LAWS IN INDIA FOR THE PROTECTION OF THE RIGHTS OF CHILD

Childhood shows the man, as morning shows the day……..John Milton

This quote of the great English poet aptly depicts the importance of a child in our lives. India too is a home to about 430 million children and as a consequence rights of children and their aspirations are of paramount importance in our march towards an inclusive and equitable society. Since independence, India has developed its own jurisprudence concerning children and the recognition of their rights which are evident through various legislations namely the Constitution of India, Right of Children to Free and Compulsory Education Act 2009, The Child Labour (Prohibition and Regulation) Act 1986, The Hindu Adoption and Maintenance Act, 1956, Immoral Traffic Act, 1986, Protection of Children from Sexual Offences Act, 2012, The Juvenile Justice (Care and Protection) Act,2000, and many more. This chapter is to analyse and understand the different aspects of children's rights in the light of various legislations and judicial responses.

5.1 Education:

"Children deprived of words become school dropouts; dropouts deprived of hope behave delinquently. Amateur censors blame delinquency on reading immoral books and magazines, when in fact, the inability to read anything is the basic trouble."

…Peter S. Jennison

Education is itself a human right and it is through which one can realize the other human rights. It plays a vital role in empowering women and in the protection of children from exploitative labour as well as sexual exploitation. An individual often being educated and with an active mind has the capacity to wander freely and widely and can exercise the human rights and value human existence. A country like India which is known to be a home for a highest number of children in the world, there are about 43 crore children between the age group of 0-18 according to 2001 census and about 74 percent of child population live in rural areas and so providing free, compulsory and good quality education seems to be very important during this stage of their life. India is also a home for the one third world's illiterate population.

Since its independence and during the drafting of the Indian Constitution, India has made a conscious effort to give children the right to free and compulsory education as a fundamental right. However at that time it could not succeed in its efforts. But the Constitution of India has given it a place under Article 45 Directive Principles of state policy which provides that "the state shall endeavour to provide

within a period of ten years from the commencement of this constitution for free and compulsory education for all the children until they complete the age of 14 years". Though it was not a part of the Fundamental rights of the constitution the constitutional fathers meant that the basic education should be given to children between 6-14 years of age and it directs the state government to endeavour to provide children free and compulsory education to all children until they complete 14 years of age.

Under the Chairmanship of Kothari India for the first time constituted a commission on education to create an Indian education system on the lines of Common school system and published its first commission report on education during 1964-66 called Kothari Commission which stated that "we should strive to allocate the largest proportion of gross national product (GNP) possible for educational development". The Commission proposed to make primary education as a goal of the country and also recommended government to increase 6% of the gross national product (GNP) on education for the development of education in the country in the next 20 years by 1985-86. It was reiterated through National Policy on Education (1986) whose priority was the Universalisation of Elementary Education and it recommended ensuring that the free and compulsory and good quality education to be provided for all children upto the age of 14 years of age before the 21st century and it was revised 1992

In the world Conference on Education for All at Jomtien in Thailand in 1990, 155 countries including India took a pledge to ensure to provide education for all by the year 2000. It has certain goals to be followed by the signatory countries in which India didn't progress much. According to the UNESCO review report on India's position in 1998 whose key objectives were to care for early education of children between age group of 0-6 years and their development spreading awareness about the elementary education for all, encourage youngsters to learn reduce illiteracy specially female literacy, skill development and improving the quality of life. Again in April 2000, World Education Forum was held in Dakar (Senegal) where 180 out of 1993 signatories participated in the Forum. The Dakar framework agreed right of education as a basic right realizing the people from low economic status and disadvantaged group were bereft of this basic education. India among 180 countries took pledge that by 2015 education would be made available for everyone

In India the supreme court in the Unnikrishnan, J.P. Vs State of Andhra Pradesh[1] judgement affirmed that Part III and Part IV of the constitution of India is not only supplementing and complimenting each other mutually but are also inter related to each other. It is a path breaking judgement in the history of education which gave the status of fundamental right to free and compulsory education to all the children between the age of 6-14 years or until the completion of elementary education and accepted and approved the right to education as fundamental right of all children. In its continuing effort in providing elementary education to children across the country. After the 86th constitutional Amendment in 2002 the Parliament passed a landmark legislation called the Right of Children to Free and Compulsory Education Act or widely known as right to Education Act, 2009 which included the Article 21A[2] in the Indian constitution and thus making education a fundamental right. The Act came into force in the whole of India except Jammu and Kashmir from 1st April 2010. The main objective of the Act is to provide free and compulsory education to all the children between the age group 6-14 years of age until they complete their elementary education. The idea is to bring children to school by providing free education and increase the enrolment rate, reduce dropouts and increase the literacy rate in the country

5.1.1 The Right to Education Act, 2009

The Right of Children to Free and Compulsory Education Act (RTE), 2009 was enacted in the year 2009 and came into force with effect from 1st April, 2010 across the country except the state of Jammu and Kashmir. Section 2(c) defined the child as a male or female child between the age of 6-14 years. Section 2(f) defined the term elementary education as the education from class 1-8.

The salient features of the Right of Children for free and compulsory Education Act are

1) Free and compulsory education to all the children of India between the age group of 6 to 14 years Section 8(a)(i)(ii)
2) Section 4 provides special provision for children not admitted to or who have not completed the elementary education
3) Section 8 provides for the infrastructure including school building, teaching staff and learning materials, good quality education, ensure neighbourhood schools, training facilities for teachers etc

4) Section 5 provides right to transfer to other schools from a school where there is no provision for completion of elementary education to any government and government aided schools and head teacher or in charge shall issue the transfer certificate immediately and no child will be denied admission on ground of delayed production of the transfer certificate
5) No child shall be held back, expelled or required to pass a board examination until completion of elementary education (S.16)
6) S.14(2) provides that no child shall be denied admission in a school of absence of age proof
7) Section 13 provides that no capitation fee and no screening procedure to any child
8) Section 17 prohibits corporal punishment to children
9) Section 21 provides for the constitution of school management committees in every school except unaided private schools
10) Section 23 provides the minimum qualification for teachers and Section 23(2) provides relaxation of minimum qualification for appointment of a teachers in for a period not exceeding five years case the state does not have adequate institutions offering courses or training in teacher education or teachers possessing minimum qualification
11) Section 24 provides the duties of the teachers towards education of the students and towards maintaining the punctuality and regularity in attending schools
12) Section 25 provides the pupil-teacher ratio
13) Section 27 provides that no teacher shall be deployed for any non-education purposes other than the duties relating to elections, population census, disaster relief etc
14) Section 28 provides that no teacher shall engage in private tuitions or teaching
15) Section 29 provides the curriculum and the evaluation procedure for elementary education to be laid down by the academic authority of the appropriate government

Suggestions and recommendations

1) Children between 3 and 6 years of age which is indeed the most crucial stage in a child's life and the children between 15 to 18 years old are out of the purview of the RTE where they find themselves with little chance of completing their education

if they cannot pay for it. The provisions of RTE Act need to include taking into consideration the requests and demands of the common people

2) Provisions of the RTE Act under S.9 provides infrastructure including school buildings, boundary walls, separate toilets etc. It is an excellent provision which could improve the school buildings and walls for children's safety. However it is observed that most of the schools do not have proper class rooms, no teaching equipments and other important things that could be useful for skill learning of the students. Schools need not focus only on reading the textbooks and marking. There is a need to introduce vocational and skill development learning process in all the government schools

3) Medium of instruction which the provisions of the Act strictly provide is the used of mother tongue only .But children on completion of their elementary education or after moving out of their primary and upper primary schools encounter a sudden change because most of the secondary schools adopt English language as a medium of instruction and so medium of instruction should be flexible

4) S.25 and the norms and standards provided for the teacher pupil ratio is neglected in all the schools. Only 5 out 9 teachers are teaching more than 400 students which is not as per the ratio .Such negligence on the part of the government burdens the teachers and many students deprived of classes due to shortage of teachers. Such teachers will be unable to impart good quality education to the students and compel children to leave schools and get engaged in either other illegal activities or develop suicidal tendencies. In order to avoid such consequences they must adhere to the provisions of the Act and start recruiting qualified and well trained.

5) It is also observed that the teaching methodology in the classes varies and there is no specific provision followed by teachers regarding the same. To improve the students performance and skills.S.29 of the RTE Act provides for the curriculum and evaluation procedure and not the method of teaching. The teaching methodology needs to be provided in the provisions of the RTE Act. Since the Act deals with children studying in elementary schools and are tender their future needs to be prepared and taken care of especially when their parents do not value education for their children It is the responsibility of the Government to protect and promote the life and security of each citizen Everyone has the right to life with dignity and to achieve that dignity of life one needs to be educated to know one's own right

6) It is found that financial constraints and extreme poverty are not the only reasons to drop out of school but there are some reasons for which the school too is to be blamed like not providing good quality education and the Government as well for not strictly prescribing the qualifications necessary to recruit teachers and introducing at least 2 years of training on teaching and other skills.

7) The salaries of the SSA teachers need to be taken into account and it is observed that all the SSA teachers are getting the regular salaries .There should be a raise in teachers salaries.

8) With the Act coming into effect it has been found that there is a shortage of 12-13 lakh teachers in schools. The states need to take steps to recruit more permanent teachers and not encourage the hiring of unqualified,untrained and inexperienced teachers

9) The government must make every effort to become self sufficient by using the education cess and other taxes to effective implement the RTE Act. It must not always beg from the private sector

10) The public private partnership (PPP) model in primary education should be avoided at all costs so that there is no commercialization of education

5.2 Child Labour

Children are universally recognized as the most important asset of any nation. The future of the nation depends directly on how they are brought up and cared for. This is why the Universal Declaration of Human Rights adopted way back in 1948 had proclaimed that childhood was entitled to special care and assistance. The UN Convention on the Rights of the child adopted in 1989 proclaims in article 6 that every child has the inherent right to life and that the state parties shall ensure to the maximum extent possible the survival and development of the child. Again in Article 32 the convention mandates the states parties to recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

The Government of India has ratified the convention in December 1992 in relation to Article 32. While fully subscribing to the objectives and purposes of the rights of the child, namely, those pertaining to the economic, social and cultural rights can only be implemented in the developing countries, subject to the extent of

available resources and within the framework of international cooperation recognizing that the child has to be protected from exploitation of all forms including economic exploitation, noting that for several reasons, children of different ages do work in India, having prescribed minimum ages for employment in hazardous occupations and in certain other areas, having made regulatory provisions regarding hours and conditions of employment, and being aware that it is impractical. Immediately to prescribe minimum age for admission to each and every area of employment in India - the Government of India undertakes to take measures to progressively implement the provision of Article 32, particularly paragraphs 2 (a) in accordance with its national legislation and relevant international instruments to which it is a State Party. Also, a peek at our constitutional provisions, especially, articles 24, 39 (e) and (f) would reveal that there is much in common between the legislation, and mandates enshrined therein and the framework of principles and guidelines embodied in the UN Convention on the Right and the Child. Similarities apart, the fact remains that in countries afflicted with chronic poverty and pervasive privation, the rights of the child are incessantly marginalized. This is exactly what has happened in our country and the result is evident.

With demands on the country's resources, the government has been unable to give children dues towards their growth and development. The result is that there is widespread employment of children for their and their families survival, in environments and professions, which are detrimental to their health and growth. Poverty, unemployment or underemployment of parents, low incomes, low living standards, and insufficient opportunities for education and training leave no alternative for such children except to toil under conditions not conducive to their health. The government has not been able to do much to remedy the situation, despite the commitment made by it while ratifying the UN Convention for reasons beyond its control. The result is that India has the dubious distinction of having the largest contingent of child labour and as a concomitant, the maximum number of juvenile illiterates in the world.[3] Whether they are sweating in the heat of stone quarries, working in the fields 12 to 16 hours a day, picking rags in city streets, or hidden away as domestic servants, these children endure miserable and difficult lives. They earn little and are, abused much. They struggle to make enough to eat and perhaps to help feed their families as well. They do not go to school; more than half of them will never learn the barest skills of literacy. Many of them may have been working since

the age of four or five, and by the time they reach adulthood they may be irrevocably sick or deformed - they will certainly be exhausted, old men and women by the age of forty, likely to be dead by fifty.[4] Most or all of these children are working under some form of compulsion, whether from their parents, from the expectations attached to their caste, or from simple economic necessity, or to ward off starvation.

5.2.1 Elements of child labour

According to a study undertaken by Anker and Melkas, child labour involves one or more of the following elements: (i) work by very young children; (ii) long hours of work on a regular full-time basis; (iii) hazardous working conditions (physically and mentally); (iv) no or insufficient access' attendance or progress in school; (v) abusive treatment by the employer and (vi) work in slave-like arrangements (bonded Iabour).The Committee on Child Labour, after an in-depth study of the problem of child labour in the country came to the finding that "child labour involves the use of labour at its point of lowest productivity, hence it is an inefficient utilization of labour power. Child labour represents pre-mature expenditure rather than saving." It concluded: "the argument that employment of children increases the earnings of the family and keeps children away from mischief is misleading. It glosses over the fact that child labour stunt's their physical growth, hampers their intellectual development and by forcing them into the army of unskilled labourers or blind alley jobs condemns them to low wages all their lives. In short child labour is economically unsound, psychologically disastrous and physically as well as morally dangerous and harmful[5].

5.2.2 Causes of child labour

Over 260 million people in the country still live below the poverty line. In the country side, the distribution of land is most iniquitous. Nearly one-third of the metropolitan population lives in slums and improvised tenements. In these circumstances, the child is compelled to shed sweat of his brow to keep the wolf away from the door. In some families when disease or other forms of disability upset the delicate balance of family budget, there may not be any alternative but to send the child to work.[6] The income accruing from child labour may be small but it plays a crucial role in saving the family to keep their body and soul together. In studies done by the National Labour Institute in the lock industries of Aligarh, Bangle industries of

Firozabad, gem polishing industries of Jaipur, slate industry of Markapur, etc., it has been found that in most of the cases the children's' contribution to family income is 20-30 per cent[7]. Economic compulsions may sometimes even compel the poor parents to collude with the employer, and put the child under risks of inhuman exploitation.[8] Poverty and child labour thus, always beget each other and tend to reinforce themselves in families and communities.[9]

A US report has noted that while poverty may be one very important contributing factor for child "labour some other factors are also equally important, viz., economic self interest - factory owners who overwork underpay, and otherwise take advantage of vulnerable child workers; public indifference - politicians, media, non-governmental organizations, and other opinion makers who collectively treat child labour as a non-issue; public policy – inadequate resources devoted to primary education and export promotion policies that support firms and industries without regard for their impact on child labour; government inadequacies- labour inspectorates that lack authority, expertise, numbers and accountability; government corruption – government officials who not only condone but in many cases personally benefit from child labour; and societal prejudice – majority groups, which consider child labour among less privileged groups part of the natural order.[10] Although all the above factors do contribute towards child labour, they are in no way exhaustive. Among the other factors contributing to child labour are rapid population growth, adult unemployment, bad working conditions, lack of minimum wages, exploitation of workers, low standard of living, low quality of education, lack of legal provisions and enforcement, low capacity of institutions, gender discrimination, conceptual thinking about childhood, etc. It is a combination of these factors which compel children to work under exploitative or hazardous conditions.

5.2.3 Pull and push factors

Other studies on the issue of child labour have also tried to explain the reasons for the spread and prevalence of child labour more or less on the same lines.[11] According to these there are various socio-economic and cultural factors that force children into work and these factors can be broadly classified into two : Supply (push factor); and Demand (pull factor). The supply side factors refer to the conditions under which families are engaging children in work. Demand side' factors refer to the preference of employers for employing children.

5.2.4 Consequence of child labour

Child labour is a concrete manifestation of the violations of the rights of children, especially the right to education and development. Working at a young age has many adverse and direct consequences:

- Children are deprived of their right to education;
- Children are deprived of their right to play, leisure and healthy growth;
- Children are deprived of their free mental, physical, psychological and spiritual growth owing to hazardous nature of their work and over work that is not compatible with their age;
- Children are deprived of their childhood itself;
- Child labour creates and perpetuates poverty;
- It condemns the child to a life of unskilled, badly paid work, and
- Ultimately leads to child labour with each generation of poor children undercutting wages.

In rural areas, it has been seen, that farmers store seed grains for sowing in the next season. But owing to starvation and poverty sometimes these seed grains are also consumed, affecting the well being of their future. Children are like today's seeds for tomorrow's healthy societies. Child labour amounts to consuming the seed grains resulting in gloomy future.[12] Child labour is as much the cause as also consequence of adult unemployment and under-employment. It at once supplements and depresses the family income. It is not only a subsidy to industry but also a direct inducement to the payment of low wages to adult workers. Child labour involves the use of labour at its point of lowest productivity, hence it is an inefficient utilization of labour power. It represents premature expenditure rather than saving.[13]"Long hours of work, late hours of night employment, continuous standing, sitting or use of single set of muscles, emphasis on the finer neuro-muscular coordination's with attendant nervous strain, indoor confinement in noisy factories and dusty trades, carrying heavy loads under the arm or lifting heavy weights, pressure of speed in the performance of simple mechanical acts, contact with industrial poisons, exposure to inclement weather"[14] all take their toll on the health of children and make them unhealthy adults.As was summed up by the government committee on child labour, it can now authoritatively be stated that child labour deprives children of their educational opportunities, minimizes their chances for vocational training, stunts their physical growth, hampers

their intellectual development and by forcing them into the army of unskilled labourers or blind alley jobs, condemns them to low wages all their lives. Therefore, child labour is economically unsound, psychologically disastrous and physically as well as morally dangerous and harmful.[15]

5.2.5 Child labour and Education

Child labour and illiteracy go hand in hand as one tends to bread the other. Numerous studies have examined the impact of education on the incidence of child labour. Most of the child labour are either illiterate of partially literate. The parents of child labour are also more often than not, illiterate. No study has ever found a child labour coming from an educated family.[16] Myron Weiner, a strong advocate of compulsory education for children to combat child labour in India, maintains that without the iron frame of legislation to compel at least few years of elementary education, millions of Indian parents will never send their children to school, employers will never release their grip on a nimble fingered, easy to handle and cheap source of labour and India will continue to head the international illiteracy league well into the coming century.[17]

5.2.6 Magnitude of child labour

Reliable statistics on child labour are rare and, when available, often incomplete. Because child labour is illegal below a certain age in almost every country, national government surveys often do not collect information on working children below 15 years old. According to the latest available statistics of the United Nations Children's Educational Fund (UNICEF) an estimated 246 million children are engaged in child labour all over the world. Of these, almost 70 per cent (171 million) work in hazardous occupations, such as working in mines, chemical factories, in agricultural fields (approximately 70 percent) with constant contact with pesticides or with dangerous machinery. Moreover, millions of girls work as domestic helpers and also unpaid household help and are especially vulnerable to exploitation and abuse. Millions of others work under horrific circumstances; they may be trafficked (1.2 million), forced into debt bondage or other forms of slavery (5.7 million), into prostitution and pornography (1.8 million), into participating in armed conflict (0.3 million), or other illicit activities (0.6 million).[18]Regional estimates indicate that: Asian and Pacific regions harbour the largest number of child workers in the 5 to 14

age group, 127.3 million in total (19 percent of the children work in the region). Sub-Saharan Africa has an estimated 48 million child workers. Almost one child out of three (29 percent) below the age of 15 works. Latin America and the Caribbean have approximately 17.4 million child workers (16 percent of children work in the region). 13.4 million children work in the Middle East and North Africa, which constitutes 15 percent of the total children, Approximately 2.5 million and 2.4 million children are working in industrialized and transition economies, respectively.

5.2.7 Indian scenario

There are varying estimates of the magnitude of child labour in India due to differing concepts, methods of estimation and identifying the Sources of data, among others.[19.]To these can be added the vast unorganized, informal and unregulated sector of the economy and corresponding labour market. For example, it is in the informal sectors that child labour mostly operates without being adequately represented in the official labour statistics, including the census. Based on the number of non-school going children and families living in destitution, Campaign against Child Labour estimates that there are between 70 to 80 million child labourers in the country.[20.]A survey of child labour throughout the country ordered by the Supreme Court was completed during 1997, and it documented the existence of some 126,665 wage-earning child labourers. When this figure was challenged as patently low, the states conducted a second survey, in which an additional 428,30S child Labourers in hazardous industries were found. However, even the combined total of the two surveys understates the true dimension of the problem. As per the Census of India, there were 7 million child labour in the age group 5 to 14 years in 1971; 13.64 million in 1981; 11.28 million in 1991 and 12.66 million in 2001. Out of these 12.66 million, about 5.77 million children were classified as ‘main workers’ and the rest 6.88 million children were as ‘marginal workers’ Most of the working children. Are engaged in agricultural activities as wage laborers or cultivators. Manufacturing, processing, servicing and repairs the household industries engaged 3 per cent of child workers, while 3 per cent were engaged in factory work and the other 15 per cent were engaged in service sector, mostly as domestic workers, and in small trade activities. Working children are usually classified in terms of work situations in (a) domestic work; (b) non-domestic and non-monetary work; (c) bonded labor work; (d) wage work in hazardous and non-hazardous occupations; and (e) commercial sexual exploitation

work.[21] Each work situation has deep rooted consequences on their human rights, healthcare and future economic production processes.

According to UNICEF's, The State of the World's Children 2006 about 14 per cent of the children (5 to 14 years) of the total children in the age group were engaged in child labour activities in 2004, with the percentages for boys and girls almost same at 14 per, cent and 15 per cent, respectively.

5.2.8 Legislative Framework

The constitutional commitment reflected in numerous legislations enacted time to time. Today we have more than 300 central and state legislations on child labour. These legislations mainly dealing with minimum age, minimum wage and hazardous employments. A brief perusal of some of the important legislations will be well in order for the present study.

1. The Factories Act, 1948

The Factories Act, 1948 prohibits the employment of children below 14 years of age in factories. A child is not permitted to work during night (10 p.m. to 6 p.m.) and not more than 4 ½ hours in a day.(sec 54) Restriction have also been laid down on the employment of children in certain dangerous occupations.(s.23) A special register has to be maintained by the employer in respect of child labour to satisfy inspecting authorities that provisions regarding child labour are implemented(s 62 &73). A young person can be employed in factories only of his fitness and age are duly certified by a medical practitioner. Such fitness certificate remain valid for a year only.(s.69) The adolescent of the child must be issue a token marked “P” (Protected) which he must carry during working hours. Rests, shelters, canteens etc. are also to by provided for workers including child labourers. (s.68) The Act also imposes penalty on a parent or guardian for permitting double employment of children.(s.47)

2. The Minimum Wages Act, 1948

The minimum Wages Act, 1948 provides for fixation by State Government of minimum time rate of wages, minimum piece rate of wages, guaranteed time rates of wages for different occupations and, localities or class of work and adult, adolescents, children and apprentices.(s.99) The Act is aimed at occupations which are less well

organized and more difficult to regulate and where sweated labour is more prevalent or where there is much scope for the exploitation of labour.(s.3)

3. The Plantation Labour Act, 1951

Under the Act 'child' means a person who has not completed his fifteenth year. It covers all tea, coffee, rubber, cinkona and cardamom plantation which measure 117 heactares or more, in which 30 or more persons are employed. The employment of children between the age of 12 is prohibited under the Act. However, the Act permits the employment of child above 12 years only on a fitness certificate from employment of child above 12 years only on a fitness certificate from the appointed surgeon. (s.24&25)The certificate of fitness is valid for one year at a time. This is the only Act wherein statutory provisions for education, housing and medical facilities have been enjoined upon employer.(s.27)

4. The Mines Act, 1952

'Child' means a person who has not completed his fifteenth years. This Act also extends to the whole of India and includes all excavations where any operation for the purpose of searching for or obtaining minerals is carried out. The Act provides that no child shall be employed in any mines nor shall any child be allowed to be present in any part of a mine which is below ground or in any open cast working in which any mining operation being carried on.(S.40,245) A young person (between 16 to 18) years is allowed to work in any part below ground if he has a medical certificate from certifying surgeon about his fitness.(s.43) An employer contravening the provisions of child labour is punishable with imprisonment up to 3 months or a fine up to 10,000 or with both. It also provides for penalties for use of false certificate of fitness and double employment of children (S.65)

5. The Beedi and Cigar Workers (Condition of Employment Act, 1966)

This Act extends to the whole of India and prohibits employment of children below the age of 14 years in any industrial premises. (s.24)The employment of young persons between 14 and 18 years age, is prohibited between 7 p.m. and 6 p.m. (s.25).The administration of the Act rests with the State Governments.

6. The Child Labour (Regulation & Prohibition) Act, 1986

Since legal framework for the eradication of child labour happens to be patchy, the need for a comprehensive legislation to overcome various anomalies such as minimum age for employment, working hours, medical examination, minimum wages and penalties and offences has been debated thoroughly. Under this background Child Labour (Prohibition & Regulation) Acts, has been enacted on 23rd December 1986.The Act brought a conceptual uniformity in definition of 'child' by bridging the gap created under various laws.(s.2(ii)) To prohibit and regulate the child labour it classifies occupations into 'hazardous' and 'non-hazardous'.(s.3) The Act consists of four parts and schedule. First part deals with preliminary definitions. Second part entails prohibition of employment of children in certain occupations and processes. Part third regulates child labour in those establishments where none of the occupations or process listed in the schedule are carried on. Fourth part of the Act deals with miscellaneous items viz. penalties, procedure relating to offences and appointment of inspectors. The Schedule enumerates occupation and process where employment of children are prohibited. Section 3 of the Act prohibits the employment of children below 14 years in any of the occupations and processes specified in schedule.(s.3) The other part of the section provides an exception to the above prohibition. (Section 14 says: (1) who ever employ and child or permits any child to work in contravention of the provisions of Section 3 shall be punishable with imprisonment of a term which shall not be less than three months but which may external to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both).However, it stipulates conditions such as a wage structure, working hour etc., for employment of children in such non-hazardous occupation. Section 7 of the Act specifies that the period of work for a child in any establishment on each day is fixed so as not to exceed 6 hours. This includes interval and the time spent in waiting for work on any day. Section 7(4) prohibits night work between 7 p.m. to 8 p.m., and Section 7(5) prohibits double employment of a child in any establishment. Section 14 of the Act deals with penalties. Whoever contravenes the Act, shall be punishable with imprisonment for term which shall not be less than three months but which may extend to one year or with fine which shall not be less than Rs.10,000, but which may extend to Rs.20,000 or with both. Whoever having been convicted of an offence under Section 3, or commit like offence afterwards, shall not be less than 6 months but which may extend

to two years. For other offence this Section provides simple imprisonment which may extend one month or with fine which may extend to Rs.10,000 or with both. According to Section 16 of the Act, any person, police officer or Inspector may file a complaint of the commission of an offence under the Act in any court of competent jurisdiction.

Inspite of numerous provisions the Act suffers to some major short comings. Firstly Act does not abolish child labour per se. Secondly, the legislation is not compatible with the true spirit of Constitution. Article 24 which prohibits employment of children below 14 years in all factories and mines irrespective of the hazardous nature, whereas the scope of the Act is confined to hazardous industries except the construction work. Even in the enumeration of hazardous occupations a selectivity has been adopted. In categorizing of the hazardous and nonhazardous industries a rational criterion has not indulging into hazardous process makes the Act quite redundant. In these circumstances prosecution is extremely difficult for inspectorate to prosecute in the absence of documentary evidence. The Act is also oblivious of minimum age for the employment of children to work in permitted occupations. The provisions relating to punishment prescribed under the Act caries a low deterrent effect. The implementation and enforcement of the Act according Labour Ministry report is near dismal. Though the states of Gujarat, Maharashtra, Rajasthan, Tamil Nadu and Uttar Pradesh have taken effective steps and launched prosecutions. India having 44 millions child workers had only 3488 prosecutions and 1426 convictions between mid 1986 and mid 193 and the penalty is also between Rs.50 and 5000, much less than prescribed under the law. According to Section 14, Whoever –

a. fails to give notice as required by Section 9 or
b. fails to maintain a register as required by Section 11 or makes any false entry in any register; or
c. fails to display a notice containing an abstract of Section 3 and this section as required by Section 12; or
d. fails to comply with or contravenes any other provisions of this Act or the rules made there under shall be punishable with simple imprisonment which may extent to one month or with fine which may extend to ten thousand rupees or with both.) Though India is a party to the ILO but it is not easy to ascertain the real extent of child labour in India mainly because of the informal an unorganized nature of the labour market. On the other hand the

precise definition of child labour is not available. Due to multiplicity of the concepts, methods of measurements and the sources of data it is difficult to estimate the overall magnitude of child labour in India.

According to UNICEF Report an estimated about 246 million children are engaged in economic activity all over the world. Out of this India alone accounts for about 100 million. The estimates of some Non-Governmental Organizations cite the figure of child labour between 70 and 150 million. The figure gets larger as the years pass by. However as per the census of India there were 10.75 million child labour in the age group of 5 to 14 years in 1971; 13.64 million in 1981; 11.28 million in 1991 and 12.66 million in 2001. The information on children working in informal sectors or attending schools who might also be working is difficult to procure. The collection of reliable data regarding child labour is limited also by the fact that officially the work undertaken by children in domestic and informal sectors are excluded from workers category, as it is difficult to assess the productive value of such labour. Thus official child labour figures are always at such variance with figures quoted by non-governmental organizations. There is corresponding relationship between school dropouts and child labour. Whenever school dropout rates are high at primary and middle levels the incidence of child labour is also high. For example in 1991, 99 million children as against 150 million child population between the ages of 5 and 14 years enrolled in primary schools but only 52 percent of the enrolled have completed their V grade. Nearly 100 million children between the ages of 5 and 14 years are not in schools. It can be said that this majority is engaged in some kind of work either paid or unpaid. Thus India is the largest producer of illiterates and child labourers in the world. In India the state of Andhra Pradesh stands for the largest number of working children whereas the state of Kerala for the lowest. (20-46)

5.3 Adoption

In a broad, non-legal sense adoption may be defined as the institutionalized social practice through which person belonging by birth to one family or kinship group acquires new family or kinship ties that are socially defined s equivalent to biological ties and which supersede the old ones, either wholly or in part.[22] Adoption among Hindus has come of age from the old times when Kings, Landlords or the rich used to adopt an heir rather than a child they look for a boy while going on in adoption. This situation still continues while we are in the age

of the egalitarian era, where both men and women have an equal status and opportunity in social, economic, and political spheres.

Today most people choose adoption not as a social responsibility but for the sake of continuation of their family. In India there is no common code on adoption for all members of the community irrespective of their caste, creed or religion. The adoptions for Hindus are still governed by the Hindu Adoptions and Maintenance Act, 1956 and for non-Hindus under the Guardians and Wards Act, 1890. The fact is enough to show how far the Indian law on adoption is too old and outdated. The Hindu Adoptions and Maintenance Act, 1956 is parent-oriented rather than child-oriented. Under the Act, a man without children could adopt either a stranger or a near agnate, such as brother's son. In practice, strangers are rarely adopted, the childless parents generally choose to adopt a near agnate or his relative's son. It is mainly the poorer who prefers to adopt a child out of his clan or group. A motivational aspect in adoption is that it is generally preferred by the childless parents with a view to take care of themselves in gold age, infirmity or disease rather than the welfare of the children. Another practice that has developed in Hindu society is that adoption rarely look place unless there was property to pass on. In upper and middle-class family, it is not mere childlessness that necessarily leads a man to adopt a son; it is childlessness combined with the ownership of landed or other properties that induces many male Hindus to adopt a son. The law also encourages them to do so. In short the Hindu law of adoption is as follows: Any male Hindu who is of sound mind and a major can adopt a Hindu boy or girl under 15 and who have not been married. If he has a wife living, he should get the consent of his wife unless she is an insane. a convert or a sanyasin. Similarly, a female Hindu who is of sound mind and a major can also adopt a boy or a girl for her own Normally the father alone has the capacity to give the child in adoption, but the mother's consent is necessary, unless she is an insane, a convert or a sanyasin. If the father is dead insane, a convert or has renounced the world by becoming a sanyasi, then a mother of the child gets an absolute right to give the child in adoption. If both parents are dead, insane or have completely and finally renounced the world or have abandoned the child or when the parentage of the child is not known, then a guardian can make the valid adoption only with the previous sanction of the Court. In such a case the Court will seek the opinion of the child if he or she is capable of giving it. The Hindu law of adoption states that

if a Hindu male has no son, son's son or son's son's son he can adopt a son', for himself. Thus, if a man has only a daughter and no son either by blood or adoption, then the male child can validly be adopted. Similarly, a Hindu can validly adopt a girl child he/she has no daughter of his/her own or son's daughter. Thus the Hindu adoption law allows the adoption of only one male and only one female child to give the parents the social status of full parenthood. The law also provides that the child must not have been adopted earlier and there must be an age difference of 21 years between adopter and adoptee to avoid any sexual intimacy between the adopter and the adoptee if the adopter and the child are not of the same sex. There is no need of religious ceremony or legal proceedings, only actual giving and taking of the child is enough. Neither the Court proceeding nor any placement agency come into picture in making adoption under the Act. The effect of an adoption is to transfer all rights, duties, obligations and liabilities of parents or guardians in respect of future custody, maintenance, and education, including rights to appoint a guardian, from the natural parents to the adoptive parents, as though the adopted child were one born legitimate.

For the purposes of marriage, family 'allowance, and national insurance, claims of damage on death, and intestate succession an adopted child is deemed a child born in wedlock to the adopter. The Hindu Adoptions and Maintenance Act, 1956 is the only means through which an adoption is permitted in India. Under the Act only Hindus can adopt in the Country. Although the India Government had attempted several times since independence to pass a uniform, secular bill for the whole Country, but the Muslims and a section of the Parsis have had strong objections to the various bills introduced in Parliament. As a result Muslims, Christians and Parsis have no adoption laws of their own. The Adoption of Children’s Bill. 1972 sought to provide for a uniform law of adoption applicable to all communities including the Muslims but, it was dropped owing to the strong opposition of the Muslim community, The Adoption of Children Bill, 1980 which excluded the Muslim community from its purview. has unfortunately not yet been enacted into law. In this respect, we are of the opinion that every Indian citizen irrespective of his/her caste, creed or religion should have the right to adoption. Today, Indian Muslims, Christians and Parsis do not have adoption rights but only a guardianship rights under the Guardians and Wards Act, 1890 and the adopted child does not get the inheritance and other rights under the Act.The second

drawback of our Hindu law of adoption is that an illegitimate child cannot be adopted. The child must be a Hindu. However, the word "Hindu" has been widely defined and includes Jains, Buddists and Sikhs or anyone who must be presumed (to be' a Hindu within a definition of Hindu in Sec. 2 of the Hindu Adoptions and Maintenance Act, 1956 by reason of not being and adherent of the Islamic, Christian and Parsi faith.

Illegitimacy is a major social problem as millions of children in our society are illegitimate. Adoption is in practice a common solution to a case of illegitimacy. An illegitimate child should be adopted freely without any legal hurdles by either natural parent or both or by third parties, so that more destitute and orphans can be accommodated. Another drawback of our adoption law is that a Hindu spinster, a widow or a divorcee can adopt a child for herself, but a wife cannot adopt a child even with the consent of her husband. Adoption is neither being recommended nor recognized by Muslim law. The adopted son or 'daughter is, however, entitled to what may be given under the valid deed in gift or will. Under Hanafi law, a man may adopt an heir when he leaves no living relative in this case escheat to the state or to the religious community can be avoided. But in other schools of Islamic law adoption was prohibited. In Islam not only purdah system (an upper practice generalized) but also the remarriage of widows and divorcees are permitted. So too is plural marriage, a less- frequent solution to childless marriage than divorce. These strategies of heirship are preferred to adoption, since the Hindus one-for-always union offers less possibility of producing one's own children, it makes a greater call to adopt those of other people, for which they may well have to depend upon kin even if there is no formal restriction 'to the children of relatives , or even strangers. As noted earlier, the need for a male heir has traditionally been one of the prime motives for adoption and the welfare of the child was not the main consideration. This was reflected in Roman Civil law which subsequently influenced , adoption laws of a number of Western Countries. Adoption had no place in England until 1926. Later legislation 'now consolidated in the Adoption Act of 1976.

The new Act controls the work of adoption societies, rights of the natural parents and the adopted child's right to know his original name. The increased effectiveness of birth control, the legalization of abortion and the social acceptance of one parent families, has decreased the number of babies in some

Western Countries. Many foreign couples have been taking Indian children in adoption. In the absence of common adoption code, low awareness and the shortage of voluntary recognized agencies in this field remains the main hurdle. In the absence of uniform code, resort is had to provision of the Guardians and Wards Act, 1890 which provides only a custodial mechanism. As expressed by the Supreme Court in Lakshmi Kant Pandey vs. Union of India, (AIR 1984 SC 480), “since there is no statutory enactment in our Country providing for adoption of a child by foreign parents or laying down the procedure which must be followed in such a case, resort is had to be provisions of Guardians and Wards Act, 1890 for the purpose of facilitating such adoption. The Act is an old statute enacted for the purpose of providing for appointment of guardian of person or property of a minor”Lakshmi Kant Pandey's case is the most important in the area of inter-country adoption which merits a special consideration in the context of current discussion. In 1982, a petition was filed under Art. 32 of the Constitution by advocate Lakshmi Kant Pandey, alleging malpractices and trafficking of children by social organizations and voluntary agencies who offer Indian children for adoption overseas. The petition was filed on the basis of a report in the foreign, magazine called “The Mail”. The petitioner' accordingly sought relief restraining Indian based private agencies “from carrying out further activity of routing children for adoption abroad" and directing the Government of India, the Indian Council of Child Welfare and the Indian Council of Social Welfare to carry out their obligations in the matter of adoption of Indian children by foreign parents. By an, order dated 6.2.1984 the Supreme Court laid down detailed principles and norms to be, followed for the adoption of children by the people, overseas. Many examples and references were cited while discussing the issue, including the statutory provisions and the international standards. While discussing the issue the Court said: “when the parents of a child want to give it away in adoption or the child is abandoned and it is considered necessary in-the interest of the child to give it in adoption, every effort must be made first to find adoptive parents for it within the Country because such adoption would steer clear of any problems of assimilation of the" child in the family of the adoptive parents which might arise on account of cultural, racial or linguistic differences in case of adoption of the child by foreign parents. If it is not possible to find suitable adoptive parents of the child within the Country, it may become necessary to give the child in adoption to

foreign parents rather than allow the child to grow up in an orphanage or an institution where it will have no family life and no love and affection of parents and quite often, in the socio-economic condition prevailing in the Country, it might have to lead the life of a destitute, half- clad, half-hungry and suffering from malnutrition and illness". The Court also quoted with approval from the National Policy for the Welfare of Children. The policy states with a goal-oriented perambulatory introduction where it was said "The Nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part, in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice." It is obvious that in a civilized society the importance of child welfare is of paramount interest.

In recognition to the' international standard and norms of human dignity and of equal rights, the Universal Declaration of Human Rights (1948) too deals with welfare and development of children. Apart from it, the U.N. Commission on Human Rights drafted the convention on the Rights of the Child, which was subsequently adopted by the General Assembly on 20 November, 1989. This document also recognises that childhood is entitled to special care and assistance. The convention also sets international standards and measures intended to protect and promote the well-being, of the children in the society. The World Human Rights Conference in Vienna in. 1993 has emphasized upon special care and assistance for children and a need to create an atmosphere in the society conducive for the healthy growth and development of children. The Economic and Social Council by its resolution No. 1925 LVIII requested the Secretary General of the United Nations to convene a group of experts with relevant experience of family and child welfare with a mandate to prepare a draft declaration of social and legal principles relating to adoption and foster placement of children nationally and internationally. One of the guidelines recognised by the draft declaration was that "the child should at all the times have a name, nationality and legal guardian." Apart from statutory provisions and international standards for 'the well-being of the children, the Constitution of India enshrined our basic

philosophy in its preamble and lays down certain valuable directive principles of governance recognizing the well-being of children, Article 15(3) of the Constitution enables the State to make special provisions inter alia for children and women and Art. 24 provides that no child' below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Clauses (e) & (f) of Art. 39 provide that the State shall direct its policy towards securing inter alia that the tender age of children is not abused, that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength and that children are given facility to develop in a healthy manner and conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. These constitutional provisions reflect the great anxiety of the Constitution makers to protect and safeguard the interest and welfare of children in the Country, as what is expressed by the Supreme Court in Lakshmi Kant Pandey's case. The lives of children in the third world countries are more deplorable.

As Paul Harrison a freelance journalist working for several U.N. agencies including the International Year of the Child Secretariat points out that most third world children suffer "because of their country's lack of resources for development as well as pronounced inequalities in the way available resources are distributed" and they have a situation of absolute material deprivation. He proceeds to say that for quite a large number of children in rural areas, "poverty and lack of education of their parents, combined with little or no access to essential services of health, sanitation and education, prevent the realisation of their full human potential making them more likely to grow up uneducated, unskilled and unproductive" and their life is lighted by malnutrition, lack of health care and disease and illness caused by starvation, impure water and poor sanitation. What Paul Harrison has said about children in the third world applies to children in India and if it is not possible to them in India decent family life, where they can grow up under the loving care and attention of parents and enjoy the basic necessities of life such as nutritive food, health care and education and lead a life of basic human dignity with stability and security, moral as well as material, there is no reason why such children should not be allowed to be given in adoption to foreign parents, as observed by the Supreme Court in Lakshmi Kant

Pandey's case. Such adoption would be quite consistent with our national policy on children because it would provide an opportunity to children, otherwise destitute, neglected or abandoned, to lead a healthy decent life, without privation and suffering arising from poverty, ignorance, malnutrition and lack of sanitation and free from neglect and exploitation, where they would be able to realise "full potential of growth", said the Supreme Court in Lakshmi Kant Pandey's case. Children constitute a special group who need special care and protection. However, children suffer in various ways in many countries. Most of our children are forced to live the life of orphanage and destitute.

Even in the United States which is the richest of all world powers, the child welfare programmes lag behind those of many others .sections of the society. The joint Commission on Mental Health in Children stated in 1970: "In spite of our best intentions, our programmes are insufficient, they are piecemeal, and fragmented, and do not serve all those in need. Unwittingly, we have failed to commit-our vast resources to promote the healthy development of our young. This nation though the richest of all world powers, has no unified national commitment to its children and youth. The claim that we are a child-centered society, that we look to our young as tomorrow's leaders is a myth, Our words are made meaningless by our actions - by our lack of national, community, and personal investment in maintaining the healthy development of our young, by the minuscule amount of economic resources spent in developing our young, by our tendency to rely on the proliferation of simple one factor, short ·term, and inexpensive remedies and services. As a tragic consequence, we have 'in our midst millions or ill-fed, ill-housed, ill- educated, and discontented youngsters."Today, when any child is adopted, we are proud of giving a decent homely life to the child but in the absence of common adoption code for all community members, we cannot hope the expected results. Though the adoption of both male and female orphans gained increasingly acceptance in the last few years, absence of uniform code in this field remains the main legal hurdles in giving and taking of a child in adoption.

Today, the big need is to have a uniform code on adoption for both intra and inter-country adoption. Only adoption societies, which must be registered with and are subject to the control of legal authorities, or local authorities, may make arrangements for adoption. They must ensure that parents understand the

consequences of adoption of their child, and make enquiries into prospective adopters. Application for an adoption or should be made to a Court which must appoint a person or body to safeguard the infant's interest. A natural parent may adopt his or her own child, alone or jointly with his or her spouse as it will safeguard the interests of illegitimate child. The child must have been in the care and possession of the applicant for at least three consecutive months preceding the order to ensure the capability of prospective adopters. Before making an order for adoption the Court must be satisfied that persons whose consents are necessary have consented, that the welfare of the child should be the main consideration, and that no unauthorized payment has been or agreed to be made. The Court may impose terms and conditions and dispense with any consent necessary for adoption in particular circumstances. With these safeguards we can best protect the interests of both natural parents and adopted infants.[23] Adoption is not only one of the most progressive and successful components of India's child welfare programme, but is also most regulated legally and procedurally.

But there exists a particular segment of the Indian population which has long been and still is, critical of many aspects of adoption. Intra country adoption in particular, believing it to be an area of child welfare is the most unregulated and open to abuse. Periodic scare stories of babies being "exported", adopted children ending up in foreign brothels as well as actual adoption scams, like the one recently unraveled in Andhra Pradesh only add fuel to the fire. This is definitely a setback for the cause of adoption in the country. India till recently had no uniform law governing adoption. It was only a Hindu citizen who could legally adopt a child under the Hindu Adoptions and Maintenance Act, 1956. The closest that non-Hindus, that is, Muslims, Christians and Parsis, could come to adoption was through procedure under the Guardians and Wards Act 1890. This is hardly a substitute for an adoption law, which is full-fledged and complete in itself.

There was a great need for a law governing adoption, or at the very least, an adoption code enabling non-Hindus to adopt without the need for recourse to Hindu Adoptions and Maintenance Act, 1956.It is partly in response to the pressing need that the Juvenile Justice (Care and Protection of Children) Act, 2000, included adoption within its ambit. This is not an all in all adoption law, but brings in adoption as one of the means by which abandoned, neglected, abused and destitute children could be rehabilitated. The Act recognizes adoption as an

important process in the rehabilitation and social re-integration of children who are abandoned, orphaned, neglected or abused in their families or in institutions. One of the arguments in favour of the legislation is that the Juvenile Justice (Care and Protection of Children) Act, 2000, if well interpreted by the Courts, the legislation will help in promoting the noble cause of adoption, as sanctified by the religious texts. Since the scope of adoption is greatly narrowed down by the Hindu Adoptions and Maintenance Act, 1956, the new legislation shall act as a compensating factor, thereby enlarging the ambit and purview, and given it an impetus. According to the Hindu Adoptions and Maintenance Act, 1956, a Hindu who already has one adopted or natural born child and is desirous of adopting another child of the same sex cannot do so.[24] Most of these children are then adopted through inter country adoptions, often into families where there are already several children. But if all the implications of the act are meticulously considered it is evident that though laudable in intent, the Juvenile Justice (Care and Protection of Children Act 2000 may do more harm than good to cause of adoption. This is because it conflicts with the existing legislation and riddled with inconsistencies. Given its special status within the broad framework of child welfare program adoption demands a sort of legislation that must either supersede or made compatible with the existing legislation. Also, the compatibility should be there with the tangle of procedure which directly involves the Central and State Government as monitoring bodies, Central Adoption Resource Agency, Courts, social workers adoption agencies, biological parents, adopt parents, and obviously the child (as specified in the Act Rules, 2001).

- Existence of a prior law relating to adoption for Hindu.
- The non-existence of adoption laws non-Hindu communities.
- The prohibition of adoption in the religion laws of some communities, say, Muslim for instance.
- The Silence of the Act on the issue of inter country adoptions.

Thus, the Juvenile Justice (Care and Protection of Children) Act, 2000 has conclusively been rendered defective, since it hide an adoption law in it with no reflection its implementation and repercussion. Though the legislative intent might be bonafide but they do not even mention adoption in the statement of objects and reasons the Act. Now, we shall address some of the issue of concern. First and foremost, it is a well settled principle of Jurisprudence that where there is a general

and specific law on the same aspect of law, the latter has preceded over the former. Consequently, the Juvenile Justice Act is rendered fruitless and inadequate by the very presence of Hindu Adoption and Maintenance Act, 1956.Secondly regarding the conflict between the Act and the existing legislation, naturally the multiplicity of laws, each with their set of operational rules, causes chaos in the field. Further, the section[25] on adoption of the new Act has been written inadequately. The creation of a new structure for adoption which are headed by the Juvenile Justice Boards in the various acts under Magistrates with "special knowledge and training in child psychology" replace system of family Courts, which worked reasonably well. Besides, the Act will require a substantial amount of changes and it may not be always possible to get Magistrates with the desired background in child welfare, resulting in the remaining vacant. This will infuse delay in already delay ridden system. The new Act is silent regarding the provisions of adoption as are mentioned in the Adoptions and Maintenance Act, 1956, Section 12 of the same. Further the Juvenile Justice (Care and Protection of Children) Act, 2000 does not discuss the issue of inter country adoption, and in turn continues to be governed by Supreme Court Ruling.[26] Again, an issue of contradiction lies in the fact that the Act empowers State Governments to give guidelines to the Board. Hence the Central Adoption Resource Agency guidelines that are drawn up with such care have worked well all this time. The real test of the Act will lie in its implementation and whether it can be expanded.

Now, let us highlight on this aspect, as in, how the provision of the Act can be put to misuse. In the crackdown undertaken by the Government of Andhra Pradesh, several adoption agencies were shut down, the children and a whole bunch of high profile people who ran these NGOs were arrested under the charge of child trafficking in the garb of inter country adoption. These agencies were alleged to have dangled monetary incentives before biological parents, which violated the most fundamental norms governing adoptions. A large-scale criminal conspiracy was unearthed on the matter of the relinquishment deed that the biological parents desirous of giving up their children for adoptions must sign. The signatures were either forged or obtained fraudulently or belonged to fictitious persons.[27]These allegations were denied by the agencies that claimed that the signatures were those of the "Lambadas" who being nomadic could not be located. In this tug of war between the Government and agencies, the one who are really being deprived of childhood, homes, families, future

and possibly their lives are the children because the adoption process has come to a grinding halt. Under these circumstances, the future of the victimized children appears grim. The Andhra Pradesh Government initiates action to check the adoption racket, but the lack of clarity about rules and procedures at various levels raises doubts about, its effectiveness. There is so much of a murky business being carried out in the name of inter-country adoption. For over a month. Investigations by the police, the media and voluntary agencies have prima facie shown that adoption is a lucrative business in Andhra Pradesh. A number of institutions, most of them based in Hyderabad, have been asked to stop operations relating to adoption or have been put on the watch list.[28] A host of reports have been lodged regarding the alleged violation of the adoption procedures by the Juvenile homes, John Abraham Memorial Bethany Home at Tandur in this case. These and other illegal events have led to a war of words among the representatives of Central Adoption Resource Agency, which functions under the Union Ministry of Welfare and Social Justice, the Voluntary Coordinating Agency (VCA), the nodal adoption agency in the State, and the State Government.

The CARA guidelines in accordance with the judgment of the Supreme Court n the Laxmikant Pandey case AIR 1984 SC 469, have credited a multi-level scrutiny system composed of several authorities like the voluntary coordinating agencies, scrutinizing agencies, etc and armed all of them with wide powers and thus creating a whole complicated procedure which has to be undergone for inter country adoption. CARA grants recognition to the child adoption agencies on the recommendations of the respective State Government, but Andhra Pradesh Government officials refuted accusations that they failed to check the unhealthy practices. But he facts are not hidden from our eyes.

Now, in the final analysis, it can be said that though the Act was framed with a bonafide intent, yet it has paved way to a number of doubts and difficulties in its practical implementation. The Muslims challenge the constitutionality of the provision (Section 41 of Juvenile Justice (Care and Protection of Children) Act, 2000 per se, since the concept of adoption runs contrary to the injunctions of the Holy Koran. Regarding the other flaws in the Act as already mentioned before, the following alterations are suggested. It is submitted that if not struck down completely, the provision on adoption in the Act should be made more comprehensive and detailed as regard its application. The conflict and contradictions between the Act and the existing legislation should be amicably resolved. Being a secular Act those people

who are willing to take recourse in this Act should be allowed to do so if they do not wish to be governed by their personal laws in this regard. Now, viewing the situation from the standpoint of the Indian social perspective it is clear that the people are not progressive enough to follow the new Act, in place of their own personal laws, though they impose many restrictions on them. In addition if at all they do take such a step, they might are most likely to be branded as nonconformists. Therefore, there is a clear chance of the new Act being an anachronism, since the social milieu is not fit to imbibe the sense behind the Act. Adoption is an act of establishing a person as a parent to one who is not so, in fact or in law, his child. adoption is widely recognized and it is a worldwide institution with historical roots traceable to antiquity. In most ancient civilizations and in certain later cultures s well, the purposes served by adoption differed substantially from those emphasized in modern times – continuity of male line had been the main goal of adoption. The importance of the male heir stemmed from political, religious and economic considerations pending on the culture. The person adopted was invariably a male and the welfare of the adopter was primary concern than the welfare of the adoptee. Law of adoption in India falls within the purview of Personal Laws, in the absence of any uniform civil code on the same, and the personal laws of Hindus only recognize this institution among all the communities of India. As the human civilization evolved, man's desire to know the paternity of his children grew and there was a transition from matriarchal society to patriarchal society this institution of marriage also evolved amongst Hindus was a holy sacrament strict monogamy for the women[29]. And offshoot of the emergence of patriarchal society was man's desire that his people should go to his own being and his own being could only be his children. Children and man could only be determined if the ceremonial union would be exclusive. Hence the institution of marriage basically evolved the view to determine the paternity of children. Amongst children, in patriarchal society the son is the most proximate own being because daughters are not considered to be a part of family as after their marriage they go and live with the husband and has to take his gotra, etc.

Among Hindus the institution of adoption has evolved as a result of the obsession of the society with the son .The Hindu Society has always been obsessed with a male child and is still so, which is evident from the falling sex ratio in India, rampant female foeticide and infanticide. Son is called putra in Sanskrit 'Put' means hell and this word literally means deliverer from hell. Son became essential for the salvation of

soul. He was so important that an institution of sonship evolved in Hindu society. Since it is just no possible to beget a natural born son by everyone, at one point of time apart from natural born son, as many as 12 secondary sons are recognized in the Hindu society, of which adopted son was the one and thereby constitution of adoption evolved. The obsession with son was so great that one had to get a son whether naturally or by hook and crook. Amongst these 12 secondary sons a few of them were a result of some immoral connection of either the husband or the wife such as kanina son, i.e. maiden's born to an unmarried girl in her father's family kshetraja son, i.e. son of a wife begotten upon a man's appointed wife or widow of his brother or near kinsman. In the old Hindu law adoption was to be bestow a son on a sonless person. Since a son could discharge both religious and secular duties not anyone could be adopted. There were many restrictions such as a girl, an orphan an illegitimate child could not be adopted. Similarly adoption had to be intra caste and intra gotra. the Hindu adoptions and Maintenance Act, 1956 has brought significant changes in the law of adoption among Hindu. This Act is a unique blend of old and new law. At that point of time it was engaged that it might have revolutionalized the institution but in the contemporary society it has become somewhat archaic especially since we do not have a uniform law on the time. No doubt that the Act has steered off religious and sacramental aspects of adoption and has secularized this institution to a large extent in the sense all prohibitions regarding adoption of a daughter, adoption of a shudra child, gotra, sapinda prohibitions have been removed by the Act.

To facilitate the study of the Act for the purposes of this paper, it can be divided into various segments, viz., Capacity to take in adoption Capacity to give in Adoption, Capacity to be taken in Adoption, Ceremonies Adoption. These segments would be taken one by one and lacunae which the present authors find would be discussed and some submissions to rectify the same would be made.

Capacity to take[30] in Adoption: Under the Act, broadly speaking, both male and female have been given right to adopt a child and they have to fulfill following conditions:

i) The person adopting should be major i.e. should have completed the age of 18 years.
ii) The person adopting should be of sound mind.
iii) The person adopting should be a Hindu.

After his broad provision, the Act provides for different capacities for the male Hindu and female Hindu to adopt a child. Any Hindu male who fulfills the above requirements is capable of adopting a child but a married male can adopt only with the consent of his wife. However a Hindu male can dispense with the consent of his wife it she has ceased to be a Hindu or if she has finally and completely renounced the world or if she has been declared by a Court of competent jurisdiction to be of unsound mind. In the above conditions, the first condition, where the consent of wife can be dispensed with when she has ceased, to be Hindu is wedded to archaic, fundamentalist and chauvinistic approach. If the wife of a husband, who wants to give the child in adoption converts to some other religion, she does not ceased to be the mother of the child. If we go by this condition, it would mean that a wife on conversion loses all her rights over her child. Is conversion to some other religion a sin or an unlawful act? Our Constitution guarantees freedom of religion.[31] But as per this provision, a mother, just because her faith changes or just because she finds solace in some other religion, loses her child because if she converts, her husband has full freedom to give their child in adoption, her consent or non consent being totally immaterial. Therefore, it is submitted here that taking into consideration the present time, this provision ought to be amended. Unlike the old Hindu law, a female Hindu has also been given right to adopt a child. But the reformist zeal ends here as not every woman has right to adopt. A married woman whose marriage is subsisting has no right to adopt a child even with the consent of her husband. Such woman can only adopt a child when her marriage has been dissolved or whose husband is dead or whose husband has finally and completely renounced the world or whose husband has been declared by Court of competent jurisdiction to be of unsound mind or whose husband has ceased to be a Hindu.[32] Similarly a right should not conferred on the non convert spouse to foist an adopted child on convert spouse. Along with the capacity to take in adoption a person should have right to take in adoption. According to the Act a person has a right to adopt a son only if the adopting father or mother as the case may be, should not have a Hindu living son, son's son or son's sons' son, or if a daughter is to be adopted, the adopter should not have a Hindu living daughter or son's daughter, if a Hindu male wants to adopt a female child, he must be senior to her by 21 years, if a Hindu female wants to adopt a male child, she should be senior to him by 21 years, two persons (other than man and his wife) cannot simultaneously adopt a child.[33] these conditions are called restrictive conditions. The first two conditions

have severely narrowed down the scope of adoption.

Even otherwise in India the scope of the institution of adoption is very limited, in the sense, that it is a subject matter of personal laws since it does not form part of uniform civil code and personal laws of only Hindus recognize this institution. it is submitted here that as to the bar on adoption of a son and a daughter in the presence of a Hindu son, son's son or son's son's son, daughter and son's daughter, as the case may be, should be done away with. At this stage we would have to resolve one dilemma whether this Act is to provide child to the childless or to provide parents to a parentless child? If one was to study the Act thoroughly, one would find that the crafters of the Act have swung between modern ideology of the welfare of the child and the old notions of Hindu law. At one hand, they have recognized the right of illegitimate, orphans and girl child to be adopted whereas on the other hand, they have struck to the principles of old Hindu that in the presence of Hindu son, etc, (daughter, etc.) another son or daughter cannot be adopted. These provisions raise the aspirations of a socially spirited or a couple who want a richer and fuller family. A couple having a son and/or a daughter may desire to have more children but have to be socially conscientious and being aware of the spirit of family planning they wish to increase their family by taking resort to adoption, with this, they would serve two purposes the richer family life and to provide home and a family to orphan children. This question raised in Sandhya alias Supriya Kulkarni Union of India, AIR 1998 Bombay. Bombay High Court, while observing personal laws are outside the ambit of the Constitution of India, therein cannot grant any indulgence further emphatically that Parliament ought to examine the question relating to the said provisions. The point which is raised in favour is that in the presence of their natural children, the adoptive parents may not be their adopted children equitably. While considering this point, it is overlooked that only those persons, who are committed to caring of children, would resort to such adoption secondly, natural children can be born to parents subsequent to the adoption. In such circumstances such parents can treat their adopted children inequitably. It is therefore submitted here that S. 11 & (ii) should be done away with. The restrictive provisions (iii) and (iv) primarily for the protection of the child adopted. The age difference of 21 years that the adopter should be senior to the adopted child in "opposite sex adoption" is to prevent sexual abuse of the adopted child had this provision not been there, a boy of 18 years would have very well adopted a girl of 14 years and the relationship would have never looked like a parent-child relationship.

These provisions are no doubt commendable and are enacted with welfare of child principle in view but interesting and apt lacuna in these provisions has been pointed out by Dr. Paras Diwan. Interestingly, if a Hindu male wants to adopt a male child, he may adopt a boy who is 14 years and 364 days while the age of his wife may be 18 years or less, the adoption will be valid, though the age difference between him and his adoptive mother is no more than three years.[34] This observation also brings forth the act that according to Section 7 and 8, only the man can take the child in adoption and a married women, whose marriage is in substance, cannot. Had the provision been that both husband and wife would adopt together, this lacuna would not have arisen, because the, this provision would have been applicable on the husband as well as on the wife. Capacity to give[35] in adoption: - Before meaning into force of the Act, the law of adoption had developed in such a way that father had attained absolute power to give his son in adoption he could do so even without taking consent of his wife tat is the child's mother.[36]

(1) Father, (2) Mother, and (3) Guardian. Father:-Only father can give his legitimate child in adoption, though with the consent of the mother. The expression 'father' does not include an adoptive father, putative father and step father. The consent of mother can be dispensed with: (a) if she has ceased to be a Hindu, or (b) if she has finally and completely renounced the word, or (c) if the has been declared by a Court of competent jurisdiction to be of unsound mind. In the present submission, the first condition,. Where the consent of wife can be dispensed with when she has ceased to be Hindu is ridded to archaic, fundamentalist and chauvinistic approach. If the wife of a husband, who wants to

(2) Give the child in adoption, converts to some other religion, she

(3) Does not cease to be the mother of the child if we go is this conditions, it would mean that a wife on conversion loses all her rights over her child is conversion to some other religion a sin or an unlawful act? Our Constitution guarantees freedom of religion.[37] But as per this provision, a mother, just because her with change or just because she finds solace in some other religion, loses her child because if she converts, her husband has full freedom to give their child in adoption, her consent or non consent being totally immaterial. Therefore, it is submitted here that taking into consideration the present times, this provision ought to be amended. An illegitimate child can be given in adoption by the mother even without the consent or permission of the putative father. But a mother of a

legitimate child cannot give the child in adoption even with the consent of her husband. This means that a mother whose marriage is subsisting has no right to give the child in adoption. She can so so only under following circumstances:- (a) if father is dead, (b) if he has ceased to be Hindu, (c) if he has completely and finally renounced the world, (d) if he has been declared by a Court of competent jurisdiction to be of unfound mind. It is further submitted here that another anachronistic and discriminatory provision which reflects the present bondage with the old law is that a married woman has neither a right to adopt a child nor a right to give child in adoption. Admittedly her consent is generally mandatory in both the cases and she c n do so under certain circumstances enunciated earlier, but still the fact that man could do both, viz., adopt and give in adoption, glares at ones face. Does it not violate the right to equality given to all by your Constitution? It is submitted that these provisions ought to be redrafted in such a manner that both the parents together should be given the right to adopt the child and both should together give the child in adoption as the case may be.

In old Hindu law an orphan or foundling could not be adopted. But this condition has been done away with after coming into force of the Act. Such a child can now be given in adoption by its guardian subject to the provisions of the Act.[38] A guardian can give the child in adoption only under following circumstances.[39] (1) if both the parents of the child are dead, (2) if the parents have finally and completely renounced the world, (3) if the parents have been judicially declared of unsound mind, (4) if the parents have abandoned the child, (5) if parentage of the child is unknown, e.g., in case of a foundling or refugee child. Unlike parents, a guardian cannot give the child in adoption without the prior permission of the Court. The underlying principles with the courts while making an order of adoption would be welfare of the child.[40] other factors to be kept in view are:-

1. If the child is capable of expressing his or her wishes, they would be taken into consideration subject to welfare of the child.
2. While making an order of adoption, the Court will consider the physical and moral well being of the child, and financial position and social status of the proposed adopter.
3. The court will also have to weigh the pros and cons of the two places – where the child is and where the child shall be taken to.

4. Before passing the order the Court shall see whether any person has not received or agreed to receive or has given, or has agreed to give some consideration for adoption. Though the Court can allow some payment to the guardian, e.g., what he has spent in upkeep of the child from his own pocket.

It is no doubt commendable that the principle of welfare of the child has been incorporated in the Act vis- vis the children to be given in adoption by the guardian. It is submitted here that this principle should also be there in case of adoption where the givers are parents. We still adhere to the old Hindu law notion where adoption was considered as a purely personal and private act. In to days' changing social norms, looking at the pace at which society is moving, where alcoholism, drug addiction, single mother syndrome, child abuse, pornography, pedophilia are on rise, a child given in adoption, may not end up in wrong hands. No doubt there can be no greater will wishers of the child than his parents, nonetheless for the welfare of the child, some monitoring agency ought to be established as we have for inter country adoptions.

Capacity to be taken in adoption:

In the old Hindu law an orphan or a girl child could not be taken in adoption either an only son or the eldest son, could be adopted, one could not adopt a son of a woman whom he could not have married, a maiden such as sister's son. The Act to a large extent revolutionized the concept as to who can be taken into adoption .Only the following persons can be taken into adoption

1. The child to be adopted should be a Hindu.
2. The child should not already adopted.
3. The child should not be married unless custom permits.
4. The child should not have completed the age of 15 years .

Under the Act a girl child, an orphan, an illegitimate child can also be adopted. In the present submission the concern that the child to be adopted should not Hindu ought to be modified. We should not adhere to the old notions of Hindu law. When we have done away with all caste, gotra, sapindas, illegitimacy, etc. prohibitions even then that a child has to be a Hindu should be done away with. With such a large number of abandoned children waiting to find homes and people now becoming amenable to the idea of adopting the child from orphanages and institutions, this bar seems to be anarchistic. A child is a child, whether Hindu or non Hindu and a child needs a home to grow up. A child is the future of the nation and it is his right to get a proper and a

healthy start in life. Agreed this is a Hindu Act for the Hindus but if we lack will for a uniform civil code, we should do away with these strict norms. Further adherence to old law for adoption is irrevocable. The reason behind this principle is to prevent the fickle minded parents who adopt a child, then change their mind and want to turn back from their commitment and thereby make the child a ball which can be thrown across any number of times. But his principle is to be gauged at the parameters of the principle of welfare of the child is the paramount consideration. The vital point that has been focused is that if an adopted child is abandoned or ill treated or abused by the adoptive parents should be left to his fate because nothing can be done for the child who has been given in adoption because the adoption is irrevocable and an adopted child cannot be further given in adoption. Further the in depth study of the Act recalls that the child has been given no choice or say in the matter which vitally concerns him. The child's consent or dissent is immaterial. The child, in howsoever hard circumstance he may be, cannot renounce his stable of being an adopted child. the adoption is permanently binding on him. The natural parents due to family obligations or due to love and affection for a childless relation or due family pressure and emotional blackmail may agree to give the child in adoption, whereas the child does not want to go to a new family and establish new relationships. It is therefore, submitted that the consent in the child, who has reached the age of discretion should be mandatory. For this, institution of adoption, would have to be channelized and some agency regulating all types of adoption should be created. In the welfare of the child it cannot remain a private act between the individuals. Ceremonies of hindus[41] Hindus have considered adoption essentially as a transfer of domination over the child from natural parents to adoptive parents. Some essential formalities were, therefore, prescribed to effectuate such transfer.

On coming into force of the Act, the ceremonies have been simplified and made more secular. Now only the giving and taking of a child is necessary. The child must be actually given by the parents or guardian with an intention to transfer the child from the family of its birth or where he has been brought up, in case of an orphan or abandoned children, to the family its adoption. The ceremony of giving and taking must be performed by: - (1) giver or taker, or (2) any other person under the authority of the then or taker. Only the performance of ceremony can be delegated and not the power to give and take. There have been a series of cases where adoption is challenged on the ground of non performance of the ceremony of giving and taking.

To avoid this confusion the registration of all adoptions must be made mandatory. Though the Act provides for presumption on registration of adoption.[42] .It has not been made mandatory. The argument against mandatory registration of Hindu marriages and adoption is that since India is still a poor, illiterate and backward nation lack of registration due to non awareness would render many a marriage and/or adoption invalid, but while raising this argument one forgets that once registration of births and deaths has been made mandatory everyone goes for it. The will to implement law is necessary to make a law effective.

While concluding it is submitted that a question as to the purpose of the Act has to be resolved – whether this Act is meant to provide a child to a childless person or a couple or to provide parents and family to a homeless child? The contemporary laws and practices now aim more to promote child welfare. Although the desire to continue the family line and to secure the rights of inheritance are still among the personal motives for adoption the interest of society is by and by centering on the creation of parent child relationship. Further, since law of adoption concerns children materially, it is legislation pertaining to children, therefore, welfare of the child, should be the thrust of this law. Further, in view of Art. 44 of the Constitution of India which strives to enact uniform civil code in India and in view of Article 39, clause (f) which provides, inter alia, that a State shall direct its policy towards securing childhood and youth to be protected against exploitation and against material and moral abandonment a uniform law of adoption, permitting all citizens should be enacted. In country where abandoned, orphan children languish in a hope to find a home, such limited law of adoption cannot serve its end to the hilt. A brave attempt by Indian legislature was made in 1980 when it introduced Adoption of Children Bill 1980, which was allowed to lapse in spite of the fact that Muslims were excluded from its purview, since in Muslim law an adopted child is considered to be a child of zina.

It is submitted that no community should be exempted from the purview of the proposed uniform adoption law. The law of adoption does not and cannot force a person to adopt. A choice is given which may or may not be exercised. Under Section 12 of the Hindu Adoptions and Maintenance Act, 1956 an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of adoption and from such date, the child loses all his relationship with his natural family and those relations are created and established in the adoptive

family. One of the exceptions to this general rule is laid down in the Proviso (b) According to it any property 'vested' in the adopted child before adoption shall continue to vest in such child even after adoption subject to the obligations, if any, attaching to the ownership of such property. Thus the Proviso (b) clearly says that the adopted child shall take from the family of his birth to the adoptive family only that property which was 'vested' in him before adoption. If the property was not vested in him, then he shall not be entitled to take the property away from the natural family. The question for consideration is if a member of coparcenary governed by Mitakshara Law is given in adoption, whether his undivided interest in the coparcenary property continues to vest in him even after adoption by virtue of Proviso (b) to Section 12.According to S. V. Gupte (Hindu Law of Adoption, Maintenance, Minority and Guardianship) by virtue of Proviso (b), the undivided interest of a person in a Mitakshara coparcenary property will not be divested by adoption but will continue to vest in him even after adoption. According to him not only the property belonging to an adopted child in the natural family such as his self acquired property, property inherited by him from other persons and property held as a sole surviving coparcener in a Mitakshara property, but even the undivided interest of a male child in Mitakshara coparcenary would pass with him as if he had separated from the coparcenary. Mulla has expressed a different view. According to him the undivided interest of a Mitakshra coparcener is not a 'vested' property and therefore he is not entitled to claim it after partition. S. T. Desai, the learned editor of Mulla's Hindu Law, 15th Edition 1982, says that the Proviso (b) relates only to such property which was absolutely 'vested' in the adopted son prior to his adoption and not his undetermined and fluctuating interest as a coparcener in his natural family.[43]

5.3.1 Inter Country adoption

In the process of evolution of civilization and mankind a child is the starting point for each successive generation. A child is not expected to achieve a full physical and mental growth unless proper environment, adequate opportunities, and sufficient facilities are provided. It is obvious that in a civilized society the importance of child welfare should not be overemphasized, because the welfare of the entire community, its growth and development depend on the health and well being of its children. The state and the society would provide the child to enjoy the basic human rights like food, shelter, clothing and proper education, which are conducive for the welfare and

development of the child.[44]Every child has a right to love and be loved and to grow-up in an atmosphere of love and affection and of moral and material security and this is possible only if the child is brought up in a family. The most congenial environment would, of course, be that of the family on his biological parents. But if for any reason it is not possible for biological parents or other near relatives to look after the child or the child is abandoned and it is other not possible to trace the parents or the parents are not willing to take care of the child, the next best alternative would be to find out adoptive parents for the child so that the child can grow up under
the loving care and attention of adoptive parents.[45] For adoption of a child by foreign parents, the provisions of the Guardians and Wards Act, 1890 are referred to for the purpose of facilitating, such adoption. Sometimes the provisions of the Children's Act, 1960 and the Juvenile Justice Act 1986 are also referred.

While supporting inter-country adoption it is necessary to bear in mind that the primary object of giving the child in adoption being the welfare of the child, great care has to be exercised in permitting the child to be given in adoption to foreign parents, lest the child may be neglected or abandoned by the adoptive parents in the foreign country or the child may be subjected to moral or sexual abuse or forced labour or experimentation for medical or other research and may be placed in worse situation than that of his own country, the Court apprehended. Inter-country adoption must be looked upon not as an independent activity by itself, but as part of child welfare programme so that it may not tend to degenerate into trading. Such adoption would not be mere legalistic arrangement but the creation of an environment in which the child can grow in health and happiness and be really integrated in the society of its adoption. In case on inter country adoption of an Indian child, it cannot be said that the Indian citizenship should continue until the adopted child attains the age of majority and is legally competent to opt. such a step would run counter to the need of quick assimilation and may often stand as a barrier to the requirements of the early cementing of the adopted child into the adoptive family. In case of adoption of a female child nothing was on record to show as to what religion that said child belongs to and the said child intended to be adopted by an Iranian and migrated to U.S.A. and whose wife was an American and professed Christianity, the Bombay High Court in J. Ghorashian v. State of Maharashtra held that the said child on being permitted to be adopted by the Petitioner should be taught fundamental principles of all known religions of human beings. Thereafter,it be left at liberty to select the religion which

the child desires to profess in her future life after attaining the majority or the decision taking capacity in view of laws where the child happens to be staying at that particular age. Both countries of origin and receiving countries of children have to take special legal action in an attempt to exert supervision over-inter-country adoption, on the one hand in order to improve the chances of success of such adoption and on the other hand in order to combat abuses. Such mandatory provisions generally are intended to over ride the confecting rules of Private International Law[46]

The procedure to be followed by the Court for the purpose of inter country adoption has been laid down by the High Courts and Supreme Court of India with a view to protecting the interest and safeguarding the welfare of the child. in 1984 Mr. L. K. Pandey, complained in the Supreme Court about practices indulged in by social organization and Voluntary Agencies engaged in the offering of Indian Children in adoption to foreign parents and the Hon'ble Court's judgment laid down the norms and procedural safeguards to be followed giving in an Indian Child in adoption foreign parents. These safeguards were clarified and altered in 1986 by the Supreme Court. Further directions were also issued to Supreme Court in 1992 in the matter of inter country adoption. As reported the agencies have indeed not provided any facilities to the child. In the event of such facilities being available maintaining children in hygienic condition and in an environment which would be healthy for the children's growth and mental development would indeed be difficult. On the issue of application by foreign Nationals to be appointed as Guardians of Indian Children the Karnataka High Court in Society of Sisters of Charity St Gerosa convent v. Karnataka State Council for child welfare, held that the Court is bound to exercise jurisdiction in favour of the child once it is satisfied that the order, it is likely for the welfare of the child. If the satisfaction is reached that the welfare of the child is assured, the Court may make order accordingly, should be read as mandatory not directory. The High Court further served that the dominant factor to be considered by the Court is welfare of the child and not of any procedural lapses and that too a procedure which does not contravene the Law. In cases where a person has expresses his desire to get himself appointed as a guardian of person and property, the Bombay High Court in J. Ghorashian v. State of Maharashtra held that it should keep in mind the minor's interest is of paramount consideration The Court should be careful and see whether the said desire expresses by the person is bona fide or motivated with no other intention which would not be beneficial to the future of the said Child. The court

should find out the material for the purpose of enabling it to Judge whether such a person should be permitted to be the guardian or his prayer should be rejected. In this context the following matters are very much important according to the Court:-

a) Whether such person and his spouse being criminal antecedents.
b) Whether such person and his spouse are well placed in their life and are capable of shouldering responsibility of upbringing the said child.
c) Whether the said child would get proper atmosphere to grow physically, mentally and intellectually in association with the same person and his spouse his family members.
d) Whether the said person, his family members would shower on such child the humanly love and affection so as to create a good life in future for such child.
e) Whether such child would get proper education and would get future opportunities of having better life and social status.

Considering the welfare of the minor child that would be secured by permitting the person to adopt the child wherein the child would get a better status in the society, a better life in the future and better amenities to survive and grow up and get more and more avenues in future life, the Court in J. Gorashian v. State of Maharashtra directed the appellant to follow the following directions:-

The appellant to undertake to this Court:

(a) To give an undertaking through his Advocate to produce the said minor whenever required to communicate any change of address to the Institution in whose care and custody the Child was admitted (K. M. Mahila Seva Gram, Pune).
(b) To treat the said minor on an equal footing with his natural children in all maters of maintenance, Education and succession.
(c) Before taking the said minor out of India to execute a Bond through his duly constituted

attorney in India in favour of the Registrar of this Court a sum of Rs.60000/- Expatriate the said minor to India by Air so that it becomes necessary for any reason to do so.

(d)To submit to this Court every three months for the first two years and every six months for next three years progress report of the said child (along with its recent photographs) made or verified as correct by the Organization which made the Home Study Report herein regarding the said minor's moral and material progress

and her adjustment in the appellant's Home and the true copy of the adoption orders with the copies of the said report to the said Indian Council of Social Welfare, Mumbai and further the agency which had submitted the home study report of the appellant, agreeing that in case of disruption of the appellant's family before adoption, the said agency shall take care of the minor and find a suitable alternative placement for her with approval of the Institution whose inmate the minor is and to report such alternative placement to this court and also to the Indian Council of Social Welfare, Mumbai.

The Judiciary in India both the High Courts and the Supreme Court while deciding the cases involving inter country adoption of Indian children by foreign nationals have taken into consideration the different facts with great care for permitting such adoption. Of course, these facts are not exhaustive, but illustrative which may be different from case to case. Invariably in all the cases of inter country adoption one consideration is common and the most important, that is, the welfare of the child. the Courts have considered and examined the circumstances of adoption only after which they have permitted the adoption giving certain directions and Guidelines to the foreigners adopting the child and the concerned Social Organizations and Agencies of both the countries of Origin and Receiving the child in adoption as a result of which the possibility of the adopted child being neglected in any form including moral or sexual abuse or forced labour or experimentation for medical purpose or any other torture may be ruled out. The questions of Citizenship and religion[47] of the child have been considered and how the child will be quickly assimilated and cemented at an early time into the adoptive family have been discussed. The non availability of child care facilities of the Agencies involved in the process of adoption for maintaining children in hygienic condition required for their growth and development has also come within the purview of judicial consideration and it has been directed by the Apex Court that such agency having no such facilities may over a period of years go out of the field. When a foreigner expresses his desire to adopt and the Guardian of an Indian child, the paramount interest of the child has been taken into consideration by the Court and the Court has examined the bona fides of the person by going through the materials relating to the personal criminal antecedents capability of shouldering the responsibilities of upbringing the child, the atmosphere for the growth of the child in the family of the adoptive parents and the future

opportunities of better life and then only permitted such person to be appointed as the guardian giving the only consideration of Welfare of the adopted child. The Court has given certain directions to the adoptive parents relating to which they are to give an undertaking to the Court whereby the Court prima facie will be satisfied that the best interest of the child will be secured both at present and in the future and the child will not be subjected to any negligence including human rights violations and he will lead and enjoy the life of peace and harmony in the adopted family like that of others in the society.

As such Inter country adoption of children may be accepted as one of the means available to protect the interest and safeguard the welfare of the children who are abandoned or orphaned. Such a child should be adopted for a bona fide and a good purpose as has been considered by the Courts in India. Not only the Government but also other Agencies like CARA are involved in Child Welfare and the human rights activists should give proper attention and care for the implementation of the provisions of the directions of the Judiciary relating to inter-country adoption of children particularly during this time when all the countries including the United Nations have been more aware and encouraged on the Rights of the Child. International adoptions hold a fascination for many adoption agencies across the country. For the child, it is an opportunity to get a family's love. But in a rising number of cases, children given in for adoption abroad, are abandoned or forced to come back to India for other reasons. And when that happens, usually they have nothing to fall back on. To fill in this lacuna and to ensure a safety net for cross border adoptions, the Bombay high court for the first time suggested the establishment of a National Children's Trust Fund for their rehabilitation. Justice Dhananjay Chandrachud is in the process of finalizing path breaking guidelines on foreign adoptions and the steps that need to be taken to ensure the welfare of these children. The judges are of the view that children who are abandoned or forced to return to India cannot be left to chart their course through unknown territory and with no institutional help in a radical proposal and so it was suggested that $5,000 should be deposited by each foreign adopting parent/s before the adoption is finalized. The funds thus collected would then be used for supporting children who return to India. A case still pending before the Bombay High Court about a girl who was adopted 20 years ago by a US couple, was sent back on certain charges. She moved the high court, saying she has no

identity left and nowhere to stay. In another case, a 14 years old girl also adopted by a US family was sent back after she developed psychiatric problems. The question is who would fund her treatment wide Horizons for Children (WHC), the adoption agency that had placed her for adoption and then flew her back or the Indian government's Central Adoption Resources Agency which gave the permission to bring her back or the Indian Council for Social Welfare (ICSW) under whose care she is now. The Indian council wants the adoptee parents and the WHC to pay for the medical treatment. The HC has said that proper psychiatric evaluation prior to such international adoptions is also a must. Advocate Jamshed Mistry, who has dealt with several cases of issues cropping in foreign adoptions, said that what needs to be done immediately is to ensure that records of foreign adoptions must be scrupulously kept by the agency that facilitated it for the 60 year period as mandated by the Hague Convention to which India is a signatory. But the practice is sometimes not followed. On adoption by a foreign national, the process of naturalization of the child ought to begin immediately.[48] An Indian can adopt a child even though his/her personal law does not permit it, a Delhi court has said, giving hope to a Muslim couple who aspire to adopt an orphan.

According to district judge Pratibha Rani "Indians have a fundamental right under the Indian Constitution and the provisions of the Juvenile Justice Act, 2000, to adopt an Indian child". While allowing the plea of a Muslim couple who wanted to adopt a two year old girl child, the court also directed them to sign and execute an adoption deed, which will help the child to have all natural rights available to a biological child. "There is no impediment in allowing the present petition just for the reason that petitioners in the case are Muslims and the personal law of the petitioners does not permit adoption", the court said, relying upon a decision of the Supreme Court. The couple, practicing doctors, adopted the infant, who was found abandoned in the bushes in 2007, four months after her birth. According to the Juvenile Act, the court may allow a 'child in need of care and protection' to be given in adoption either to a single parent or to parents to adopt a child irrespective of the number of living biological sons or daughters. The couple had obtained guardianship rights of the child, who was living in an orphanage here, but wanted to get full parenthood of the girl with all the rights and responsibilities vested on them.[49]

5.4 Human Trafficking in Women and Children

Trafficking in human beings, more so in women and children, is one of the fastest growing forms of criminal activity, next only to drugs and weapons trade, generating unaccountable profits annually. The reasons for the increase in this global phenomenon are multiple and complex, affecting rich and poor countries alike, India is no exception to this. The process of trafficking is designed and manipulated by traffickers for their own ends for which they employ all kinds of means. To a large extent also signifies that trafficking primarily is a human rights issue for it violates the fundamental human rights of all those who are trafficked.[50]

The Constitution of India, the fundamental law of the land, forbids trafficking in persons. Art 23 of the constitution specifically prohibit traffic in human beings and beggar and other similar forms of forced labour. Art. 24 further prohibit employment of children below 14 years of age in factories, mines or other hazardous employment[51.] The Directive Principles of State Policy articulated in the constitution are also significant, particularly Art. 39 which categorically states that men and women should have the right to an adequate means of livelihood and equal pay for equal work, that men, women and children should not be forced by economic necessity to enter unsuitable avocations and that children and youth should be protected against exploitation. Further Art. 39 A directs that legal system should ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities. In addition to this, Art. 43 states that all workers should have a living wage and there should be appropriate conditions of work so as to ensure a decent standard of life[52.] The commitment to address the problem of trafficking in human beings is also reflected in Indian Penal Code 1860. It contains more than 20 provisions that are relevant to trafficking and impose criminal penalties for offences like kidnapping, abduction, buying or selling a person for slavery, labour, buying or selling minor for prostitution. The Immoral Traffic (Prevention) Act, 1956 (ITPA) initially enacted as the suppression of Immoral Traffic in Women and Girls Act, 1956 is the main legislative tool for preventing and combating trafficking in human beings in India. However, till date, its prime objective has been to inhibit/abolish traffic in women and girls for the purpose of prostitution as an organized means of living. The Act criminalizes the procurers, traffickers and profiteers of the trade but in no way does it define 'trafficking' per se in human beings. The other relevant Acts which address the issue of tracking in India are:

- Karnataka Devdasi (Prohibition of Dedication) Act 1982
- Child Labour (Prohibition and Regulation) Act 1986
- Andhra Pradesh Devdasi (Prohibiting Dedication) Act 1989
- Information Technology Act 2000
- The Goa Children's Act 2003
- Juvenile Justice (Care & Protection of Children) Amendment Act 2006.

The right against exploitation is a fundamental right guaranteed by the constitution of India under Art. 23, traffic in human beings, "beggar" and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.[53] There has been a failure to implement the aforesaid legislation, which has caused and continues to cause severe injury and prejudice to the victims of prostitution. The legislative deficit is coupled by callousness displayed by the state authorities having failed and neglected to accept responsibility and discharge their duty as mandated by law. Though there is no concrete study on the number of women and children who are victims of sexual exploitation for commercial purposes and trafficking, it is estimated to be over one million in India alone. Research done on child prostitution reveals that:

- Incidence of child prostitution through abduction is estimated 40%.
- The percentage of Devdasis in Mumbai brothels is 15-20%, In Nagpur,
- Delhi and Hyderabad 10%, in Pune 50%, in urban centres around belgaum district up to 80%.
- About 50% of children come into prostitution after incidence of rape.
- About 8% of children come because of incidence of incest.
- About 10% are children of prostitutes
- About 5% are children of dalit and tribal families where prostitution is a cultural and customary practice.
- About 5 to 10% girls are married off and sold in prostitution.
- 2% because of natural disasters

The problem of trafficking of women and children for the purpose of sexual exploitation is prevalent at various levels-local, inter-districts, inter-state and cross-border. Commercial exploitation of women and children takes place in various forms including brothel based prostitution, sex-tourism, entertainment industry and

pornography in print and electronic media. Trafficking for commercial exploitation of women and children has resulted not only in violation of right, but also has adverse physical, psychological and moral consequences for the victims. Trafficking is a multidimensional problem encompassing a whole range of economical, social and cultural issues, which are varied and highly complex. Most of the victims have been trafficked with promises of jobs, better career prospects and marriage. Some are abducted forcibly. Some girls are often sold by friends or relatives, some times even by their own parents out of greed or desperation. Although parents complicity in this degrading occupation is difficult to understand, cultural indoctrination and financial desperation are clear motivating factors as part from trafficking, certain other forms of prostitution are prevalent e.g. Joginis, Mathammas, Dommaras and Basavis.[54]

Prostitution is the worst form of exploitation of women and as an institution it speaks of mans tolerance of this exploitation on an organized level in society women is viewed solely as a sex object and as an outlet for man's baser instinct. The condemnation of the woman and not the man is the continuance of standards of dual morality which prevail in most of the countries of the world with regard to men and women. Some societies have continued to regard prostitution as necessary evil and tolerated it as much. It has been in practice in India as in other countries of the world from ancient times. It is regarded as something immoral and anti-social and is discouraged by both law and custom. Yet prostitution may be regarded as co-evil with society. It is prevalent throughout the world. The sociologists think that it is necessary a social evil.[55] In India, legal measures to curb the prostitution were virtually non-existent in pre-independence period. There are some sections dealing with this subject in the Indian Penal Code, which are enacted more the one a half century back .Sections 372 and dealing with offence of selling a minor girl for the purpose of prostitution, sexual in course, or immoral purposes and similarly Secs.366-366-A-366-B relate to the offence of kidnapping, abduction, procuration or importation of a woman for sexual purposes.

The post independence period witnessed the enactment of a number of legislations to protect and confer rights on Indian women to enable them to lead a dignified life.. A careful scrutiny of the Act, clearly reveals that the act was aimed at the suppression of a commercialised vice and not penalization of the individual prostitute or prostitution itself.[56] Various provisions of the act tend to strengthen the above view. But there has been one exception and that is found is Sections 7 and 8 of

the Act which makes the practice of prostitution in or in the vicinity of certain public places such as places of public religious worship, educational institution, hospitals, etc. This is an illuminating provision, throwing light upon the intention of the legislature. "This provision, therefore, inhabits a woman from the practice of her profession in contravention of its terms and to the extent renders prostitution a penal offence.[57] The Suppression of Immoral Traffic in Women and Girls Act, 1956 envisages variety of activities that are associated with or incidental to prostitution. The scheme of the statute is to spread the net of penal measures wide enough by creating two categories of persons other than the prostitutes[58] and (ii) offences penalizing the prostitute themselves.[59] The key to proper understanding of both the clauses of offence lies in their ultimate purpose of upholding public morality.[60] The Act provides the following powers on the administration to deal with various respects of prostitution.

1. Appointment of special officer;
2. Power to search premises without warrant;
3. Power to issue directions for rescue of girls;
4. Provisions relating to custody of girls;
5. Ordering the closure of brothels and eviction from certain premises;
6. Power to entertain application for being kept in protective rescue homes;
7. Power to order removal of prostitutes from any place;
8. Establishment of protective homes and
9. Power to make rules (Sections. 12 and 15 to 21 and 23)

The Act also authorizes the Court dealing with matters under the Act to:

(1) Order release on probation;
(2) Order detention in protective home;
(3) Order liability to notify address for a certain period in case of persons involved in prostitution on offence.

Despite the provisions in the above Act, it is disheartening to note that prostitution and immoral traffic in women is still prevalent in India. Prostitution by itself is no crime and the Act deals only with particular activities connected with its practice. The visitor who visits a prostitute is not punished even if he visits her in a brothel. The prostitute herself comes for punishment only for soliciting or for carrying on prostitution in a prohibited locality or premises. However, the social legislation nature of the Act also requires that women and children who are by an large the

victims in cases prostitution, should be adequately protected by the provisions of the Act. The Court in the have uniformly kept the interest of woman and girls in mind while interpreting the Act. This act is penal statue. Penal statutes affected liberty of the subject. In two possible and reasonable constructions can be put under penal provisions, the Court must lean towards that provisions which exempt the subject from penalty rather than that which imposes a penalty[61] Therefore, in a penal status it is the duty of the Court to interpret word ambiguous meaning in board and liberal sense so that they will not become traps on person to be penalized. The Madras High Court held in case that the Act was aimed and suppression of commercialised vice and not the penalization of the individual prostitution of prostitution itself.[62]In other words the Act, however does not aim at abolition of prostitutes prostitution as such and make it per se a criminal offence or punish a woman because prostitutes herself, but Sections 7 and 8 of the Act provide exceptions.

Prostitution in the vicinity of public places; and seducing or soliciting for purpose of prostitution in public place are made cognizable offences and punishable under Sections 7 and 8 respectively. Section 9 of the Act provides punishment to any person who having custody, charge or care of any woman or girl, causes or aids or abets the seduction prostitution of that woman or girls. This offence is cognizable and enhanced punished is provided for a second or subsequent conviction. The definition of "prostitution" means promiscuous sexual intercourse for hire whether in money or kind with the prostitute, the word "promiscuous present difficulties and because of this various other preventive measures provides SIT Act cannot be properly enforced. Unless we prove a person as a 'prostitute' or as an act of "prostitution" various checks provided on these crimes and criminals become inoperative. The Act provides punishments to the female offenders i.e., the victim and the male abettor and the participants in the offence except under Sec. 7 (i) if the partner were made responsible and punished under the Act it would sever as a deterrent for checking the vice. In the definition of "Brothel" the Phrases (a) for mutual gain of two or more prostitutes and (b) for the gain of another person, there are numerous complications in collecting evidence for the offence. This could be simplified by defining it as "Any house, room, or place or any portion of the house, room or place which the owner, occupier or person or persons use for the purposes of prostitution. They would naturally place responsibility on the owner on one hand, and the occupier and the person on the other. The police have no powers even under Magistrate order to rescue

a woman above the age of 21 years under Sec. 16 of the SIT Act. This requires examination for which aim should be eradication of prostitution and not merely its suppression in respect of girls below 21 years of age. If the woman happens to be over 21 years of age, she cannot be rescued or detained in a protective home even on her mother application.

From the aforesaid observation, it is clear that all measures taken by Government, voluntary women organizations and social reforms to suppress or eradicate prostitution and also of the fact that the status of women has improved after independence, it is disappointing to find that neither the number of prostitutes nor the males frequenting them have been reduced even though the brothels have been closed in many places as a result of police raids. However, the patterns, forms and methods of prostitution and types of prostitutes and their clients have changed with the enacting of new legislation and the changing socio-economic scenes. It is observed that since the SIT Act came into operation clandestine prostitution had replaced the licensed brothels. One of the effects of the closure of brothels is the rise in the number of call girls, particularly in Metropolitan cities, and young women, connected with highly affluent families selling themselves in posh hotels and houses at high rates. The multi-storied buildings coming up in Metropolitan cities contain flats many of which are sold or rented out to parties who used these flats for flesh trade. These call girls can be classified into the following groups; (1) unmarried working girls, (2) unmarried non-working girls, (3) college or schools girls, (4) married working women, (5) married non-working women, (6) divorced or separated women windows. Not merely sex appetite but breakdown of joint family system, poverty in the family, ill treatment by parents, guardians or in-laws and the desire to lead a fast life push girls into the life of call girls. Some of the call girls operate independently and others operate through friends or organized groups or agents. They are in great demands in hotels and guest houses of flats of big executives for entertainment of Ministers and top Government servants whose favours are needed. With the rapid industrialization in the country there is an exposure to multiple health hazards and with the rise in prostitution the major source of infection transmitted through prostitutes and which is the most prevalent is the sexually transmitted disease (STD)

The enactment of Suppression of Immoral Traffic in Women and Girls Act, 1956 has been a very important first step in eradicating the various evils of prostitution that have existed in our country from ancient times. It was enacted by the

Parliament in a mood of high morality but with such a drafting inefficiency that it was pathetically failed to produce any decline in the Malady. In order to remove look holes in the SITA and to make it more effective and strengthen, our Parliament had amended this Act twice, in the years 1978 and 1986. The enactment of Prevention of Children from Sexual Offences Act 2012 is one such genuine attempt by the legislators to create the desired enabling environment by empowering the children and strengthening the legal provisions for their protection from sexual abuse and exploitation. The Act purports to protect persons below the age of 18 years from offences such as sexual assault, sexual harassment and child pornography, all of which have been accurately defined and are accompanied by rigorous punishments proportionate to the gravity of the crime.

Despite amended Immoral Traffic Prevention Act, we are seeing reports about the selling and buying of young girls for prostitution in the daily news papers of these days. A survey just completed by the joint women's programme in ten states and two union territories has revealed the existence of an organized network or mafia of selling girls from one part of the country to another. It is estimated that in each of the states survey, approximately 5000 to 7000 girls are sold for the profession of prostitution every year. The majority of them are poor, belonging to scheduled castes and what is more shocking is that they are very often sold by their parents, local guardians, nearest relatives or friends. The purpose of protecting the public place from the doings of prostitution understandable, but what is not understandable is technicality whether these provision are according to the objective of "suppression or prevention". This apart a few pockets crowded cities are not 200 metres away from the public place. This act does not recognize the prevalence of red light areas. This has resulted in law enforcement agencies[63] frequent attacks on common prostitutes. It has been rightly pointed out that not only are red light areas a frequent target of raids; but also traps are laid for those who may discreetly carryout on their profession, in not so very public places. This pertinent question is does this amount to abolition or prohibition?

According to Senior Police Officials, Sec. 15(1) has severely restricted to powers for suppression of this trade. "This restriction needs immediate amendment as vice of prostitution has gone posh colonies where pimps have hired modern houses to run this profession, in absence of these premises situated within 200 yards from the places as envisaged above is not possible to prosecute such women or girls soliciting

their bodies for immediate purposes.[64] Another practical difficulty imposed by the Act itself is the provision for witness under Section 15(2) of the Act lays down that Special Police Officer conducting the raid should call upon two or more respectable inhabitants, at least one of whom shall be a women the locality in which the place is situated to attend and witness the search. Police officer have pointed out that this proves to be extremely difficult particularly in case of women witness.

Considering the social conditions existing to-day in our country, no respected man/woman would like to help the Police in sex offence. If any body turns up for some help, he has to face harassment and even repent for his action as persons prosecuted are themselves criminals or are supported by them. At first these witnesses are lured with money, wine and women. If these tactics fail they are threatened with dire consequence with immediate danger to their lives and properties. Efforts were made to produce witnesses through welfare associations and agencies but all in vain. A letter was written to the Association for moral and social Hygiene in India for furnishing names of some workers including lady social workers so that they could be contacted at the time of raids on brothel and place of disrepute. They replied that although the members of association are sincere workers these workers will come forward during raids and will also face cross- examination in Courts. Efforts have also been taken by some social institutions and the above position has considerably changed. A social 'Savadhan' institution had taken a significant step regarding the marriage of 400 prostitutes in Bombay. These women are now living in a respectable position in our society. Similarly another step was taken in Pune, where welfare measures like Anganwadi for children of prostitutes and Prostitutes trade have been introduced. The Act also includes provisions for setting up Rescue Homes, State Home Reception Centers, Corrective Institutions and Protective Home for the protection treatment and rehabilitation of the women apprehended under PIT Act. All the provisions are facilities and their execution have hardly been able to succeed in preventing immoral trafficking. This compels us to look for comprehensive and practice alternatives.

Therefore, the above homes and institutions should be managed very efficiently by the experienced persons. Moral and religious instructions must be part of the training to inmates of these homes. They have of course to be trained in arts and crafts which will make themselves supporting for themselves and their children, if they have any more over, incentives have to be provided in order to encourage

suitable persons to marry inmates so that the later might be permanently rehabilitated. In other words the constant effort of these homes should be directed towards turning inmates into good and self respecting citizens. The programmes for the rehabilitation of fallen women should not be based on moral consideration alone; they should be based on our knowledge of recent advances in psychology, sociology and medicine. The task of discouraging prostitution is not merely one for Lawyers and Judges to tackle, it is a challenge to be faced and resolved by social scientists.

Therefore, in present time most of the social scientist and specialists are now harping on sex education in schools and colleges in collaboration with parents and also to the general public. Pamphlets on the disease and its disastrous consequences are to be oriented and distributed freely in schools, colleges, universities and red light areas. There tremendous scope to import sex education through films. One of the conditions for the grant of license to owners of hotels should be prohibition of prostitution, in any from, within their premises and cancellation of license if the condition is violated. A meeting with the hoteliers should be held by the Chief of Police along with heads of voluntary social organizations and social workers every month to emphasise the danger to the society from sexual promiscuity within multi-storied flats and hotel premises. Pornographic literature and sexy films should be totally banned. Sale of pornographic literature could be stopped by inflicting heavy punishment and the offence should be made cognizable and non-bailable. Neither the suppression of Immoral Traffic (in Women and Girls Act, 1956) nor the amended prevention of Immoral Traffic Act, 1986 is adequate to protect the victims (Prostitutes) and deals with traffickers.

Therefore, it has been realized that the Act is itself not sufficient to control this commercial exploitation and traffic in women. Hence, drastic alterations in the Act are needed to save the society from the deleterious effects of the shifting potters of prostitutions. “It is no argument to say that in as much as prostitution has existed for ages. It cannot be prohibited. Pleas are being launched for removing age long poverty and ignorance from the country; the same king of faith and zeal is needed to control prostitution”[65] Now, it has become very essential that certain changes be made in the Act to help to eradicate the evil. This should be so amended as to provide heavy and deterrent punishment to those persons who maintain brothels or live on the earnings of the prostitutes; or who are the prostitute’s customers or persons who act as procurers or induce prostitution. It is essential to prevent the women caught under this

Act from returning to the profession by adequate rehabilitation arrangements. The persons who pay for their bail invariably are the procurers or brothel keepers. Instead of sending the women and girls to jails, it is necessary to send them to protective homes. The age limits should be lowered from 18 to 14 years. The Act does not envisage the appointment of social workers to advise the Police and the Court deciding the cases but no social workers/ advisors have appointment the delight of the youngsters and their friends in the Police. Therefore, the Government must take immediate step relating to the appointment of social workers/advisors for help to the police and the Court.

From the aforesaid observation it is clear that the institution of commercial prostitution cannot be abolished, but concerted efforts by the Government, social welfare agencies and responsible citizen should undertake the rehabilitation of prostitutes and the law also has failed to reduce the number of prostitutes or check its accelerated growth. Prostitution can be minimized not completely eradicated by social persuasion only. Value of religion, the feeling of motherhood for women, and respect for the opposite are fast diminishing in modern society and society must rehabilitate, re-establish the values with the help of social workers. Humanitarian measurers rather that infliction of punishment can only reduce menace the society is facing to-day. Every case coming to notice must be examined, causes which force her to become a prostitute should be examined and such causes should be removed.

5.4.1 Child Paedophilia and Tourism

Tourism has been seen in developing countries as an opportunity for rapid economic development, bringing in much needed foreign exchange. Stimulating tourism has received precedence over social policies, including the protection of children. The international tourism aims at supporting tourism to contribute to the economic development international understanding, and promotion of peace, wealth and maintenance of human rights and freedom for all human beings without discrimination of race, sex, language or religion.[66]Sexual exploitation of children is not a new term for the third world countries. The phenomenon started in a small scale but mushroomed in several third world countries in a wide scale as a result of rapid industrialization and urbanization after the second world war. Visitors from developed countries were encouraged to visit under developed countries to help the latter in the growth of economic development and international understanding. But many foreign

visitors were, however, attracted not only for tourist activity but also for the purpose of exploitation of women and children[67] The nexus between child prostitution and the tourism industry is no more a hazy domain.

The World Tourism Organization (WTO) became actively involved in the struggle against organized sex tourism, and particularly the sexual exploitation of children, after being alerted of this phenomenon by various NGO's, notably ECPA T (End Child Prostitution in Asian Tourism), and a number of religious networks operating in tourist destination countries. A few years later, in 1995, the General Assembly of the World Tourism Organization (WTO), adopted its first resolution on - as it was then called - The prevention of "organized sex tourism", in which it denounced and condemned child sex tourism, "considering it a violation of Article 34 of the Convention on the Rights of the Child (CRC) and requiring strict legal action by tourist sending and receiving countries[68]. The organized sexual exploitation of children is a worldwide phenomenon, and one that increasingly appears to be taking on an international dimension. Child pornography, often involving the circulation of material produced in developing countries, the trafficking of children across national borders for exploitation, the movement and sexual exploitation of female domestic workers and 'child brides' are all features of this transnational exploitation, each of which essentially involves the moveme4nt of the child or pornographic material to the consumer.[69]

Paedophilia pertains to the manifestations and practices of sexual desire that some adults develop for prepubescent children (13 or under) of both sexes.[70] Sexual practices between an adult and an adolescent and sexual aggression against young majors do not fall within the confines of paedophilia. Although, present state of knowledge on the personality of the paedophile is still fragmentary yet, it is important to note that paedophilia is found in all socio-cultural milieus, all social classes, from the poorest to the richest and that a paedophile is not a hirsute, dirty character, lurking in the dark, waiting to pounce. On the contrary, he can be someone who is a friend to all, often well integrated in society, and, sometimes, entirely above suspicion. It is, at most, an indication that he never talks about or openly displays his paedophilic tendencies. Who is it that uses children sexually when traveling overseas?

Although there will be of course some degree of sexual arousal towards children in the vast majority of individuals who sexually offend against children, the strength of this arousal' varies between individuals and within an individual over time.

One general theory is that some people have early sexual experiences with children that condition them when they become adults to find children to be arousing. Another theory about sexual arousal derives from speculations that some individuals might learn to become aroused to children through exposure to child pornography or other sources of media that project children in an erotic light. However, the distinction between 'preferential' and 'situational' child molesters is useful in analyzing this situation. The preferential child molester involves sexual deviance regarding prepubescent children acted out in various forms. On the other hand, this situational molester does not have a true sexual preference for children but engages in sex with children for varied reasons. These are often isolated, impulsive acts committed by individuals with pathological personalities. This would include persons of poor self-esteem and coping skills, for whom children substitute for the preferred peer sexual partner, as well as those who display morally or sexually indiscriminate behaviour- a 'why not' approach to sex.[71]

Finkelhor stresses the importance of social, as well as psychological factors in contributing to the propensity for child sexual to occur. He proposes that the motivation of the adult to abuse children sexually may be seen as a facilitating factor, which is then constrained by internal inhibitions, external inhibitions and the resistance of the child.[72] While internal and external inhibitions, coupled with the resistance of the child may normally act as effective constraint to the expression of such latent attraction, the situation for the tourist in a distant, culturally and racially different environment is very different.[73]There are extensive references in tourism studies that highlight the reduction of individual and social constraints as part of the touristic experience. When combined with a situation in which easy access is provided to children for sexual purposes, especially if this can be rationalized as a more relaxed cultural attitude to sex, then these factors provide a significantly increased potential for child sexual to occur. The link between tourism and child sexual has been developed by Hiew[74]who argues that situational conditions in tourist destinations and the state of anonymity of travelers interact with personality and cognitive factors in tourists to enhance sexual interest and reduce inhibitions to become sexually involved with children. He notes that research provides evidence of a relationship between situational factors and a variety of deviant and anti-social behaviours, through the process of ‘de-individuation’. This combination of factors suggests that there is something inherent in the nature of tourism to other countries

and cultures that increases the potential for child sexual abuse to take place. Indeed, Ennew[75]reports that at least two studies have suggested that men are more likely to give way to repressed paedophiliac tendencies while away from home. There are few reliable research studies which identify the real scale or nature of the sexual exploitation of children in developing countries and none which investigates adequately the role of the international tourist in this. However, there is sufficient evidence from organizations working with children, and from governments, to demonstrate that there is extensive and systematic sexual exploitation of children and that international tourist contribute significantly to this.

5.4.2 The Asian scenario

While the international tourism industry has acknowledged the problem of paedophilia to a certain extent, Asian countries such as India, Nepal, Combodia, Thailand, Bangkok, Sri Lanka and places where poverty exists in its extreme forms, and wherever tourism industry is expanding in order to bring in much needed revenue in the country, the problem is ignored. The number of tourist travelling to Asia for sex with children has risen sharply in recent years, spurred by the effects of the economic crisis and the lax law enforcement. It was a study by PEACE (Protecting Environment & Children Everywhere), an NGO in Sri Lanka, that shocked Sri Lankan society as a whole into realizing that far from being a heaven for tourists in search of the sun and golden beaches, the country was also attracting an unsavory tribe of tourist- the paedophiles who come solely to gratify their sexual needs on young children.[76]The scenario is similar in other Asian countries as well. All these countries have ratified the Convention on the Rights of the Child adopted by the UN in 1989 (Sri Lanka was one of the first Asian countries to do so incidentally), and child prostitution or the commercial sexual exploitation of children has grown to unprecedented levels in recent years- largely as a result of a developing economy and an expanding tourist industry. So much so, that today, there is an international organization that has been formed called End Child Prostitution in Asian Tourism. Of the number of foreigners arrested for sexual crimes against children in Asia in a two- year period between 1992 and 1994, 25% were from the USA, 18% were Germans, 14% were Australian, 12% British and 6% French, totaling 75%. With child sex accounting for up to 14% of the Gross National Product of certain South- East Asian countries, this is a large business to exploit and too large for which to find an easy solution. In its report "The sex

factor: the economic and social bases of prostitution", the World Labour Organization states that sex involving children involves 800,000 children in Thai land, 100,000 in the Philippines, 500,000 in India and 30,000 boy prostitutes in Sri Lanka and 1,00,000 in Taiwan.

However, it is not only in South-East Asia where child prostitution is a problem. The United Nations Organization quoted the USA as having no less than 300,000 child prostitutes. However, in this country, the situation is not related to poverty, but to social chaos.[77] There is also a report that in other countries such as Pakistan, Nepal and Vietnam, child prostitution is also widely prevalent, while in Indonesia, Combodia, Burma and Laos and some provinces in China, children are being trafficked across borders for the purpose of serving in brothels. Most of the countries concerned, however, have challenged the accuracy of these statistics and have charged that they are exaggerated. However, while these Charges may be true to some extent, one thing is certain, that the menace of child sexual abuse is now very much a widespread phenomenon in the Asian region as a whole. In order to establish what is - and what is not - known about the sexual exploitation' of children by international tourists, the Save the Children Fund (SCF) in London, commissioned a literature study on this subject. The Philippines, Sri Lanka and Thailand were taken as example tourist receiving countries and special attention was given to tourism from the UK.[78] The study found that there is extensive evidence of the use of young boys for sex by adult males from the west, which appears to be the predominant feature of the sexual exploitation of children in Sri Lanka. Study further reveals that countries like Philippines and Thailand have an extensive sexual entertainment industry, in which girls, as well as boys, provide sexual services for foreign visitors (as well as local men). In Thailand especially, it would appear that the sexual exploitation of girls in prostitution is numerically much greater than of boys.[79] As a result of the United Nations World Conference of Women in Nairobi in 1985 the West German news magazine took up the issue. In a series of inequalities and the continuing oppression of women in the developing three continents (Asia, Latin America and Africa), a journalist wrote, “traffic in persons in the widest, and most certainly in the commercial sense of the word, is in fact a business run by the extremely prosperous branch of the tourist industry which offers, advertises and organizes sex as a service in the same way as it does boarding and lodging” Various promotions and advertisements within the UK and European markets have formerly alluded, if not

openly referred, to the availability of sexual entertainment in the countries like Philippines, Sri Lanka and Thailand. P Police and other sources who work with offenders in Britain consider that the overt promotion of the availability of children for sex is no longer an issue, as this knowledge is already wide spread among paedophiles and the general public.[80]

Although there may be a certain percentage of tourists who certainly come for paedophile activities, not all tourists who come to Asia are like that. What has happened is that in most Asian countries opening up one's country to tourists also makes them vulnerable to paedophile rings operating world wide. Closely linked to this is poverty and the desperation to make ends meet that has driven parents to selling their own children to foreign paedophiles in order to keep their home fires burning. The prolific availability of child pornographic material in video parlours and on the internet is another reason accounting for the flood of paedophiles to Asian countries. There is no doubt that in Asia and other countries where child prostitution is prevalent, the victims come from the poorest of the poor. They are sold to pimps and peddlers of flesh or induced to sell their bodies against their will, because of their abject poverty. It is no secret that many of the victims are unprotected children, such as street children, for whom quick money, even a negligible amount, and a few luring presents make them easy prey, especially to paedophiles. The recent growth in the incidence of child prostitution has also been induced by a number of demand considerations. Three factors that have been emphasized within the literature are the AIDS scare, the rise of global tourism and in some nations the impact of military excursions. Fear of AIDS has lead to more and more children at a younger age being drawn into prostitution.[81] Manila's Sunday Chronicle [82]described this development as possibly "the darkest twist in Asia's AIDS pandemic." Of the countries considered here Thailand would appear to have the greatest incidence of AIDS.The World Health Organization claims that there are now 200,000 HIV+ persons in Thailand with 73,000 new cases of AIDS in Thailand each year. The Thai Department of Health states there are 10,000 working prostitutes who are HIV+ so the infection may have now spread to as many as 184,000 clients, many of whom are married or in permanent relationship.[83] AIDS has also increased the incidence of child prostitution by enhancing the demand of virgins. Indeed, there have been reports from Thailand that children have been surgically adjusted to appear to be virgins for more than one client. Certainly the price changes radically. In Cambodia the price for a virgin is

between 4 and 7 hundred U.S. dollars. After a week the price falls. Thailand is reportedly experiencing a boom in the “virgin trade” Children as young as 10 are being procured in China, Laos, Burma and Vietnam and brought to Thailand to provide “safe sex” for customers. Vietnam is especially carried by this development as cases of HIV infection are still reasonably rare so sex tourists are keen to visit. The Vietnam Women's Union estimates that at least 10% of the countries prostitutes are now children.[84] The Vietnamese government is already alarmed at the increase in child prostitution which has tripled since 1989 to an estimated 3,800. This has been blamed on growing tourism and cases of kidnapping of young girls to sell to brothels have also been detected by authorities. The government is worried that AIDS may begin to flourish in that country and are stepping up campaigns to try to deal with growing prostitution. However, many paedophiles are already moving to Vietnam in the belief they will be safer and there will be more ready supply of virgins. The Vietnam Women's Union claims “the rising demand for child sex workers has spawned a vicious child trafficking industry”[85]

The above description makes it clear that so far as the sexual exploitation of children by tourists is concerned, Asian scenario is frightening and alarming and therefore, needs immediate not only preventive measures but also stern and strict punitive measures to stem the growth of this horrendous evil. Indian scenario-Tourism has been given the status of an industry in India. Tourism is seen to be a prime source of foreign exchange and a panacea to all the economic ills of a developing country. Most of the states have incorporated tourism in their development strategies. Beaches are being thrown open to tourism. Special tourism areas are being demarcated in the most environmentally sensitive region - the coastal region of India. The economic arguments in favour of tourism development have led policy makers into ignoring the social costs associated with tourism.[86.]The National Women's Commission has found that Bangalore is one of the five major cities, which supplies 80 percent of the child prostitutes in the country. Based upon this finding, when the Karnataka State Commission for Women tried to investigate it further, they stumbled upon a major smuggling gang whereby girls from impoverished rural families were lured to Goa and pushed into flesh trade. Tourist industry agrees that there are between 15,000 and 20,000 people in the season which enters Goa during the tourist season. A large proportion of this group consists of children under the age of 14 years. They are easy targets for paedophiles since they are, emotionally needy and materially deprived.

Disturbingly there is a huge increase in the amount of young girls travelling into Goa from Andhra Pradesh, Kovalam in Kerala, and Mahabalipuram in Tamilnadu following in the same footsteps. Information has been given from a number of sources about the trafficking of girls and boys.[87]British, German, Dutch, French, Swiss and Swedish- visit Goa to seek children for sexual gratification. They come to Goa because it is easy and cheap to sexually abuse a child here. On the run after crackdowns on cheap child sex tourism in Thailand and Sri lanka , the paedophile bus has rolled into Goa.[88.]

The trial in Stockholm, Sweden, is one indication of how Goa is fast outrivaling Bangkok the new sex capital for paedophiles when Lena Perved and her lover were put on trial along with 18 others, most of them disclosed that they had chosen Goa over Bangkok because the Thai capital had become 'Too Hot'[89].The issue of paedophilia gained prominence in India only after the arrest of Freddy Peats in 1991. Till this time, 71 year old Peat was considered to be a philanthropist. With his arrest 2,305 photographs were seized from his residence, depicting young boys in various homosexual acts with elderly male foreigners. In spite of such evidence the police released him on bail within 45 days on grounds of 'insufficient evidence'.[90] After which he freely roamed in the state of Goa till he was convicted to life imprisonment in 1996, the first paedophilia conviction in Asia. The Peat was the first to expose the possibility of the organized sexual abuse of both male and female children. The Indian National Social Action Front (INSAF), in a working paper on paedophilia in Goa states that there is reason to believe that" the growth in the demand for male children is the same, if not higher than the demand for female children" In several other cases offenders were let off on grounds of insufficient evidence[91]Child rights activists all over the country were heartened by the news of the conviction of Wilhelm and Lily Martin[92] by the Bombay sessions court to seven years sentence on 29th March 2003, on the ground of using street children for child pornography. The Bombay High Court on appeal commuted the seven – years sentence of the couple to there years and three months that was the time they had already spent in jail increased the compensation amount for the six victims from Rs.5,000 to Rs.1 lakh and ordered the release of the couple. While setting the couple free, the judge said it was essential to ensure that they do not repeat their "nefarious activities". The couple had admitted they come as tourists to Mumbai and obtained pornographic material and created porno pictures using minors. However, before the

Martin's couple left the country, the Maharashtra Government acted swiftly in response to a plea from child rights groups and appealed first in the High Court, where the appeal was dismissed, and thereafter in the Supreme Court. The Supreme Court stayed the order of the Bombay High Court that had reduced by half the seven years sentence of a Swiss couple Wilhem Martin and Lily Marie Martin but released them on bail. On 16th August 2005 the Supreme Court cancelled bail of Swiss paedophiles at the instance of child rights activists. It is indeed surprising that the Supreme Court overlooked the heinous nature of crime committed by Swiss couple and let them off on bail Is it the job of child rights activist groups only to be sensitive to the issues of children? Are they not aware how easy it is to bribe your way into getting a new passport? The Indian judicial system is either too naïve or blissfully ignorant. Given the difficulties involved in prosecuting sex offenders in general and foreign paedophiles in particular, state government demonstrated what could be done if the state decided to move and recognize the seriousness of the offence and its long term implications.

From the above cases it becomes evident that serious attention is required to be given to protect children and prosecute paedophiles. There is a need for the state and judicial authorities – be it the police, the prosecutors or the judiciary to address the issue of paedophilia in a determined and decisive manner. Although police were informed of many cases of paedophilia but no attempt was made to investigate the matter. The lack of response on the part of the police could be accounted for by their desire to adhere to the official position that paedophilia does not exist in an alarming scale in Goa. Any positive action taken by them would mean an acknowledgment of the existence of paedophilia, which otherwise is ignored by the functionaries of the state Government.

5.4.3 Law and Paedophilia in India

The Indian Government ratified and accepted the UN Convention on the Rights of the Child on December 1992. Under Article 34[93] of the Convention it is imperative upon State Parties to protect the child from all forms of sexual exploitation and sexual abuse and take all appropriate national, bilateral and multilateral measures to prevent exploitative use of children in prostitution and pornographic performance. Under Article 35 all measures have to be taken by the State Parties to prevent the abduction of, the sale of or traffic in children. This protection is most clearly awarded

in the Optional Protocol on the Sale of Children, Child Prostitution and Pornography of 2002.

However, despite new legislation and ratification of such conventions the global rise of Child Sex Tourism and the trafficking of children raise serious concerns for the safety of children and the detrimental long term affects. The convention also states that all children must receive the opportunity to discover their identity and realize self worth in a safe and supportive environment. The law dealing with sexual offences does not specifically address child sexual abuse. It is disconcerting but true, that Indian Penal Code 1860 does not recognize any kind of a child abuse. The law is silent on the rape of a mere child only rape and sodomy can lead to criminal conviction. Anything less than rape as defined by the law amounts to‘ outraging the modesty’ under section 354 IPC. An offence under section 354 PIC is a cognizable and bailable offence, which allows foreigners to simply leave the country before prosecutions begin. While Section 376 IPC seeks to provide women redress against rape, it is rarely interpreted to cover the broad range of sexual abuses, particularly of children that actually takes place. Section 376(2)(f) provides stringent punishment for committing rape on a women when she is under the age of 12 years of age for ten years or for life with fine. The narrow understanding and application of rape under sections 375/376 IPC only to cases of penile/vaginal penetration runs contrary to the understanding of rape as intent to humiliate, violate and degrade child sexually. Section 377 has largely been used in prosecuting cases where anal and/or oral intercourse with children was involved. The punishment provided under section 377 is imprisonment for life or imprisonment of either description for a term which may extend to 10 years and, shall also be liable to fine. Although it has been somewhat successful in penalizing child sexual abuse and complementing the lacunas of the rape law, but it is woefully lacking in both scope of definition and implementation. Child sex abuse should be included as an independent category of sexual offence. There is a dire need to evolve more effective legal formulations as well as procedures to ensure that sexually abused children are offered the protection of the law and perpetrators are punished severely and unfailingly. The provisions relating to evidence and criminal procedure are not suited to deal with child sexual abuse. In the Supreme Court judgment in Sakshi v. Union of India & others[94] it was held that there is absolutely no doubt or confusion regarding the interpretation of provisions of sec. 375 IPC and the law is very well settled. Giving a wider meaning to section 375 IPC will led to a

serious confusion in the minds of prosecuting agency and the courts which instead of achieving the object of expeditiously bringing a criminal to book may unnecessarily prolong the legal proceedings and would have an adverse impact on the society as whole. Therefore, it will not be in the larger interest of the state or the people to alter the definition of "rape" as contained in section 375 IPC by a process of judicial interpretation as is sought to be done by means of the present write petition. However, the judgment sought to reduce the trauma of the victim of child sex abuse or rape by laying some directions for the protection of the child victim of sex abuse or a witness to such an incident.

The Juvenile Justice Act was amended and rewritten in 2000, but it makes no attempt to identify sexual abuse on children. Section 23 lays down that if any person is having the actual charge of a juvenile or a child and assaults, abandons, exposes or willfully neglects him then he shall be imprisoned for a term of just 6 months or fine or both. Section 5 of the Immoral Traffic Prevention Act 1956 prescribes punishment for a term of not less than 7 years but may extend to life for inducing a child into prostitution, but does not directly address child abuse. The intent of the UN Convention on the Rights of the Child has been reiterated in National Charter for Children, 2003. But the question is what has changed since the ratification of the convention on the Rights of the Child or more recently since 2003 when national policy for children was adopted. India is not immune to the problems of tourism related development. Existing State mechanism have to acknowledge the enormity of the problem and the shortage of applicable laws addressing trafficking in girls and boys and other abuses typical of the sex industry. Greater political will, more effective enforcement and adequate allocation of resources are needed to give effect to the spirit and letter of existing laws and conventions, policies and programmes. What is lacking is a central law on the subject? Parliament had come up with a new bill which outlined the intent to crack down on those who sexually assaulted or abused children. and for the first time, brings oral sex within the purview of law[95].

The Goa Children Act, 2003 is a legislation against child sexual abuse, especially those related to tourism. In section 2, which deals with definitions, sexual offences are classified into 'grave sexual assault, 'sexual assault and 'incest'. The legislation has specifically made any such cases of abuse non-bailable offences under section 2(a) of the Criminal Procedure Code, 1973. The punishment prescribed is even up to ten years and a fine of rupees two lakhs. By including a wide range of

possible activities that an offender may engage in, the focus will shift from the present one point programme of detecting semen in vagina/anus of the child, to the investigation of child sexual abuse. Moreover, it also seeks to establish child-friendly court procedures, which will help to ensure that children are able to give evidence without being in the presence of the perpetrators of the crime. The setting up of a Children's Court to try all offences against children is a bold step prescribed by this law. A child-friendly court will help to minimize the double trauma that abused children are subject to in courts, which even adults find awesome and terrifying. The Goa Children's Act is unusual because it does not merely recommend punitive measures against offenders. Instead, in dealing with child sexual abuse it attempts to place responsibility on different sections of society to play a role in protecting all children and preventing the abuse of any child. The hotel owners, the photo studios, cyber cafe operators, the police, the tourism department and all those involved in the travel and tourism trade are expected to keep their eyes open and fulfill their duties, be sensitive to the situation of any child they may come across in the performance of their duties.[96]Three years later, the activists and lawyers are disillusioned with the Goa Children's Act and Children's Court. Goa is the first state in the country to enact legislation that intended to give every child, a childhood, but in reality innocent children still continue to be raped, molested and drifted into prostitution. It took state Government one and a half year to establish children's court, which was supposed to be different from other courts. Surprisingly Children's court only meets once a week. Many now refuse to register a case of molestation or rape against a minor due to delay in justice. While the accused is released on bail, the victim child suffers continuous mental tension for long. It took Tehelka[97] five months to do the sting operation in Goa to investigate the story of paedophilia. The most shocking thing that came out of the sting operation was that police, bureaucrats working in the Directorate of Women and Child Welfare are not even following basic rules to protect children as laid down in Goa Children's Act, 2003. So nothing has changed because right from Chief Minister of the State to all people down the line are more concerned about the tourism revenue than child molestation. There is no doubt that two are to fulfill the deficiency in law regarding sexual assault and sexual abuse of children, but Goa's Children Act has been designed primarily to come down heavily on child sex tourists, to make punishment as deterrent as possible, together with a heavy fine to be imposed in case found guilty. On the other hand, Central Act is meant not only for child sex tourists

but people in general who abuse or assault children sexually. Many questions will arise which will be solved only when the Act is passed. There is a saying that childhood is coated with "sugar and spice and everything nice". It is a period of joy, sports, games and unbound growth. But in poignant third world reality, an estimated 250 million children have to bear the burden of survival almost from the day they learn to walk.[98] The sexual exploitation of children is a sad reality of the world in which we live, and tourism is not immune.

However, it took some time for the tourism industry to realize that in fact tourism could be a means to aggravate the problem and that it was necessary to assume its part of the responsibility. After realizing the magnitude of the problem, The World Tourism Organisation (WTO) became actively involved in the struggle against organized sex tourism. Destinations of child sex tourists appear to be changing. As prevention and protection efforts are stepped up in one country, child sex tourists choose neighboring country as their destination. It is brutal, inhuman and unethical to sexually abuse children or to involve children in pornography and acts of paedophilia. The State Governments along with NGO's should take the responsibility to promote physical and psychological recovery and social integration of the child victim. The Government of India needs not only law but also a political will and political commitment to enforce law strictly and sternly. Strong cooperation from police and other law enforcement agencies is needed to control the sex trade. Paedophilia is a fact about which every society has 'unwittingly' created wall of silence. This veil of silence has to break, with the active cooperation and coordination of parents, schools, NGO's governmental organizations and society at large. Asia as a whole and India in particular has to be determined in its resolve to protect and prevent child abuse sexually, psychologically, physically or pornographically.

Concerted action is needed at the local, national, regional and international levels to bring an end to the phenomenon. World organizations should communicate in clear terms to all paedophiles that rigorous penalty awaits all those found guilty of abusing children. Every child is entitled to full protection from all forms of sexual exploitation and sexual abuse. There are no excuses for sexually abusing children at any time, in any place and under any circumstances. Paedophilia is a crime that has to be tackled politically, legally and socially. This is an issue of today not of tomorrow, tomorrow will be late. Let us not forget, the future of the world is in the hands of tomorrow's adults who are today's children. They are the most precious commodity

that the world has. They not only deserve, but have a right to all the protection which we can afford.

5.4.4 Cyber Pornography

Technology may be considered as an instrument of acculturation and erosion of traditional socials system because technology possesses knowledge awareness, information and innovation, which may be transferred beyond the boundaries of religion, culture and society. The focus is to depict how children from extreme poverty ridden family from developing country like India and the sub-continent are becoming victim of pornography in the internet[99] 'Porno' which means 'prostitution' 'graphos' which means writing about.[100] In a country like India, porn material which earlier used to be hidden in the book and corners of shady book stalls on road side pavements, bus stands and railway stations, is now not more than three clicks away from any place which has an internet connection. The wide access of pornography to all, including our children, coupled with the heights of depravity and the widespread involvement of children in the sexual performance, have led to the heat and controversy over cyber pornography. The expansion of computer databases on the internet has provided the greatest opportunity to access sexually explicit images by both adults and children. Parents today have a legitimate concern about what their children will be exposed to and the damage online pornography can do. The internet becomes the pedophiles playground, because it affords them anonymity.

The reasons why cyber pornography has become so big an industry are: (i) The easy, free, sin the accessibility, problems of jurisdiction, different Laws and standards of morality in different countries, which have made a mockery of the Laws and their enforcement. The IT is to play a crucial role in restructuring and redesigning the government's role and the public organizations or authorities. The Indian Parliament has passed the Information Technology Act, 2000 [101]which inter alia provides (i) to combat cyber crimes and (ii) to establish a regulatory authority for implementation of the Cyber Laws and Cyber Crime. Cyber crime can be defined as any crime committed with the help of computer and telecommunication technology for the purpose of influencing the functioning of computer or computer system. As cyber crime can be committed from distant places, so it is very difficult to detect and even harder to prove them – it does not involve violence but rather greed and pride. It is very difficult to identify the culprit as the net can be accessed from any part of the

world. Cyber crime can be of three categories, namely against person, property and government. Cyber crime of pornography falls in the first category.

Keeping in view of the fact that Indian legal framework is lacking in electronic governance and to facilitate e-commerce, the new Information Technology Act, 2000 was passed by our Parliament which same into force w.e.f. 17.10.2000. Firstly if we come to the question of legal control of paedophilic site we have to note provisions of Section 67 of the IT Act as amended in 2008 which says as follows Publishing of information which is obscene in electronic form: Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprive and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to ten lakh rupees. The Information Technology (Amendment) Act, 2008 added three new Sections 67, A, B, & C with Section 67. New Section 67 introduced to cover material containing “sexually explicit act” and provide more severe punishment compared to Section 67. Section 67B was introduced to cover Child Pornography with stringent punishment of 5 or 7 years and fine of Rs. 5 or 10 lakhs for first and subsequent instances respectively. It also covers the Act of ‘grooming’ and 'self abuse' within the concept of child pornography. New Section 67C was introduced requiring Intermediaries to preserve and retain certain records for a certain period as to be notified by the Central Government. As regards offence factors of pornographic site the Law is perfectly right. The problem lies in determining liability of offender for which we may note Section 79 of IT Act as stated below: Network Service Providers not to be liable in certain cases: For the removal of doubts, it is hereby declared that no person providing any service as a network service provider shall be liable under this Act, rules, regulations made there under for any third party information or data made available by him if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention. Explanation: For the purposes of this section:

a) ‘network service provider’ means an intermediary, and
b) ‘third party information’ means any information dealt with by a network service provider in his capacity as intermediary.

Thus Section 79 of the Act provides as escape hatch to network service providers. It says that no person providing any service as a network service provider shall be liable for any third party information if he proves that the contravention was committed without his know ledge or that he had exercised due diligence to prevent contravention. Another point is whether the internet cafe owner is as responsible as a book shop owner who sells prurient stuff. By the same logic it is the Cyber Cafe which is making prurient information available to the users. The question is in case of I.P.C. offence under Section 292 the book cannot be sold without knowledge of the book shop owner. But the Cyber cafe owner can at the most block out one, two or may be a hundred sites but not thousands of sites and therefore should not be held responsible. Now as regards jurisdiction the IT Act, 2000, has introduced a newer pt of jurisdiction in its application Clause 1(2) which says: “the act applies also to any offence or contravention there under committed outside India by any person”

Section 75(1) of the Act provides extra-territorial jurisdiction for contravention of I.T. Act and Section 75(2) of the Act applies to offences and contraventions committed outside India.

The element of extra-territoriality of the Act is potent enough to generate the conflict of the jurisdictions in future. In-addition, the definition of different terms like computer, computer network computer system appearing in the Act are also different from the definitions of these terms appearing in Laws of the other countries, International agreements and conventions. But so far no such case is instituted against any foreigner for violation of Section 67 of the Act. Therefore efficiency dimension of the LT. Act, 2000 in invoking extra-territorial Jurisdiction is yet to be tested. Moreover, when a citizen of India committed any offence outside India, Section 188 of Criminal Procedure Code 1974 (Cr. P.c.) provides that "no such offence shall be inquired into or tried in India except with the previous sanction of the Central government." therefore Section 75 of LT Act and Section 188 of Cr. P.c. are to be reconciled by necessary amendment of Cr. P.c. and for prompt and speedy investigation of Cyber crime the provision of prior sanction of the Central Government shall be removed. Moreover there are some other legislations related with control of paedophilic site such as Juvenile Justice Care and Protection of Children Act, 2000; Immoral Traffic (Prevention) Act, 1956; Young

Persons (Harmful Publication) Act, 1956 and necessary amendments shall be made to cope with the emerging problem of paedophilic site:

(i) Jurisdictional conflict over cyber space yet to be resolved.

(ii) Prosecutorial co-operation among nations in the international level depends on bilateral treaty which demands a multilateral treaty as early as possible.

(iii) The existing conflict between LT. Act and Cr. P.c. regarding enquiry and trial of an offence committed by any Indian outside India required to be reconciled.

(iv) Necessary Law reforms in the related legislations such as in Juvenile Justice (Care and Protection of Children) Act, 2000, Immoral Traffic (Prevention) Act, 1956 etc. not yet being made by the legislature.

iv) reformulation of our National Policy for Children 1974 and our child related Laws at the earliest.

Various initiatives may be thought of to protect children from the threat of child pornography through the internet, such as, legislative responses to incriminate abuses on the Internet, the provision of hot lines to receive complaints of abuses, and a broadened educational process for children, families and teachers to promote awareness of abuse on the Internet, development of software programs to help filter or block pornographic information or images coming through web and developing networks between Internet service providers as a vigilant partner for child protection.

5.5 Juvenile Justice

Taking cognizance of constitutional provisions directing the state to ensure "that all the needs of children are met and that their basic human rights are fully protected"; the ratification by India of the Convention on the Right of the Child (hereinafter CRC) prescribing a set of standards to be adhered to by all state parties in securing the best interests of the child on December 11, 1992, and the United Nations Standards Minimum Rules of the Administration of Juvenile Justice (the Beijing Rules); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international instruments, it was found expedient to enact the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter the JJA 2000).To consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child friendly approach in the adjudication and disposition of matters in the

best interest of children and for their ultimate rehabilitation and for matters connected therewith or incidental thereto.[102]

The Juvenile Justice (Care and Protection of Children) Act, 2000 is the principal legal framework for juvenile justice in India. Law related to juvenile justice has gradually evolved since the mid -19th century in India. The first Indian legislation in this regard was the Apprentice Act, 1850, which required that children between the ages of 10-18 convicted by Courts to be provided vocational training as part of their rehabilitation process. This Act was substituted by the Reformatory Schools Act, 1897 and later by the Children Act, 1960. In 1986, the Juvenile Justice Bill was first introduced in the Lok Sabha, and the Juvenile Justice Act, 1986 was enacted. Thereafter the present Juvenile Justice Act, 2000 was brought in, with exhaustive amendments in 2006 (by Act No. 33 of 2006). Rules were framed there under in the year 2007, known as Juvenile Justice (Care and Protection) Rules, 2007. They comprehensively deal with the law relating to "Juvenile in Conflict with Law" and "Child in Need of Care and Protection". The introduction of these new terms give an idea of the intention of the Legislature, which categorically wanted to avoid terms such as "criminal" in reference to juveniles.[103] The JJA was brought into force on April 1, 2001 and it repealed and replaced the Juvenile Justice Act, 1986. Significant amendments have been made in the JJA 2000 by the JJ (Amendment) Act, 2006. Since its amendment, the JJA 2000 authorizes the central government to make rules on all the matters on which state governments can make rules and enjoins the state governments to make their rules in accordance with e model rules framed by the central government, so far as is practicable.

Pursuant to this amendment, the central government has notified the Model Rules 2007 on October 26, 2007, which are binding on all states till the states make their own rules. Even though the JJA 2000 has made a complete departure from the welfare approach of the era in which the first Children Act was passed in 1920 in Madras and incorporates the rights approach established by the CRC since 1989, it, like its predecessors, applies to two categories of children: delinquent children rechristened as 'juveniles in conflict with law, and neglected children, now referred to as 'children in need of care and protection'. However, the most crucial issues under all the enactments since 1920 have been the issues relating to age which determine the applicability of the Act in a given case. The cut-off age defining a child under these legislations differed but these Acts applied to children below the specified age. The

JJA 2000 defines a child or juvenile as a person who has not completed the age of eighteen years in contradiction to the definition of 'juvenile' as a person below the age of sixteen years in case of a boy and below the age of eighteen years in case of a girl under the JJA 1986. Given the cut-off age it should have been simple to apply the JJA 2000.to all those children who have not completed the age of eighteen years. However, the number of issues raised in relation to age gives a glimpse of the complexity of this simple proposition. In order to determine if a person below the age of eighteen may be dealt with or not under the JJA in a given case, many questions need to be addressed. Most importantly Who has the duty to raise the question of age - child, prosecution, police, or magistrate Is the court bound to hold an age determination inquiry in all cases whenever an accused claims to be a child? On whom is the burden to ensure that evidence is forthcoming to prove age - magistrate, prosecution, or child? Who should determine age - only competent authority under the JJA or any magistrate? When can the ordinary magistrates determine age? Where should the 'accused' remain during age determination when the ordinary magistrates decide to determine age themselves? If the question is not raised at the first instant and is raised after committal to a session judge, can the session judge determine the age or should the case be transferred to the juvenile court for age determination? At what stage the plea of child status may be raised? What procedure should be followed for determination of age? How to determine age in the absence of birth certificate? Should documentary evidence be preferred over medical evidence? How reliable is the medical evidence? In Which cases should medical evidence be preferred over documentary evidence? How should the court decide the question of age if there are conflicting evidences? Whether age of the accused should be proved beyond reasonable doubt or can it be determined by preponderance of evidence? Should a person whose age cannot be determined exactly, be given the benefit of doubt and be treated as a child or juvenile? When should the child be below the specified age for applicability of the JJA? What will be the relevant date to determine age in continuing offences? What should be done if the person ceases to be eighteen years of age during the pendency of proceedings? Can a child above the age of sixteen years be dealt with by the juvenile court in view of the prohibition contained in section 27 of the Code of Criminal Procedure? Does the JJA, 2000 apply to above sixteen-under eighteen years old boys who committed an offence prior to April 1,2000 and who were being tried by ordinary criminal courts as they did not fall within the definition of juvenile under the

JJA 1986?Does the JJA, 2000 apply to those boys who were above the age of sixteen but below the age of eighteen on the date of offence and were sent to prison by an ordinary criminal court and were still in prison on April 1,2001 when the JJA 2000 came into force raising the age to eighteen years for both boys and girls? Some of these issues have been considered by courts with differing results. Some have been specifically clarified or addressed by the JJ (Amendment) Act, 2006 . Many are still waiting categorical answers and development of the best practice in those circumstances. The researcher scrutinizes the judicial decisions and the amendments in the JJA 2000 on the issues relating to age mentioned above in the next three parts. The first part focuses on the procedural issues relating to age and the second part on the evidentiary issues relating to determination of age. The third part considers the issues relating to applicability of the Act and focuses primarily on two aspects, one relevant date for age determination and second, applicability of the JJA to pending cases.

We can conclude that there is a pronounced shift in the approach of the apex court from inclusiveness to being exclusionary contrary to the provisions and scheme of the JJA 2000 as amended in 2006.[104] The preamble to a statute is the proverbial key to unlock the legislative intent and the preamble of the 1986 Act significantly reads as follows: “An Act to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to the disposition of delinquent juveniles”. Thus, the Juvenile Justice Act was introduced to establish the basis for a national uniform juvenile justice system, addressing care, protection and treatment of neglected and delinquent juveniles. The amendment was brought into revise the Act, to strengthen the Act and to instill a child centric rehabilitation and family restoration focused system. It provides for a special approach towards the prevention and treatment of juvenile delinquency and a frame work for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system. It takes care of every aspect of the children in need of care and protection of the State, which includes their health care, diet, education, vocational training, recreation facilities etc. as also their personal requirements of clothing, toiletries, sanitation etc. The law on the subject is quite comprehensive. What is needed to its proper implementation?. Quite contrary to the objective of the Act, the practical reality is horrific, and needs to undergo a sea change before it can truly bring forth the legislative intent. This is where the

importance of the roles of Judicial Magistrate and caretakers of the juvenile homes is significantly felt. A law may be very good on paper but unless implemented in its true spirit, it is meaningless. The Constitution of India under Part IV (Directive Principles of State Policy) envisages for Indian children a happy and healthy childhood, free of abuse and exploitation. However, the reality of daily life for vast numbers of children is completely disconnected from this vision, In the case of juveniles facing the law enforcement machinery, the situation is even more poignant. The objectives of the Juvenile Justice (Care and Protection of Children) Act, 2000 are to ensure the care and protection of children, to provide for their development and rehabilitation, and most significantly, to reorient the law regarding juveniles according to the standards and rules prescribed by the United Nations.[105]

5.5.1 Deplorable Condition of Juvenile Homes and Effects of Maladministration

The Act and the Rules have taken care to almost all the needs of the "Child in Need of Care and Protection." It is one thing to have legislation on the subject but what is more important is to ensure that such legislation is implemented in all earnestness. It would not be sufficient to just give lip sympathy and there can also be no justification for non-implementation of such a beneficial piece of legislation. The Juvenile Justice (Care and Protection of Children) Act, 2000, with its amendments of 2006, is creditworthy, as it incorporates many important aspects regarding juveniles. But besides the Act, much more needs to be done at the ground level to accomplish the objectives set out in the Act. The report released by the National Commission for Protection of Child Rights (NCPCR) in 2008 throws light on how the juveniles are treated in various shelter homes, observations homes, and children homes, which is nowhere close to the objectives and standards laid down under the Act and the Rules. Whereas about 5,000 cases are pending in Courts against juveniles, these children are victims of improper care by reform homes. Thus, part from suffering from delayed justice, the juveniles suffer from improper treatment, as over 50 per cent of the juvenile homes do not provide any counseling services to juvenile delinquents. Besides, more than 80 per cent of the caretakers of these homes are not trained. In 70 per cent of the juvenile care centres, physical punishment is a dominant method to discipline children. They are locked up for 24 hours or even more and not allowed to go out and if they even try to peep outside, they are beaten up. The report has suggested that reforms should be undertaken by juvenile homes. More importantly,

the caretakers of juvenile homes should be so trained and equipped to deal with the juveniles under them with tenderness and care, as would be required for dealing with such children of tender age. The Juvenile Homes are generally considered by all children as jails. This impression has to be erased from the mind.

Unfortunately, the fact remains that in some ways they are worse than adults' jails. Prisons have enough space for prisoners, but in most juvenile homes there is not even enough space for the juveniles to stay in proper humane conditions. For girls, the situation is appalling, as at some places a hundred girls are made to spend the entire day in one small room in the name of protection. The juveniles are referred to as convicts and criminals, even though they are just the accused. This reference leaves lasting negative impression on their mind[5]. Different answers have been given by courts to the question who has the duty to raise the question of age among the child, prosecution, police, and magistrate? In a case where the medical evidence showed the accused to be below the specified age, Bombay High Court held that it was for the prosecution to prove that the. accused was not a child[107], but when it showed him to be above the specified age, the accused was asked to prove that he was a child.[108] In case the accused earlier stated that he was older than the specified age but later produced no material to substantiate his revised plea, the Children Act was not applied by the court to him.[109] The Calcutta High Court[110] said that the person, who is asking application of the Children Act, should ask for an inquiry to determine his age. Thereafter the court is obligated to determine the age and record its finding. However, the reasoning of the Bombay High Court seems to be most, persuasive which held that it should be the court which should ensure that "it does not exercise jurisdiction which it does not possess. Therefore, the court has to make a thorough inquiry into the age of the accused."[111] This approach has been reinforced by the Andhra Pradesh[112] Rajasthan[113] and Allahabad[114] high courts too. Another important question is whether the court is bound to hold an age determination inquiry in all Cases whenever an accused claims to be a child? It is not uncommon to find cases in which the courts have refused to determine age on the ground that it is an afterthought.

However, in Bhola Bhagat v. State of Bihar[115]the Supreme Court had categorically stated that: Keeping in view the beneficial nature of the socially oriented legislation, it is an obligation of the court where such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a

positive finding regarding that plea, deny the benefits of the provisions to an accused. The court must hold an inquiry and return a finding regarding the age, one way or the other. In answer to the question on whom is the burden to ensure evidence is forthcoming to prove age - magistrate, prosecution, child, the ruling of the Supreme Court in Gopinath Ghosh is instructive of the duty on the magistrate to secure the evidence of age' when it observed that "if necessary, the magistrate may refer the accused to the Medical Board or the Civil Surgeon, as the case may be after obtaining credit worthy evidence about age. The magistrate may as well call upon accused also to lead evidence about his age."Another question frequently raised is whether the magistrate not empowered to deal with juveniles also determine the age or should they always transfer the matter to the Juvenile Justice Board as provided for in section 7 of the JJA 2000? The answer seems to be explicit in the words contained in the section "when any Magistrate is of the opinion" as these words suggest that the magistrates should transfer the matter if the magistrate has formed an opinion either due to the physical appearance of the person brought before him or due to any other apparently reliable piece of evidence that the person is likely to be a juvenile. In case the magistrate thinks that the person before him may not be a juvenile but may be below the age of twenty-one years, in those cases, such magistrate may determine the age himself. These approach was adopted by the Allahabad High Court, which held that the high court or the court of sessions may exercise the power of inquiry when proceedings come before them in appeal, revision or otherwise after commitment of the case, and did not direct that the inquiry must be held by the competent authority alone.[116] Such inquiry must be held expeditiously and it should be ensured that the person does not come in contact with any known or hardened criminals to prevent any adverse influence on him. Another procedural issue involved in age determination is what should a session judge, or other courts do if the plea of child status is raised for the first time when the matter comes 'before them after committal or in appeal or revision or otherwise. This question needs to be answered by reference to the newly inserted section 7A read with the above discussion. Section 7A provides that "a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, even if the juvenile has ceased to be so on or before the date of commencement of this Act."

Hence, it makes no difference at what stage the plea of child status is raised

and the court is obligated to decide the plea even after the case has been finally-disposed off. All the courts that are empowered to admit evidence should hold the inquiry themselves only if they are of the opinion that the person before them may not be a child but not so in cases they think that the person may be a child. In the latter case, the case and the accused should be transferred as per the provisions of the JJA, 2000. Section 7 A also provides that the authority conducting inquiry for determination of age should take evidence other than an affidavit as necessary to determine the age and record a finding. When the plea of child status is raised, the Supreme Court in Bhola Bhagat directed that if there is a doubt about the age, the court is obliged "to hold an inquiry itself, or cause an enquiry to be held and seek a report regarding the same, if necessary, by asking the parties to lead evidence in that regard. Keeping in view the beneficial nature of the socially-oriented legislation, it is an obligation of the court where such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefit of the provisions to an accused. The court must hold an enquiry and return a finding regarding the age, one way or the other" In case the person is found to be a juvenile, he is to be forwarded "to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect."[117] In Balbir Singh[118], the Rajasthan High Court elaborating the procedure to be followed for determination of age, said that the competent authority should give an opportunity to the parties to adduce oral and documentary evidence. It must also give right to cross-examine the opposite party following the procedure of the summons case. Section 49 of the JJA 2000 contains the presumption and procedure for determination of age and reads as follows:

> (1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.
>
> (2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the chi Id, and the age recorded by the

competent authority to be the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person.

This section read with section 3 of the JJA 2000 show the clear intention of the legislature to be inclusive in its approach and applicability bringing within its purview persons who may be found later not to be children or who may have ceased to be so during the pendency of proceedings. There are reasons why juveniles should be cared for and protected by the State and civil society. Firstly, the tomorrow's progress of civilization is determined by the treatment we provide to today's children. Secondly, they compose a separate intelligible class which necessitates special treatment due to their tender and vulnerable nature. So, the legislation requiring special treatment for juveniles, which may seem discriminatory are in accordance with the Constitution. Our Constitution has in several provisions also, including clause (3) of A-15, clauses (e) and (f) of A-39, Articles 45 and 47, imposed on the State a primary responsibility of ensuring that all the needs of children are met and their basic human rights are fully protected. Moreover, it is laid down in Section 82 of the Indian Penal Code that no offence can be committed by a child under the age of seven. This embodies the principle of Doli Incapax. The law presumes that malice cannot be attributed to the children less than seven years under any circumstance. Section 83 further states that a child between 7-12 years cannot be considered to have committed an offence if he does not have sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. This clearly implies that juveniles should not be treated in the same manner as ordinary accused and hardened criminals. The enactment of Juvenile Justice (Care & Protection) Act, 2000 (hereinafter as JJ (C&P) Act which has replaced the Juvenile Justice Act, 1986, is a result of the same anxiety of our legislators.[119]

5.5.2 Scheme of Juvenile Justice Act, 2000

Under the JJ (C&P) Act, juvenile delinquency is considered as a disease caused by situation of social maladjustment and conditions in which young boys and girls are put up by certain callous grown ups of the society. However, when young children are found by the law enforcing authorities engaged in the anti-social activities it couldn't be said no action should be taken against them[120], JJ (C&P) Act has an elaborate scheme framed in accordance with several international conventions to deal with such situations. This enactment is an evident improvement

on the Juvenile Justice Act, 1986 JJ (C&P) Act applies to person who have not completed the age of eighteen years. The change in the spirit between the two is very large by the fact that the new Act nowhere uses juvenile delinquents or juvenile offenders but "juvenile in conflict with law" as the expression. The competent authority to deal with the juvenile in conflict with law' is the "Juvenile Justice Board (Board).[121]The board shall consist of a magistrate and two social workers, one of whom shall be a woman. The two social workers who were required to assist magistrate under the earlier Act, have been made part of the board. All of them should have special knowledge of child psychology and child welfare. This provisions if implemented in letter and spirit has the potential to convert the legal and technical nature of the proceedings of the Board into welfare and care proceedings The means that the opinion of the two social workers shall prevail over the opinion of the magistrate. JJ (C&P) Act, 2000 is a special law and to this the provisions of Cr. P.C. or any other general law shall not apply in consonance with Generalia Specialibus non-derogant. That means in any case of conflict, the provisions of JJ (C&P) Act shall prevail over the general law. Section 12 lays down the provision for bail. It enjoins that the juvenile must be released on bail with or without security as a matter of rule unless it is shown that there appear reasonable grounds for believing that his release is likely to bring him under the influence of any criminal or expose him to moral or psychological danger or that would defeat the ends of justice.[122] For granting of bail no procedural wrangles like filing of bail application etc. are needed.

Interestingly nowhere in the Act has the word 'trial' been used. Euphemistic use of expressions substantiates the intent of our legislators to bring about a change firstly in letter itself. Instead sec. 14 provides for inquiry by Board regarding juveniles. The time limit for inquiry is four months. Orders that may not be passed by the board include death penalty, life imprisonment, committed to prison in default of payment of fine or furnishing of security expecting the cases in which a serious offence has been committed by a juvenile who has trained the age of 16 years. When the Board is satisfied that sending him to a special juvenile rehabilitation centre shall neither be n his interest nor in the interest of other juveniles, he may be kept in protective custody with prior direction from the State Government after the matter has been reported.

After inquiry if the Board is satisfied that the juvenile actually committed the

offence, following are the orders delineated under Sec. 15, which may be passed by the Board

- Release after advice or admonition after counseling to parent/guardian/child.
- Participation in group counseling.
- Perform community serve.
- Pay fine if above 14 years and earning.
- Release on probation under the care of parent/guardian/fit person executing a bond.
- Release on probation under the care of fit institution.
- In above three cases, in addition, place under the supervision of probation officer.
- Send to special home.

1. For a minimum of two years in case of a juvenile above 17 but below 18 years of age.
2. In other cases till he ceases to be juvenile.

Sec. 17 provides that proceeding under Chapter VIII of the Cr. P.C. shall not apply to Juveniles. Sec 18 expressly enjoins any joint proceedings of the juvenile with a non juvenile. Even found committed an offence by the board no disqualification shall be attached to the juvenile a attaching to a conviction of an offence under any law. Sec. 21 further prohibits any report disclosing identity of juvenile or to publish their photo unless authorized in writing in the interest of the juvenile. It has been held in Pratap Singh v. State of Jharkhand[123]overruling Arnit Das v. State of Bihar[124] and approving Umesh Chandra v. State of Rajasthan.[125]

- The reckoning date for the determination of the age of juvenile is the date of the offence and not the date when he is produced before the Court or the Board.
- The 2000 Act would be applicable in a pending proceedings in any Court authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the
- Person has not completed 18 years as on 01.04.2001.

The most important and pertinent issue, however, is the legal definition of the term ‘juvenile delinquency’. A legal definition often falls short mainly because while

defining a term or syntax a legal draftsman occasionally fails to take into consideration various vocational problems and confuses their interactive importance. In the definition of each term or word or syntax there lies a hard core of thick meaning and a wide circumference of gradually fading out conceptual coverage which is known as the extended meaning. The etymological meaning of the word 'juvenile' is a 'young person' or 'a person having or retaining the characteristics of youth', and the meaning of the word, 'delinquency' is 'failure in or omission of duty; a fault, a crime'. But leaving aside, the phenomenological importance about the location problems that this definition fails to convey, this definition does not satisfy the condition of attempting to quantify the definitional coverage. In a narrower sense juvenile delinquency means any action by someone designated as a juvenile that would make such a juvenile subject to an action by the Juvenile court[126.]

'Crime in India[127] has shown constant decline in the incidence of 'juvenile delinquency' ever since 1988, at a point of time when the definition of juvenile delinquency was restricted strictly to the behaviour of males below the age of 16 years and females below the age of 18 years as per the terms of the Juvenile Justice Act, 1986.This led to a decline in juvenile delinquency incidence from 3.1 per one lakh population in 1988 to 0.9 in 1999. Similarly the percentage of juvenile crime to total crime rate came down from 1.7% in 1988 to 0.5% in 1999. The total number of crimes by juveniles under the Indian Penal Code in 1999 was 8888 (as against 24827 in 1988 and 9339 in 1988). The total number of Special and Local Law Crimes committed by juveniles also declined in 1999 as compared to previous years.

TABLE 5.1 INCIDENCE AND RATE OF JUVENILE DELINQUENCY UNDER THE INDIAN PENAL CODE

Year	Juvenile Crimes	Total Cognizable Crimes	Percentage of Juvenile Crimes to Total Crimes	Rate (Incidence of Crime per lakh of Population)
1988	24827	1440356	1.7	3.1
1989	18457	1529844	1.2	2.3
1990	15230	1604449	0.9	1.8

1991	12588	1678375	0.8	1.5
1992	11100	1689341	0.7	1.3
1993	9465	1629936	0.6	1.1
1994	8561	1635251	0.5	1.0
1995	9766	1695696	0.6	1.1
1996	10024	1709576	0.6	1.1
1997	7909	1719820	0.5	0.8
1998	9339	1779111	0.5	1.0
1999	8888	-	0.5	0.9

The constant decline in juvenile delinquency reported in 'Crime in India' can be explained in the following ways.

1. It reflects a real decline associated with the trickled down of developmental benefits to the population that contributes to the growth of juvenile delinquency and thus indicates the emergence of positive conditions for children as a whole.
2. It reflects gross unconcern amongst the general public, including the victim and the juvenile justice functionaries, who tolerate and condone juvenile delinquency as well as 'child abuse' as a matter falling within the 'private domain' of the pater-familieas.
3. It reflects a shift in focus of the state apparatus from welfare oriented juvenile delinquency to serious adult crimes and consequential low reporting and recording of
4. This form of deviance.

Juvenile crimes committed under the Indian Penal Code, in the year 1998 have been classified under different crime heads in Table 48 in 'Crime in India' published by the National Crime Records Bureau, Ministry of Home Affairs, New Delhi. Te following is an extract from Table 48 as published in 'Crime in India'.

TABLE 5.2 JUVENILE DELINQUENCY' – IPC CRIMES UNDER DIFFERENT CRIME HEADS IN THE YEAR 1998

Crime Head	No. of Crimes Committed
Murder	251
Attempt to commit murder	161
Culpable Homicide not amounting to murder	22
Rape	194
kidnapping and Abduction 1. Of women and girls 2. Of others	153 134 19
Dacoity	35
Preparation and Assembly for dacoity	2
Robbery	53
Burglary	1293
Theft	2152
Riots	574
Criminals breach of trust	19
Cheating	33
Counterfeiting	0
Arson	26
Hurt	1642
Dowry death	78
Molestation	138
Sexual harassment	37
Cruelty by husband and relatives	248
Other crimes under the Indian Penal Code	2228
Total Cognizable Crimes under the Indian Penal Code	9339

However with the newly enforced Juvenile Justice (Care and Protection of Children) Act, 2000 the declining trend is likely to be grossly reversed, because of addition of the 16-18 age group males in the definition of the word 'juvenile'. Crime in India

1999 in Table 69 gives the following statistics:

TABLE 5.3 PERSONS ARRESTED UNDER IPC AND SLL BY AGE GROUP AND SEX DURING 1999

Sl. No.	Crime Head	Below 16 Years		16-18 Years	
		Male	Female	Male	Female
1.	Total cognizable IPC crimes	8894	720	43231	2257
2.	Total cognizable IPC crimes	4194	542	26343	1853
3.	Grand total of IPC & SLL crimes	13088	1262	69574	4110

This would mean that after the coming into effect of The Juvenile Justice (Care and Protection of Children) Act, 2000 from the 1st of April, 2001 the number of juvenile delinquents would swell by another 69574. This would not only reverse the declining trend but would also call for adequate and effective management of a threefold increase in the juvenile delinquent population.

5.5.3 Violent and Serious Juvenile Delinquencies- Rise and Implications

In 1999, of the total number of juvenile crimes, 15.6% were violent crimes and 39.6% property crimes. The rise in violent and serous juvenile delinquencies and decline in property crimes has been a gradual phenomenon throughout the course of the post Independence era. Of the four major categories of violent crimes, namely:

1. Crimes affecting the human body;
2. Crimes affecting property;
3. Crimes affecting public safety and;
4. Crimes affecting women;

The increasing involvement of youth in violent and other serious crimes has of late created pressures for reforming the juvenile justice system both in the advanced countries and in developing country like ours. Society has taken a stern view of violent delinquencies and as consequence the policy of juvenile justice has been

substantially altered. This is particularly true of the United States of America. In India too there have been certain developments that indicate the hardening of social attitude to violent delinquencies.[128]

Right of information to parents and legal guardians

Article 40, Clause 2 of the Convention on the Rights of the Child, 1989 lays down,

2(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees;

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians

The Juvenile Justice (Care and Protection) Act, 2000

Section 13 of The Juvenile Justice (Care and Protection) Act, 2000 deals with information to parents, guardians and probation officers of the arrest of a juvenile as soon as possible after the apprehension.

Section 13, Information to parent, guardian or probation officer:

Where a juvenile is arrested, the officer in charge of the police station or the special juvenile police unit to which the juvenile is brought shall, as soon as may be after the arrest, inform:

(a) The parent or guardian of the juvenile, if he can be found of such arrest and direct him to be present at the Board before which the juvenile will appear, and

(b) The probation officer of such arrest to enable him to obtain information regarding the antecedent and family background of the juvenile and other material circumstances

(c) likely to be of assistance to the Board for making the enquiry.

Thus we see that Section 13 of The Juvenile Justice (Care and Protection) Act, 2000 is in consonance with the various provisions of the international instruments adopted by the United Nations. It mandates the police officer to inform the probation officer also, besides the parents of the juvenile under arrest about the arrest in order to enable him to obtain information regarding the antecedents etc. of the juvenile to assist the Juvenile Justice Board for making the inquiry.[129]

Sections 11 and 23 of The Juvenile Justice (Care and Protection) Act, 2000 indirectly incorporate the provisions of the international instruments. The philosophy of these provisions is based on the premise that juvenile delinquency is essentially an off-

shoot of the disorganization process of the wider social system and juvenile delinquency is a symptom of failure of the society to ensure for the child what it owes to him. It recognizes that juvenile delinquency is, more often that not, a culmination of adverse experiences that the child passes through or a result of his being deliberately neglected or abused by elders. As a result when a juvenile is apprehended the adverse experiences should not be continued any further especially by the enforcement agencies treating the juvenile in an undignified manner. This is especially important as it might profoundly influence the juvenile's attitude towards the State and society.

The Juvenile Justice (Care and Protection) Act, 2000

This right to be placed under the charge of the Special Juvenile Police Unit immediately on apprehension is recognized in Section 10 of The Juvenile Justice (Care and Protection) Act, 2000.

Section 63 of The Juvenile Justice (Care and Protection) Act, 2000 deals with the special police units. It lays down.-

Section 63 Special Juvenile Police Unit

(1) In order to enable the police officers who frequently or exclusively deal with juveniles or are primarily engaged in the prevention of juvenile crime or handling of the juveniles or children under this Act to perform their functions more effectively, they shall be specially instructed and trained.

(2) In every police station at least one officer with aptitude and appropriate training and orientation many be designated as the 'juvenile or the child welfare officer' who will handle the juvenile or the child in co-ordination with the police.

(3) Special juvenile police unit, of which all police officers designated as above, to handle juveniles or children will be members, may be created in every district and city to coordinate and to upgrade the police treatment of the juvenile and the children.

As the police are the first points of contact a 'juvenile in conflict with law' has with the juvenile justice system, it is most important that they act in an informed and appropriate manner. While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific

principles but more so for improving the prevention and control of juvenile crime and the handling of juvenile offenders. United Nations Standard Minimum Rules for the Administration of Juvenile Justice, "The Beijing Rules" November 1985

Rule 10.2 deals with the issue of bail even though in clear terms. It lays down, Rule 10.2 A judge or other competent official or body shall, without delay, consider the issue of release. The question of release (Rule 10.2) shall be considered without delay by a judge or other competent official. The latter refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person. This rule incorporates a fundamental rule found in the International Covenant on Civil and Political Rights.

13 Detention pending trial

13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

The Juvenile Justice (Care and Protection) Act, 2000

Section 12.Bail of Juvenile:

(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer in charge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

The provisions of the section have a salient object to keep away a juvenile from the company of criminals. Children must not be kept in jails. The atmosphere of a jail has

a highly injurious effect on the mind of the child, estranging him from society and breeding in him an aversion bordering on hatred against a system which keeps him thus. If State Governments do not have sufficient accommodation in Remand Homes or Observation Homes, children should be released on bail instead of being subjected to incarceration in jails. The judgement in Krishna Bhagwan v State of Bihar with respect to the provisions under the Juvenile Justice Act is a reiteration of the statements made by the Supreme Court in the case of Sheela Barse v Union of India. The Supreme Court had observed."If a child is a national asset, it is the duty of the State to look after the child with a view to ensure full development of its personality. That is why all the statutes dealing with children provide that a child should not be kept in jail. Even apart from the statutory prescription it is elementary that a jail is hardly a place where a child should be kept. There can be no doubt that incarceration in jail would have the effect of dwarfing the development of the child, exposing him to baneful influences, coarsening his conscience and alienating him from society". Sections 6 and 7 The Juvenile Justice (Care and Protection) Act, 2000 of the Act deal with the right of a 'juvenile in conflict with law' to be tried only by a competent authority.

Section 6 Powers of Juvenile Justice Board:

(1) Where a Board has been constituted for any district or group of districts, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law.

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.

Section 7. Procedure to be followed by a Magistrate not empowered under this Act:

(1) When any magistrate not empowered to exercise the powers of a Board under this Act is of the opinion that a person brought before him under any of the provisions of this Act (other than for the purpose of giving evidence), is a juvenile or the child, he shall without any delay record such opinion and forward the juvenile or the child and the record of the proceeding to the competent authority having jurisdiction over the proceeding.

(2) The competent authority to which the proceeding is forwarded under sub-

section (1) shall hold the inquiry as if the juvenile or the child had been brought before it.

Section 16 of the The Juvenile Justice (Care and Protection) Act, 2000 deals with orders that may not be passed against a juvenile which include the right of a juvenile against the imposition of capital or corporal punishment. Section 16. Order that may not be passed against juvenile.

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or life imprisonment, or committed to prison in default of payment of fine or in default of furnishing security:

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

(2) On receipt of a report from a Board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit:

Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed. Section 16 of the Act makes it amply clear that no delinquent juvenile shall be sentenced to death or imprisonment for life or imprisonment in default of payment of fine or of furnishing security. In Gopal Chandra Srivastava v State of U.P.[130] it was held that "gruesomeness of a crime may be one of the factors requiring infliction h: the severest sentence but tenderness of age has always been accepted to be a mitigating factor to save an adolescent neck form being lengthened by the noose of the rope".

The increasing involvement of youth in violent and other serious crimes has of late created pressures for reforming the juvenile justice system both in the advanced countries and a developing country like ours. Particularly in the United States, Society

has taken a stem view of violent delinquencies and as a consequence the policy of juvenile justice has been substantially altered and has taken a re-criminalization line. In India too 'f1ere have been certain developments that indicate the hardening of social attitude to violent delinquencies. The most significant of them have been two lines of decisions of the apex court of the land.

The first relates to the desirability of imparting death sentences in case of juvenile and youth offenders (between 16-18 years). Justice Jaychandra Reddy resolved the issue of desirability of imposing the death sentence to an accused below 18 years in Amrutlal Someshwar Joshi v State thus: There is no inflexible rule that a criminal aged about 17 or 18 years should never be sentenced to death irrespective of other circumstances however aggravating they may be.

Sections 52 and 53 of the Act deal with the provisions of appeal and revision.

Section 52.

(1) Subject to the provision of this section, any person aggrieved by an order made by a competent authority under this Act may, within thirty days from the date of such order, prefer an appeal to the Court of Session:

Provided that the Court of Session may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) No appeal shall from.-

(a) any order of acquittal made by the Board in respect of a juvenile alleged to have committed an offence; or

(b) any order made by a Committee in respect of a finding that a person is not a neglected juvenile.

(3) No second appeal shall lie from any order of the Court of Session passed in appeal under this section

Section 53.Revision

The High Court may at any time, either of its own motion or on an application received in

this behalf, call for the record of any proceeding in which any competent authority or court of session has passed an order for the purpose of satisfying itself to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:

Provided that the High Court shall not pass an order under this section prejudicial to

any person without giving him a reasonable opportunity of being heard. An appeal is the judicial examination by a higher court of the decision of an inferior court. It is thus the removal of a cause to a superior court for the purpose of testing the soundness of the decision of the inferior court. An appeal is one of the major premises on which modem day judicial systems survive. The Juvenile Justice (Care and Protection) Act, 2000 in Sections 52 and 53 thus incorporates the remedy recognized by law for getting the decree of the lower court set aside.

Sections 21 and 51 of the Act deal with the right of privacy of a 'juvenile in conflict with law'.

Section 21. Prohibition of publication of name, etc. of juvenile involved in any proceeding under the act.

(1) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile nor shall any picture of any such juvenile be published:

Provided that for reasons to be recorded in writing the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile.

(2) Any person contravening the provisions of sub-section (1) shall be punishable with fine, which may extend to one thousand rupees.

Section 51.Reports to be treated as confidential

The report of the probation officer or social worker considered by the competent authority shall be treated as confidential:

Provided that the competent authority may, if it so thinks fit communicate the substance thereof to the juvenile or the child or his parent or guardian and may give such juvenile or the child, parent, or guardian an opportunity of producing such evidence as may be relevant to the matter stated in the report. Sections 21 and 51 stress the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization. Criminological researches into labeling process have provided evidence of the detrimental effects resulting from the permanent identification of young person's as "delinquent" or "criminal". Section 21 thus stresses the importance of protecting the juvenile from the adverse effects that may result from the publication of information about the

case (e.g. the names of young offenders, alleged or convicted) in the mass media by making it a offence punishable with fine which may extend to one thousand rupees thereby protecting and uploading the interest of the juvenile. The Juvenile Justice (Care and Protection of Children) Act, 2000 was amended in 2006 and a new section in 62A has been added for constitution of Child Protection Unit responsible for implementation of the Act. The said section provides that "Every State Government shall constitute a Child Protection Unit for the State and such units for every District, consisting of such officers and other employees as may be appointed by the Government, to take up matters relating to children in need of care and protection and juvenile in conflict with law with a view to ensure the implementation of this Act including the establishment and maintenance of homes, notification of competent authorities in relation to these children and their rehabilitation and co-ordination with various official and non-official agencies concerned.

Section 15 of the The Juvenile Justice (Care and Protection) Act, 2000 deals with orders that may be passed regarding juveniles which incorporates among other things the release of a juvenile on probation.

Section 15. Order that may be passed regarding juvenile,

(1) Whereas Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything in any other law for the time being in force, the Board may, if. it thinks so fit:

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counseling the parent or the guardian and the juvenile;

(b) direct the juvenile to participate in group counseling and similar activities;

(c) order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety as the Board may require, for the good behaviour and well being of the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and placed

under the care of any fit institution for the good behaviour and well being of the juvenile for any period not exceeding three years;

(g) make an order directing the juvenile to be sent to a special home:

(i) in the of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;

(ii) in case of any other juvenile for the period until he ceases to be a juvenile

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit... ..

Section 15 of The Juvenile Justice (Care and Protection) Act, 2000 incorporates the principle of non-institutional treatment. Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. However the many adverse influences on an individual that seem unavoidable within any institutional setting and which evidently cannot be outbalanced by treatment can be avoided in a non-institutional correction measures. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development. However as is evident from a study of the number of juvenile delinquents released on supervision under Probation Officers, it may be seen that the Juvenile Courts in India have certainly not been in favour of juvenile probation or non-institutional treatment. Seemingly the Juvenile Courts are of the opinion that other modes of disposal of juvenile cases are better than the release of juveniles on probation supervision. The juvenile Justice (Care and Protection) Act, 2000 have just paid lip service to non-institutional care. The draftsmen of the Juvenile Justice (Care and Protection) Act, 2000 have patted themselves on their backs over the fact that they have managed to legitimize certain non-institutional treatment such as adoption when previous attempts to do so have failed.

But the fact remains that juvenile offenders in our country still suffer the many adverse influences that institutionalization has no offer while remains a preferred choice in the adjudicating forums. Juvenile delinquency is the legal term for behavior of children and adolescents that no adults would be judged criminal under law. The causes of such behavior, like those prime in general, are found in a complex if

psychological, social, and economic factors. Clinical studies have uncovered emotional maladjustments, usually arising from disorganized family situations, in many delinquents. Other studies have suggested that here are persisting patterns of delinquency in poverty level neighborhoods regardless of hanging occupants, this culture of poverty' argument has come into disrepute among any social scientists.

Poverty and illiteracy are two major factors leading to juvenile delinquency, which is evident from the act that about 72.2 per cent of the juvenile crimes are committed by children belonging to families having an annual income of less than rupees 25000 and 77.9 per cent the juveniles are/were either illiterates or below primary level of schooling and 11.5 per cent above the primary level but below higher secondary level.[131] In the field of juvenile crimes Madhya Pradesh leaves every other State behind in most all crimes. In the year 2000, the number of juveniles apprehended under the IPC as maximum in Madhya Pradesh i.e. 3541. Madhya Pradesh was way ahead of other States in the commission of juvenile crimes such as murder (105), attempt to murder (78), rape (98), hurt (678), eve-teasing (104), robbery (37), house breaking (471) and other IPC crimes (1.230).

The problem of juvenile justice is, no doubt, one of tragic human interest so much so in fact that it is not only confined to this country alone but cuts across national boundaries. Any person less than 18 years of age is now globally considered to be a child under the United Nations Convention of the Rights of Child, 1989 a definition ratified by India in 1991 and converted into a legal instrument under Juvenile Justice (Care and Protection of Children) Act, 2000. The differential treatment given to a child, which has been in the process of evolution over hundreds of years, creates a separate juvenile justice system, other than the criminal justice system which is obviously, meant for the adults, that I, those over 18 years of age. This system of separate legal and administrative treatment operates beyond the realm of law aloe and drifts into the complex dynamics of socio-economic, psycho-emotional and the family-community based institutional and non-institutional interventions and organizations. The juvenile justice system generally emphasizes informal procedure and correction rather than punishment. There has been tendency to handle cases in public welfare agencies outside the court. Juvenile correctional institutional have been separated from regular prisons and although most are inadequate, some have developed intensive rehabilitation programs, providing vocational training and psychiatric treatment. The parole system, foster homes, child

guidance clinics, ad public juvenile protective agencies have contributed to the correction of delinquents and maladjusted children. Especially important for prevention is action by community groups to provide essential facilities for the well-being of children. Increased attention is now being paid towards expanding and strengthening the scope of voluntary action in the prevention of crime and the treatment of offenders.

In all carts of the globe efforts are being made to seek the co-operation of voluntary institutions and bodies whose functioning relates, directly or indirectly, to a variety of social defence operations. This is because in the last two decades, many governments especially, but not exclusively in the Third World – have come to realize that the non-governmental organizations (NGO's) are better able to deliver services than government authorities. The Indian government is not behind in this regard and both the legislations in the field of juvenile justice – the Juvenile Justice Act, 1986 i.e. the earlier law and the Juvenile Justice (Care & Protection of Children) Act, 2000 i.e. the existing law provide for the involvement of the NGOs and social workers in the juvenile justice process, though the new law is an improvement on the old one. In recent years there has been an increased recognition of the potential of the public and the possibility of its being fully involved in the criminal justice administration. The need for adequate intervention by the citizen is being viewed as one of the key factors in the successful implementation of programmes and policies that aim at the prevention, control, treatment and rehabilitation of offenders. as a result, considerable importance is being attached to bringing the public closer to criminal justice sub-systems.[132] One thing that most observation the criminal justice system agree upon the need for greater involvement of the public in the prevention of crime and treatment of offenders. The contemporary criminological thought has added strength to the bee that the task relating to the prevention crime and the treatment of offenders indeed too complex to be left alone to the police, courts and correctional agencies.

Historically, the promotion of voluntary action, antedates all institution arrangements societies have been able advise in their internal defense against crime and citizen involvement in crime prevention and control is perhaps as old as the problem itself. Te tradition of voluntary action however, saw a slight eclipse in the model complex and urbanized societies. The organizational realities of such societies did warrant a total reliance on informal social control mechanisms. In such societies elaborate networks of laws, large-scale implement of police and a vast array of

judicial punitive and corrective strategies had been considered necessary to control and regulate the deviant behavior of individuals age groups. It is only in these societies a large number of highly depersonalized agency of formal social control mechanism great which, despite their effectiveness, tended isolate the public from operational systems of crime prevention and control. This isolation tended, further to widen the gulf between the people and the State-operate social defence enterprise. In all such societies, the police, the courts and the correctional agencies suffered from a unique kind of otherness, and were regarded, different thesis sticks to the belief that any amount of increase in the number of policemen judges and correctional agencies, will best, prove to be a temporary solution to the baffling problem of crime and delinquent Solutions of this nature, the experts suggest, will tantamount to putting a bandage on a patient who is bleeding profusely the bandage is helpful, perhaps essential, but it will not stop bleeding. Simply, providing more of the same will not prevent crime. The realization is to the effect that if society is to succeed in its struggle against crime and delinquency, it is not enough to rely solely on police, courts, and correctional system. What is required is to involve the citizenry; because it is the citizenry that will curb crime, and not the police, nor the courts and nor the prisons[133]

With the emergence of community-based corrections, and its growing acceptance and popularity all over the world, the experts in the field of social defence are in favour of bringing the public closer to corrections by strengthening the methods and modalities suggested for enlarging the scope of public participation in juvenile and adult corrections. Most such experts aver that constructive cooperation by the public in general and specific welfare minded citizens in particular be made a permanent part of crime prevention programmes, so that the harmful or passive attitude of society, which assumes that professionals alone can solve the rapidly growing problems as if by a miracle may give way to responsible citizen action1[34]. Concerned with serious increase in crime and delinquency, criminal justice policy planners all over the world ultimately realized that no country can effectively deal with its crime problem though its criminal justice system alone; people's participation is the hall-mark of any successful plan for crime control. The belief that has now come to stay with us places increased accent on public participation, i.e. more the participation of the public in criminal justice system, greater is the efficiency of criminal justice sub-system in the prevention and treatment of crime and delinquency.

The countries with enough regard for people's cooperation in their struggle against crime and delinquency now seems more inclined to formally involve an increasingly large number of well-meaning citizens and bodies which represent the consciousness of the public towards the problems in this field.[135]

Since the end of the Second World War and most especially since the end or the 1970s. There has been an explosive emergence of local, national, and international voluntary organizations working for the promotion and protection of human rights on every continent and in almost every country in the world. These non-governmental organizations (NGOs) vary enormously ill their membership, leadership, and purposes, in the scope of their activities and programmes and in the incidence or impact they have in domestic, regional or international arenas. This should not be not surprising in that NGOs have emerged in response to specific conditions and crises and are the product of social action, history and culture. In recent years, as the human rights movement has developed. There has also been a high degree of specialization and professionalization between and amongst the organizations.

Nonetheless, these NGOs, in all their diversity, comprise a human rights movement that has taken us from a world order ill which governments were free to treat their citizens as brutally, callously or arbitrarily as they pleased to one in which political authorities are now accountable to Internationally-defined standards of human rights. Non-governmental organizations have been the dynamo that has driven the struggle for self-determination, the struggle for democratic pluralism, .and the struggle for a more just economic order. It was NGOs which ensured that human rights were inscribed into the United Nations Charter. NGOs have contributed in a major way to the elaboration of the International Bill of Human Rights, and they were in the forefront of the push to move the United Nations system beyond human rights promotion to protection or implementation. NGOs continue to provide inter-governmental organizations with the information essential for action in enforcing these standards. They can also provide governments with information essential to judicious policy-formulation and can assist in implementing these human rights policies. Most importantly, these NGOs provide a countervailing and humanizing force to the: centralizing tendencies of the modem state.[136] The role of voluntary sector in national development has been considered vital due to their vast experience and knowledge of local needs, problems and resources.

The commitment of voluntary organizations/non-government organization is

considered effective as it is not bound by rigid bureaucratic system. The voluntary sector is observed to operate with greater flexibility and base its activities on the felt needs of the community. Sadly, there is still a tendency on the part of many governments to regard NGOs with suspicion; to equate their criticism with treason or subversion; to ban then: or deny them : permission to register legally; and to even imprison, muzzle or execute their leaders Such defenders Include not only the officials of human rights NGOs, but lawyers who defend political prisoners or publicly challenge repressive legislation; journalists and. 'writers who use their pens to expose violations; religious leaders who speak up for landless peasants; and 'trade unionists who expose inhuman or unsafe working conditions and demand a living wage for workers. All these become 'legitimate' targets for death squads or candidates for arrest under draconian security laws.

Though the tradition of voluntary action in social welfare is centuries old in our country, there seems little evidence of any role or the participation of the people (who may otherwise be concerned: willing or active in .other important areas of social concern) had been minimal to say the least. Most such people have shown less enthusiasm in associating with institutions and agencies that 'cater to the custodial and correctional requirements of the persons charged with law-violational conduct. The general Citizenry has continued to treat criminals and delinquents with disdain, hostility and contempt. The general public still hangs on to the belief that most such persons are unworthy of any dignified and humanitarian treatment. This situation is mainly due to fact that the idea of retribution as morally just punishment is deeply embedded in the public mind against a social odd like this, corrections do not find adequate number of country workers willing to lend their support and cooperation in the little understood cause of reformation and rehabilitation. The lack of people's confidence, credibility and concern for corrections get reflected in low key citizen participation in many of the programmes and activities in the field of juvenile and adult corrections. All sorts of official exhortations, prescriptions and advices to obtain extensive public participation in the operation of correctional systems have not yielded very encourage results.[137] The modalities through which the participation of the public has been effected is that the treatment of juvenile and adult offenders could be broadly divided into two major categories – formal modalities and inform modalities.[138] Formal Modalities as laid down in various correctional legislations and statues which provide for the appointment citizen representative are:

- To visit correctional institutions with view to finding out and redressing the grievances of the institutional personnel and inmates
- To perform advisory functions and duties related to the smooth functioning of the institutions/agencies concerned.
- To serve on governmental bodies which take policy decisions, or, discharge administrative functions and duties as prescribed under the provisions of any specific
- legislation dealing with the institutional or non institutional treatment of juvenile and adult offenders**.**
- To undertake tasks assigned by some appropriate authority in relation to the care protection and supervision of the person/ persons officially placed under their charged.
- Informal Modalities symbolize the citizens' individual or collective concern in direct and in indirect form for:-
- Establishing such organizations and agencies which supplement the protective preventive and rehabilitative functions of correctional sub-systems.
- Extending moral and financial support to the functionaries and to the inmates of correctional institutions.
- Visiting correctional institutions on their own, or when invited to get to know of the problems of the inmates and the staff and to make efforts for mobilizing necessary resources to meet the unmet needs of the institution.
- Working as citizen auxiliaries to perform tasks related to the achievement of treatment and rehabilitation goals of the concerned correctional agency.
- Discharging the function of catalytic agents or ardent advocates of correctional reform.

Juvenile correction has been and continues to be the main-stay of voluntary action programmes that dealt with juveniles were organized and conducted by voluntary workers. The establishment of charitable institutions (orphanage in particular) in the early years of the twentieth century marked the beginning of voluntary action.[139] It was a significant development in terms of delinquency prevention. The orphanages started by the Christian missionaries encouraged a large number of individual philanthropists and voluntary organizations of both sectarian and secular character to

work for the setting up of home-like institutions for children, who, if not helped, were in imminent danger falling prey to criminal careers. The establishment of children aid societies in Madras (1925) and Bombay (1927) heralded the beginning of voluntary action in the prevention of delinquency and the treatment of juvenile and adolescent offenders. These societies paved the way for the enactment and implementation of children Acts in the country.

Much of what we see in the field of juvenile correction in the country today has, in fact crystallized out of the vigorous activity of voluntary organization and workers in the boarder filed of child welfare. At the international level, the Riyadh Guidelines"[140] provided that mechanisms for the appropriate coordination of preventive efforts between governmental and non-governmental agencies should be instituted. It further provides that close interdisciplinary cooperation should be initiated between national, State, provincial and local governments, with the involvement of the private sector, representative citizens of the community, and labor, child welfare, health, education, social law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime. In India, the scheme pertaining to the prevention and treatment of juvenile delinquency as initiated under the framework or Children's Act contains systematic procedures for cooperation of non-official voluntary organizations and workers in the apprehension, institutionalization and aftercare of children who come in conflict with law, or who because of neglect, exploitation and victimization are prone to delinquent behavior. Some of the Children Act provisions in this regard are –

- Citizen cooperation in the referral of such children to an appropriate authority.
- Constitution of Child Welfare Boards manned by voluntary workers to exercise magisterial powers in relation to the disposal of the cases of neglected children produced before the Boards.
- Appointment of persons having adequate knowledge and expertise in child psychology and child welfare as honorary juvenile court magistrates.
- Certification of voluntary child welfare institutions as 'fit-persons' institutions;
- Placement or release on license of the inmates of Children Act institutions under the care and guardianship of voluntary workers or agencies with or without supervision and

- Obtaining the support of voluntary organizations in the aftercare and follow-up of children released from correctional Institutions.

The Juvenile Justice Act, 1986 reiterated the provisions as were contained in the central Children Act 1960. In respect of Juvenile Welfare Board the Act provided that the Board shall be exclusively manned by honorary magistrates drawn from the rank and file of local voluntary child welfare/social welfare workers. In regard 'to Juvenile Courts the Act provided for the appointment of two honorary social workers for assisting the Court, of whom ·at least one shall be a woman. A person to be appointed as an honorary social worker on the panel was to be-

- Respectable educated citizen with the · background of special knowledge of child psychology, sociology, social work, education or home science;
- A teacher, a doctor, a retired public servant or a professional who Is involved in work concerning juvenile; or
- A social worker, who has been directly engaged in child welfare

The Act provided for the placement of a juvenile under the care of a parent, guardian or fit person. The parent/guardian or fit person under whose care a juvenile had been placed under section 16(1) or under section 21(l)(b) by the Court was required to-

- Make arrangement for proper care and · nurture of the Juvenile;
- Arrange for the proper medical care of , the juvenile whenever necessary;
- Ensure that the juvenile is not willfully' neglected in a manner likely to cause the juvenile unnecessary mental or physical suffering
- Protect the juvenile against moral danger or exploitation
- Be responsible for good conduct of the juvenile;
- Prevent the Juvenile from being associated with any undesirable persons; and
- Protect the juvenile with all types of social service and ensure the general welfare of the juvenile.

The competent authority making an order under section 51(1) might have directed the parent or other person liable to maintain the juvenile to contribute to his maintenance, if able to do so. The Act provides for the recognition of fit persons or institutions which are willing to receive a juvenile in need of care, protection or treatment so long a period as may be necessary. An institution certified or recognized under sections 9,10 or 11 might, during the period of certification or recognition, apply for grant-in-aid by the state government for maintenance of juveniles received

for meeting the expenses incurred on education, treatment, vocational training, development and rehabilitation. The Juvenile Justice Act, 1986 made new provision for the creation of a special fund to be called "The Juvenile Justice Fund" to pay grant-in-aid to non-official organizations. All voluntary donations, contributions or subscriptions made by any individual or organization were required to the credited to the Fund. The Board of Management to be set up for the administration the fund was to include three non-official members to be appointed by the state government. The Act made another new provision relating to the constitution of an Advisory Board to advise the state government on matters relating to the establishment and maintenance of homes.

Mobilization of resources, provision of facilities for education, training and rehabilitation of neglected and delinquent juveniles and coordination amongst the various official and non-official agencies. The Board was to include an industrialist, a journalist, a representative the State Bar council and social workers/representatives of voluntary organization actively engaged in juvenile welfare. Provision was made for the nomination by the District Magistrate of three non-official visitors for each institution established within his, jurisdiction. Each visitor was to visit the institution for which he or she was appointed at least once in three months and send a quarterly report to the Chief Inspector through the District Magistrate containing his or her comments or suggestions in regard to the institutional management and the quality of institutional services for action to be taken by the District Magistrate. The re-enacted Juvenile Justice (Care & Protection of Children) Act, 2000, has substituted the previous Juvenile Justice Act, 1986. However, the actual enforcement of this proactive legislation for children has just begun in some parts of the country. The earlier Act, much lesser in its expanse and coverage, could not be implemented even 25% in terms of institutional and non-institutional care of the neglected and delinquent children during the 15 years of its existence on the statute book. In case, similar situation persists in respect of this new Act as well, the much talked about care, protection, welfare and rehabilitation of the children in need of care and protection and the children in conflict with law, shall inevitably, remain a far cry. Our supreme assets, the 40 crore non-school going children who happen to be neglected or disadvantaged in some form, will remain looking up to the pronouncements made in such lofty legislations besides national and international commitments, the United Nations Convention on the Rights of Child and the constitutional provisions.

Further, in view of the National Charter for Children substituting the National Policy of 1974 and the setting up of the National Commission for Children, there is an urgent need to find out the status of our children in need of care and protection who, Ipso facto, also cover the children in various forms of conflicts, In terms of actual interventions, the ultimate test of the government and the civil society lies in the protection and care of those children who need it most, i.e., the destitute, vagrant and 'uncared for children.' It is mainly for them that the Juvenile Justice Act, 2000 which happens to be the basic law for children in the country, has been somewhat enlarged in its scope and re-enacted with several fundamental changes.

The new law i.e. Juvenile Justice (Care & Protection of Children) Act. 2000, casts an extraordinary responsibility on the judicial apex bodies to enforce the law besides the central, provincial and the local self-governments, the voluntary organizations and the society at large. Under the altered scheme of child care in the country, combining the new Act with the National Charter and National Commission, child labour laws etc., the future will remain as bleak perhaps worse, in case the government and the civil society do not forge a real time dignified and multiple partnerships. Looking at the most inadequate infrastructure for institutional care - 280 Observation Homes, 36 Special Homes and 46 After Care Homes for about 36,000 inmates at the most, as against the requisite at least 2,50,000 in 704 Police Districts - in the country, there is an urgent need to associate the voluntary sector In a big way. The marginal experiments of collaboration between the government and the NGOs in the area of institutional care have betrayed definite reservations on the part of the government functionaries to part with such power, resources and responsibilities.[141] Perhaps, in the changed dispensation, the government will have no choice since the' new law pre-supposes the majority participation of the voluntary organizations and, social workers in both institutional and non-institutional care for juveniles/children.

As per the provisions made under the new Act, there was a need for a dynamic change as no government could alone take the entire responsibility of 35 million children in distress, in the country. In order to ensure a wholesome coverage, involvement of voluntary organizations on an equal footing with the governmental agencies was most imperative. There was an urgent need for creating adequate infrastructure necessary for the Implementation of the proposed legislation with a larger involvement of informal systems specially the family, the voluntary organizations and the community. Proposal was made to spell out the role of the state

as a facilitator rather than doer by involving voluntary organizations and local bodies in the implementation of the proposed legislation.[142] The Juvenile Justice (Care & 'Protection of Children) Act, 2000 had drawn upon various due process, welfare and participatory models in the best interest of the country.

The present law had appropriately accorded a primacy to community based welfare efforts in safeguarding the rights and interests of children processed through the formal system. Therefore, the success of new law depended on the extent to which the government was able to generate voluntary action. The new law, Inter alia, provides for street and abandoned children without abode, victims of child labour, armed conflict, natural calamity, HIV-AIDS besides those abused and exploited in any form either as children in need of care and protection or as children 'In conflict with law. There are now ample provisions to associate voluntary organizations, social workers, public-spirited citizens, public servants, corporate sector and the civil society at large in both institutional and non-institutional care for such .children.

Similarly, the qualified and trained social workers will have the most prominent role to play In the Juvenile Justice Boards, Child Welfare Committees, i.e., the Competent Authorities to deal with the children in need of care and protection and In conflict with law: as members of Advisory Boar-Is and Selection Committees in the process of Investigation, adoption foster care and sponsorship for social re-integration: the management and actual running of Children's Homes and Shelter Homes for those In the need of care and protection, even in the Observation Homes and Special Care Homes for those 'in conflict with law.' The entire range of Institutional and non-Institutional care will now be supervised by the Panchayati Raj institutions and the local bodies, instead of the bureaucratic machinery. It was important for NGOs to supplement the governmental duties and play their vide under the implementation of the provisions of the Juvenile Justice Act, in this connection, with the Juvenile Justice (Care & Protection of Children) Act, 2000, government had come out with a blue-print, to work close association with NGOs to implements provisions and to supplement some its functions. NGOs working in this should be purposefully drawn into this process. Although every child is entitled to free legal aid, it is indeed unfortunate to find general lack of basic awareness amongst various stake holders comprising the society, NGOs governmental organizations and so on.

In India, like many of the neighbouring countries, children were not provident with the basic facilities, which were necessary for them to become responsible citizen

of the country, apparently, the enunciate goal could only be achieved with the spread of education, for which NGOs had to assume a nodal responsibility. With the new Juvenile Justice (Care and Protection of Children) Act, 2000, there would be an expanded coverage of children on account of increase in age and categories. The new law envisages a number of infrastructural changes.

Two members of the Juvenile Justice Board would be social workers who are acquired to serve at par with the magistrate. This is an improvement from the 1986 Act where the two social workers could only assist the Court. Thus, the NGOs can act an extent by their expertise as it will provide the judiciary a guideline to know the background/reasons of the offence or negligence and also provide the remedy for the respective correction. Further, no magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and social worker shall be appointed as a member of the Board unless he has been active involved in health, education, or welfare activities pertaining to children for at least 7 years.

State governments have been empowered to establish and maintain either by themselves or under an agreement with the voluntary organizations, observation homes in every district or a group of districts, for the temporary reception of any juvenile in conflict with law during the pendency of any enquiry regarding them. The government has also been empowered to certify any institution, other than a home established or maintained by themselves or under an agreement with the voluntary organizations as an observation home for the purpose of the Act.

State governments have been empowered to establish and maintain either by themselves or under an agreement with the voluntary organizations, observation homes in every district or a group of districts, for the reception and rehabilitation of any juvenile in conflict with law. The government has also been empowered to certify any institution, other than a home established or maintained by themselves or under an agreement with the voluntary organizations, that it is fit for the reception of juvenile in conflict with law.

As per the provisions under the new law, there would be three homes for children in need of care and protection, namely children's homes, shelter homes and the after care homes that have to be managed in close collaboration with voluntary organizations.

State governments have been empowered to establish and maintain either by

themselves or in association with the voluntary organizations, children's homes in every district or group of districts, for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.

State governments have been empowered to recognize reputed and capable voluntary organizations and provide them assistance to set up and administer shelter homes for juveniles or children. These shelter homes shall function as drop-in-centers for the children in the need of urgent support.

State governments have been empowered to establish or recognize after care organizations for the purpose of taking care of juveniles or the children after they leave special homes children homes and for the purpose of enabling them to lead an honest industrious and useful life.

NGOs and voluntary social workers may also act as Probation Officers under the Probation of Offenders Act. 195833 to find out the antecedents of the juvenile and to ensure that the juvenile does not repeat the crime again.

Voluntary workers would also be members of Child Welfare Committees. Among the' various dispositional alternatives the new law provided for group counseling and community service for children.

Section 45 of the new Act explicitly provides that the State government may make rules to ensure effective linkages between various governmental non-governmental, corporate and other community agencies for facilitating the rehabilitation and social reintegration of the child. This provision though ought to have been couched in mandatory terms.

The Central or State advisory boards to be constituted under section 62 of the new Act shall include inter alia eminent social workers and representatives of voluntary organizations.

The strength and vitality of voluntary action has always been beset with number of problems and difficulties. The very complexity of these problems has, however, continued to remain Intact despite vigorous assistance in this field. Currently the issue of voluntary action in delinquency prevention is high on the government's agenda. The government is keen to obtain the cooperation of voluntary welfare resources and agencies. But the government's penchant for Institutional programmes still continues to be unlimited despite massive evidence to prove that correctional institutions though useful, and often necessary, have contributed little to prevent

Juvenile delinquency. The government has overlooked the simple fact that the way to reducing the problems related to juvenile social maladjustment or delinquency lies in preventing them at the first place. The delinquency prevention ideology in the government circles hopes to seek the solution in the treatment of juvenile offenders rather than in the prevention of conditions leading to juvenile social maladjustment. In its pursuit for simple solutions to a complex problem, many of the governmental measures prove wasteful and incapable of securing results in proportion to the expenditure in terms of energy, time and resources.[143]

Further, the policy of the government has been to appoint only a limited number of voluntary workers as non-official visitors and members and office-bearers of the managing or advisory committees of the correctional institutions. This mode of public participation has not yielded the expected results, perhaps because the individuals selected or nominated for the purpose neither, represented the .public in the strict sense of the term, nor effectively performed the role of selfless social workers inspired with missionary zeal. The role of such workers has been extremely limited and perfunctory in nature. The government's generosity in providing grants-in-aid to many voluntary organizations has been commendable indeed. The result is that hundreds of voluntary organizations and bodies have sprung up in the country. But the fact, however, is that many such voluntary institutions are hardly doing any worthwhile Job. In fact, many of them have become a convenient means of devouring government money obtained through political wire-pulling. Needless to say that the continuance of such organizations have brought discredit to several other voluntary institutions and organizations despite their numerous limitations they are doing a good job. The public credibility of voluntary social welfare institutions in general stands eroded because of the misdeeds the large number of voluntary workers who has either exploited the community's sentiment of charity to serve their personal ends.

The government has rarely tried to weed out the so called social workers from the voluntary sector because of whose corrupt practices the good people not feel inclined to join the effort.[144] The irony of the situation is that many the good voluntary social defence organizations are crying for adequate government protection and encouragement. Many of them are withering away for want of requisite facilities and resources. The ones that are surviving have simply learned to live with their inadequacies. The people who know these organizations and

institutions are disillusioned with the manner in which the concerned grant-giving government departments treat them. What is frustrating the most is the red-tapism and authoritarianism prevalent in the offices of the concern government departments, particularly at all the state levels. Devoid of any proper governmental and social recognition, many such wonders are feeling the futility of their work. The basic problem is not the paucity funds, as some people tend to believe, it that of finding enough persons who sincere believe in the intrinsic philosophy of such action or feel encouraged to invest their time money and resources.

The feeling that dissuades the ordinary citizen the most is the gigantic nature of the problems where voluntary action is called for. To many such persons the rhetoric of citizen power or people action is all sound and fury signifying noticing. To others who are too busy to make their both ends meet, the gospel of collective action in resolving social problems is at best of theoretical interest. And then, to some is a leisure time activity of upper class civilized zenry, a person struggling for his survival has hardly any time to work for the welfare of others. In respect of voluntary action in the prevention and control of crime and delinquency, the problem of finding sincere and dedicated workers is more acute. It is perhaps, one field in which the citizens are too reluctant to walk in. Their reluctance is not because the citizens do not sufficiently realize consequences of their inaction; it is because they find, that they can do precious us little. The sense of public helplessness is so overwhelming that people are not prepared to intervene. The peace loving citizen is so much fearful of criminal elements that he prefers to lie low than confront an awkward situation. To such citizen crime and, delinquency prevention is a dreaded task he would like to avoid rather than undertake. Some of the problems .of voluntary action that require special attention have been discussed here in terms of their priority.

The first problem, theoretical though is to remove the cobwebs of confusion surrounding the very use of the term. ‘public participation’. The term is by no means unambiguous. As things are, there is so much of semantic confusion and lack of perspective that the terms ‘community participation’ ‘public participation’ and ‘voluntary action’. Interchangeable though are often used as platform rhetoric. Sometimes tile people who 'use these terms do not clearly know what community public/voluntary action group they are referring to, What sort of participation/ co-operation/ action they are talking about, and finally how community/public or

volunteer groups are to be mobilized for some good cause. The clarity that should characterize the usage of these terms is however, missing.[145] In consequence, the people for whose action co-operation or participation the entire debate is made of are ultimately left in the lurch not knowing what -to do, how to do and where to do? What we generally, find is the simplistic belief that more the public is involved in the programme or crime prevention and treatment of offenders the better they will be done. This is by all means is not always true. Thoughtless involvement of toe public might produce harmful and often disastrous results.

It is therefore necessary to spell out the concept of public participation in clear and unambiguous terms. It is a goal directed venture with clearly defined and well-articulated methods and modalities of seeking the participation of well meaning, public service, spirited individuals and citizen groups whose co-operation/assistance/support might produce better results in the field of delinquency prevention and treatment of juvenile offenders. The second problem is that of dispelling the notion that public participation is a panacea for all, or many, of the major defects and deficiencies of juvenile justice system. Public participation is needed and is useful but it is not to substitute for governmental inaction. Public is aroused to participate only when there is demonstrable outcome of the policies 'and programmes initiated by the government. Public is seldom moved by exhortations appeals am lectures; it is moved only when official programmes and policies present a full-of-life image. The participation of the public: is further dependent on the sincerity of the government to involve people. At present there is only symbolic representation or the people in the juvenile justice administration and worse still the persons chosen are not the best ones. The whole exercise seems to be a sort of window-dressing. Many of these men and women the experience suggests, dance to bureaucratic tunes and serve on official committees as ‘yes men.’ The Objective viewers of the situation have reasons to believe that presently there is more rhetoric and less substance in all that goes on in 'the name of public participation. The third problem pertains to the lukewarm response of the government to the question of enlarging and extending the scope of voluntary intervention in the juvenile corrections.

The available information indicates that officially prescribed modalities of public participation leave much to be desired. The functionaries of the system have only done a Up-service to the cause. They have made no effort to educate people

about the philosophy of corrections its policies, programmes and action strategies. The net result is that the public is woefully ill-informed about corrections and, that this lack of information i.e., a convenient way for the public to allow the principle of out-of-mind, out-of-sight to operate.[146] The public does not know much about corrections and the information it does possess is either fragmented or incomplete, or is based on traditional stereotypes. As a result of no information, little information or incorrect information the citizen involvement in corrections has been minimal or almost nonexistent.

Though the goal is to move towards decriminalizing the administration of Juvenile Justice, it is still a distant dream. Juvenile Justice Boards and Child Welfare Committees have to be revitalized based on a deeper understanding of the psychological and social forces that bring these children in the juvenile justice system. Following are some areas of concern in the Juvenile Justice system that needs reform:

- The education, training and recreation of children have not been provided for. Besides basic or school education even higher education and training of these children have to be considered. Open school and Open University education system should be made accessible to these children. The vocational training is outdated and has no relevance to the current market needs and requirements. This is an area that requires immediate attention. Otherwise you have children out of the institutions with no skills to maintain themselves and are easy targets of the world of crime.
- Children have a right to speedy trial, right to speedy disposal of cases and right to child friendly proceedings but there are pendency of cases in the JJB's which is against the provision of the law.
- The inspection of the institutions should be carried out with some special issues in mind and should be of both quality as well as quantity care. Homosexual behaviour is largely common in these institutions. During inspections the child's view must also be ascertained. A joint inspecting format is available with the Department of Women and Child, Government of Maharashtra, which may be followed. Compensation can be provided for children who have been victims of custodial and institutional abuse.

- The government schemes relating to child develop0ment, education and child labour must be made available to the children in institutions.
- The Act still retains a high degree of dependence on the adult criminal justice system like the police, magistrates, bail applications, procedure and lawyers.
- The problem of special care and need of disabled children have been ignored. Institutions and trained personnel to deal with such children are required.
- There is no concept of parental responsibility under the Act.
- There is no linkage between the JJA 2000 and other related legal provisions relating to child labour, child education, child abuse and child health.
- After the 2006 amendment, there is also a confusion as to whether the registration under the Juvenile Justice Act covers institutions of children under the Orphanages and Charitable Homes Act, 1960, or there has to be registrations under both the laws.
- Many states in India have still to set up structures under the new Act.
- The Act fails to provide for procedural guarantees like right to counsel and right to speedy trial.
- There is a need to amend section 197 of the Code of Criminal Procedure, which requires government approval for prosecution of law enforcement officials or illegal detention and section 43 of the Police Act, so that police cannot claim immunity for actions in cases of illegal detention of custodial abuse of children.
- The objective and the spirit of the new law is still to be known and there is a need for large scale training of functionaries under the Act including the judiciary. The functionaries should be trained to have educational, mental health and social service components. The functionaries must all work together for the best interest of the child.

Children as citizens are entitled to all that has been promised to them under the Constitution of India and by the United Nations Child Rights Chapter. The children's issues need to be looked in their entirety, rather than through the narrow prisms of education, health, child labour, child abuse, foeticide/infanticide, etc., seeking the underlying root causes of the deprivation – gender, caste, livelihoods, displacement, mis-governance, etc, mobilizing each local self government and community to find long term solutions to these problems by ensuring the relevant laws and policies that

guarantee their rights are actually implemented. The outdated National Policy on Children 1974 is now being revised. It needs to be child centric and not remain just a wish list[147].

Legislation intends that juvenile offenders should be treated differently from adult offenders. Such legislation has been in force since the early 20th century when states had framed their separate laws to deal with children who had committed crimes. These laws differed in content, including, the age of juvenility. It was in 1986, at the instance of the Supreme Court in Sheela Barse vs. Union of India"[148] that a uniform juvenile legislation was enacted by the Central government to deal with "neglected juveniles" and "delinquent juveniles. The Juvenile Justice Act 1986 was amended in 2000, and currently the Juvenile Justice (Care and Protection of Children) Act 2000 governs "for proper care, protection and treatment" of juveniles in conflict with law and children in need of care and protection by catering to their development needs, and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation. Under the 2000 Act, all persons under 18 years of age on the date of commission of the offence are to be dealt with under that Act, irrespective of the crime committed. That children who have committed an offence require protection is the essence of juvenile legislation and the same is reflected in the title of the 2000 Act.

Hence, reformation and rehabilitation replaces punishment as the focus. At this stage it is imperative to understand the need to treat juveniles in conflict with law distinct as many are of the opinion that treatment of an offence should commensurate the gravity of the crime and not of the offender or circumstances in which it was committed. It universally accepted the persons below a particular age are immature and unable to cope with situations, thus they react impulsively and within weighing the consequences of their acts. It is generally a juvenile's circumstance that results in the commission of an offence, therefore, it is not mere legal intervention but socio-legal intervention that is emphasized with treating juvenile offenders. The aim of juvenile legislation is not only adjudication of the juvenile's guilt, but making him realize that what he did was wrong and ensure that in future he is able to responsibly handle a similar situation. To achieve the spirit of juvenile legislation, a person below 18 years of age on the date of offence, on apprehension is not to be kept in a police lock-up or jail, and the inquiry is to be conducted by the Juvenile Justice Board. For accomplishment of the socio-legal perspective, the Juvenile Justice Board consists of

three members, viz., a judicial magistrate and two social-workers. Bail is mandatory, with or without surety, except in certain prescribed circumstances.

Section 15 of the Juvenile Justice (Care and Protection of Children) Act 2000 lists the orders that may be passed by the Board in the event of it deciding that the juvenile has committed the offence. It is important to note that "no juvenile in conflict with law shall be sentenced to death or imprisonment for any term which may extend to imprisonment for life. The emphasis is on ensuring that the life of the juvenile is not disrupted for long periods of time, therefore, the inquiry by the Board is to be completed within four months, except in special cases the time limit may be extended. The question to be now asked is whether juveniles in conflict with law are actually being accorded the protection of juvenile legislation.

The reality is very different. Many juveniles are deprived the safeguard of a socially beneficial legislation that has been enacted for their protection. The main reason for this denial is that persons below 18 years of age are incorrectly shown and treated as adults by the investigating and adjudicating authorities. It is the police whom the juvenile alleged to have committed an offence first comes into contact with. Though the accused is seemingly under 18 years of age, the police show him to be an adult and place him in the police lock-up. The police deliberately act so because a juvenile within 24 hours of his arrest is to be placed under the custody of the Juvenile Justice Board. The police thereafter have access to the juvenile only if the Board so permits, and that too under supervision of a probation officer. These precautions have been established to ensure that the juvenile does not fall prey to police manipulation, but are perceived-by the investigating agency as a hindrance. Further, regular attendance before the Juvenile Justice Board is a shift from the police's regular routine, which the police say is an inconvenience. It is more opportune for the police to treat the juvenile as an adult, and produce him before the Magistrate and keep him under their control. Judicial notice has been taken of the police's conduct, and the Supreme Court has repeatedly instructed subordinate courts to hold an age determination inquiry when in doubt about the age of the accused.

Sadly, the Magistrate, before whom an accused is first produced, too does not notice that the accused standing before him is of young age and that he has no jurisdiction to, entertain the case. Perfunctorily, the Magistrate extends the remand of the accused till the charge-sheet is filed, and thereafter the matter is committed for trial to the appropriate criminal court, whilst the juvenile remains in jail. The

adolescent is not aware about the law, nor does he have the wherewithal to engage a lawyer, so the claim of juvenility is not made at the initial stage, and the juvenile continues to be treated as an adult thereby defeating the object of juvenile legislation.

Recognizing that juveniles are being denied protection due to the indifference of the criminal justice system, the Supreme Court has attempted to check this apathy by obligating the Magistrates to conduct an age determination inquiry when there is doubt about the age shown by the police. In Gopinath Ghosh vs. State of West Bengal, the issue of juvenility was raised for the first time before the Supreme Court, and whilst holding Gopinath Ghosh to be a juvenile under the West Bengal Children Act 1959, the Supreme Court directed and observed, “We are of the opinion that whenever a case is brought before the Magistrate and the accused appears to be age 21 years or below, before proceeding with the trial or undertaking an inquiry, an inquiry must be made about the age of the accused on the date of the occurrence. This ought 1 to be more so where special Acts dealing with juvenile I delinquents are in force. If necessary, the Magistrate may refer the accused to the Medical Board or the Civil Surgeons, as the case may be, for obtaining creditworthy evidence about age. The Magistrate may as well call upon accused also to lead evidence about his age. Thereafter, the learned Magistrate may proceed in accordance with law. This procedure, if properly followed, would avoid a journey up to the Apex Court and the return journey to the grass-root court.” Despite instructions to determine the age of an accused prior to proceeding with his case, constantly juveniles are treated and sentenced as adults. It is rarely that a Magistrate on his own, without a plea being raised, conducts an inquiry to ascertain the age of a young accused. The Supreme Court and the High Courts are repeatedly approached to set-aside sentences of imprisonment, including life imprisonment, imposed by trial courts.

In Bhola Bhagats case, the High Court summarily rejected the appellant's plea of juvenility, causing the Apex Court to opine, “If the High Court had doubts about the correctness of their age as given by the appellants and also as estimated by the trial court, it ought to have ordered an enquiry to determine their ages. It should not have brushed aside their plea without such an enquiry." The Court continued to say, “Keeping in view the beneficial nature of the socially oriented legislation, it is an obligation of the Court when such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefits of the provisions to an accused. The Court must hold an inquiry and

return a finding regarding the age one way or the other. We expect the High Courts and the subordinate Courts to deal with such cases with more sensitivity, as otherwise the objects of the Acts would be frustrated and the efforts of the legislature to reform the delinquent child and reclaim him as a useful member of the society would be frustrated."

The Criminal Manuals of the different High Courts also obligate Magistrates and judges of the Session Courts to ascertain the age of the accused. "The best evidence of age is the entry in the Births and Death Register. Where this is not available, the accused person should be got medically examined and a medical certificate obtained in regards to his age. A definite finding with regard to his age should be recorded in every case."[149]"The system's lack of concern is reflected in Master Rajeev Shankarlal Parmars[150] case and Master Salim Ikramuddin Ansaris case[151], where despite the Session Court's finding that Rajeev and Salim were juveniles, the jail authorities neglected to transfer them to the Observation Home on flimsy grounds such as non-availability of escort and misplacement of the court's order declaring the accused as a juvenile. In both these cases the Bombay High Court directed that the petitioners should be immediately shifted to the Observation Home, and also awarded compensation to the juveniles. It is not that the juvenile justice ·system does not have its maladies. A lot requires to be done to streamline its functioning. But this cannot be the reason to keep the child in jail. The Supreme Court, in Sheela Barse vs. Union of India"', has strongly chastised the practice of placing children in jail, "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 a system which keeps him in jail." The Supreme Court has time after time reprimanded those participating in denying a child the protection of the juvenile justice system. It is imperative that the law of the land is adhered to in practice in order to assure a juvenile his comprehensive rehabilitation. The Observation Home is a residential care institution for juveniles or children in conflict with the law. After apprehension the child is admitted in the Observation Home during the period of enquiry where he stays till his release (either on bail or by other relevant Orders).

Though the Observation Home is supposed to be a "temporary" arrangement and many children stay there only for a few days, there are some who stay in the Home for several months. Police delay in completing enquiry, parental unwillingness to release the child, inability of poor families to travel to the Homes, incomplete family address,

denial of bail are some of the reasons for prolonged stay. Other reasons for long stay could be hesitation of the part of the accused to disclose family information, unwillingness of the child to go back home due to strained family relationships or a desire to pursue some kind of education or vocational training. Though the accused attend informal classes within the Home, the varied educational background of these children makes it difficult to plan a uniform educational programme. Further, due to the transient nature of the group, the Observation Homes are often unable to introduce long term self-development programmes. A large number of children in the Homes are uncertain and anxious about their future, while some of them repent their act, others are confused about it. If not dealt with urgently, these children will veer towards a life of crime.

Children who have been falsely implicated are agitated and feel a strong sense of injustice towards them. Depending on the nature of the case and the profile of the child, an individualized plan for every child is essential which needs to be followed up even after the child leaves the institution. After the enquiries are completed, the Juvenile Justice Board may pass an order that the child should stay in a correctional institution or a Special Home for a maximum period of three years. In the Special Home children are provided formal education, vocational training, job placement and rehabilitation. In both the Homes the endeavour is towards correction and rehabilitation rather than punishment. However, there is a gap between the expected outcome and the existing reality. State managed institutions often face a number of constraints in terms of funds, excessive paper work, and lengthy procedures especially to take permission and/or sanction from higher authorities. The functionaries are expected to work with dedication and sensitivity without the necessary support in terms of resources and opportunities for self-growth. These factors often demotivate them as well as lower their morale. Unfortunately, this has a direct impact on the quality of care. Children become reduced to statistics, and staff-child interactions become mechanical and authoritarian. Often children are treated harshly with indiscriminate beating and cruel words to maintain control and discipline.

Moreover, though there are many caring state members in these institutions, there is no mechanism appreciate their contributions or take their valuable input for further instructional improvement. Long term residential care often leave young people with low self esteem, a sense of worthlessness; and the feeling that they have no one to care for. Merely detaining children and subjecting them to a daily routine may not

automatically reintegrate them into mainstream society Children in Observation Home and Special Home require secure dependence upon reliable caring adults in order to develop them into dependable adults themselves. Berry Juliet (1975) in her study of children and their caregivers found that the daily routine tasks of caregivers like distribution of food, clothes, general supervision etc., if handled benignly, has a positive impact on the children. The very ordinary routine of care can then become an important means of communication between the staff and the children and help build up the confidence of the children in human relationships. For any rehabilitation programme to be effective there has to be a positive relationship between the child and the authorities. The staff in these institutions work under very stressful conditions. Staff related needs and issues too require attention and priority. Over the years efforts have been taken towards deinstitutionalization.

Deinstitutionalization is the process of a) an unnecessary admission and retention of children in institutions b) finding and developing appropriate community based alternatives for children who need not be in institutions and c) improving conditions, care and treatment for those who need institutional care. All the three areas need to be addressed simultaneously. Given below are some of the measures towards improving quality of care.

5.5.4 Child's Right to Participation

Children need not be viewed as victims of circumstances only. They too have a decisive role to play in steering their own lives. Within the institution participation could mean including and involving the children in decision making processes, in planning for rehabilitation, children can provide 'us with insight into the complexities of their social lives and, the dilemmas they face. Adults can take into account their real concerns and choices rather than just what adults think their concerns ought to be. Children stay in the Home for a limited period of time. However, they will require ongoing supervision for guidance and to prevent recidivism. Thus it is very important that each child is linked to a support group or a network that will follow up even after the child leaves the institution. NGOs and individuals can work closely with the authorities of the Home and establish such links. A large number of juveniles (72.4 per cent) belong to poor families and have little or no education (The Crime in India Report 2006). Rehabilitation should integrate formal education with contemporary vocational training. Apart from vocational training there should be

sufficient opportunities for life skills education. If children are provided with the opportunity to learn skills such as problem solving, decision-making, interpersonal skills, self-awareness in a supportive environment, they can confidently manage their lives, in a positive manner.

5.5.5 Community Participation

The Observation Home and the Special Home being "closed" institutions deprive the child of his liberty. Unnatural constraints and security encourage unnatural behaviour. In lesser restrictive environments and community-based programmes, with parental and community involvement, these children will be able to join the mainstream gradually and turn away from crime. Involvement of civil society, and provision of activities such as group counseling and community service, though included in the Act, is yet to be implemented. A large number of juvenile offenders have been deprived of the care and encouragement that a family is supposed to provide. Majority of these children, even prior to the offence, have been deprived of basic rights of education and, development they were neglected and became vulnerable to delinquency. Every child has the capacity to change and work with children in conflict with the law, has to be based on this conviction. Strong governmental support in requited in terms of effective implementation of the Juvenile Justice Act, 2000: monetary resources, adequate personnel and infrastructural facilities for such children. Despite inherent limitations of institutional care, many children who have previously experienced abuse, exploitation, severe hunger, or rejection by their own families have been helped in these institutions to rebuild their lives. Our efforts towards decriminalization and humanizing process have received an acceptance from the Board as well as from the authorities within the OH responsible for the care and rehabilitation of JCL's.

Increasingly, we are realizing that it's a gradual at the same time, a very slow process that we have embarked upon, but a coherent effort will bring the much needed impetus towards community based rehabilitation away from institutionalization and stigmatization. We are now gearing towards building a continuous and sustainable support system for the child as well as his family in the form of a "Help Desk" which will act as a bridge between the child/family and the Board. A national perspective needs to be built on juvenile in conflict with law, in order to follow a uniform approach towards care, treatment, rehabilitation and re-integration. We need to focus

on the preventive strategies such as empowering communities with enabling and participatory processes for the protection of any violence against children. Rehabilitation should be the primary focus of juvenile justice. Failing to provide rehabilitative measures will never show us the results we are expecting the state machinery should provide effective coordination and support to the civic society E-mass training and sensitization of various stake-holders especially the media is needed for an effective and sensitive handling of cases reported . Our intervention within the children's observation home has surely helped scores of children in finding justice in a timely manner.

In our experience, while we have found the cases of those in need of care and protection motivating enough to take them to its conclusion, we have found the cases of JCL more challenging, at the same time very rewarding. Our experience with JCL cases though limited, has propelled us in believing that the correctional measures are indeed providing to be valid. It's the mindset coupled with stronger conviction which is making a statement of change in people's lives. Those, who would have been otherwise labeled as "difficult" and "potential threat" to the society, have shown tremendous growth and promise while they are in Saathi's car and custody. Based on our experiences in dealing with JCL cases, we feel that a time has come where all of us need to work towards the delivery of justice by thinking and working "out of the box". Failure should not deter us, but, few successes should lead us in finding the path for greater success.[152]

In a democratic country like ours the courts are the guardians of rights who play a crucial role in enforcing the rights of children as enshrined in the constitution and elaborated in various other Acts. They have indeed played a significant and vital role in protecting the rights of children by interpreting the various laws in India

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