modern juvenile justice school known as Central school for children in the city of Calcutta11. History shows that the first ever Act relating to the juveniles has been dealt in India under the Apprenticeship Act,

1850, where the offending child has to serve as apprentice, as a punishment for his conviction. Then came the Indian Penal Code in 1860, IPC totally exempts the children from the criminal justice system making a conclusive presumption, which is known as ‘Doli Incapasi’ under the age of 7\(^{12}\). It also provided a conditional exemption to the Juvenile who are below the age of 12 depending upon the proof of the mens rea and the capacity of the child\(^{13}\).

In the U.S, the barbaric, cruel unusual punishment has been clearly prohibited by the Constitution of U.S in the Bill of the 5\(^{th}\) Amendment\(^{14}\). In the year 1876, Reformatory Act has been passed in the British India. The Act was re-enacted with some changes in the year 1896\(^{15}\). The Madras Province happens to be the first ever province which had an exclusive legislation to deal with the three kinds of children i.e., the delinquent juveniles, neglected juveniles and the children who need care and protection under the Madras Children Act, 1920\(^{16}\). In 1922, a similar legislation had been passed by the legislature of Bengal, followed by Bombay in 1924. However, it is understood that the Bombay Legislation came into operation first, instead of Madras Legislation\(^{17}\).

1.2.1 Post Independence Era

The Constitution has been adopted in the year 1949, 26\(^{th}\) November. It came into operation on 25\(^{th}\) January 1950. The framers of the Constitution have enunciated a number of specific provisions to deal with the children as well as juveniles for the improvement of the well-being of the children\(^{18}\). In the year 1960, the Government of India passed first ever Central Children Act applicable only to the Union Territories which are governed under the

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\(^{12}\) Section 82 of IPC.

\(^{13}\) Section 83 of IPC.

\(^{14}\) Fifth Amendment of the Constitution of U.S.

\(^{15}\) supra note 11.


\(^{17}\) Ibid.

\(^{18}\) Articles 15 (3), 21, 21(A), 39 (E) & (F), 45, 47, 51 (A), and other provisions of the Constitution of India.
direct control of the Government of India. In the year 1970, first ever National Policy has been adopted by the Government of India. In the year 1985, the Supreme Court of India, has rightly recommended the Government of India to have a Central Legislation relating to the Juvenile Justice so as to remove the anomalies prevailing in various State Children Acts relating to Juvenile Justice. For the first time, the term ‘Juvenile Justice’ has been coined and adopted by the U.N. in the Beijing Rules, 1985, relating to the administration of Juvenile Justice. This is only a recommendatory guidelines. Based on that, in 1986, the Juvenile Justice Act has been passed by the Parliament of India and the same has come into operation on 2nd October 1987. The afore stated Beijing Rules has been made as binding document by the International Community in the form of United Nations Convention on Child Rights, 1989, popularly known as Convention on Child Rights (C.R.C.). In the year 1990, the U.N. has adopted Rules relating to the administration of justice to the Juveniles whose liberty has been deprived. In 1992, the C.R.C has come into operation. In 1999, the Government of India has organized three rounds of National consultation to improve the administration of Juvenile Justice and to bring out the necessary changes in the existing Juvenile Justice Act.

Two types of views have been expressed, one is asking for a separate legislation to deal with the delinquent juveniles and the children who are in need of care and protection. Another view is that the existing law should be repealed and the new law should be passed. This view has been accepted. The Government of India has constituted a Committee under the Chairmanship of Justice Krishna, who submitted his report to the then Prime Minister, Atal Bihari Vajpayee in the year 2000. The same has been accepted and acted upon by the Government of India. The Parliament of India has passed a legislation known as Juvenile Justice Care and protection Act, 2000. It came into operation by 1st April 2001. In the very

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19 Ibid.
20 supra note 11.
21 Sheela Barse v. Union of India, AIR 1986 SC 1773.
22 supra note 16.
23 supra note 11.
same year, a Writ Petition has been filed in the High Court of Delhi challenging the Constitutional validity of the provisions relating to Juvenile Justice embodied under the Juvenile Justice Care and Protection Act, 2000. The Government of India has given an undertaking to the High Court of Delhi, that it will constitute a committee to go into this issue. After getting the recommendations from the Committee, it will make the appropriate amendments in the Juvenile Justice Act, 2000. Based on that undertaking, the High Court of Delhi, has disposed of the Writ petition. Meanwhile, conflicting views emerged relating to the determination of the Juvenility for the purpose of getting benefit under this Act. Whether the Juvenility would be reckoned from the date of the commission of the offence or on the date on which the juvenile has been produced before the court. The Supreme Court of India has given two different answers in two different cases for the afore stated question\(^{24}\). This has been resolved in the year 2005 by a Constitutional Bench of the Supreme Court of India\(^{25}\). In the year 2006, the Parliament of India passed an amendment act which incorporates a greater number of Amendments in Juvenile Justice Act, 2000. The said Amendment Act has come into operation by 2007. The model rule was promulgated by the Government of India in the year 2007. But even then, many of the states have not implemented the system in the true manner, both in letter and spirit. For eg., only one Juvenile Board has been constituted in the State of Punjab in the year 2007, i.e., after six years of the commencement of the 2000 Act\(^{26}\). In Tamil Nadu too, only a few juvenile courts were functioning instead of having one juvenile justice board for each district as mandated by the 2006 amendment. Later, this defect had been rectified and Juvenile Justice Board has been constituted for each district separately.

### 1.3 Review of Literature

\(^{24}\) Arnit Das v. State of Bihar, AIR 2000 SC 2264 and Umesh Chandra Case.


\(^{26}\) supra note 11.
A Project for Stake Holders of the Juvenile Justice System (2008), done by the Legal Assistance Forum in association with UNICEF, led by Vijay Hansaria, on Juvenile Justice System, is available in Book format.

This contains around 11 chapters addressing the different dimensions of the Juvenile Justice Act depending upon the powers and functions carried out by different authorities and stake-holders recognized under this Act. For eg., the Probation Officer, the Police, the Juvenile Board and Observation Home, NGOs and others. Each segment has been written by an advocate and edited by a Judge. Many of the Hon’ble judges of the Supreme Court have contributed to this Project including the then CJI Justice K.G.Balakrishnan, who has contributed in his introduction, the Ex CJI Justice Altamas Kabir has contributed on the working of Juvenile Justice Board and similarly many other Dignitaries such as Judges of the Supreme Court, Chief Justices of the High Courts have contributed.

In the introduction, The Hon’ble Justice K.G.Balakrishnan, stresses upon three important things. His lordship says that the diversion technique and restorative justice are the two things which are not generally practiced in India. He says that the combination of these two techniques while we practiced in the list that curtails the Juvenile Justice Crime rate to a considerable limit. He also speaks about the informal arrangements i.e. the observation homes and special homes, run by NGOs will become a non-custodial alternate for correctional measures relating to the delinquent juveniles. The relevant part of the report reads as under:-

“In our country, there is not much awareness about concepts such as 'diversion and restorative justice’. Diversion schemes relate to a policy-choice wherein cases involving juveniles are dealt with by bodies other than the formal court system, in order to avoid the stigmatization and trauma associated
with judicial proceedings. Diversion of children from the justice system needs to be combined with community-based programmes involving families of offenders, so as to ensure proper rehabilitation and avoid repeat offences. Strategies oriented around the idea of Restorative justice, (i.e. promoting reconciliation, restitution and responsibility) through the involvement of the child, family, community and the victim provide juveniles the opportunity to develop their individual capacities and contribute to society. In many countries, successful combinations of diversion and restorative justice initiatives have resulted in reduction in the levels of juvenile crime.”

The researcher would like to bring it on record that this suggestion given by the then CJI should be seriously implemented, otherwise the spirit of the Juvenile Justice Act would not be achieved. It is also interesting to note that the author’s comment on the involvement sectors states:-

“Voluntary sector organisations can thus help the governmental agencies to engineer a substantial shift towards non-custodial alternatives for corrective measures involving juveniles.”

Police –

This segment explains the role of the Investigative Machinery i.e., police and what are their powers and functions to be carried out under this Act. The author Justice Jasti Chelameshwar, Judge, Supreme Court of India, explains how it is different from the responsibilities discharged by the police officer in the Cr.P.C. , that should be taken note. It should be born in mind that handcuffing must be prohibited. The social investigation report plays a vital role rather than the FIR. The Police is called here as a Child Welfare Officer. It is highly advised that the police should act as a Welfare Officer rather than behaving as
police officer with the Juveniles who are in conflict with law. The Researcher strongly holds that it is a welcome suggestion that it requires a lot of attitudinal change both in the mind set and in the atmosphere prevailing in the organizational set up of the police machinery.

**Probation Officer -**

This segment has been authored by The Hon’ble Justice R.V.Raveendran, Judge Supreme Court of India. The author traces the origin and development of the concept of Probation Officer. His Lordship rightly distinguishes the role of the Probation Officer to be performed under the Probation of Offenders Act, 1958 and the Juvenile Justice Act, 2000. He simply states that Probation Officer should behave as a guide, philosopher and best friend of the juvenile. The Probation Officer should win the hearts of the juveniles as well as the parents i.e. the key to the success of curing the behavior of the delinquency of the Juvenile. His Lordship cites the statement made by A.E.Jones in his book ‘Juvenile delinquency and Law” published in 1945, the relevant passage reads as under :

“The essential power of the probation officer is in his personality; if he can inspire devotion in his charge; if the probationer becomes filled with a genuine desire to gain his approval; if the parents accept him unreservedly as a wise friend of the family and profit by his suggestions on the upbringing of their offspring; if the probationer does not look on him as a sort of policeman whose watchfulness it is almost a point of honour to cheat; then the probation officer may hope for a true success……the probation officer can only cure delinquency by effecting a change of heart either in the child or the parent.”

This is the need of the hour. This aspect must be deeply rooted in the minds of the Probation Officer. This cannot be done through mere law, but can be done by adequate training and proper sensitization.
Juvenile Justice Board –

This segment has been authored by The Hon’ble Justice Altmas Kabir, Ex Chief Justice of India, he traces the origin of the JJA, both in the Municipal law as well as in International law. His Lordship rightly says that the JJ focuses upon two different groups of children i.e Children who are in conflict with law and Children who are in need of care and protection. His Lordship also focuses upon the former and not the latter, which is very crux for the subject matter of the research of this study. His Lordship rightly pin points the key responsibility performed by the Board in general and the Principal Magistrate in particular.

Observation Home–

This segment has been authored by The Hon’ble Justice Madan B. Lokur, Judge, Supreme Court of India. The author shares his personal experience. His Lordship cites a simple but pragmatic reason for the non-effective function of the observation home. The reason which His Lordship cites is huge influx in the Observation Home. He cites that the rule is bail and the jail is exception, but points out that the reality is otherwise. Many a time the JJB routinely sending the juveniles to the observation home rather than granting bail. The author suggests that if this rule is implemented the occupants in the observation home will be considerably reduced and the efficacy of the management of the observation home will considerably improve. He has personally realized this through an experiment. The author rightly points out that the inordinate delay in disposing the cases pertaining to the juvenile compels the juveniles to stay in the observation home, more than the prescribed term of punishment u/s 15 of the JJA, 2000. The author rightly points out that S.436(a) of Cr.P.C., mandates the State to release the person, who have spent more than half of the sentence during the under-trial, immediately on bail. This is a welcome suggestion, which should be applied in the Juvenile Justice Act also. The interest of the children is the paramount under the Juvenile Justice Act. The Juvenile Justice Act makes it very clear that this Act is an
addition rather than in derogation to the existing laws. This is also supported by Section 2(y) of the Juvenile Justice Act, 2000 which makes it very clear that anything or term has not been explicitly defined or expressed in this Act. Then the expression used in the Cr.P.c. should be followed. By reading the afore stated provisions conjunctively, the provisions relating to the under trial prisoners can also be applied to the delinquent Juveniles under the Juvenile Justice Act, 2000.

In addition to the above segments this study has the following segments, such as, (i) The State, (ii) Non Government Organizations (NGOs), (iii) Rehabilitation and Social Integration, (iv) Children Supreme National Asset; Authored by : Hon’ble Justice I.A.Ansari, Judge, Gauhati High Court; Mr. Sonykutty George, Project Officer, Child Protection Section, UNICEF, India; Hon’ble Justice Tarun Chatterjee, Judge, Supreme Court of India; and Anupam Mishra, & Hon’ble Justice Dr. Shivraj V. Patil, Former Judge, Supreme Court of India, respectively.

Improving Protection for Children in conflict with the Law, 2006\(^{27}\) is a report published by UNICEF, Regional Office for South Asia. This report brings out the implementation of CRC, in the form of Municipal Legislations, known as Juvenile Justice. This report talks about the entire South Asian Country’s profile, such as, Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. Though the study hails some of the steps taken by Government of India, in improving the standards relating to administration of Juvenile Justice in compliance of CRC in the years 2000 and 2006, it points out that there are greater deficiency in implementation of the legislations relating to Juvenile Justice. For example, it points out that only eight States have constituted a Special Juvenile Police Unit by the year 2005 and suggests that still a number of states have to establish

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Juvenile Justice Boards. The study also brings out the role played by NGOs in assisting the administration of justice and is differing from one state to another state. It is highly interesting that this report names a few organization functioning in few states for their excellent contribution in the administration of Juvenile Justice in India. For example, it appreciates the role played by an NGO, known as Prayas in New Delhi and ECHO in Bangalore. It also appreciates the innovative mechanism adopted by State of Andhra Pradesh, known as the concept of Co-managing, the special home and the observation home and approach taken by Tamil Nadu in managing the special homes. However, the study also points out a serious issue, which should be immediately concentrated i.e., many states give the certificate without any differentiation in recognition of the special home, observation home, children home and after-care home. This malpractice is a clear cut violation of the Constitution of India and the Juvenile Justice Act. Therefore, it is unconstitutional and illegal. In fact, the study points out that the innocent children, who are in need of care and protection, get mixed up with the Juveniles who are in conflict with law, without any distinction in the observation homes or the homes meant exclusively for the juveniles and this practice should be immediately stopped and condemned. This study makes a comparative chart based on certain key points relating to the standards of administration of juvenile justice recognized by U.N; suggests some best practice which is prevailing in other countries and recommends the same in South Asia; and also points out that the fixing of age for criminal responsibility for the children in India is very low and is in violation of the standards prescribed by the UN relating to the administration of juvenile justice.

Child Protection in Juvenile Justice system for Juvenile in Conflict with law\textsuperscript{28} by Ms. Maharukh Adenwalla, who is a Mumbai based socially conscious lawyer and also a child activist, has made this publication with the help of Tata Institute for Social Science, as a

project done by Child line Foundation. This organization has been highly appreciated by the UNICEF, Regional Office for South Asia, in its report published in the year 2006. Therefore, the study made by this organization assumes high importance and the credibility is highly established. The study consists of two parts, part-I contains 16 chapters, covering aspects relating to the Juvenile Justice, such as, History of Juvenile legislation, definition of juvenile, determination of juvenility, institutional mechanism such as the Juvenile Justice Board, appeals, such as the Court of Sessions, High Court and the Supreme Court, provisions relating to bail, arrest, various applications which are likely to be moved by the Juveniles before the Juvenile Justice Board, such as, application for leave, application for transfer from one home to another home and others. It talks about the organizational set up, such as observation home, special home, after-care home and other facilities made available by the Juvenile Justice Act for the treatment of delinquent juveniles. The study also focuses the role to be played by the Police, Lawyers, the Media, social workers and the Probation Officers. Part – II contains a plethora of case laws decided by the Supreme Court of India and various High Courts relating to various issues on Juvenile Justice. The book has a section relating to case studies which is highly interesting. The author has done around 13 case studies, some of them reveal shocking information which reflect the bad administration of Juvenile Justice, and poor implementation of laws relating to Juvenile Justice in India. The following case studies done by the authority is note-worthy, for the purposes of the subject matter of this research:-

(i) She talks about the case where a five years old child has been arrested by the Police for throwing a stone upon his friend. Thereby the friend gets injured and the child has been detained unlawfully. Unfortunately, there is none to support the child and the child is languishing in jail. This case study shows how far the Police machinery is blatantly violating law of the land both
substantive as well as procedural law, such as, IPC and the Cr.P.C., it is not only a mere violation of the law, but a grave violation of the Constitution.

(ii) The researcher pointed out that the monitory mechanism embodied with the Juvenile Justice Act, has been totally failed.

(iii) The Author brings the case study relating to the child who has been granted bail by the JJB, but for want of surety, he was forced to remain in the Observation Home, which is a clear-cut violation of the Juvenile Justice Act, which makes it very clear that the parents/child is unable to pay the money, then the child should be released on self bond without insisting for surety. This shows again the poor implementation relating to the provision of surety embodied under the Juvenile Justice Act. This is also in violation of the rights guaranteed to the juveniles under the Juvenile Justice Act.

(iv) Case No.11 contained in this Book points out that the Police have initiated security proceedings against the 16 year old boy, under Section 107 of Cr.P.C. This has been clearly prohibited under the Juvenile Justice Act, 2000. The Police have acted contrary to the law even after having the Birth Certificate from the Juvenile. They have acted unlawfully and without any authority.

(v) The Researcher pointed out that there shall be some mechanism to punish the erring police officials under the Juvenile Justice Act.

Juvenile Justice in India – On a path to Redemption by Ms. Bobby Anand traces the evolution of Juvenile Justice of Law in India right from the ancient era very specifically from 1773 onwards. It also makes a comparison between 1986 and 2000 Act of Juvenile Justice. It criticizes the loopholes available under the 2000 Act and says how far those loopholes have been rectified by the 2006 Amendment. That is the reason the article is titled “On the

path of the redemption”. But it does not make it clear whether it has been redeemed or not. The redemption will take place a long run mile to go before the target is achieved.

1.4 Scope of the Research

The Juvenile Justice system in India deals with two types of children. One is Juveniles, in conflict with law and the other is Juveniles in need of care and protection. This study is confined to Juveniles in conflict with law and clearly excludes the children who are in need of care and protection. The research is focused on law relating to the juveniles, who are in conflict with law, issues relating to them, as dealt, with to the International as well as the Municipal legal mechanisms. The study, though it focuses mainly on the Juvenile Justice Act, also covers the relevant piece of legislation, such as, Cr.P.C., Constitution and other relevant laws which touches the Juvenile Justice in one way or another. The study also focuses on the justice delivery mechanism by the Juvenile Justice Board, functioning in Tamil Nadu, which are dealing with the juveniles in conflict with law. The extent to which the rights of the children are effectively protected by the Juvenile Justice Board, issues involved in protecting the rights of the children and the improvements needed to effectively, efficiently and quickly render justice to juveniles in conflict with law and to suggest solutions and remedies to improve the efficacy of the Juvenile Justice Board are the focuses of the study.

1.5 Objectives of the Study

(i) To trace the evolution of Juvenile Justice System in India as well as in the International arena.

(ii) To define various terms relating to Juvenile Justice.

(iii) To analyze how far the standards laid down by the International instruments relating to Juvenile Justice have been complied with in India.

(v) To find out whether Juvenile Justice is in conflict with the other rights of the victims.

(vi) To find out whether there is any gap between the theory and the practice in the Juvenile Justice Act.

(vii) To find out whether there is any lacuna in the laws relating to Juvenile Justice.

(viii) To suggest solutions and remedies to improve the efficacy of the Juvenile Justice System and Juvenile Justice Delivery Mechanism in India.

1.6 Hypothesis

The existing Juvenile Justice Delivery Mechanism does not adequately protect the rights of the juveniles, who are in conflict with law.

1.7 Methodology

This study is a Doctrinal one. It uses the statistics, actual case history available from juvenile justice board, other data made available by the competent authorities, such as, the data made available by the National Bureau of Crimes, Ministry of Social Justice and Empowerment and other competent bodies, to make its findings and to formulate the conclusion. This study uses analytical, critical, comparative and other necessary methods to deduce the conclusion and to make out the findings of the study and to suggest the remedies for the improvement of existing Juvenile Justice Delivery Mechanism.

1.8 Data Collection

This study uses both the primary as well as secondary sources including the cases decided by the Supreme Court of India. It uses the following sources, such as, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, dated 29th

1.9 Scheme of Research

Chapter – 1, Introduction – Significance of the study – object of the study – scope of the study – methodology of the study. The introductory note discusses the evolution of the law, the background of the study and provides other necessary details for the purpose of introducing the study. The note also discusses the object and need for the study with the scope and methodology for the same.

Chapter – 2 deals with certain important concepts, fundamental principles, including Jurisprudential aspects relating to Juvenile Justice and definitions relating to the administration of Juvenile Justice Delivery Mechanism.

Chapter – 3 discusses about the International Instruments relating to Juvenile Justice; the Institutional mechanism embodied in the relevant International Instruments relating to the protection of juveniles.

Chapter – 4 deals with the Constitution of India and the protection of Juveniles.

Chapter – 5 discusses about the Juveniles in conflict with law and Juvenile Justice Board, which deals with those juveniles and the Juvenile Justice Delivery Mechanism embodied under the 2000 Act as amended by the 2006 Amendment Act.

Chapter – 6, Deals with Cases decided by the Juvenile Justice Board, the decisions arrived at and their conformity or otherwise of the same with that of the purpose and objective
of the Juvenile Justice Act and the dictum laid down in the cases decided by the Supreme Court of India.

Chapter – 7, Conclusion, which provides solutions and suggestions for the improvement of Juvenile Justice Delivery Mechanism and to the effective protection of Rights of the Juveniles, who are in conflict with law.