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CHAPTER – 3

**LAW, PROCEDURE AND TREATMENT OF  
JUVENILE DELINQUENTS**

As rightly stated by Friedman in his classic work ‘Law in Changing Society’, the state of criminal law continues to be, a decisive reflection of social consciousness of society. Therefore criminal law should adopt the effective machinery or deterrence based on factual matrix. The State through the instrumentality of criminal law should function to ensure security of persons and property of the people by eliminating crime, failing which the contagion of lawlessness would undermine peace and social order and lay it in ruins. The object of criminal law should be protection of society and stamping out criminal proclivity.<sup>1</sup>

Therefore, law as a cornerstone of the edifice of order should meet the challenges confronting the society in the form crime and criminals. Justice demands that court should impose punishment befitting the crime so that public indignation of the crime is duly reflected.<sup>2</sup> The use of alcohol and other drugs is of ancient origin but their consumption and the consequent problems have assumed alarming magnitude and dimension in the recent past in many parts of the world. All this has caused a great deal of concern and the formidable challenge posed to sociologists, lawyers, doctors and administrators have drawn a variety of responses.<sup>3</sup> W.H.O. defines that Drug addiction is a stage of periodic and chronic intoxication detrimental to the individual and to society, produced by the repeated consumption of a drug.

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<sup>1</sup> Kathpalia, Girish (2016), *Criminology and Prison Reforms*, LexisNexis, Haryana, at P.10.

<sup>2</sup> Supreme Court’s observation in *Dhananjoy Chatterley v. State of West Bengal* (1994) 2 SCC 220.

<sup>3</sup> Ahmed, Siddique (2016), *Criminology, Penology and Victimology*, Eastern Book Company, Lucknow, at P. 169.

The use of drugs and drinking of liquor is one of such socio-economic evils that have exerted its baneful impact on teeming millions of Indian since ages. Laws of Manu stipulate that a Brahmin who drinks forbidden liquor should be made to drink that liquor boiling hot until his throat is scalded.<sup>4</sup> The intoxicating properties of certain cannabis preparations were probably known in India more than 2,000 years ago. The earliest reference to it is in Atharva Veda, a religious text believed to belong to the period 2000-1400 B.C. The Buddhist Law also abhors the consumption of liquor. Alcoholic drinks are prohibited among Muslims, and certain caste Hindus and Jains.

It is considered to be a crime against public safety, social order and morals. Indian constitution is first and foremost a social document. The sole aim of the inclusion of Socio-economic justice in the Constitution was to bring about a socio-economic revolution so as to promote the welfare of common man.<sup>5</sup> The Directive Principles of the State Policy of the Constitution of India, specifically the Article 47 envisions prohibition on consumption of liquor. According to this Article the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. Criminality occurs mostly because of the effect of consumption in the lowest self control and a sense of responsibility and often leads to accidents. The possession of narcotics and psychotropic, however, is usually illicit and especially trafficking in them is nearly always so. Therefore, the criminality associated with them is concerned more with their movement and attempts to obtain them, than acts committed under their influence.<sup>6</sup>

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<sup>4</sup> Sirohi, J.P.S. (2011), *Criminology and Penology*, Allahabad Law Agency, Haryana, at P.606.

<sup>5</sup> CESC Ltd. vs. S.C. Bose, AIR 1992 S C 573.

<sup>6</sup> Pranjape, N.V. (2011), *Criminology and Penology with Victimology*, Central Law Publication, Allahabad, at P. 208.

### 3.1. Indian Law Relating to Substance Abuse

The problem of Juvenile delinquency is becoming graver day by day. Besides this, one of the major factors contributing towards growth of juvenile delinquency is the use of alcohol and other substance abuse by them. Drug abuse has emerged as a major global problem. In our country, according to latest estimates, more than 4(four) million people are victims of drug abuse.<sup>7</sup> To deal with this problem the Indian Govt. as well as Assam Govt. has taken several legislative measures from time to time. Thus there are two basic strategies in dealing with the problem of addiction. One is legal and the other is therapeutic. The legal view is chiefly concerned with the effects of drugs that are regarded detrimental to the individual and the society. Drugs are, therefore, labelled as illicit items and the user becomes an offender in the eyes of the law and is subjected to prosecution and penalization. Both the illicitness and the punitive patterns maintain public condemnation of the users. The researcher has discussed the relevant legal measures relating to this problem in this chapter.

#### 3.1.1. Narcotic Drugs and Psychotropic Substances under the 7th Schedule of the Constitution

India is a welfare State. It is the constitutional duty cast upon the State to provide for conditions suitable to good public health.<sup>8</sup> To deal with the menace of drugs and psychotropic substances the Indian Constitution in its 7<sup>th</sup> Schedule has given power of legislation to Central as well as State Governments on the matter exclusively and concurrently under the three lists as follows-<sup>9</sup>

**List I- Union list:** Entry 59- Cultivation, manufacture and sale for export of opium.

Entry 84- Duties of excise on tobacco and other goods manufactured or produced in India except-

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<sup>7</sup> Sachdeva, D.R. (2015), *Social Welfare Administration In India*, Kitab Mahal, Allahabad, at P.575.

<sup>8</sup> Shukla, V.N. (2006), *The Constitution of India*, Eastern Book Company, Lucknow, at PP.954-961.

<sup>9</sup> Supra note 4, at P.606.

- (a) Alcoholic liquors for human consumption.
- (b) Opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

**List II-State list:** Entry 8- Intoxicating liquors, that is to say, production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

Entry 51- Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India-

- (a) Alcoholic liquors for human consumption;
- (b) Opium, Indian hemp and other narcotics, drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

**List III-Concurrent list:** Entry 19- Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium.

Besides the aforesaid items, item 14 of the Union List i.e. “Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries” is relevant since India is a party to a number of international conventions on narcotic drugs and psychotropic substances.

In **State of Rajasthan v. Mana Singh**,<sup>10</sup> Rajasthan High Court was of the view that it was not in dispute that in view of Entry 19 of the Concurrent List of the Constitution of India the law relating to the NDPS Act falls within the executive powers of the Union of India.

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<sup>10</sup> State of Rajasthan v. Mana Singh, RLW 2003(1) Raj 308.

### **3.1.2. The Opium Act, 1878**

The Opium Act was enacted to regulate possession, sale, purchase, transport, import or export of opium and providing punishment for contraventions. The drug abuse was dealt with essentially as a medical problem. Legal controls under the Opium Act were somewhat limited and mainly directed to the trafficking in drugs. The Act did not provide any distinct and separate procedure for the investigation and trial of the offences created by it. The offences were to be investigated, inquired into and tried under the provisions of Criminal Procedure Code. The maximum punishment provided under the Act was only one year, enhanced to three years by an amending Act, 1957.

### **3.1.3. The Dangerous Drugs Act, 1930**

The Dangerous Drugs Act, 1930 was enacted primarily to deal with the drug problem in the international setting and covered drugs other than opium like cocaine and morphine. The need for the enactment was felt in view of the Geneva Dangerous Drugs Convention of 1925. The Act furnished substantial powers to the Central Government regarding the production, supply and control of dangerous drugs in the country. In view of the prohibition policy accepted at the national level after Independence, greater restrictions were placed on the consumption of cannabis, particularly ganja and opium in many parts of the country. In many States, the sale of ganja and opium, in particular the oral use of the latter was banned. In some States and territories ganja and opium could be given only to addicts on medical prescriptions.

### **3.1.4. The Narcotic Drug and Psychotropic Substances Act, 1985**

India has comprehensive substantive law on drugs in the form of an Act of Parliament titled, “Narcotic Drugs and Psychotropic Substances Act, 1985”. This Act has been amended in 1988 and now it is known as the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988. This Act is

useful for the preventive detention of dangerous drug offenders. The NDPS Act amalgamated all the previous three British era laws on the subject, namely the Opium Act 1857, the Opium Act, 1878 and the Dangerous Drugs Act, 1930.

**3.1.4.1. The main features of the NDPS Act are as follows:**

- The Act extends to the whole of India. Moreover, it applies to all citizens of India, outside India and all persons on ships and aircraft registered in India
- It declares in no uncertain terms its objectives to be a ‘stringent law’, thus clearing all doubts about the justification for heavy penalties included in it.
- The Act seeks to prevent and penalized abuse of and trafficking in illicit drugs – both narcotics and psychotropic substances.<sup>11</sup>
- It seeks to effect co-ordination among the enforcement agencies of the Central and the State Governments and the connected authorities.<sup>12</sup>
- It lays down the ways and means to implement the provisions of the UN Conventions on Narcotics and Psychotropic Substances.
- It makes obligatory on the Govt. of India to extend assistance to foreign governments and international organizations in the matter of prevention and suppression of trafficking in drugs.
- It seeks to make provisions, among other things, for treatment, education, after care, rehabilitation and social integration of drug users. For this purpose, it created a “National Fund for Control of Drug Abuse”.<sup>13</sup>

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<sup>11</sup> Section 4 of the Narcotic Drug and Psychotropic Substances Act, 1985.

<sup>12</sup> Ibid.

<sup>13</sup> Section 7A of the Narcotic Drug and Psychotropic Substances Act, 1985.

- It provides for the appointment of a Narcotics Commissioner of India to superintend in illicit cultivation of opium poppy for pharmaceutical purposes.
- The penal system established by this Act is very stringent. It has put in place several tiers of penalties, from imprisonment for six months with a fine of Rs. 10,000/- to imprisonment for ten years with a fine of Rs.1,00,000/- to imprisonment for twenty years with a fine or Rs. 20,000/- to sentence of death. Enhanced punishment of offences after previous conviction is also a specialty.
- The Act provides for trial by a Special Court of all drug offences that are punishable with imprisonment for more than three years.
- The offences under NDPS Act are cognizable and non-bailable. The bail provision in the Act even when it is to be granted by a competent court has been made stiffer than general offences under other laws.
- The Act is a self-contained statute. It lays down elaborate and minutely worked out procedures for investigation of drug-related cases over and above the Criminal Procedure Code, 1973.
- A most important feature of this Act is the provision for forfeiture of property derived from or used in illicit trafficking in drugs.
- The most positive aspect of the Act is that it expects the government to take adequate care of the drug addicts such as treatment, education, after-care, rehabilitation, and social re-integration.<sup>14</sup>
- A drug control authority exclusively to investigate and prosecute drug offenders nationwide has been created under the NDPS Act under the title “Narcotic Control Bureau”. It has been tasked to control and suppress illicit drugs production and trafficking and to keep tabs on the growth of Narco-terrorism in the country.

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<sup>14</sup> Section 71 of the Narcotic Drug and Psychotropic Substances Act, 1985.

#### **3.1.4.2. Important Provisions of the Narcotic Drug and Psychotropic Substances Act, 1985(Amended in 1988)**

The main policy underlying the Act is to prohibit supply and distribution (trafficking) of prohibited drugs, for which minimum sentence of ten years, which may extend to 20 years, with a minimum fine of rupees one lakh, and a maximum up to two lakhs has been prescribed. The Act makes no distinction between a drug addict and a drug-trafficker in respect of punishment except under Sections 27 and 64-A of the Act.

Section 27 of the Act provides that if a drug addict proves that he possessed drug of less than 'small quantity' and that it was for his own personal consumption and not for sale, he or she shall be liable to punishment which may extend to maximum one year.

Section 33 of the Act provides that the provisions of the probation under section 360 of the Code of Criminal Procedure, 1973 and of the Probation of Offenders Act, 1958 shall not apply to a person convicted of an offence under this Act, except if such person is under eighteen years of age.

Section 64-A provides immunity to a drug addict from criminal liability provided that if he proves that the offence is committed for the first time and he or she voluntarily agrees to be treated for de-addiction in a recognized institution.

Section 71 of the Act provides for rehabilitative and reformatory measures for an addict whether he is an offender or not. Thus, the Act combines within it deterrence and reformatory techniques of punishment to tackle the problem of drug addiction and trafficking effectively.

In India drug addiction is spreading like wild fire as could be seen from the fact that heroin was being recently smuggled even in dead bodies. Two Nigerian nationals were sentenced to 12 years rigorous imprisonment and a fine of Rs. 2 lakhs by Greater



Bombay Principal Judge Mr. S.A. Kirtikar on 25.12.1987 under the NDPS Act for smuggling huge quantity of heroin in dead bodies.<sup>15</sup>

The Supreme Court of India, in **Dawood Lama's Case**<sup>16</sup> confirmed the conviction of the accused, a foreign national under the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced him to 10 years' rigorous imprisonment and to pay a fine of Rs. 1,00,000/- and in default further undergo rigorous imprisonment for two years. In this case brown sugar was seized from the accused which is a narcotic drug and not a psychotropic substance. The Court further ruled that under NDPS Act, the police officer taking search is duty bound to inform the person arrested that if he so desired he shall be searched in the presence of a Gazetted Officer or a Magistrate.

**In Birendra Kumar Rai v. Union of India**,<sup>17</sup> the Supreme Court further held that in a case falling under the Prevention of Illegal Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, the accused should be sternly dealt with under Section 3 of the Act and provisions of Article 22(5) of the Constitution of India are not attracted in such cases. Therefore, the detention of the accused under the Act shall not be held arbitrary.

**In State of Maharashtra and others v. Nagpur Distillers**,<sup>18</sup> a two Judge Bench of the Supreme Court took a serious note of liquor addiction among the younger generation and urged the Government to work towards gradually reducing the consumption of liquor.

### **3.1.5. Assam Students and Juvenile Smoking Act, 1923**

The Act aims to prevent smoking by students and any person apparently under the age of 16 years. Under the Act, no person shall sell tobacco, cigarettes, etc., to any

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<sup>15</sup> Supra note 9, at P.613.

<sup>16</sup> Wilfred Joseph Dawood Lama v. State of Maharashtra, (1990) Cr. L.J. 1034.

<sup>17</sup> Birendra Kumar Rai v. Union of India, AIR 1993 SC 942.

<sup>18</sup> State of Maharashtra and others v. Nagpur Distillers, 2006 (5) SCC77.

person under the age of sixteen years, or any student under the age of seventeen. The Act, however does not apply when the person to whom such products are sold was at that time employed by manufacture or dealer of such products. Now the Act was repealed by Juvenile Justice (Care and Protection of Children) Act, 2015.

Section 77 of the Act is titled “penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to a child” and section 78 provides that whoever uses a child, for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance, shall be liable for punishment. The Act has hence subsumed by the Juvenile Justice (Care and Protection of Children) Act, 2015.

#### **3.1.6. The Assam Opium Smoking Act, 1927**

The Act aims to prohibit the smoking of opium in the State of Assam by providing penalizing provisions for the same. Under the Act, it is unlawful for any person to smoke opium. Any person smoking opium is punishable with fine up to fifty rupees and imprisonment up to one month. It further prohibits smoking of opium in a company or as a part of an assembly.<sup>19</sup>The Narcotic Drugs and Psychotropic Substances Act, 1985 is more detailed in its definitions and comprehensive than the Assam Opium Smoking Act, 1927 and subsumes the purposes for which it was enacted.

#### **3.1.7. The Assam Opium Prohibition Act, 1947**

The Assam Opium Prohibition Act, 1947 was enacted to prohibit the consumption (except for medicinal purposes) and smuggling of opium in of Assam. The Narcotic Drugs and Psychotropic Substances Act, 1985 was established as an umbrella law to “Consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances”.

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<sup>19</sup> Section 3&4 of the Assam Opium Smoking Act, 1927.

### 3.1.8. The Assam Excise Act, 2000 (The Amendment Act, 2018)

The Assam Excise Act was enacted in 2000. The Act is relating to import, export, and possession of intoxicating liquor and of intoxicating drugs. The Act defines intoxicating, intoxicating drug and liquor. Intoxicating means any liquor or intoxicating drug;<sup>20</sup> “intoxicating drug” means-<sup>21</sup>

- (i) the leaves, small stalks or flowering or fruiting tops of the Indian hemp plant (*Cannabis Sativa* L) including all forms known as bhang, sidhi or ganja;
- (ii) charas, that is, the resin obtained from the Indian hemp plant which has not been submitted to any manipulations other than those necessary for packing and transport;
- (iii) any mixture with or without natural materials, or any of the above forms of intoxicating drugs, or any drink prepared there from, and
- (iv) any other intoxicating or narcotic substance which the State Government may, by notification, declare to be an intoxicating drug, such substance not being opium, coca leaf, or manufactured drug, as defined in the Narcotic Drugs and Psychotropic Substances Act, 1985.

“Liquor” means intoxicating liquor and includes all liquid consisting of or containing alcohol; also tari and pachwai in any form; and any substance which the State Government may, by notification, declare to be liquor for the purposes of this Act.<sup>22</sup> The Chapter - III of the Act also provides for restriction on import, export and transport of intoxicant subject to restrictions imposed by the State Government.<sup>23</sup> The State Government may, by notification-(a) prohibit the import or export of any

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<sup>20</sup> Section 2(o) of the Assam Excise Act, 2000.

<sup>21</sup> Section 2(p) of the Assam Excise Act, 2000.

<sup>22</sup> Section 2(q) of the Assam Excise Act, 2000.

<sup>23</sup> Section 8(1) of the Assam Excise Act, 2000.

intoxicant into or from the territories to which this Act applies or any part thereof; or (b) prohibit the transport of any intoxicant.<sup>24</sup>

The Act also prohibit into the areas to which this Act applies the publication or display of advertisement of liquor or intoxicating preparations.<sup>25</sup> The Act provides that no intoxicant shall be sold except under the authority and any person for contravention of any provision of the Act shall be liable for punishment.<sup>26</sup>

The Amendment Act, 2018 inserted two important provisions that no person shall be allowed to consume liquor or any intoxicant in a public place [as defined under section 2(z)] and if any person consume liquor or any intoxicant in a public place, create nuisance, shall be liable for punishment.<sup>27</sup>

### **3.1.9. The Assam Ganja and Bhang Prohibition Act, 1958**

The Assam Ganja and Bhang Prohibition Act was enacted in 1958 to prohibit cultivation, collection, possession, consumption, manufacture or sale of ganja in, and of smuggling thereof into the State of Assam and to restrict cultivation, collection, possession, consumption, manufacture or sale of Bhang with a view to effect its ultimate prohibition in the State of Assam. The Act defines that ‘Ganja’<sup>28</sup> means dried flowers, flowering or fruiting tops of the Indian Hemp Plant (*Cannabis Sativa L.*); and ‘Bhang’<sup>29</sup> means leaves of the Indian Hemp plant (*Cannabis Sativa L.*) including such form known as Siddhi. The Act also provides the prohibition that no person shall cultivate, collect, import, transport, manufacture, sell, buy, possess or consume and use ganja or bhang<sup>30</sup> and whoever contravenes the provisions of Section 3 shall be liable for

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<sup>24</sup> Section 10 of the Assam Excise Act ,2000.

<sup>25</sup> Section 11 of the Assam Excise Act ,2000.

<sup>26</sup> Section 53 of the Assam Excise Act, 2000.

<sup>27</sup> Section 63A & 63B of the Assam Excise Amendment Act, 2018.

<sup>28</sup> Section 2(3) of the Assam Ganja and Bhang Prohibition Act, 1958.

<sup>29</sup> Section 2(4) of the Assam Ganja and Bhang Prohibition Act, 1958.

<sup>30</sup> Section 3 of the Assam Ganja and Bhang Prohibition Act, 1958.

punishment.<sup>31</sup> This Act also prohibited for allowing premises to be used for the commission of an offence.<sup>32</sup>

### **3.1.10. The Assam Liquor Prohibition Act, 1952**

The Assam Liquor Prohibition Act was enacted in 1952 for the prohibition of possession, consumption and manufacture of liquor in and of smuggling thereof. The Act defines liquor. 'Liquor' means any intoxicating liquor and includes all liquid consisting of or containing alcohol, also tari and pachwai in any form and any substance.<sup>33</sup> But 'Tari' is not included under this Act. The Act also provides the prohibition that no person shall transport, import or possesses, sell or buy, consume liquor except on a permit granted and manufacture of liquor etc.<sup>34</sup>

The Act also bans the publication or display of advertisement of liquor<sup>35</sup> and also provides the punishment, whoever contravenes the provisions of Section 3 of this Act. Provided that a person, who is under 21 years of age and against whom no previous conviction is proved, may be awarded a sentence of less than three months and a fine less than one hundred rupees.<sup>36</sup>

The Act also prohibits any person for allowing the use of any house, room, enclosure, space, vessel, vehicle or place and if any person contravenes the provision shall be liable for punishment. But a person who is under 21 years of age may be awarded a sentence of less than one month and a fine less than fifty rupees.<sup>37</sup>

### **3. 2. Legal Protection of Juvenile**

For the protection of juveniles or child the Indian legislature has enacted various laws. Relevant provisions are discussed below briefly:

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<sup>31</sup> Section 4 of the Assam Ganja and Bhang Prohibition Act, 1958.

<sup>32</sup> Section 5 of the Assam Ganja and Bhang Prohibition Act, 1958.

<sup>33</sup> Section 2(3) of the Assam Liquor Prohibition Act, 1952.

<sup>34</sup> Section 3 of the Assam Liquor Prohibition Act, 1952.

<sup>35</sup> Ibid.

<sup>36</sup> Section 4 of the Assam Liquor Prohibition Act, 1952.

<sup>37</sup> Section 5 of the Assam Liquor Prohibition Act, 1952.

### **3.2.1. The Apprentices Act, 1850**

The Apprentices Act, 1850, makes the beginning of the juvenile justice machinery in India. The Act was concerned about the juvenile delinquency and covering children in the age group of 10-18 years. The Act also provides the vocational training to the conflicted children for their rehabilitation.<sup>38</sup>

### **3.2.2. The Reformatory Schools Act, 1897**

The first special law dealing with delinquency all over India was under the Reformatory Schools Act, 1897 which provided that a child below fifteen years of age, found guilty of any offence might, at the discretion of the Court, be ordered to be detained in such a reformatory school for a period of three to seven years. Under this Act, no boy over eighteen years of age could be detained in such an institution. Thus, under this Act, a beginning was made for incorporating the rehabilitative techniques in the penal philosophy for juvenile offenders.<sup>39</sup>

The children often become delinquent by force of circumstances and not by choice. By improving the unfavourable environment and giving suitable training, it is possible to reform the anti-social attitude and to mould him into a responsible citizen.<sup>40</sup>

### **3.2.3. The Probation of Offenders Act, 1958**

The Probation of Offenders Act, 1958 aims to provide for release of offenders on probation after due admonition and for matters connected therewith.<sup>41</sup> The object of this Act is to prevent the conversion of youthful offenders into criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. It is also provided that if any offender

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<sup>38</sup> Sharma, D .D. Young (1996), *Delinquents in India*, Printwell, Jaipur, at P.162.

<sup>39</sup> Supra note 38 at P.163.

<sup>40</sup> Tripathi, B.N. Mani (2017), *Jurisprudence*, Allahabad Law Agency, Faridabad, at P.176.

<sup>41</sup> Misra, S.N. (2010), *the Code of Criminal Procedure*, 1973, Central Law Publications, Allahabad, at P.862.

has successfully completed his probation period, he will not suffer from any disqualifications which are attached with conviction. The Act has been given stress to reform of young offenders not guilty of serious offences and of preventing their association with hardened criminals.

#### **3.2.4. The Children Act, 1960**

The Children Act, 1960 was created for enforcement in the Union Territories of India children right through specialized institutions like Juvenile Courts and Child Welfare Boards. The purpose of Juvenile Court is not to punish but to make correction and thereby the child can lead a peaceful and honourable life in the society. This Act further contains provisions for two agencies to deal with the juvenile delinquents and the neglected child separately. Now, a child could be sent from the Juvenile Court to the Welfare Board and vice-versa, which will help not only in preventing the non-delinquent from coming into contact with the delinquent, but also facilitate the proper maintenance of institutional discipline.<sup>42</sup>

#### **3.2.5. The Juvenile Justice Act, 1986**

This Act came into force in the year 1987 on a uniform basis for the whole country. The following were the main objectives of the Juvenile Justice Act, 1986:

- (a) To lay down a uniform frame work for juvenile justice in the country so as to ensure that no child under any circumstances is lodged in jail or police lock-up.
- (b) To provide for a specialized approach towards the prevention and treatment of juvenile delinquency.
- (c) To spell out the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of children coming within the purview of the juvenile justice system.

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<sup>42</sup> Chatterjee, S. K. (2016), *Offences Against Children And Juvenile Offence*, Central Law Publications, Allahabad, at P.408.

- (d) To establish norms and standards for the, administration of juvenile justice.
- (e) To develop appropriate linkages and co-ordination between the formal system of juvenile justice and voluntary agencies.
- (f) To constitute special offences in relation to juveniles and provide punishments therefore.
- (g) To bring the operation of the juvenile justice system in conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

The Juvenile Justice Act, 1986 defines a 'juvenile' as a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.

This Act further classified a juvenile into two categories—'neglected juveniles' and 'delinquent juveniles'. The 'delinquent juvenile', is one who has committed an offence under any law of the land and comes in conflict with law. The delinquent juveniles are brought before the Juvenile Court. The 1986 Act has also provided for the classification and separation of delinquents on the basis of their age, the kind of their delinquency and the nature of offences committed by them. The four types of institutions under the Act are Observation Homes, Juvenile Homes, Special Homes and After-Care Organizations. Sections 13 and 14 deals with the procedure in case of a neglected juvenile and procedure in case of a delinquent juvenile is dealt with under sections 18, 19 and 20. Similarly, Sections 41 to 45 of the Juvenile Justice Act, 1986 provides for punishments for certain special offences in respect of the juvenile.<sup>43</sup>

### **3.2.6. The Juvenile Justice (Care and Protection of Children) Act, 2000**

The ratification on the 'Right of the Child' 1989 by India in 1992 and the changing Social attitudes towards criminality by children and need for a more child-friendly juvenile justice system for the best interest of the child were some of the factors that led to the passing of the new juvenile justice (Care and Protection of Children) Act,

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<sup>43</sup> Srivastava, S.P. (1989), *Juvenile Justice in India*, Ajanta Publications, Delhi, at PP.28-36.



2000<sup>44</sup> which extends to the whole of India except the State of Jammu and Kashmir.<sup>45</sup>  
The Act repealed the earlier Act of 1986.<sup>46</sup>

The Preamble to the Act states that, it is an Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection by providing for proper care, protection and treatment by catering to their development needs and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation and for matters connected therewith for incidental thereto.

The Juvenile Justice (Care and Protection of Children) Act, 2000 is a comprehensive legislation consisting of 70 sections divided into five chapters. The Act was enacted on the basis of the international guidelines provided by the Beijing Rules, Juvenile Deprived of their Liberty, the Riyadh Guidelines and other relevant international instruments for the protection of child rights. The main object of this Act is to protect and safeguard the interest of children below eighteen years against exploitation and child abuse. Various important provisions of this Act are discussed in the following:

(I) **Definitions** - In this Act, 'Juvenile' or 'Child' is person, who has not completed eighteenth years of age.<sup>47</sup> 'Juvenile in conflict with law' means a juvenile who is alleged to have committed an offence and has not completed eighteen year of age as on the date of commission of such offence<sup>48</sup> and 'offence' means an offence punishable under any law for the time being in force.<sup>49</sup>

A juvenile cannot also be treated as a habitual offender and cannot be called upon to furnish security for good behaviour under section 110 of Code of Criminal Procedure, even if a juvenile who has committed heinous offence of murder or rape or

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<sup>44</sup> Act No. 50 of 2000.

<sup>45</sup> Section 1 (2) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>46</sup> Section 69 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>47</sup> Section 2 (k) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>48</sup> Section 2 (I), Subs by Act 33 of 2006, Section 4 (w.e.f. 22.8.2006).

<sup>49</sup> Section 2 (p) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

other serious offence. But, if an offence has been a continuing offence, then the age of the juvenile in delinquency should be determined with reference to the date on which the offence is said to have been committed by the accused.<sup>50</sup> For determining the age of a juvenile, medical certificate regarding age can be considered only after rejecting date of birth certificate issued from school.<sup>51</sup>

The Juvenile Justice Act has made it clear that even if during the course of inquiry under the Act, a person ceases to be juvenile or child the inquiry may continue and order may be made in respect of such person continues to be a juvenile.<sup>52</sup>

**(II) Provisions Relating to Juvenile in Conflict with Law-** Chapter-II of the Act deals with the provisions relating to juvenile in conflict with law. Some important provisions in this respect are discussed below.

**(A) Constitution of Juvenile Justice Board -** The Act makes provision regarding constitution of Juvenile Justice Board. This Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be and two social workers of whom at least one shall be a woman. Every Bench of the Board shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or as the case may be a Judicial Magistrate of the First Class and the Magistrate of the Board shall be designated as the Principal Magistrate.<sup>53</sup>

**(B) Procedure etc. in relation to Board -**A juvenile in conflict with law has to be produced before the Juvenile Justice Board. When the Board is not sitting, such a juvenile may be produced before an individual member otherwise the Board shall meet at such times and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed. The order made by the Board shall not be invalid in the absence of any member during any stage of the proceedings provided,

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<sup>50</sup> Vimal Chadha v. Vikash Choudhury and another, 2000 Cri LJ 3190 (SC)

<sup>51</sup> Devendra Kr. Chintu v. State of U.P. 2007 Cri LJ (NOC) 60 (All).

<sup>52</sup> Arnit Das v. State of Bihar, AIR 2000 SC 2264.

<sup>53</sup> Section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

there are at least two members, including the Principal Magistrate, present at the time of final disposal of the case. In the event of any difference of opinion among the members of the Boards in the interim or final disposition, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the Principal Magistrate shall prevail.<sup>54</sup>

**(C) Power of Juvenile Justice Board-** The Board shall have the power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law except as otherwise provided in this Act and the powers conferred on the Boards may also be exercised by the High Court and the Court of Session when the proceeding comes before them in appeal, revision or otherwise.<sup>55</sup>

**(D) Procedure to be followed by a Magistrate not empowered under the Act-** 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 the provisions of this Act, (other than for the purpose of giving evidence) is a juvenile or the child, he shall without any delay forward the record of the proceeding to the competent authority having jurisdiction over the proceeding. The competent authority to which the proceeding is forwarded shall hold inquiry as if the juvenile or the child had originally been brought before it.<sup>56</sup>

**(E) Procedure to be followed when claim of juvenility is raised before any Court-** According to the Act whenever a claim of Juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person and shall record as finding whether the person is juvenile or a child or not stating his age nearly as may be provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in

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<sup>54</sup> Section 5 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>55</sup> Section 6 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>56</sup> Section 7 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

terms of the provisions contained in this Act and the rules made there under, even if the juvenile has ceased to be born on or before the date of commencement of this Act.<sup>57</sup>

**(F) Observation Home and Special Home-** The Act provides that any State Government may establish and maintain either by itself or under an agreement with Voluntary Organization, Observation Homes and Special Homes in every district or a group of district. The Observation Homes are required for the temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding them under this Act, whereas the Special Homes are for reception and rehabilitation of juvenile in conflict with law under this Act.<sup>58</sup>

**(G) Apprehension of Juvenile in Conflict with law-** The Act provides that as soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the Special Juvenile Police Unit. Provided that in no case a juvenile in conflict with law shall be placed in the police lock-up or lodged in a jail.<sup>59</sup>

**(H) Bail of Juvenile -** 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 or in any other law for time being in force, be released on bail with or without surety or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person but he shall not be so released if there appears reasonable grounds for believing that the release is likely to bring him into association of any known criminal or expose him to moral physical or psychological danger or that his release would defeat the ends of justice.<sup>60</sup>

**(I) Information to parent, Guardian or Probation Officer -** The Act provides that when a juvenile is arrested the officer-in-charge of the police station or the Special

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<sup>57</sup> Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>58</sup> Section 8 & 9 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>59</sup> Section 10 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>60</sup> Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Juvenile Police Unit to which the juvenile will be brought shall as soon as may be after the arrest, inform the parent or guardian of the juvenile and the Probation Officer.<sup>61</sup>

**(J) Order that may be passed regarding juvenile-** Where a Board is satisfied on inquiry that a juvenile has committed an offence and then the Board may pass following orders-

- (a) Allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;
- (b) Direct the juvenile to participate in group counselling and similar activities;
- (c) Order the juvenile to perform community service;
- (d) Order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years 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, or such parent, guardian or other fit person.
- (f) Direct the juvenile to be released on probation of good conduct and place 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 for a period of three years; 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.<sup>62</sup>

**(K) Order that may not be passed against juvenile -** According to the Act sentence of death, sentence to imprisonment and commitment of prison in default of payment of fine or in default of furnishing security orders cannot be passed against juvenile in conflict with law.<sup>63</sup>

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<sup>61</sup> Section 13 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>62</sup> Ibid.

<sup>63</sup> Section 16 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

- (L) Proceeding** - The Act, speaks that no proceeding shall be instituted and no order shall be passed against the juvenile under chapter-VIII of the Code of Criminal Procedure, 1973.<sup>64</sup> The Act prohibits joint trial of a juvenile and a person who is not a juvenile.<sup>65</sup> Thus, according to section 17 and 18 of the Juvenile Justice (Care and Protection of Children) Act, 2000, no juvenile could either be proceeded against in accordance with the procedures established by the Code of Criminal Procedure or have the Courts any competence to conduct any proceeding against the juveniles along with non-juveniles.<sup>66</sup>
- (M) Special provision in respect of pending cases** - The Act makes special provisions with regard to cases pending in any Court at the time of coming into force of this Act. This section provides that notwithstanding anything contained in this Act, all proceeding in respect of a juvenile pending in any court on the date of coming into force of the present Act, 2000 shall be continued as if this Act had not been passed. It is further provided that if the juvenile has committed an offence; it shall record such finding and instead of passing any sentence in respect of the juvenile forward to the Board. When any such case is forwarded to the Board, it shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that the juveniles has committed the offence.<sup>67</sup>
- (N) Prohibition of publication of name** - The Act prohibits publication of report in any newspaper, magazine, news sheet or visual media of any inquiry regarding a juvenile in conflict with law. No report shall disclose the name, address or school or any other particulars which may lead to the identification of the juvenile. It also prohibits publication of any picture of the juvenile.<sup>68</sup>

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<sup>64</sup> Section 17 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>65</sup> Section 18 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>66</sup> P. Deeptha and another v. V.S. Chandrasekaran, 2003 Cri. L.J 4660 (Mad).

<sup>67</sup> Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>68</sup> Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

**(O) Prohibition in respect of escaped juvenile-** The Act says that, notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge without warrant of a juvenile in conflict with law who has escaped from a Special Home or an Observation Home or from the care of a person under whom he was placed under this Act, and shall be sent back to the Special Home or the Observation Home.<sup>69</sup>

**(P) Punishment and penalties -** Whoever having the actual charge of or control over a juvenile or the child, assaults, abandons, exposes or willfully neglected the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months or fine or with both.<sup>70</sup>

The Act also further provides that, whoever gives or causes to be given, to any juvenile or the child any intoxicating liquor in a public place or any narcotic drug or psychotropic substance except upon the order of duly qualified medical practitioner or in case sickness shall be punishable with imprisonment for a term which may be extend to three years and shall be liable to fine.<sup>71</sup>

**(III) Provisions relating to child in need of care of protection -**Chapter-III deals with the provisions relating to children in need of care and protection. Some of the important provisions in this respect are:

**(A) Constitution of Child welfare Committees:** The State Government, within a period of one year from the date of commencement of the Act, shall constitute for every

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<sup>69</sup> Section 22 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>70</sup> Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>71</sup> Section 25 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

strict,<sup>72</sup> one or more Child Welfare Committees for exercising the powers and discharging the duties conferred on such Committees in relation to child in need of care and protection under this Act.<sup>73</sup>

The Committee shall consist of a chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another expert on matters concerning children.<sup>74</sup>

So far as the qualifications of the chairperson and the members and the tenure for which they may be appointed is concerned, it shall be such as may be prescribed.<sup>75</sup> The chairperson and members of the Committee shall be provided with training and orientation in child psychology, child welfare, child right national and international standards for juvenile justice by the State Government.

The Act says that after holding inquiry, the State Government may terminate any member if he has been found guilty of misuse of power vested under this Act, convicted of an offence involving moral turpitude and fails to attend the proceedings of the Committee for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.<sup>76</sup> As section 29 (5) of the Act says that the Committee shall function as a bench of Magistrate and shall have the powers conferred by the Code of Criminal Procedure, 1973.

**(B) Procedure etc. in relation to Committee** - The Committee shall meet at such times and shall observe such rules of procedure in regard to the transaction of business of its meetings as may be prescribed. In the event of any difference of opinion among the

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<sup>72</sup> Subs for “by notification on official Gazette constitute for every district or group of districts specified in the notification” by Act, 33 of 2006 w.e.f. 22.8.2008.

<sup>73</sup> Section 29 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>74</sup> Section 29 (2) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>75</sup> Section 29 (3) for details rules 20, 21 and 22 of the Juvenile Justice (Care and Protection of Children) Act, 2007.

<sup>76</sup> Section 29 (4) of the Juvenile Justice (Care and Protection of Children) Act, 2000.



members of the Committee at the time of any interim decision, the opinion of the majority shall prevail but where there is no such majority the opinion of the chairperson shall prevail. A Child in need of care and protection may be produced before an individual member for being placed in safe custody or otherwise when the Committee is not in session.

**(C) Power of Committee-** The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.<sup>77</sup>

The Act further says that where a Committee has been constituted for any area such Committee shall notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection.<sup>78</sup>

**(D) Production of Child before the Committee:** Any child in need of care and protection, according to section 32 (1) may be produced before the Committee by one of the following persons-

- (i) Any Police Officer or Special Juvenile Police Unit or a designated Police Officer;
- (ii) Any public servant;
- (iii) Child line, a registered voluntary organization or by such other voluntary organization or any agency as may be recognized by the State Government.
- (iv) Any social worker or a public spirited citizen; or
- (v) By the Child himself.

The child shall be produced before the Committee without any loss of time but within a period of twenty four hours excluding the time necessary for the journey.<sup>79</sup>

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<sup>77</sup> Section 31 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>78</sup> Section 31 (2) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>79</sup> Ins, by Act 33 of 2006 Section 17, w.e.f.22-8-2006

In this regard, the Act further speaks that, the State Government may make rules consistent with this Act to provide for the manner of making the report to the Committee and the manner of sending and entrusting the child to Children's Home pending the inquiry.<sup>80</sup>

Before passing an order in respect of the children produced before the Magistrate, he shall confirm that the person or organization who received the 'child in need of care and protection' has acted in accordance with the mandatory provisions and other relevant provisions of the Act and Rules and nothing has occurred to him affecting his rights.<sup>81</sup>

**(E) Homes to be established maintained and recognized** - The State Government either by itself or in association with the voluntary organizations, may establish or maintain Children Homes in every district or group of districts, as the case may be for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment education, training, development and rehabilitation.<sup>82</sup>

**(F) Inquiry and inspection** - According to section 33 of the Act of 2000 on receipt of a report under Section 32 the Committee shall hold an inquiry in the prescribed manner and the Committee on its own or on the report from any person or agency as mentioned in sub-section (1) of Section 32 may pass an order to send the child to the Children's Home for speedy inquiry by a social worker or Child Welfare Officer. Such inquiry shall be completed within four months or within a shorter period as may be fixed by the Committee. The State Government shall also review the pendency of cases of the Committee at every six months and shall direct the Committee to increase the frequency

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<sup>80</sup> Section 32 (2) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>81</sup> Jose Maveli, Director v. State of Kerala and another, 2007 Cri LJ 2709 (Ker).

<sup>82</sup> Section 34 (i) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

of its sitting or may cause the constitution of additional Committees. After the completion of the inquiry, if, the Committee is of the opinion that the said child has no family or ostensible support or is in continued need of care and protection, it may allow the child to remain in the Children's Home or Shelter Home till suitable rehabilitation is found for him or till he attains the age of eighteen years.<sup>83</sup>

At the same time as per the Act, the State Government may appoint Inspection Committees for the Children Homes for the State, a district and city, as the case may be and the Inspection Committee shall consist of representative from the State Government, Committee, Voluntary organizations and other medical experts and social workers as may be prescribed.<sup>84</sup>

**(G) Transfer of Child-** If during the inquiry it is found that the child hails from the place outside the jurisdiction of the Committee, the Committee shall order the transfer of the child to the competent authority having jurisdiction over the place of residence of the child, and such a juvenile or the child shall be escorted by the staff of the home in which he is lodged originally.<sup>85</sup>

### **3.2.7. The Juvenile Justice (Care and Protection of Children) Act, 2015**

During the Juvenile Justice (Care and Protection of Children) Act, 2000 implementation the last 13 years many issues arose constraining its effective implementation. One of such issues was increase in heinous offences by the children and lack of any specific provisions to deal with such children. The National Crime Records Bureau (NCRB) data shows that there has been an increase of offences committed by juveniles, especially in the age group of 16-18.

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<sup>83</sup> Section 33 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>84</sup> Section 35 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

<sup>85</sup> Section 38 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

The Central Government became more enthusiastic, when the public outcry created an alarm in the society. **Delhi Gang Rape** in December, 2012, the **Shakti MILL Rape case** in Mumbai July, 2013 and **Guwahati Rape case** in September 2013 involving child offenders triggered a debate across the country about the inadequacy of punishment awarded to children who committed heinous crimes. For this reason, the Juvenile Justice (Care and Protection of Children) Act was enacted in 2015. This Act is the core law relating to child in need of care and protection, development, treatment, social re-integration, and rehabilitation through a child-friendly approach. It defines the term 'child-friendly' to mean "Any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child."

Some of the important provisions which are inserted in the new Act, 2015, are discussed below:

**a. Inquiry by Board regarding child conflict with law<sup>86</sup>:** This Section is analogous to section 14 of Act, 2000, but many changes have been made in the Act, 2015. The following changes have been made which appear to have changed the structure of the provision:

- I. In such section instead of 'Juvenile', 'Child in Conflict with law' is used.
- II. In provision to sub-section (1) inquiry is to be completed within four months unless the period is extended but in sub-section (2) of this Act the words are used, "unless the period is extended, for a maximum period of two months. The period of extension is prescribed".

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<sup>86</sup> Section 14 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

- III. Sub-section (3) is a new provision dealing with heinous crime. Here preliminary assessment shall be made by the Board within three months from the date of first production of the child before the Board.
- IV. If inquiry under sub-section (2) for petty offences remains inclusive, even after the extended period, the proceedings shall stand terminated.
- V. Period for inquiry in the case of heinous crimes and serious crimes can be extended only by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate for reasons to be recorded in writing. The period of extension is not stated but depends upon the Board as to how much time it needs to complete the inquiry.
- VI. In sub-section (5) the steps are stated to be taken by the Board to ensure fair and speedy inquiry. These steps are mandatory in nature. It is incumbent to state that this section has categorized the offences into three categories i.e. petty offences, serious offences and heinous offences include thereof.

b. **Preliminary assessment into heinous offences by Board<sup>87</sup>**: It is a new provision in the Act, 2015 (2 of 2016). Legislative intention is very clear. It has adopted a very cautious approach pertaining to children who are alleged to have committed heinous crime when they are between the ages of 16 to 18 years. When such a child is presented before the Board, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, his ability to understand the consequences of the offence alleged to have been committed and the circumstances in which he allegedly committed such an offence, his ability to understand the consequences of the offence alleged to have been committed and the circumstances in which he allegedly committed such an offence. It is a mandatory provision of

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<sup>87</sup> Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

conducting a preliminary assessment and may pass an order under section 18 (3) of the Act, 2015. The Preliminary assessment may be done by taking the assistance of experienced psychologists or psycho-social workers or other experts.

**c. Review of pendency of inquiry<sup>88</sup>:** It is a new clause incorporated in the Act, 2015, providing review of the pendency of cases of the Board once in every three months by the Chief Judicial Magistrate or the Chief Metropolitan Magistrate and if needed to direct the Board to increase the frequency of the sittings or may recommend the constitution of additional Boards. The number of cases pending before the Board and the reasons for their pendency shall be reviewed in every six months by a High Level Committee consisting of the Executive Chairperson of the State Legal Services Authority, who shall be the Chairperson, the Home Secretary, the Secretary responsible for the implementation of the Act in the State and a representative from a Voluntary or Non-Governmental Organization to be nominated by the Chairperson. The pendency of such cases shall also be furnished by the Board to the Chief Judicial Magistrate or the Chief Metropolitan Magistrate and the District Magistrate on quarterly basis in the prescribed form made by the State Government. The Legislative intention behind this provision is to keep all the eggs in one basket but under the watchful eyes of the judicial inspection because justice delayed is justice denied.

**d. Orders regarding a child not found to be conflict with law<sup>89</sup>:** It is a new provision incorporated in the Act, 2015 when a child is brought before the Board, presumably on the plea that he has committed or alleged to have committed an offence, petty, serious or heinous the Board firstly makes an inquiry as provided for in the Act, 2015, to find out the truth. If the Board is satisfied on inquiry that the child brought before it has not committed any offence, then notwithstanding anything contrary contained in any other

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<sup>88</sup> Section 16 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>89</sup> Section 17 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

law for the time being in force, shall pass order to that effect. Impliedly it means that if the child is not found to be in conflict with or alternately the child needs care and protection as understood by the Board, it would refer the child to the Committee with appropriate directions.

**e. Orders regarding child found to be in conflict with law<sup>90</sup>:** This section is analogous to section 15 of Act, 2000 but in a modified form adding sub-section (3) which warrants a need for trial of the said child as an adult, then the Board may order transfer of the trial to the Children's Court having jurisdiction to try such offences. It is the sole judicial discretion of the Board based on its satisfaction and application of mind after completion of inquiry (preliminary assessment).

**f. Powers of Children's Court<sup>91</sup>:** According to section 15 of the Act, 2015, the Board after preliminary assessment, passed an order that there is a need for trial of the said child as an adult, the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences. The word 'may' used needs to be read as 'shall' because the Board cannot take up the matter where the child has committed serious or heinous offence and being in the age of 16 to 18 years. The powers of Children's Court are multifarious and also include power of the Board to conduct inquiry when it comes to the conclusion that there is no need for trial of the child as an adult. The Children's Court shall ensure an individual care plan for the rehabilitation of the child in conflict with law including follow up by the Probation Officer. This arrangement shall be of the duration till the child in conflict with law attains the age of 21 years, after which he shall be transferred to jail. The child up to the age of 21 years shall stay in the place of safety with attendant reformatory services like skill development and alternative therapy which includes counseling, behavior modification

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<sup>90</sup> Section 18(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>91</sup> Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

and psychiatric support. The idea behind is that the child must be kept in a soothing atmosphere enabling him to reform himself and after attaining the age of 21 years, he goes to the jail with a reformed attitude which it is hoped he shall retain and come out fit to be in the mainstream of life.

**g. Child attained age of twenty one years and yet to complete prescribed term of stay in place of safety<sup>92</sup>:** It is a new section incorporated in the Act, 2015. This section is to be read only with section 19(3) of this Act which says , “The Children’s Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty one years and thereafter the person shall be transferred to a jail.” It is to be further read with section 19(4) according to which the Children’s Court shall ensure that there is periodic follow up report every year by the deputed agency to evaluate the progress of the child in the place of safety. Now if a situation arises that the child attains age of twenty one years and yet to complete prescribed term of stay in place of safety , then the Children’s Court in that situation, will see and evaluate the report whether such child has undergone reformatory changes and the child is also a contributing factor to such reformatory changes. The Children’s Court shall decide on either of the two alternatives provided under section 20(2) (i) and (ii) i.e., to release the child on such conditions as it deems fit or the child should complete the remainder period in jail. Such data shall be maintained by the State Governments through the monitoring agencies keeping such record as prescribed to be maintained.

**h. Provision with respect of runaway child in conflict with law<sup>93</sup>:** It is a provision incorporated in the Act, 2015 by which the child ordered to be in a ‘Special Home, or an ‘Observation Home’ or “from a ‘place of safety’ or from the ‘care of a person or under institution’ under this Act by virtue of being a child in conflict with law and runs away,

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<sup>92</sup> Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>93</sup> Section 26 of the Juvenile Justice (Care and Protection of Children) Act, 2015.



any police officer may take charge of such child in conflict with law. The said child shall be produced, within twenty four hours, preferably before the Board which passed the original order in respect of that child. No additional proceeding shall be instituted in respect of such child.

**i. Place of safety<sup>94</sup>:** This is a new provision. The State Government is empowered to set-up at least one place of safety in a State which shall be registered under section 41 of the said Act, 2015 to place a person above the age of 18(eighteen) years or a child in conflict with law who is between the age of 16(sixteen) to 18(eighteen) years and is accused of or convicted for committing a heinous offence.

**j. Public awareness on provisions of the Act<sup>95</sup>:** This section lays emphasis on publicity which can create awareness about the Act and versatility of the officials concerned with the implementation of the provisions of this law which can be infused and inculcated by periodic training. Success of law does not lie in its enactment but its implementation which should be the responsibility of the State which must be discharged.

**k. Monitoring of implementation of the Act<sup>96</sup>:** This provision has been firmly tagged to the Commissions for Protection of Child Rights Act, 2005. The National Commission for Protection of Child Right and the State Commission for Protection of Child Right are also empowered to monitoring of implementation of the provisions of the Act, 2015.

### **3.2.8. The Commission for Protection of Child Rights Act, 2005**

India has the largest child population in the world; well-being of children is a universal aspiration. Constitution of India guarantees several rights to the children including equality before law, free and compulsory primary education to all children of the age group of six to fourteen years, prohibition of trafficking and forced labour of

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<sup>94</sup> Section 49 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>95</sup> Section 108 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>96</sup> Section 109 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

children and prohibition of employment of children below the age of fourteen years in factories, mines and hazardous occupations. The Constitution enables the State to make special provisions for children and directs that the policy of the State shall be such that their tender age is not abused. The Government is committed to give children opportunities and facilities to develop in healthy atmosphere with required freedom and dignity and to ensure that their constitutional and legal rights are protected. In view of the national and international developments and concern for the children, the need for protection of child rights has been articulated by many social scientist and Non-Governmental Organizations. The Government has accordingly decided to set up the National Commission for Protection of Child Rights for better protection of their rights and thus the Commission for Protection of Child Rights Act, 2005 was enacted and received the assent of the President on 20<sup>th</sup> January, 2006. The functions of the Commission, inter alia shall be as under

- (a) To study and monitor all matters relating to constitutional and legal rights of children.
- (b) To examine and review the safeguards provided by any law for the protection of child rights and recommend measures for their effective implementation in the best interest of the children.
- (c) To review the existing laws and suggest amendments there in, if considered necessary.
- (d) To look into complaints or take suo-moto notice of the cases involving violation of constitutional and legal rights of the children.
- (e) To monitor implementation of laws and programme relating to the survival, welfare and development of children, and

- (f) To present report to the Central Government upon the working of those safeguards.<sup>97</sup>

### 3.2.9. Juvenile Delinquency under Indian Penal Code

Indian Penal Code, 1860 contain some special provisions for juvenile offenders regarding their special treatment. Section 82 of the Indian Penal Code says that, “Nothing is an offence which is done by a child under seven years of age”, and according to section 83 of the Code, “Nothing is an offence which is done by a child above seven years of age and under twelve who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion.”

Blackstone has explained the reason for exempting infants from criminal liability in the following words: infancy is a defect of the understanding, and infants under the age of discretion ought not to be punished by any criminal prosecution whatsoever.<sup>98</sup> Nothing is an offence which is done by a child up to seven years of age. Until such an amendment is effected the benefit of the doubt should be resolved in favour of an infant up to 7 years under section 82 of the Indian Penal Code.<sup>99</sup> Thus, the section 82 totally absolves criminal liability that child below the age of seven years of age, whereas section 83 grants partial immunity against prosecution and punishment for a child between seven and twelve years of age.

In **Ulla V. King**,<sup>100</sup> the accused, a girl about 10 years old was scolded by her father-in-law and her husband who had attempted to beat her. A few days after the incident she struck her husband on his neck with a sharp instrument while he was asleep, which resulted in his death. After the assault she ran away and concealed herself.

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<sup>97</sup> Nawla, Suman & Kohil, Hari Dev (2016), *Commentary on the Juvenile Justice Act*, Universal Law Publishing, Haryana, at PP.31-32.

<sup>98</sup> Gaur, K.D. (2012), *Textbook on the Indian Penal Code*, Universal Law Publishing, New Delhi, at P.143.

<sup>99</sup> Gaur, K.D. (2000), *Penal Law of India*, Universal Law Publishing, New Delhi, at P.610.

<sup>100</sup> Ulla v. King, AIR 1950 Orissa, 261.

Judging from her conduct before and after the incident the court concluded that she was doli capax, i.e. capable of understanding the nature of the act and so was held guilty of murder. However, the court remanded her for a reprieve of sentence instead of seven years considering her age.

### **3.3. Indian Jail Committee Report on Juvenile Offenders (1919-1920)**

In India, actually it was the Indian Jail Committee Report that for the first time brought to the force the vital need for the separate trial and treatment of juvenile offenders for their reformation.

The Indian Jail Committee was appointed in 1919 to review the conditions prevalent in jails. The Indian Jail Committee during its visits noticed many children in jails and prisons confined along with adult prisoners. In Para 368 of its report, the Committee cite a case of a small child, whose age had been originally marked as six but afterwards changed to seven in Bengal. This was the most flagrant case among a number of cases came across by the Committee. The Committee criticized very badly the confinement of children in prisons and jails during its report. One of its observations made in Para 367 is quoted below:

“A child who commits crime cannot have the same knowledge and realization of the nature and consequences of his act as an adult. The cold blooded character of the crimes sometimes committed by the children may generally be attributed to his lack of realization, just as boys are often cruel from mere thoughtlessness. It is well known that full recognition of the laws of property comes gradually and that offences against property committed by young persons are largely due to the lack of suitable training be successful. But such training cannot be provided in a prison. It should be given in a special institution devised and equipped for the purpose. Moreover, it is undesirable to

familiarize the young with the sights of prison life or to blunt the fear of prison which is one of the most powerful deterrents for crime.”

The Committee also recommended various recommendations regarding the child offenders. These are briefly mentioned below:

- (a) The child criminal is mainly the victim of adverse circumstances and therefore, he is entitled to fresh chance under better surrounding.
- (b) Children’s Court should be established. Where the number of children to be dealt with is small, the ordinary magistrate should sit at special hours and if possible in a separate room to hear charge against child/offenders.
- (c) The Magistrate should be given a clear understanding of the fact that he is dealing with a case of special character in which he is expected to assume a different role, from different standpoint and with more paternal attitude.
- (d) In order to arrive at the decision the Magistrate should have before him information regarding child’s home habits and circumstances which led him into crime. In the meantime the child should be released on bail or sent to a remand home.
- (e) The Probation Officer should not be given more cases than he can look after properly and if the number is great it should not be scattered over too large an area.
- (f) Inmates should be carefully trained in habits of self-control and self-reliance and gradually given more freedom and independence.
- (g) Contact with pupils discharged from a reformatory should be kept to render them any help or assistance possible. In their after-care record should be kept of the members who turn out well or ill in after life.
- (h) Offenders should be examined to ascertain their mental and physical conditions before committal and immediately after that in the reformatory. Mentally defectives should be sent to institutions specially provided for them and physically defective should be hospitalized.

- (i) The Reformatory Schools and such other institutions should not be located in jail building or near them. Proper buildings or cottage system should be provided.
- (j) The potential criminal should be removed from the bad environments, before he actually comes within the ambit of criminal law.<sup>101</sup>

### **3.4. Preventive and Curative measure of Juvenile Delinquency**

Prevention against crime and criminals essentially involves reduction in the incidence of crime and making environment safe elimination of potential criminals. Most of the countries now recognize that prevention of crime and handling of criminals is not an isolated legal problem confined to court room only but relates to the total culture and socio-economic fabric of society.<sup>102</sup>

Crime prevention and treatment of offenders are inter-related issues. It must be stated that prevention of crime and treatment of offenders are both directed towards common goal, namely, elimination of crime and criminals from the society. The only difference is that crime prevention is a stage prior to the incident of crime whereas treatment of offender follows after the crime has been committed and perpetrator thereof is convicted by the court.<sup>103</sup>

Pointing out the inter-relationship between crime prevention and treatment of offender, Sutherland observed that in crime prevention it is the police which play a major role whereas the Court and Prison institution have only an indirect role to play.<sup>104</sup> The problem of juvenile delinquency is one that has drawn the attention of society. It is known that the delinquent child of today may turn out to be a chronic criminal tomorrow. Discussions, debates and studies have been made at the national as well as international levels by scholars to seek out effective remedy for this problem.

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<sup>101</sup> Supra note 4, at PP.430-432.

<sup>102</sup> Perlman and Allington (1970), *The Tasks of Penology*, University of Nebraska Press, at P.4.

<sup>103</sup> Supra note 6, at P.204.

<sup>104</sup> Brown's, Thand F. article titled '*Crime prevention and youthful Offender's*', Published in Police Year Book, 1957, at PP.77-80.

Generally speaking, the increasing understanding of the social and psychological causes of crimes has led to a growing emphasis on reformation rather than deterrence in the older sense, as the best way to protect both the individual criminal from himself and society from the incidence of crime. A revolution of far greater proportion has, during the last generation, taken place in the treatment of juvenile offender, who not so long ago used to be subjected to the harshest penalties and thrown together with hardened criminals is now subjected to a special procedure.<sup>105</sup>

Two methods have been suggested to deal with this problem: (A) Preventive method, and (B) Rehabilitative or curative method. In the former, factors leading to delinquency are to be tackled, and in the latter, those who have committed delinquent acts are to be helped to become normal citizens.

#### **3.4.1. Preventive Measures**

Prevention programmes may take one or two forms, viz. programmes focusing on an individual and programmes having an environmental orientation. The former involves the prevention of delinquency through counselling, psychotherapy and proper education while that of latter approach employs techniques with a view to changing the socio-economic context likely to promote delinquency. These two rooms of preventive approach are reflected in the following strategies which are adopted in crime prevention programmes.<sup>106</sup> These are discussed in the following.

##### **3.4.1.1. Role of Parental Care and Home environment**

The word ‘family’ originates from Latin word ‘famulus’. So it is clear that family is a group of persons in which they are bind together with the feeling of service.<sup>107</sup> A child’s first line and protection should be the family. As the world summit

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<sup>105</sup> Friedmann, W. (2008), *Law in a Changing Society*, Universal Law Publishing Co., Azadpur, at P.324 .

<sup>106</sup> Siddique’s, Ahmad (2016), *Criminology, Penology and Victimology*, Eastern Book Company, Lucknow, at PP.280-285.

<sup>107</sup> Rao, C.N.S. (2001), *“Sociology”-Primary Principles*, S. Chand & Co. Ltd., New Delhi, at P.238.

plan of Action states, “For the full and harmonious development, of their personality, children should grow up in a family environment, in an atmosphere of happiness, love and understanding.”<sup>108</sup> Theodore Roosevelt, a former president of the USA, is of the opinion that “No Nation is safe unless in the average family there are healthy and happy children. If these children are not brought up well, they are not merely a curse to themselves and their parents, but they mean the ruin of the state in the future”.

Part- IVA of the Indian Constitution which contains the Fundamental Duties of the Citizens of India was added by the Constitution (42<sup>nd</sup> Amendment) Act, 1976. Article 51-A (k) provides that who is a parent or guardian to provide opportunities for education to his child or as the case may be ward between the ages of six to fourteen years.<sup>109</sup> In some American jurisdictions, the obligation of parents to support their minor children is still regarded as a moral, and not a legal duty.<sup>110</sup> The number of obligations imposed upon the members of the family has drastically increased compared with even a century ago. Compulsory school education, often including higher education, compulsory health tests are now standard law in many countries.<sup>111</sup>

Families play a vital role in the development of children and youth. Studies of juvenile delinquency have shown that the family environment can present as either a risk or protective factor. The risk of becoming a drug abuser involves the relationship among the number and type of risk factors (e.g., deviant attitudes and behaviours) and protective factors (e.g. parental support).<sup>112</sup> Understanding the family factors that influence delinquent behaviour can help to enhance the design and development of

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<sup>108</sup> Ahmed, Sartaj; Bhartiya, Vaibhav Goel & Tripathi, Monoj Kumar (2019), *A Textbook of Sociology*, University Book House Pvt. Ltd., Jaipur, at P.497.

<sup>109</sup> Kumar, Narender (2006), *Constitutional Law of India*, Allahabad Law Agency, Haryana, at P.469.

<sup>110</sup> Supra note 105, at P.278.

<sup>111</sup> Ibid at P. 285.

<sup>112</sup> Mohan, Jitendra & Sehgal, Meena (2004), *Drug Abuse Among Child Workers*, Abhijeet Publications, Delhi, at P.136.



effective crime prevention programs for vulnerable families. According to Justice Ansari, “A Child may come into conflict with the law even if he, otherwise, belongs to a good, respectable and affluent family.”

The primary institution for the development of a child is home. So prevention of juvenile delinquency starts at home with the parents. Home conditions affects child a lot. So, suitable home conditions should be provided to a child to prevent him to be a juvenile delinquent.<sup>113</sup> Glueck’s study reveals that the delinquent boys were more deprived of affection by their fathers, mothers, brothers, and sisters and that they in turn, did not have as warm a feeling towards their parents and other members of the family as did the non-delinquent.<sup>114</sup> Youth in all ages, have been vanguard of progress and social change.<sup>115</sup> A nation can progress only when the energy of youth is channelized into constructive work.<sup>116</sup>

Physical and cultural environment of the home do have their influence on the development of personality. The members of the family have certain responsibilities duties and obligation. Smooth running of family depends on how best the members discharge their responsibilities in coordination with other individuals of the family.<sup>117</sup> The family problem also spoils the mental peace of growing youth.<sup>118</sup> J.H. Bagot<sup>119</sup> in his study in Liverpool found that more than 50% of the families of delinquents were below the poverty line.

The family is the most important social group in society that affects the lives of individuals in society; none touches them so intimately or as continuously as does the

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<sup>113</sup> Patel, Bharat R. (2015), *Juvenile Delinquency*, Shree Niwas Publications, Jaipur, at P.198.

<sup>114</sup> Sheldon & Glueck, Eleanor (1950), *Unravelling Juvenile Delinquency*, Harvard University Press, London, at P.287.

<sup>115</sup> Annual report 1995-96 part III, *Dept. of Youth Affairs and Sports Ministry of Human Resource development, Govt. of India* 1996, at P.1

<sup>116</sup> India 2001, Publication Division, Ministry of Information and Broad Casting, Govt. of India. P.643.

<sup>117</sup> Supra note 107, at P. 350.

<sup>118</sup> Singh, Renuka (2005), *Problems of Youth*, Serials Publications, New Delhi, at P.10.

<sup>119</sup> Bagot, J.H. (1941), *Juvenile Delinquency*, Jonathan Cape, London, at PP.37-39.

family. From the moment of birth to the moment of death the family exerts a constant influence.<sup>120</sup> Family is the immediate primary group to teach the child the social norms, standards moral belief values and idea of society and moved the human personality.<sup>121</sup> The stability of family life stands out as a most important factor in the development of a child.

A defective and deficient family environment is a fertile ground for the germination of juvenile delinquency. The home is all important to the developing child. The child who shows delinquent tendencies is more likely to come from a defective home. The defect may be in the form of absence of either of the parents due to death, divorce or desertion. Even if the home would seem to be intact with both parents in the house it is often found, on investigation, that their relationship with one another is highly unsatisfactory.<sup>122</sup> Broken home is one of the many factors which play significant role in the development of delinquency. Merrill opined that half of the delinquent come from broken homes.<sup>123</sup> A Broken home is one in which the normal structure of the family are severed by death, divorce or separation, desertion or long absence of one spouse. They suffer from emotional disturbances which in turn give rise to delinquent juveniles. Broken homes are generally characterized by quarrels, emotional tensions, improper discipline, improper control, improper socialization of the child etc., which make the home conditions inadequate and children feel deprived and rejected. Studies have shown that delinquent children from broken homes are markedly deficient in some traits such as self control, self-discipline and character.<sup>124</sup>

Cyril Burt stressed on the factor of family discipline in his study in London. He believed that defective family disciplinary pattern existing among his delinquent

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<sup>120</sup> Singh, Yogendra (1994), *Modernization of Indian Tradition*, Rawat Publication, Jaipur, at P.174.

<sup>121</sup> Supra note107, at P. 238.

<sup>122</sup> Sharma, D.D.( 1996),*Young Delinquents In India*, Printwell, Jaipur,at P.82.

<sup>123</sup> Merrill, M.A.(1947), *Problem of Child Delinquency New York*, Haughton Mifflin Co.,at P.3.

<sup>124</sup> Schneiders, A.A. (1960), *Personality Development and Adjustment in Adolescence* , Milwalekee, the Bruce Publishing Co.,at PP.396-397.

samples is nearly seven times higher than the non delinquents.<sup>125</sup> Sheldon and Elanor Glueck points out that inconsistent behavior of parents, such as excessive anger, over strictness, conflicts among parents may have serious consequences in the development of personality and character.<sup>126</sup>

Family bonding is the bedrock of the relationship between parents and children. Bonding can be strengthened through skills training on parent supportiveness or children, parent-child communication, and parental involvement.

- Parental monitoring and supervision are critical for drug abuse prevention. These skills can be enhanced with training or rule setting, techniques for monitoring activities, praise for appropriate behaviour and moderate, consistent discipline that enforce defined family rules.
- Drug education and information for parents or caregivers reinforces what children are learning about the harmful effects of drugs and open opportunities for family discussions about the abuse of legal and illegal substances.
- Family focused interventions for the general population can positively change specific parenting behaviour that can reduce later risks of drug abuse.<sup>127</sup>

#### **3.4.1.2. Role of Psychiatric Clinics**

The objective of psychiatric aids through psychiatrists, clinical psychologists and psychiatric social workers is to help potential delinquents by understanding their personality problems and thereafter, treating and counselling them at appropriate times. Taft in England has listed the functions of psychiatric clinics as follows:<sup>128</sup>

1. To participate in the discovery of “pre-delinquents”.
2. To investigate cases selected for study and treatment.
3. To treat cases itself or to refer cases to other agencies for treatment.

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<sup>125</sup> Burt, C. (1955), *Juvenile Delinquency*, Appleton Century, New York, at P.57.

<sup>126</sup> Sheldon and Glueck, Elanor (1966), *Unraveling Juvenile Delinquency*, Harvard University Press, London, at PP.119-121.

<sup>127</sup> Supra note 112, at PP.137-138.

<sup>128</sup> Taft, Donald Reed & England, W. *Criminology*, the Macmillan Company, New York, at P. 524.

4. To arouse interest of other agencies in the psychiatrically oriented types of treatment of behavioral disorders in children.
5. To reveal to the community urgent needs of these types of children.
6. In some communities to engage in behavioural research.
7. To co-operate in the training of students intending to special treatment of behavioural problems.

The psychiatry oriented sciences and services suffer from serious handicaps.<sup>129</sup> These clinics are treating the wrong people; they are using the wrong methods; they are located in the wrong places; they are improperly staffed and administrated. The availability and scope of psychiatric services in countries like India is very poor.<sup>130</sup>

#### **3.4.1.3. Role of School and Educational Programmes**

The school environment play important role on a child's emotional well-being and in shaping the values of children. Some research efforts suggest that its effect may be even greater than the home environment. Because most of the time children is spent in school.<sup>131</sup> Numerous studies have confirmed that delinquency is related to academic achievement, and experts have concluded that many of the underlying problems of delinquency are intimately connected with the nature and quality of children's experiences at school (Smithmyer, Hubbard, & Simmons, 2000).

The general path towards occupational prestige is education, and when juveniles are deprived of this avenue of success through poor academic performance, there is a greater likelihood of deviant behaviour. Students who show signs of hyperactivity and aggression tend to deliberately disobey authority figures, and thus, are more likely to be labelled as 'bad students', which can have a lasting impact on a student's entire educational career. According to the Labelling theory, this negative label has impact

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<sup>129</sup> Albee ,George W.( 1969 ),“A Spectre is Haunting the Outpatient Clinic” in Alan B. Tulipan and Saul Feldman (Eds) Psychiatric Clinics in Transition, at PP. 1-24.

<sup>130</sup> The Times of India, dated 20.07.1976.

<sup>131</sup> Siegel, Larry J. (2000), *Juvenile Delinquency: Theory, Practice, and Law*. Canada: Wadsworth Thomas Learning.

upon the juvenile's self-concept and may influence future (Siegel, 2000). Students who cannot cope with the unsuccessful school experience feel they essentially have two options: drop out, or go to school and cause trouble. This feeling of frustration is usually vented as aggressive behaviour towards teachers and peers alike.

Schools are a critical social context for delinquency prevention efforts, from the early to later grades. All schools work to produce vibrant and productive members of the society. Schools must take a proactive approach to improving students' psychological assets and self-image, giving them the resources to succeed and resist antisocial behaviour. Schools should also focus on the continued cognitive development of students by increasing students' awareness about the dangers of violent behaviour, substance abuse, and delinquency in general. There must also be counselling services available to help students who have already manifested behavioural problems.<sup>132</sup>

Another approach to reducing juvenile substance abuse relies on educational programmes. Education is the most powerful means of modifying individual's behavior. But one of the prominent features of juvenile delinquency is poor educational attainment. The mother is the 'first School' for the child and the school is the 'second mother' of the child. Unlike India in countries where almost every child goes to school the impact of educational institutions is very significant and preventive programmes can, therefore, be launched in an effective manner through school. Drug education now begins in kindergarten and extends through to the 12<sup>th</sup> standard. An overwhelming majority of public schools across the districts of United States have implemented drug education programs with various components, including teaching students about the causes and effects of alcohol, drug, and tobacco use, teaching students to resist peer pressure and referring the students for counselling and treatment.<sup>133</sup> Drug Abuse Resistance Education (D.A.R.E.) is an elementary school course designed to give

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<sup>132</sup> Supra note 131, at P.413.

<sup>133</sup> Ringwalt, Christopher L.; Ennett, Susan & Vincus, Amy "The Prevalence of effective Substance Use Prevention in U.S. Middle Schools," *Prevention Science* 3:257-265.

students the skills for resisting peer pressure to experiment with tobacco, drugs, and alcohol.<sup>134</sup> The three goals of school education have been suggested in these contexts.

1. Developing a new value system in which the school would be a force working against the discrimination and rejection experienced by pupils drawn from the lower classes.
2. Making schools an instrument for fostering work attitudes self-esteem and job skills to improve the employ ability of graduates of Schools in derived areas.
3. Providing school experiences designed to improve the self-image of delinquency prone children. Prevention programs can be designed to intervene as early as pre-school to address risk factors for drug abuse, such as aggressive behaviour, poor social skills and academic difficulties.<sup>135</sup>

Prevention programs for elementary school children should target improving academic and social-emotional learning to address risk factors for drug abuse, such as early aggression, academic failure, and school dropout. Education should focus on the following points: such as self-control, emotional awareness, communication, social problem-solving and academic support, especially in reading.<sup>136</sup>

Prevention programs for middle or high school students should increase academic and social competence with the following skills: such as study habits and academic support, communication, peer relationships, drug resistance skills, and reinforcement of anti-drug attitudes and strengthening of personal commitments against drug abuse.<sup>137</sup>

#### **3.4.1.4. Role of Recreational Programmes**

The Word 'recreation' has French origin. The institute of Turkish Language has defined the word as the activities people attend in their free time for fun and sport purposes. There is popular belief that recreational programmes are a good check on

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<sup>134</sup> Supra note 131, at P.389.

<sup>135</sup> Supra note 112, at PP.138-139.

<sup>136</sup> Supra note 112, at PP.138-139.

<sup>137</sup> Ibid.

delinquency since idleness provides a fertile ground for many evils. The leisure hours are vacant and the vacuum is almost inevitably filled with delinquent activities.<sup>138</sup> It is believed that the energies of youth can be very well channelized into pursuits like sports, games and other healthy activities which would counteract delinquent propensities among the participates.

Cyril Burt reported that places in London where facilities for amusement are too few may be almost as fertile in young criminals contrast to those where such facilities are too great in almost every quarter of London. The incidence of crime is high in areas most remote from open spaces, where there are no parks, no play fields, and no recreation grounds.<sup>139</sup>

The popular belief regarding the efficacy or recreational programmes has not, however, found support in a number of studies. In 1957 a sub-Committee of US Senate reported that recreational facilities are not helpful in deterring delinquency. But in present society recreation helps for preventing juvenile delinquency as well as reforming the delinquent. The benefits of recreational activities give us an important hint on preventing crime. In taking part in these activities, the people are relieved of stress as they improve their social skills in communicating with each other. The recreational activities help in the positive consumption of individuals' energy and therefore help in staying away from crime. They also help in decreasing vandalism and property crime (Cameron, MacDougall, 2000). Moreover, the recreational activities make people discover their unknown talents and in discovering their talents; people will have a more positive integration to the society thus staying away from crime. A well programmed crime prevention program will not only aid in preventing crime, but also in

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<sup>138</sup> Supra note 39, at P.120.

<sup>139</sup> Cyril, Burt (1925), *the Young Delinquent*, University of London Press Ltd., London, at P.156.

increasing the social security and development (UNODC, 2012).<sup>140</sup>

In America, where crime is a problem, studies were carried out with the help of the security forces and successful results were reached. For example; a program named PALS (Participate and Learn Skills) were tried on 417 children from 5 to 14 ages. In the study, the children were divided to two groups and placed in two complex facilities. To one group, only theoretical lessons were given, to the other ballet, judo and swimming lessons were given. The group in which recreational activities were carried out, the children had a much lesser tendency to break the rules and aggressiveness (Cameron, MacDougall, 2000), (Jones and Offord, 1989).<sup>141</sup>

The above studies have shown that recreational activities are one of the cheapest and most effective ways to reducing and preventing of crime. Participation in recreational activities, which considered as development indicators of society, and low crime rates give us one of the most important clue how these two issues linked each other directly. Use of recreative activities, for plans to reduce crime rates, will be important contribution in achieving the desired result.

#### **3.4.1.5. Role of Community Programmes**

The strategies discussed above are mainly directed to individuals with a view to eliminating the factors responsible for their social maladjustments. Besides these there are programmes involving community and group participation where efforts are made in terms of environmental factors. The basic strategy of such programmes is to reach the people in need of help instead of the people approaching the workers and agencies. Another significance of such programmes is that the participation of the local community is considered to be more important and the role of professional leadership is sought to be kept at the minimum level. Community prevention programs that combine

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<sup>140</sup> [https://www.academia.edu/11399146/Recreational\\_activities\\_in\\_crime\\_prevention\\_and\\_reduction](https://www.academia.edu/11399146/Recreational_activities_in_crime_prevention_and_reduction). Accessed on dated 20.12.2017 on 8P.M.

<sup>141</sup> Ibid.



two or more effective programs, such as family-based and school-based programs, can be more effective than a single program alone.<sup>142</sup>

Another type of drug-control effort relies on representatives of local government agencies, churches, civic organizations and similar institutions are being brought together to create drug prevention programs. Their activities include drug-free school zones, which encourage police to keep drug dealers away from schools, neighbourhood watch programs which help to control the drug abuse.<sup>143</sup> In many respects, evaluations of community programs have shown that they may encourage anti-drug attitudes and help insulate participating youths from an environment that encourages drugs.<sup>144</sup> Greenwood also discusses community-based programmes that can divert first-time offenders from further encounters with the justice system. The most successful community programs emphasize family interactions and provide skills to the adults who supervise and train the child.

Marshall B. Clinard has outlines the key assumptions of these programmes as follows:

1. Local people will participate in efforts to change neighbourhood conditions,
2. Because they do not accept an advance social and physical environment as natural and inevitable and
3. Because self imposed changed in the immediate environment will have real significance to the residents and consequently will have more permanent effect.

The Chicago Area project is one of the oldest community programmes in the US. This project revealed that the local leadership of high delinquency areas are more familiar with the area conditions and have better communication with the residents and they can tag the area of high delinquency area and accordingly can take preventive measures.

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<sup>142</sup> Supra note 112, at P.139.

<sup>143</sup> Supra note131, at P. 389.

<sup>144</sup> Welsh, Brandon C. & Hoshi, Akemi, "*Communities and Crime Prevention*," in Sherman, Farrington, Welsh, and MacKenzie , eds, *Evidence-Based Crime Prevention* ,at PP.184-186.

The process of including changes in the value configuration of the group is predicted in the existence of substantial support for the maintenance of law-abiding behaviour within the values system of the lower classes community itself. Hence, shifting the group's values from an emphasis on law-violating behaviour to an emphasis on law abiding behavior entails increasing the availability of law-abiding avenues to valued ends already present in the groups own cultural milieu. The method thus aims to affect individual behaviour by altering the value configuration of the group which exerts most immediate influence in external behaviour.

In order to prevent juvenile delinquency from taking place the following measures may be suggested:

1. Creating and inspiring a team of work of private and public agencies devoted to preventive work.
2. Giving proper training to the members and staff of all organizations concerned with delinquency control.
3. Establishing child guidance clinics to give appropriate treatment to the disturbed and maladjusted children.
4. Educating of the family so as to help the parents to realize the importance of giving proper attention to the needs of their young children.
5. Establishing wholesome recreational agencies to prevent young children from becoming the victims of illicit or unwholesome recreation.
6. Giving proper assistance to under-privileged children to build in them good character and law-abiding attitude.
7. Adopting various means of propaganda such as radio, movies, television, newspapers, magazines etc., to realize the importance of law-abidingness and how it is always appreciated and rewarded.
8. Improving the social environment- slum areas, busy market places, gambling centers etc., to prevent children to get polluted.

9. Spotting potential delinquents by predictive tests in schools and giving appropriated treatment to such children.
10. The problems of beggary and poverty are to be removed or controlled and the general economic standards of the people must be increased to prevent children from becoming delinquents due to economic exigencies.

Professor Louisa Degenhardt, National Drug and Alcohol Research Centre, University of New South Wales, has conducted the study. Individual risk factors for drug abuse include being male, the personality traits of novelty and sensation seeking; conduct disorders in childhood, and poor school performance, low commitment to education and early school leaving. Affiliating with anti-social and drug-using peers is one of the strongest predictors of adolescent alcohol and other drug user that operates independently or individually and family risk factors. Young people who initiate substance use at an early age are often exposed to many social and family disadvantages, come from families with problems and a history of parental substance use, are impulsive, have performed poorly at school, and are affiliated with delinquent peers.<sup>145</sup>

### **3.4.2. Method of Rehabilitation**

The main purpose of the method of rehabilitation is neither to punish nor to take revenge upon the delinquent. The intention behind this method is to help the delinquent children to get proper guidance and training so that they become normal children and never repeat delinquent acts.

#### **3.4.2.1 Anti-drug & Prohibition Council, Assam**

The State Anti-Drug & Prohibition Council, Assam was created in July, 1974. The main objective of the Council is to inform the masses about the harmful effects of intoxicating drugs and alcohol and to take such measures as may be required to prevent drug abuse. The habit of smoking ganja and bhang is prevalent all over the State.

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<sup>145</sup> Srivastava, Lily (2013), *Law & Medicine*, Universal Law publishing Co., New Delhi, at P.321.

Recently, the Government has banned smoking in public places and on advertisement of all forms of tobacco products. The sale of cigarettes and tobacco products to persons below the age of 18 is not allowed. The ban has been imposed under the Cigarette and other Tobacco Products (Prohibition or Advertisement and Regulation of Trade and Commerce, Production, Supply and Distributions) Act, 2003.

The Government of India sanctioned two Centres for de-addiction cum rehabilitation, one at Jorhat and another in Silchar. The number of addicts who received treatment and had taken counselling during the period of April 2016 to September 2016, in the two de-addiction cum rehabilitation centres at Jorhat and Silchar are shown below.

Table No.19

**Addicted person admitted and undergone treatment from April 2016 to September, 2016 of de-addiction centres Jorhat and Silchar**

Jorhat

Period	No. of Addicts admitted	No. of Addicts treated	No. of Addicts received counselling	O.P.D.
April, 2016 to September, 2016	139	44	139	95
Total	139	44	139	95

Silchar

Period	No. of Addicts admitted	No. of Addicts treated	No. of Addicts Received counseling	O.P.D.
April, 2016 to September, 2016	199	61	199	138
Total	199	61	199	138

Source: Anti-drug and Prohibition Council, Assam

### 3.4.2.2. Probation

Probation is not defined in the Probation of Offenders Act, 1958. Etymologically, 'Probation' means the testing of conduct or character of a person.<sup>146</sup> According to Encarta, "Probation' means the supervision of the behavior of a

<sup>146</sup> Paranjap, N.V. (2011), *Criminology & Penology with Victimology*, Central Law Publications, Allahabad, at P. 521.

young or first criminal offender by a Probation Officer”. During the period of suspension, the offender must regularly report to the Probation Officer and must not commit any further offences.<sup>147</sup>

Probation is a system of releasing young criminals, especially first time offenders on suspended sentence on good behaviour under the supervision of a person acting as friend or advisor called Probation Officer.

The importance of the probation can be seen in the wording of Justice Sikri and Justice Krishna Iyer. Justice Sikri opined that probation is not only providing rehabilitation but also reduce the rate of crime and establish good economic condition of peer.<sup>148</sup> Justice Krishna Iyer gives the example of foreign court on importance of probation. He said, “Last week of June, 1971 the Supreme Court of New Jersey change their decision and ordered that if person finds with *marya juviene* (one kind of narcotic drugs) first time then he should not be sent to jail but may be released on probation.”<sup>149</sup>

The Juvenile Justice Act also allows the juvenile to go home after advice or admonition of appropriate inquiry against and counselling to the parent or the guardian and the juvenile. The Board also 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. The Board directs 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.<sup>150</sup>

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<sup>147</sup> Encarta Reference Library Dictionary 2005.

<sup>148</sup> Inauguration lecture on probation work 8<sup>th</sup> May, 1971.

<sup>149</sup> Govt of India- Central Bureau of Services, 1972, at PP .14-15.

<sup>150</sup> Section 15 (1) (a) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

According to section 33 of The NDPS Act, 1985 the provision of the probation under section 360 of the Code of Criminal Procedure and of the Probation of Offenders Act, 1958 shall not apply to a person convicted of an offence under this Act. Exception is applicable with convicts only if such person is less than eighteen years of age (by Juvenile Justice Act, 2000).

In **Rakesh v. State of Gujarat**,<sup>151</sup> the accused aged about 16 years 9 months was convicted for offences under sections 17& 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The report of the Probation Officer showed that the accused was a bright and promising student hailing from respectable, cultured middle class family and he came under pernicious influence of evil company owing to immaturity and committed such crime for the first time. The Court held that under the circumstances granting of benefit of probation to the appellant under section 33 of the NDPS, Act would proper.

The Prohibition Enquiry Committee appointed by the Planning Commission in its report of June, 1955, recommended that the scheme of prohibition and anti-drug should be integrated with the country's development plans with a view to control alcoholism and improve the standard of living of the people. The theory of creating scarcity of liquor by prohibitory laws with a view to discouraging 'drinking habit' has not yielded desired results. On the contrary, demand for liquor has all the more increased and opened new vistas for black marketing, smuggling and illicit distilling. In fact, the consumption of liquor has taken the shape of a fashion in today's ultra modern societies. Therefore, it cannot be curbed by prohibitory laws unless people who habitually drink voluntarily give it up. It is for this reason that many States have

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<sup>151</sup> Rakesh v. State of Gujarat, 1996 Cri.L.J.1263 (Gujarat).

withdrawn their prohibition laws and are content with a balanced regulatory policy under which liquor is available for sale only in licensed shops at a fair price.

It is mentioned that reformation and rehabilitation of the juvenile is the last hope to be attained by the juveniles contact with the Juvenile Justice system. But there is a distinctive difference between reformation and rehabilitation. Reformation is founded in the belief that a juvenile is capable of changing his attitudes and behavior and recognizing that what he did was wrong. Rehabilitation is founded in the belief that circumstances resulted in the juvenile committing the crime, therefore the concentration is on setting right these circumstances. The focus is entirely on the juvenile and his particular circumstances.