
CHAPTER- 5

INTERNATIONAL EFFORTS RELATING TO PREVENTION OF JUVENILE DELINQUENCY AND SUBSTANCE ABUSE

Among the major social problems in the present day society, two major social problems are the “Juvenile Conflict with Law” i.e. “Juvenile delinquency” and “Drug or Alcohol Abuse”. But these two problems are not isolated problem. There is a link between drug abuse and delinquency. The researcher has found in the research study that maximum cases relating to juvenile delinquency are due to the influence of drug and alcohol. The juvenile delinquency and drug abuse is not only a national problem but it is an international problem also. Due to such great ramification of these problems time to time United Nations has given various Guidelines, Convention and Agreement relating to juvenile and for the prevention of drug abuse and illicit trafficking. The various Agreements, Treaties and Conventions made for solving these two problems are discussed in this chapter.

In the International level, there have been several developments in the administration of juvenile justice. Until the International Covenant on Civil and Political Rights, 1966, there were no specific provisions regulating the administration of juvenile justice. The provisions enshrined in this International Covenant, in this regard, are very specific. For example, Article 10(2) (b) this Covenant provides for the separation of accused juveniles from adults and for their speedy adjudication; Article 14(4) provides that the trial procedures for juveniles should take into account the age of juveniles and the desirability of promoting their rehabilitation. In the year 1980, the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders called for the preparation of minimum rules regulating the administration of juvenile justice. Further, in 1985, the General Assembly adopted the United Nations Standard Minimum

Rules for the Administration of Juvenile Justice, known as Beijing Rules, which provide a complete framework within which a national juvenile justice system should operate. Again for the prevention of juvenile delinquency, the United Nations Guidelines were adopted in the year 1990, which is known as Riyadh Guidelines, and it focus on early protection and preventive intervention paying particular attention in situations of 'social risk'. The high rates of juvenile delinquency often receive great attention from news, media and politicians. Here the researcher has discussed the relevant guidelines relating to juvenile delinquency as follows.

5.1. International Efforts Relating To Prevention of Juvenile Delinquency

5.1.1. United Nations Standard Minimum Rules for the Administration of Juvenile Justice “The Beijing Rules” 1985

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), 1985 provides guidelines to States on protecting children's rights and respecting their needs when developing separate and specialized systems of juvenile justice.¹ The guidelines lay out general principles and specific rules for investigation and prosecution, adjudication and disposition, non-institutional treatment and institutional treatment. The two crucial concepts provided in the Beijing Rules and which have been ignored in the enactment may be discussed as follows-

The concept of diversion- According to Rule 11, the fundamental premise behind diversion is that if children are processed through the criminal justice system, it results in the stigma of criminality and this in fact amplifies criminality of the child. Hence any intervention must aim at minimizing the contact with the criminal justice system. Second part of the Rule empowers police, prosecution and other authorities to divert the child away from the system.

¹ Nalwa, Suman and Kohli, Hari Dev (2016), *Commentary on The Juvenile Justice*, Universal Law Publishing, Haryana, at P.42.

The concept of detention as a serious punishment-The philosophy underlying the rule is that detention is a serious punishment, which is inflicted upon juveniles, and therefore it should be imposed only as a measure of the last resort and for the shortest possible period of time. This philosophy, which is influenced by a human rights framework, does not find any place in the new Act, as there is no structuring of the discretion of the authorities so as to ensure that deprivation of liberty is viewed as a serious infringement rather than as a necessary measure in the care of the child. The important guidelines of the Beijing Rules are discussed below.²

- The juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.³
- The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially anti-social behaviour.⁴
- There are two important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile.
- The second objective is “the principle of proportionality”. This principle is well known as an instrument for curbing punitive sanctions.⁵

² Malik, Krishna Pal (2012), *Administration of Juvenile Justice in India*, Allahabad law Agency, Faridabad, at P.11.

³ Rule 1.2 (Fundamental perspectives), as enshrined in Part I of General Principles of Beijing Rules.

⁴ Rule 4.1 (Age of criminal responsibility), as enshrined in Part I of General Principles of Beijing Rules.

⁵ Rule 5.1 (Aims of juvenile justice), as enshrined in Part I of General Principles of Beijing Rules

- The basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.
- The importance of the protection of the juvenile's right to privacy.⁶
- The importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted).⁷
- To draw the attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner.⁸
- Juveniles under detention pending trial shall be kept separate from adults.⁹
- While juvenile in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.¹⁰
- Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid.¹¹

⁶ Rule 8.1 (Protection of Privacy), as enshrined in Part I of General Principles of Beijing Rules.

⁷ Rule 8.2 (Protection of Privacy), as enshrined in Part I of General Principles of Beijing Rules.

⁸ Rule 12.1 (Specialization within the Police) enshrined in Part II of Investigation and prosecution of Beijing Rules.

⁹ Rule 13.4 (Detention pending trial), as enshrined in Part II of Investigation and prosecution of Beijing Rules.

¹⁰ Rule 13.5 (Detention pending trial), as enshrined in Part II of Investigation and prosecution of Beijing Rules.

¹¹ Rule 15.1 (Legal counsel, parents and guardians), as enshrined in Part III of Adjudication and disposition Beijing Rules.

- That the parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile.¹²
- The sentence of death and sentence of imprisonment shall not be imposed for any crime committed by juveniles.¹³
- Juvenile released conditionally from an institution, assistance and supervision by probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.¹⁴

5.1.2. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), 1990

The UN Guidelines for the Prevention of Juvenile Delinquency, known as ‘Riyadh Guidelines’ were adopted in 1990.¹⁵ The Riyadh Guidelines represent a comprehensive and proactive approach to prevention and social re-integration, detailing social and economic strategies that involve almost every social area: family, school and community, the media, social policy, legislation and juvenile justice administration. Prevention is seen not merely as a matter of tackling negative situations, but rather a means of positively promoting general welfare and well being. It requires a more proactive approach that should involve “efforts by the entire society to ensure the harmonious development of adolescents.” Particularly, countries are recommended to develop community-based interventions to assist in the prevention of children coming into conflict with the law, and to recognize that ‘formal agencies of social control’

¹² Rule 15.2 (Legal counsel, parents and guardians), as enshrined in Part III of Adjudication and disposition Beijing Rules.

¹³ Rule 17.2 (Guiding principles in adjudication and disposition), as enshrined in Part III of Adjudication and disposition of Beijing Rules.

¹⁴ Rule 28.1 (Frequent and early recourse to conditional release), as enshrined in Part V of Institutional treatment of Beijing Rules.

¹⁵ Chatterjee, S.K.(2016), *Offences Against Children And Juvenile Justice*, Central Law Publications, Allahbad, at P.520.

should be utilized only as a means of last resort. General prevention consists of “comprehensive prevention plans at every governmental level” and should include mechanisms for the co-ordination of efforts between governmental and non-governmental agencies; continuous monitoring and evaluation; community involvement through a wide range of services and programmes; inter-disciplinary co-operation; and youth participation in prevention policies and processes. The Riyadh Guidelines also call for the decriminalization of status offences and recommend that prevention programmes should give priority to children who are at risk of being abandoned, neglected, exploited and abused. The following important guidelines are discussed below:

- The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young person's can develop non-criminogenic attitudes.¹⁶
- The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.¹⁷
- For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued.¹⁸
- The importance of the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme and also mention the need for and

¹⁶ Rule 1, as enshrined in Part I of the General Principles of Riyadh Guidelines, 1990.

¹⁷ Rule 2, as enshrined in Part I of the Fundamental Principles of Riyadh Guidelines, 1990.

¹⁸ Rule 3, as enshrined in Part I of the Fundamental Principles of Riyadh Guidelines, 1990.

importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized.¹⁹

- The Community-based services and programmes should be developed for the prevention of juvenile delinquency.²⁰
- Comprehensive prevention plans should be instituted at every level of Government and include the following:²¹
 - (a) In-depth analysis of the problem and inventories of programmes, services, facilities and resources available;
 - (b) Well-defined responsibilities for the qualified agencies, institutions and personnel involved in preventive efforts;
 - (c) Mechanisms for the appropriate co-ordination of prevention efforts between governmental and non-governmental agencies;
 - (d) Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation;
 - (e) Methods for effectively reducing the opportunity to commit delinquent acts;
 - (f) Community involvement through a wide range of services and programmes;
 - (g) Close interdisciplinary co-operation between national, State, provincial and local governments, with the involvement of the private sector, representative citizens of the community to be served, and labour, child-care, health education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime;
 - (h) Youth participation in delinquency prevention policies and processes;
 - (i) Specialized personnel at all levels.

¹⁹ Rules 4 and 5, as enshrined in Part I of the Fundamental Principles of Riyadh Guidelines, 1990.

²⁰ Rule 6, as enshrined in Part I of Fundamental Principles of Riyadh Guidelines, 1990.

²¹ Rule 9, as enshrined in Part III of General Prevention of Riyadh Guidelines, 1990.

- To prevent stigmatization, victimization and criminalization of young persons. Legislation should be enacted to ensure that any conduct of juveniles is not considered an offence or not penalized.²²
- Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.²³

5.1.3. United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990

The UN Rules for the Protection of Juveniles Deprived of their liberty (JDL Rules) are applicable to all persons under the age of 18 years who have been deprived of their liberty. These Rules are non-binding and recommendatory in nature. It is important that this would include children who are deprived of their liberty even due to health or welfare reasons. Thus, the rules recognize that the philosophical notion of best interest cannot be interpreted to mean deprivation of liberty in most circumstances. The rules provide in details and elaborate human rights standards to be conformed to both on arrest and within the institution. These detailed human rights standards are to be made available to juvenile justice personnel in their national languages. The rules also mandate the State to incorporate the rules into their legislation or amend it accordingly and provide effective remedies for their breach, including compensation when injuries are inflicted on juveniles. The following Guidelines included in the JDL Rules for the protection of liberty of the child-

- The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.²⁴

²² Rule 56, as enshrined in Part VI Legislation and juvenile justice administration of Riyadh Guidelines, 1990.

²³ Rule 59, as enshrined in Part VI Legislation and juvenile justice administration of Riyadh Guidelines, 1990.

²⁴ Rule 1, as enshrined in Part I of Fundamental Principles of JDL Rules, 1990.

- Juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases.²⁵
- The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.²⁶
- The competent authorities should constantly seek to increase the awareness of the public that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.²⁷
- Mentions the following definitions for the purposes of the Rules should apply:²⁸
 - (a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;
- Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.²⁹

²⁵ Rule 2, as enshrined in Part I of Fundamental Principles of JDL Rules, 1990.

²⁶ Rule 3, as enshrined in Part I of Fundamental Principles of JDL Rules, 1990.

²⁷ Rule 8, as enshrined in Part I of Fundamental Principles of JDL Rules, 1990.

²⁸ Rule 11, as enshrined in Part II of Scope and application of JDL Rules, 1990.

²⁹ Rule 13, as enshrined in Part II of Scope and application of JDL Rules, 1990.

- The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority.³⁰
- Juveniles who are detained under arrest or awaiting trial (untried) are presumed innocent and shall be treated as such. Untried detainees should be separated from convicted juveniles.³¹
- The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:³²
 - (a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid. Privacy and confidentiality shall be ensured for such communications.
 - (b) Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training etc.
 - (c) Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.
- All reports, including legal records, medical records and records of disciplinary proceedings, and all other documents relating to the form, content and details of treatment, should be placed in a confidential individual file, which should be kept up to date, accessible only to authorized persons and classified in such a way as to be easily understood.³³
- No juvenile should be received in any detention facility without a valid commitment order of a judicial, administrative or other public authority.³⁴

³⁰ Rule 14, as enshrined in Part II of Scope and application of the rules of JDL Rules, 1990.

³¹ Rule 17, as enshrined in Part III Juveniles under arrest or awaiting trial of JDL Rules, 1990.

³² Rule 18, as enshrined in Part III Juveniles under arrest or awaiting trial of JDL Rules, 1990.

³³ Rule 19 (Records A), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

³⁴ Rule 20 (Records A), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

- In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:³⁵
 - (a) Information on the identity of the juvenile;
 - (b) The fact of and reasons for commitment and the authority therefore;
 - (c) The day and hour of admission, transfer and release;
 - (d) Details of the notifications to parents and guardians on every admission, transfer or release of the juvenile in their care at the time of commitment;
 - (e) Details of known physical and mental health problems, including drug and alcohol abuse.
- The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.³⁶
- The transport of juveniles should be carried out at the expense of the administration in conveyances with adequate ventilation and light, in conditions that should in no way subject them to hardship or indignity. Juveniles should not be transferred from one facility to another arbitrarily.³⁷
- In all detention facilities, juveniles should be separated from adults.³⁸
- Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.³⁹
- The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to

³⁵ Rule 21 (Admission, registration, movement and transfer, B), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

³⁶ Rule 22 (Admission, registration, movement and transfer, B), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

³⁷ Rule 23 (Admission, registration, movement and transfer, B), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

³⁸ Rule 29 (Classification and placement, C), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

³⁹ Rule 31 (Physical environment and accommodation, D), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safety. Detention facilities should not be located in areas where there is known health or other hazards or risks.⁴⁰

- Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time.⁴¹
- Every juvenile shall receive adequate medical care, both preventive and remedial.⁴²
- Every juvenile has a right to be examined by a physician immediately upon admission to a detention.⁴³
- The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society.⁴⁴
- Juvenile detention facilities should adopt specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned,

⁴⁰ Rule 32 (Physical environment and accommodation), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

⁴¹ Rule 37 (Physical environment and accommodation), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

⁴² Rule 49 (Medical care, H), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

⁴³ Rule 50 (Medical care, H), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

⁴⁴ Rule 51 (Medical care, H), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.⁴⁵

- Medicines should be administered only for necessary treatment on medical grounds.⁴⁶
- Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of the juvenile for their return to society and also allowed to the juveniles to meet their families, friends and other persons. There is also need to respect juvenile privacy, contact and unrestricted communication with the family and the defence counsel.⁴⁷
- All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited.⁴⁸
- Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint.⁴⁹
- All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end.⁵⁰

⁴⁵ Rule 54 (Medical care, H), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

⁴⁶ Rule 55 (Medical care, H), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

⁴⁷ Rule 59, & 60 (Contacts with the wider community), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

⁴⁸ Rule 67 (Disciplinary procedure, L), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

⁴⁹ Rule 78 (Inspection and complaints, M), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

⁵⁰ Rule 79 (Return to the community, N), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

- Competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to lessen prejudice against such juveniles. These services should ensure, to the extent possible, that the juvenile is provided with suitable residence, employment, clothing, and sufficient means to maintain himself or herself upon release in order to facilitate successful reintegration.⁵¹
- The administration should introduce forms of organization and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfilment of their duties.⁵²
- The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules.⁵³
- In the performance of their duties, personnel of detention facilities should respect and protect the human dignity and fundamental human rights of all juveniles, in particular, as follows:⁵⁴
 - (a) No member of the detention facility or institutional personnel may inflict, instigate or tolerate any act of torture or any form of harsh, cruel, inhuman or degrading treatment, punishment, correction or discipline under any pretext or circumstance whatsoever;

⁵¹ Rule 80 (Return to the community, N), as enshrined in Part IV of the management of juvenile facilities of JDL Rules, 1990.

⁵² Rule 84, as enshrined in Part IV of the Personal of JDL Rules, 1990.

⁵³ Rule 85, as enshrined in Part IV of the Personal of JDL Rules, 1990.

⁵⁴ Rule 87, as enshrined in Part IV of the Personal of JDL Rules, 1990.

- (b) All personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities.
- (c) All personnel should respect the present Rules.
- (d) All personnel should ensure the full protection of the physical and mental health of juveniles, including protection from physical, sexual and emotional abuse and exploitation, and should take immediate action to secure medical attention whenever required;
- (e) All personnel should respect the right of the juvenile to privacy and in particular, should safeguard all confidential matters concerning juveniles or their families.
- (f) All personnel should seek to minimize any differences between life inside and outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.

5.1.4. The UN Resolution on Administration of Juvenile Justice (The Vienna Guidelines), 1997

The UN Resolution (also known as the Vienna Guidelines) provides an overview of information received from governments about how juvenile justice is administered in their countries and in particular about their involvement in drawing up national programmes of action to promote the effective application of international rules and standards in juvenile justice. The document contains, as an annex, Guidelines for Action on Children in the Criminal Justice System, as elaborated by a meeting of experts held in Vienna in February 1997. This draft programme of action provides a comprehensive set of measures that need to be implemented in order to establish a well-functioning system of juvenile justice administration according to the Convention on Rights of Child, Riyadh Guidelines, and Beijing Rules.

Guidelines for Action on Children in the Criminal Justice System

I. Aims, Objectives and Basic Considerations

- The aims of the Guidelines for Action are to provide a framework to achieve the following objectives:⁵⁵
 - (a) To implement the Convention on the Rights of the Child and to pursue the goals set forth in the Convention with regard to children in the context of the administration of juvenile justice, as well as to use and apply the United Nations standards and norms in juvenile justice and other related instruments.
 - (b) To facilitate the provision of assistance to States parties for the effective implementation of the Convention on the Rights of the Child and related instruments.
- (8) In the use of the Guidelines for Action at the International and National levels, consideration should be given to the following:
 - (a) Respect for human dignity, compatible with the four general principles underlying the Convention, namely: non-discrimination, including gender-sensitivity, upholding the best interests of the child; the right to life, survival and development and respect for the views of the child.

II. Plans for the implementation of the convention on the rights of the child, the pursuit of its goals and the use and application of international standards and norms in juvenile justice

- The importance of a comprehensive and consistent national approach in the area of juvenile justice should be recognized, with respect for the interdependence and indivisibility of all rights of the child.⁵⁶

⁵⁵ Rule 4(Aims, Objectives and Basic Considerations) as enshrined in Part I of the Vienna Guidelines, 1997.

⁵⁶ Rule 10, as enshrined in Part II of the Vienna Guidelines, 1997.

- Particular attention should be given to the following points:⁵⁷
 - (a) There should be a comprehensive child-centred juvenile justice process;
 - (c) No child who is under the legal age of criminal responsibility should be subject to criminal charges;
 - (d) States should establish juvenile courts.
- Corporal punishment in the child justice and welfare systems should be prohibited.⁵⁸
- In order to maintain a link between the detained child and his or her family and community, and to facilitate his or her social reintegration, it is important to ensure easy access by relatives and persons who have a legitimate interest in the child to institutions where children are deprived of their liberty, unless the best interests of the child would suggest otherwise.⁵⁹
- All persons having contact with, or being responsible for, children in the criminal justice system should receive education and training in human rights, the principles and provisions of the Convention and other United Nations standards and norms in juvenile justice as an integral part of their training programmes.⁶⁰
- Juvenile justice should be given due attention internationally, regionally and nationally, including within the framework of the United Nations system-wide action.⁶¹
- The effective implementation of the Convention on the Rights of the Child, as well as the use and application of international standards through technical cooperation and advisory service programmes, should be ensured by giving particular attention to the following aspects related to protecting and promoting human rights of

⁵⁷ Rule 14, as enshrined in Part II of the Vienna Guidelines, 1997.

⁵⁸ Rule 18, as enshrined in Part II of the Vienna Guidelines, 1997.

⁵⁹ Rule 20, as enshrined in Part II of the Vienna Guidelines, 1997.

⁶⁰ Rule 24, as enshrined in Part II of the Vienna Guidelines, 1997.

⁶¹ Rule 26, as enshrined in Part II of the Vienna Guidelines, 1997.

children in detention, strengthening the rule of law and improving the administration of the juvenile justice system.⁶²

- (a) Assistance in legal reform;
 - (b) Strengthening national capacities and infrastructures;
 - (c) Training programmes for police and other law enforcement officials, judges and magistrates, prosecutors, lawyers, administrators, prison officers and other professionals working in institutions where children are deprived of their liberty, health personnel, social workers, peacekeepers and other professionals concerned with juvenile justice;
- Emphasis should be placed on formulating comprehensive prevention plans, as called for in the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines). Projects should focus on strategies to socialize and integrate all children and young person's successfully, in particular through the family, the community, peer groups, schools, vocational training and the world of work.⁶³
 - One of the obvious tenets in juvenile delinquency prevention and juvenile justice is that long-term change is brought about not only when symptoms are treated but also when root causes are addressed.⁶⁴
 - To prevent further overreliance on criminal justice measures to deal with children's behaviour, efforts should be made to establish and apply programmes aimed at strengthening social assistance, which would allow for the diversion of children from the justice system, as appropriate, as well as improving the application of non-custodial measures and reintegration programmes.⁶⁵

⁶² Rule 28, as enshrined in Part II of the Vienna Guidelines, 1997.

⁶³ Rule 36, as enshrined in Part II of the Vienna Guidelines, 1997.

⁶⁴ Rule 41, as enshrined in Part II of the Vienna Guidelines, 1997.

⁶⁵ Rule 42, as enshrined in Part II of the Vienna Guidelines, 1997.

5.1.5. United Nations Ten-Point Plan for Juvenile Justice

United Nations Ten-Point Plan for Juvenile Justice is a contribution to the “Committee on the Rights of the Child” on its founding day, during the general discussion on “State Violence against Children” at Geneva on 22nd September 2000. According to Penal Reform International, this Plan focuses on ways of reducing violence within juvenile justice systems around the world. The Plan builds on the relevant international instruments: the UN Convention on the Rights of the Child, the Standard minimum Rules for the Administration of Juvenile Justice and the UN Rules for the Protection of Juveniles Deprived of their Liberty.

Penal Reform International (PRI) believes that a proper administration of juvenile justice cannot be achieved without a strong education and social welfare system. Helping young people in conflict with the law to become law abiding adults is much more the job of parents, teachers, social workers and psychologists than police, courts and prisons.

PRI believes that juvenile offending should be dealt with as far as possible outside the formal criminal justice and penal systems. It is important to ensure that alternative systems - particularly those involving institutional care take proper steps to protect children from violence and abuse.⁶⁶ The ten point plans are:⁶⁷

1. Arrest and Interrogation

Arrest of children (defined as those under the age of 18 years) should be a measure of last resort and detention in police custody should be for the shortest time and in no case more than 48 hours. Use of police bail or bond with or without surety should be encouraged. Those arrested by the police should be separated from adults and held in child friendly rooms rather than conventional cells. Questioning should be undertaken

⁶⁶ www.penalreform.org., Accessed on 18.03. 2018 at 9.00 P.M.

⁶⁷ Supra note 15, at P.565.

by selected and trained officers in the presence of parents, guardians or other appropriate adults. Children should be informed of their rights.

2. Age of Criminal Responsibility

Countries should set as 'high a minimum age of criminal capacity as possible and children below this age who are accused of crimes should not be taken through the criminal justice system. Measures should be found for dealing with such children that provide them with appropriate services whilst protecting their rights.

3. Diversion

There is a need for diversionary community alternatives to prosecution when children admit their offences. Warnings, cautions and admonitions can be accompanied by measures to assist the child at home, with education and with problems or difficulties. Conferences which involve the victim and members of the community may be particularly useful provided that there are safeguards to protect the well being of the child. Prosecuting authorities should develop guidelines to assist diversion in the lower courts.

4. Pre Trial detention

Children should, where possible, be released into the care of their families to await trial in their own homes. Conditional release should be accompanied by measures to support and supervise the child and family. A maximum time limit should be set for keeping a child on bail according to age and offence. Pre-trial Detention should not be used for children other than in exceptional circumstances and less than 14 years' should never be detained in prison establishment. Where it is used it should be for the shortest time. Bail and other forms of conditional release should be accompanied by measures to support and supervise the young person and their family. Separation from adult detainees and strict monitoring of the conditions of children detained pre-trial are imperative.

5. Alternative Sentences

A wide range of alternative sentences are needed particularly those which emphasise the values of restorative justice and seek to meet the needs of young people who are committing crime. Intensive programmes should be developed for more persistent and serious young offenders. Fostering and residential placements in educational and treatment facilities should be available where necessary.

6. Youth Courts

Special child courts/tribunals with less formal proceeding should be established for dealing with under 18 years. Such courts should be held in camera and the presence of the parent/guardian is important. Judges should receive special training.

7. Custodial sentences

Custodial sentences should be used as a last resort and for the shortest time, and used only in exceptional cases. Small open facilities with minimal security measures should be developed for children serving such sentences. Education and rehabilitation should be the main priorities.

8. Detention facilities

Separate facilities should be used for children who are detained and there should be no mixing of them with adults. Regimes should be constructive with education, sporting and cultural activities provided during the day and in the evenings. Adequate numbers of staff should be trained and vetted. Nongovernmental organizations should be encouraged to play a full part in the life of the institution.

9. Inspection

Systems of independent scrutiny and inspection should be established for institutions for children. These should comprise government inspectors and representatives of the local community. Independent visitors should be encouraged to be friend young people and advocate on their behalf. Non-governmental organisations

working on human rights issues should play a role in monitoring institutions for children or any other institutions where children are held. Matters for scrutiny should include the rights to privacy for children.

10. Family links

Every effort should be made to encourage contact between detained children and their families and communities. Plans should be developed to assist the reintegration of the child into their family and community when they are released from detention. Reintegration programmes should be developed to help children move back into, and become contributing members of their communities.⁶⁸

5.1.6. International Centre for the Prevention of Crime

International Center for the Prevention of Crime (ICPC) was founded in 1994 and is an international forum for national governments, local authorities, public agencies, specialized institutions, and non-government organizations to exchange experience, emerging knowledge, and policies and programmes in crime prevention and community safety. It assists cities and countries to reduce delinquency, violent crime and insecurity.

5.1.7. Sustainable Development Goal, 2015

The Sustainable Development Goal (SDGs) is a set of 17 aspirational “Global goals” with 169 Targets. These goals are officially known as Transforming our world; the 2030 Agenda for Sustainable Development. This is an effort headed by United Nations, through a deliberative process involving its 194 member States. These goals are contained in Para 54 of United Nations Resolution Number A/RES/70/1 dated 25th September, 2015; one of the important goals of this S.D.Gs is sustainable development

⁶⁸ Supra note 1.

goals (SDGs) Target 3.6: Strengthening the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol.⁶⁹

5.1.8. The United Nation Convention on the Rights of the child, 1989

The UN Convention was adopted by UN on 20th November, 1989, and ratified by India on 11th December, 1992. Important provisions are as follows -

- States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.⁷⁰
- The States Parties shall ensure that:⁷¹
 - (i) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
 - (ii) No child shall be deprived of his or her liberty unlawfully or arbitrarily.
 - (iii) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults.
 - (iv) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other

⁶⁹ https://en.wikipedia.org/wiki/Sustainable_Development_Goals. Accessed on 18.03. 2018 at 9.00 P.M.

⁷⁰ Article 33 of the UN Convention on the Rights of the Child, 1989.

⁷¹ Article 37 of the UN Convention on the Rights of the Child, 1989.

competent, independent and impartial authority, and to a prompt decision on any such action.

- States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.⁷²
- (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
- (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
- (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law;
 - (iv) Not to be compelled to give testimony or to confess guilt;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

⁷² Article 40 of the UN Convention on the Rights of the Child, 1989.

- (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
- (vii) To have his or her privacy fully respected at all stages of the proceedings.
- States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular.⁷³
 - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without escorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

5.2. International Legal Control relating to Prevention of Substance Abuse

Like Juvenile delinquency, the deterioration in the global drug abuse scenario has urged the international community as a whole, and the different countries individually, to intensify their efforts of fighting not only the menace of drug abuse, but also, illicit cultivation, production, manufacture, trafficking and peddling of drugs. The existing legislations have been modified or are in the process of being modified to give more teeth to the enforcement agencies. Demand reduction programmes are getting

⁷³ Article 40(3) of the UN Convention on the Rights of the Child, 1989.

priority, drug abuse prevention programmes are being intensified and efforts at rehabilitation and reintegration of the ex-addicts are receiving greater attention.

The United Nations documents (U.N., 1987) show a deep concern of the international community about the perilous effects of drug abuse. International cooperation in this field stems perhaps from the fact that most of the governments have assumed responsibility of assuring their citizens the best health and social care benefits. The idea that drug abuse is connected to criminality is well rooted in popular tradition everywhere. This idea has evidently constituted the basis for the restrictive legislation which in each country regulates and controls the use of drugs and represses its abuse. Nevertheless, the issue of drug abuse and criminality is much more complex. The value system of the addict can acquire anti-social connotations till it reaches truly a criminal behaviour level. It is difficult, therefore, for most countries to choose between repressive and non-repressive laws in combating drug abuse and related criminality.

International co-operation in the field of drug control began in 1909 through which the first attempt to limit the shipping of narcotic drugs were made. International drug treaties concluded between 1912 and 1972 provide the legal basis for the present international drug control system. There are various Conventions and Agreements relating to drug control and prevention which are discussed in the following:

5.2.1. World Drug Report, 2017

UNODC (United Nations Office on Drugs and Crime) launched the World Drug Report 2017 during an event held in Nairobi at the United Nations Office in Nairobi (UNON). The 20th World Drug Report included the startling fact that in 2015, about a quarter of a billion people used drugs. Of these, around 29.5 million people or 0.6 per cent of the global adult population were engaged in problematic use and suffered from drug use disorders, including dependence. Opioids were the most harmful drug type and accounted for 70 per cent of the negative health impact associated with drug use

disorders worldwide, according to the latest World Drug Report, released by the UNODC.⁷⁴

Disorders related to the use of amphetamines also account for a considerable share of the global burden of disease. And while the market for new psychoactive substances (NPS) is still relatively small, users are unaware of the content and dosage of psychoactive substances in some NPS. This potentially exposes users to additional serious health risks. The Report finds that hepatitis C is causing the greatest harm among the estimated 12 million people who inject drugs worldwide. Out of this number, one in eight (1.6 million) is living with HIV and more than half (6.1 million) are living with hepatitis C, while around 1.3 million are suffering from both hepatitis C and HIV.⁷⁵

5.2.2. International Opium Convention, 1912, the Hague Convention

The first international drug control conclave in history, it was originally convened by the US in Shanghai in 1909 in response to worldwide criticism of world opium trade. It urged the contracting powers to put in all efforts to bring under control all persons manufacturing, importing, selling, distributing, and exporting morphine, cocaine and their respective salts as well as the places where such industry or trade was carried on. It was initially implemented by the US and four other countries namely The Netherlands, China, Honduras and Norway. It effectively went into force in 1919 when it was incorporated into the Treaty of Versailles.⁷⁶

5.2.3. First Geneva Conference

The First Geneva Conference was initiated on 3rd November, 1924. Sir Malcolm Delevingue, the British Delegate made a statement devoted to the situation in China in which he emphasised not only the seriousness of the opium situation in China, but the

⁷⁴ <https://www.unodc.org>. Accessed on 01.01.2018 at 8.00 P.M.

⁷⁵ Ibid.

⁷⁶ Kar, S.P. (2009), *Narcotics: Crime, Terrorism and Control*, KW Publishers Pvt. Ltd., New Delhi, at P.231.

situations confronting the other countries in the Far East by reason of the quantities of opium that was being smuggled out of China into their territories or possessions. The contraband trade in Chinese opium, it was continually reiterated, was the 'dominant' factor in the situation. The agreement framed in the First Geneva Conference contained various provisions designed to prevent persons from becoming opium-smoking addicts.⁷⁷

5.2.3.1. Agreement Concerning the Suppression of the Manufacture of, Internal Trade, and Use of, Prepared Opium, 1925

Having examined the existing International Opium Convention, 1912 and taking note of the fact that the increase of the smuggling of opium in the greater part of the territories in the Far East since the ratification of the Convention was hampering greatly the accomplishment of the gradual and effective suppression of the manufacture of, internal trade in, and use of prepared opium, and was even rendering less effective some of the measures already taken for that end and taking into account the situations in several countries, the signatories of the Agreement concluded the Agreement,⁷⁸ which was supplementary to the International Opium Convention of 1912.

The provisions of this agreement applied only to the Far Eastern possessions of territories of the Contracting Powers in which the use of prepared opium was temporarily authorised. The agreement envisaged that the importation, sale and distribution of opium should be a monopoly of the Government and the right to import, sell or distribute opium should not be leased, accorded or delegated to any persons. The parties undertook further to make a government monopoly for the making of prepared

⁷⁷ Mehanathan, M.C. (2015), *Law On Control of Narcotic Drugs and Psychotropic Substances in India*, LexisNexis, Haryana, at P.35.

⁷⁸ Preamble to the Agreement Between the British Empire (with India), China, France, Japan, The Netherlands, Portugal and Siam, Concerning the Suppression of the Manufacture of, Internal Trade in and Use of, Prepared Opium, Adopted by the First Opium Conference of the League of Nations, 1925.

opium as soon as circumstances permit.⁷⁹ The system of employing persons paying a fixed salary and not by commission on sales for the retail sale and distribution of opium shall be applied experimentally in those districts where an effective supervision can be exercised by the administrative authorities.⁸⁰ Elsewhere only persons licensed by the Government shall conduct the retail sale and distribution of opium.⁸¹ They agreed to limit as far as possible the number of retail shops and, where smoking divans (dens) were permitted the number of divans.⁸² No minor should be permitted to enter any smoking divan.⁸³

It was signed as revised International Opium Convention and went into effect in 1928. It introduced a statistical control system to be supervised by a Permanent Central Opium Board functioning as an organ of the League of Nations. It was proposed in the Convention to impose prohibition on Indian hemp but this generated protest from India and some other countries on the ground that it should not be so because of the traditional use of hemp by the people for social and religious reasons. Later, a compromise was reached that banned the export of Indian hemp to countries which had prohibited its use. On the other hand, countries which wished to import ganja, had to certify that it was required for scientific or medical purposes. The Convention also called for control over international traffic in Indian hemp.⁸⁴

5.2.3.2 Protocol annexed to the Agreement concerning the Suppression of the Manufacture of, Internal Trade in and Use of, Prepared Opium, 1925

Parties to the Protocol signed along with the Agreement between the British Empire (with India), China, France and Japan, the Netherlands, Portugal and Siam,

⁷⁹ Article I paragraph 2.

⁸⁰ Article I paragraph 3 (a).

⁸¹ Article I paragraph 3 (b).

⁸² Article IV.

⁸³ Article III.

⁸⁴ Supra note 76, at PP.231-232.

Concerning the Suppression of, the Manufacture of, Internal Trade in and Use of Prepared Opium, 1925 agreed as follows:⁸⁵

1. As soon as the poppy-growing States had ensured the effective execution of the necessary measures to prevent the exportation of raw opium from their territories from constituting a serious obstacle to the reduction of consumption in the countries where the use of prepared opium was temporarily authorised, the States signatories of the Protocol would strengthen the measures already taken in accordance with Article VI of the Hague Convention, and would take any further measures which might be necessary, in order to reduce consumption of prepared opium in the territories under their authority, so that such use might be completely suppressed within a period of not more than fifteen years.
2. The signatories of the Protocol should co-ordinate their efforts to effect the complete and final suppression of the use of prepared opium.

5.2.4. Second Geneva Conference

The first meeting of the Second Geneva Conference was held on 17th November, 1924. The matter regarding the suppression of traffic in prepared opium was embodied in the Protocol annexed to the Convention adopted by the Second Conference.

5.2.4.1. International Opium Convention, adopted by the Second Opium Conference (League of Nations), signed at Geneva, 19th February, 1925

The International Opium Convention of 1925 was adopted at the Second Opium Conference held at Geneva from November, 1924 to February, 1925 which was the first convention concluded by the League of Nations in the matter of combating abuse of and illicit traffic in habit-forming drugs. This Convention recognised for the first time Indian hemp as a psychoactive drug. The Convention incorporated a procedure for bringing new drugs of abuse under international control.

⁸⁵ Supra note at 77.

The 1925 Convention strengthened the 1912 Convention. The import-export authorisation regime in international trade of drugs introduced by the Convention was an innovation in the matter of control of drugs. The vagueness prevailed in the regime of internal control; introduced by the 1912 Convention was removed by this Convention. The domestic control of coca leaves by way of limitation on the number of places through which international trade would be carried out was a progressive control introduced by the Convention.⁸⁶ The Convention also extended control over drugs of the same nature like Indian hemp and other preparations obtained from it.

5.2.4.2 Protocol annexed to the International Opium Convention, 1925

The Protocol annexed to the International Opium Convention, 1925 signed by the Second Geneva Conference contained a declaration recognising that under Chapter I of the Hague Convention the duty rest upon the parties establishing control over the production, distribution and exportation of raw opium as would prevent the illicit traffic within five years.⁸⁷

5.2.5. Convention on Manufacture and Distribution of Narcotic Drugs, 1931, Bangkok

The objectives laid down in the Convention were to limit the manufacture and to regulate the distribution of narcotic drugs.⁸⁸

5.2.6. Agreement Concerning the Suppression of Opium Smoking in the Far East, 1931, Bangkok

The Bangkok Conference of 1931 was convened in fulfilment of the mandate of the governments concerned as embodied in Article 12 of the Geneva Agreement on Opium. Because of the seriousness of the problem of opium smoking in that part of the

⁸⁶ Several articles of the 1912 Convention were repeated in this Convention except the vague terms and addition of some words, which made the previous provisions more precise. Those articles were articles 1, 2, 9, 10, and 11, which became respectively articles 2, 3, 5, 6, and 7 of the 1925 Convention.

⁸⁷ Supra note 81, at P.37.

⁸⁸ Supra note 84, at, P.232.

world, the Agreement was concerned with the Suppression of Opium Smoking in the Far Eastern Countries only.⁸⁹

The Agreement Concerning the Suppression of Opium Smoking, 1931, vide its Article 1 required that the retail sale and distribution of opium should take place only from Government shops, or where the local circumstances make the establishment of a Government shop difficult, from the shops managed under Government supervision, by persons appointed by the Government for that purpose and remunerated by a fixed payment. Article II required that persons under twenty-one years of age were prohibited from smoking opium and from entering any smoking-establishment. Anyone who violated this provision or anyone who facilitated such act was to be provided with severe penalty including imprisonment.⁹⁰

5.2.7. Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs signed at Geneva, 13th July, 1931

The Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs was concluded in 1931. The Convention envisaged an extensive estimates system, which was to be based solely on the medical and scientific requirements of the countries. No manufacture could take place unless it was within the limits of the estimates contained in the Annual Statement or Supplements approved by the Supervisory Body.

The Convention required that no High Contracting Party should allow the accumulation in the possession of any manufacturer of quantities of raw materials in excess of those required for the economic conduct of business, having regard to the prevailing market conditions. The quantities of raw material in the possession of any manufacturer at any one time should not exceed the quantities required by that

⁸⁹ Supra note 77, at P.37.

⁹⁰ Ibid.

manufacturer for manufacture during the ensuing six months, unless the government, after due investigation, considered that exceptional conditions warrant the accumulation of additional quantities, but in no case should the total quantities which might be accumulated exceed one year's supply.⁹¹

5.2.8. Convention for the Suppression of Illicit Traffic in Dangerous Drugs, 1936, Geneva

It relates to drugs other than narcotic drugs. The high Contracting Parties, by Article 2 agreed to make the necessary provisions for severely punishing, particularly by imprisonment or other penalties of deprivation of liberty, the drug offences. The Convention deals with the matter of extradition of fugitives and their prosecution in an extensive manner. Foreigners who are in the territory of a High Contracting Party and who have committed abroad any offences set out in Article 2 are required to be prosecuted and punished as though the offence has been committed in the territory. The Convention requires that narcotic drugs as well as substances and instruments intended for the commission of any of the offences referred to in Article 2 should be liable to seizure and confiscation.⁹²

5.2.9. UN Single Convention on Narcotic Drugs, 1961, New York

The United Nations Economic and Social Council, keeping in view the multitude of agreements, protocols and conventions, the complexity of the international instruments relating to the control of narcotic drugs and the desirability of simplifying the organization of international co-operation for controlling the traffic in narcotic drugs, as early as in the year 1948, recognized the necessity of consolidating all the instruments into one single convention in which provision should be made for a single body to perform all control functions, excepting those which were to be allocated to the

⁹¹ Article 16 Paragraph 2.

⁹² Supra note 77, at P.38.

Commission on Narcotic Drugs and provisions for the limitation of the production of narcotic raw materials.⁹³ The Secretary General submitted to the Commission on Narcotic Drugs a draft convention with a detailed commentary. The draft convention so prepared was considered by the Commission in consultation with various governments, international and inter-governmental bodies and was adopted by the Plenipotentiary Conference for the Adoption of a Single Convention on Narcotic Drugs convened at New York from 24th January to 25th March, 1961. The Convention came into force on 13th December, 1964.

The objectives of the Convention are consolidating the existing international instruments on control of narcotic drugs, simplification of the control measures and control of poppy straw.

The Convention envisages certain special procedures relating to international trade in narcotic drugs. The Parties shall export drugs to another country or territory only in accordance with the laws and regulations of that country or territory and within the limits of the estimates for that country. The Convention stipulates that the Parties shall not permit the possession of drugs except under legal authority.⁹⁴ The Parties are required to make cultivation, production, manufacture, extraction, preparation, possession, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of the Convention and any other action which in the opinion of such Party may be contrary to the provisions of the Convention, as punishable offences when committed intentionally. Serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.⁹⁵

⁹³ ECOSOC Res. 770 (xxx) F.

⁹⁴ Article 33.

⁹⁵ Article 36.

Article 37 imposes an obligation that drugs, substances and equipment used in or intended for the commission of any of the offences referred to in Article 36, shall be liable to seizure and confiscation. Article 38 requires that the Parties shall give special attention to the provision of facilities for the medical treatment, care and rehabilitation of drug addicts. The Article further states that if a party has a serious problem of drug addiction and, it is desirable that it establishes adequate facilities for the effective treatment of drug addicts.

It was a milestone in international drug control efforts. It codified all the existing multilateral treaties and in effect substituted them with fresh ideas in the light of experiences gained in the preceding half a century. A multilateral control system was extended by it to the cultivation of all narcotic raw materials. It laid down an objective for itself to limit the possession, use, trade, distribution, import, export, manufacture and production of narcotic drugs to medical and scientific purposes only. It established the International Narcotics Control Board (INCB) by merging the Permanent Central Board and the Drug Supervisory Board.

5.2.10. Protocol Amending the Single Convention on Narcotic Drugs, 1961(Done at Geneva on 25th March, 1972)

The United States Government on 18th March, 1971 submitted a memorandum to the United Nations Secretary-general regarding its proposed amendments to the Single Convention.⁹⁶ Additionally, the United States Government expressed that it would be desirable, by amending Article 36 to strengthen the extradition provisions contained in the Single Convention along the same lines as the new Convention for Suppression of Unlawful Seizure of Aircraft so that the drug offences enumerated in the Single Convention would immediately become extraditable offences.

⁹⁶ AJIL, Vol.65 (1971), PP. 602-604.

Consequent to the proposal mooted by the United States Government, in order to remove certain inadequacies of and to strengthen the Single Convention on Narcotic Drugs, a protocol was signed in the year 1972.

5.2.11. Convention on Psychotropic Substances, 1971, Vienna

On the basis of the reports by the WHO Expert Committee regarding abuse of amphetamines, the Commission⁹⁷ in its Ninth Session held in 1954 decided to include the subject matter of amphetamine in the agenda of a future session.⁹⁸ In its Eleventh Session held in 1956, the Commission, considering the increase in cases of poisoning brought out by amphetamines in many parts of the world, and the number of accidents and even deaths due to the abuse of amphetamine-base proprietary medicines for obesity, took note of the dangers of such drugs and asked the Governments to provide adequate measures of control for the prevention of the abuse of these drugs.⁹⁹ The Commission gave the problem close study by having the Special Committee on the Substances not under International Control convened in August, 1966.¹⁰⁰ The report of the Special Committee¹⁰¹ had been followed by the Secretary-general's study on the legal and administrative aspects of the control of these substances.¹⁰² At its 22nd session the commission pursued consideration of setting up a working group to examine the detailed implications of control.

The Commission moved towards concluding a new treaty on the control of psychotropic substances. The ECOSOC finally decided to convene a meeting of the Plenipotentiaries for the adoption of a protocol on psychotropic substances.¹⁰³ At its

⁹⁷ Report of the Twenty-third Session of the Commission on Narcotic Drugs, United Nations E/CN.7/523/Rev.1.

⁹⁸ CND Dec.B14 (IX).

⁹⁹ CND Res, IV (XI).

¹⁰⁰ Report of the Twenty-third Session of the Commission on Narcotic Drugs.

¹⁰¹ United Nations E/CN. 7/501, annex II.

¹⁰² United Nations E/CN. 7/509 and Corr. 1.

¹⁰³ ECOSOC Res. 1474 (XLVIII).

twenty-second session the Commission pursued consideration of setting up a working group to examine the detailed implications of control.

The Convention restricts the use of substances in Schedule I to scientific and very limited medical purposes. Each Party shall, except as provided in Article 4, limit by such measures as it considers appropriate the manufacture, export, import, distribution and stocks of, trade in and use and possession of, substances in Schedules II, III, and IV to medical and scientific purposes. The Convention requires that it is desirable that the Parties do not permit the possession of substances in Schedules II, III and IV except under legal authority.

The Convention requires that subject to its constitutional limitations, each party shall treat as punishable offence, when committed intentionally, any action contrary to a law or regulation adopted in pursuance of its obligations under the Convention. It shall ensure that serious offences shall be liable to adequate punishment, particularly by imprisonment or other penalty of deprivation of liberty. The Convention requires that the Parties shall take all practicable measures for the prevention of abuse of psychotropic substances and for early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved, and shall co-ordinate their efforts to these ends.

In the years that followed the 1961 Convention, chemical inventions made in the field of mind-altering synthetic substances brought about a qualitative change in the drug abuse patterns worldwide. Psychotropic substances started taking the place of narcotic drugs in a big way. The 1961 Convention looked like failing to fully cover the space. Concerned with this dangerous development, the international community felt that only the UN had the capability to cry a halt to this growing phenomenon. Thus a separate Convention aimed at taking adequate steps in respect of the spread of 'psychotropic substances' was held in 1971.

The Convention stipulated that a state party could propose to the UN Secretary General the addition, deletion or transfer of any such substance from or to any of the Schedules. The Secretary General could send the proposal to the other State parties or the Commission on Narcotic Drugs (CND) or the World Health Organization (WHO) for consideration. If the WHO found that the substance created dependence or caused stimulation or depression in the central nervous system resulting in hallucination or disturbances in motor functions or thinking or behaviour or other problems, it could send a report to the CND which, in turn, could assess the dangers and communicate its finding. The Secretary General would then send the matter to State parties for action. Such action by State parties would include establishment of control by them on the substances by way of a system of licensing on possession, use, distribution, export, import, transportation, etc and submission of a report thereon to the INCB. The INCB would then submit statistical information with its observations and recommendations to the ECOSOC through the CND. In this connection, the INCB could ask for further information from the State Parties.

The Convention imposes responsibility on the member states for preventing the use of the substances and to take action for identification, treatment, education, after care, rehabilitation, and social integration of the substance users. States have to make violations of the provisions of the Convention committed in the international field punishable under their domestic laws. All member States are expected to co-operate in implementation of the provisions of the Convention.

5.2.12. International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Custom Offences, 1977

The Convention comprises a body and 11 Annexes, which may be adopted by the parties independently of each other. Under Article 2, a Contracting Party has an obligation to render assistance to another Contracting Party. Annex X of the Convention

deals with the matter of assistance in action against the smuggling of narcotic drugs and psychotropic substances.

5.2.13. Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, Vienna

In June, 1987 the International Conference on Drug Abuse and Illicit Trafficking adopted a major declaration in which 138 participating States had recognised their collective responsibility to provide appropriate resources for the elimination of illicit production, trafficking and drug abuse.

The draft convention prepared was adopted by the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances held in Vienna from 25th November to 20th December, 1988.¹⁰⁴

The Convention states that its purpose is to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension and that in carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.

The Convention requires that the Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences relating to narcotic drugs and psychotropic substances while considering early release or parole of convicts. The Parties shall, consistent with their legal system, ensure that a person charged with or convicted of any of the said offences, who is found within its territory, is present at the necessary criminal proceeding.¹⁰⁵ In appropriate cases, of minor nature, as an alternative to conviction or punishment measures such as education, rehabilitation or

¹⁰⁴ United Nations Publication No. E/CONF.82/16/Add.1.

¹⁰⁵ Article 3, paragraph 9.

social reintegration as well as, when the offender is a drug abuser, treatment or after care may be provided.¹⁰⁶

The Convention has extensive provisions on establishment of jurisdiction, confiscation of narcotic drugs and psychotropic substances, materials and equipment or other instrumentalities used or intended for use in offences, confiscation of proceeds derived from offences, extradition of fugitives, mutual legal assistance which includes designation of authorities who shall have the responsibility and power to execute requests for mutual legal assistance, transfer of proceedings, financial assistance to transit States for the purpose of augmenting and strengthening the infrastructure needed for effective control and prevention of illicit traffic, appropriate use of controlled delivery at the international level on the basis of agreements or arrangements, with a view to identify persons involved in offences, providing information on precursors and essential chemicals and their control, measures to prevent illicit cultivation of and to eradicate plants containing narcotic drugs or psychotropic substances, such as opium poppy, coca bush and cannabis plants, eliminating or reducing illicit demand or narcotic drugs and psychotropic substances with a view to reducing human suffering and eliminating financial incentives for illicit traffic, proper documentation of exports of narcotic drugs and psychotropic substances, co-operation to combat illicit traffic by sea, measures for suppression of illicit traffic in narcotic drugs, psychotropic substances and precursors and essential chemicals in free ports and free trade zones, measures to suppress the use of the mails for illicit traffic etc.

The experience gained during the interim years (between 1961-1971-1988) in respect of global drug abuse and trafficking made the international community deeply concerned. The link between illicit trafficking in narcotic drugs and psychotropic substances and organized crimes became obvious and visible.

¹⁰⁶ Article 3, paragraph 4.

Thus the 1988 Convention set for member States the goal of suppressing illicit traffic in all forms of drugs and sought to achieve the aim through co-operation among them. It was laid down that right from production, extraction and manufacture to preparation, offering, sale, distribution, delivery, dispatch, transportation, importation and exportation of drugs should be made punishable under respective domestic laws of nations. A state party would have to exercise criminal jurisdiction over its entire national not only in its own territory but also in the international territories when they commit a drug offence there.

All nations would have the duty to render all legal assistance to one another in investigation and prosecution of drug traffickers. Other major aspects taken care of in the Convention are i. Precursor chemicals used for manufacture of drugs are to be regulated, ii. Illicit cultivation of narcotic material is to be eradicated to curb supply of narcotics iii. Measures are to be taken to curb demand for substances. iv. Commercial carriers moving overland and sea-borne traffic have to be monitored. v. Nations would exchange scientific information.

5.2.14. SAARC Convention on Narcotic Drugs and Psychotropic Substances, 1990, Male

This Convention emphasized:¹⁰⁷

- i. Co-operation between countries on prevention and control of drug abuse,
- ii. Taking legislative and administrative measures to implement the UN Conventions,
- iii. Ensuring basic equality of member-states,
- iv. Application of domestic law for drug offences,
- v. Action by states to impose penalties on drug offenders, to impart education to, to organize treatment and after care of and to arrange rehabilitation and social integration of drug users,

¹⁰⁷ Supra note 84, at P.235.

- vi. Establishment of courts for trial of drug offenders,
- vii. Bringing under the ambit of law all nationals of the member states and also vessels, aircraft, etc.
- viii. Treatment by member States of all drug-related offences as extraditable even if any one of them was not included in the Extradition Treaty signed,
- ix. Confiscation of substances, proceeds and equipments used in drug offences,
- x. Mutual legal assistance in investigation, prosecution, etc. of drug offences,
- xi. Measures to eradicate illicit cultivation of drug materials to curb the supply and
- xii. Suppression of drug offences and sharing information.

5.2.15. UN International Drug Control Programme (UNDCP)

The great peril the international community faces from worldwide drug production and trafficking gets manifest from the fact that billions of dollars are earned annually from drug trade. This mind-boggling volume of money neither remains dormant nor goes to productive investments for economic development of nations concerned. Drugs money gets generated by destroying the social, economic, moral and health fabric of nations. The profits thus acquired are used for funding terrorism and other subversive activities. Thousands of lives are lost while drug lords, who turn into warlords, bring death and destruction in areas affected by the drug menace.

Drug money is always accompanied with racketeering and money laundering. Laundered through banks, hawala and other devices, it undermines the growth of industries and commerce through the medium of stock markets, dealings in real estate, etc. Upon which modern economic systems depend a great deal. The turmoil the Indian stock market faced throughout the year 2007 with the Sensex alternately recording a steep rise and a sudden fall is indicative of illicit money invading and withdrawing from Indian business. This ill-gotten money had three fold objectives: i. to weaken the Indian

economy, ii. to whiten the drug-generated and other forms of black money, iii. to provide funding to promote terrorism.¹⁰⁸

The objective so the UNDCP are:

- i. to achieve a reduction of demand for drugs,
- ii. to bring about reduction of supply,
- iii. to effect judicial co-operation among nations on the drug front,
- iv. to eradicate narcotic crops right on the fields,
- v. to suggest alternatives for such crops,
- vi. to check the growth of synthetic stimulants,
- vii. to facilitate international and bilateral co-operation to combat the drug problem.

The UNDCP has the following tasks laid down for it:

- i. To effect co-operation among governments, NGOs and private bodies including the business community for the implementation of UN Conventions on drug matters.
- ii. To effect co-operation among the countries of central, eastern and south-eastern Europe (the Balkans) including the CIS countries on transborder operations against drug trafficking. This also includes providing technical assistance to nations to deal with the complexities of the problem in the target regions.
- iii. In the matter of demand reduction, the programme trains professional for treatment of drugs users. It also enlists co-operation with the ILO to implement workplace programme for prevention of substance abuse. The funding of the UNDCP accounts for 90% of resources available to the UN for international drug control.

5.2.16. The European Union

The European Union (EU) has a drug strategy (2005-12) adopted in the European Commission (EC) meeting in December 2004. The main themes are: Protection of health, Social cohesion and Prevention of drug-related crime through co-

¹⁰⁸ Supra note 80, at P.240.

operation. The EU maintains a distinction between possession and trafficking and recommended increased penalties for the latter. It emphasizes treatment of drug users but could not arrive at an agreement on the quantity threshold of personal possession.

5.2.17. The United Nation and other International Bodies

The UN General Assembly (UNGA) is the ultimate authority in the matter of all international efforts to prevent and control drug abuse, trafficking and other related matters. It, however, has given its mandate to the Economic and Social Council to oversee the campaign for realizing the objectives lay down by itself in respect of all matters relating to drugs. The Economic and Social Council of the UN (ECOSOC) functions through the following bodies:

5.2.17.1. Commission on Narcotic Drugs (CND)

The ECOSOC established the CND in 1946 as the central policy-making body for drugs within the UN system. It has since become a cornerstone of international legal framework for drug prevention and control. It analyses the developing world drug situation and comes up with proposals to strengthen the international system for control of drugs. The CND is a functional body of the ECOSOC and monitors the application of international drug control treaties. It advises the Council on drug matters. It performs the functions assigned to it in the 1961 and 1971 Conventions, it decides, in consultation with the WHO, to place, remove or transfer narcotic drugs and psychotropic substances under or from international control, keeping in mind all the attendant circumstances and report to the Secretary General who, in turn, will inform all the state parties of the introduction of the new measure. The parties will now be obliged to control the new substances by appropriate measures, like licensing, etc.

In its 49th session held in Vienna in March 2006, there was unanimity on “The need to prevent and reduce the cultivation of illicit crops, protect the environment,

empower communities and ensure that alternative development approaches are integrated into wider national strategies”.

5.2.17.2. International Narcotics Control Board (INCB)

The INCB was established in 1968 as per 1961 Convention. It is an independent quasi-judicial monitoring body mandated to implement and monitor the progress in the implementation of UN Drug Control Conventions. Its functions were laid down in the 1961, 1971, and 1988 Conventions. Broadly, they are as follows:

- i. It has to provide for licit production of narcotics for scientific and medical research and to ensure that these crops do not get diverted to illicit use.
- ii. It has to identify weaknesses in individual government functioning and also the degree of control they exercise over illicit manufacture of, trafficking in and use of drugs. It would contribute to the correction of the systems in the nation-states as well as the international system.

The INCB, in discharge of its responsibilities, adopts the following methods:

- i. It administers a statistical returns system to help governments to achieve a balance between supply of and demand for drugs.
- ii. It monitors and promotes measures by governments to prevent diversion of materials for illicit manufacture of drugs.
- iii. It analyses information given by governments, UN bodies, specialized agencies and other competent bodies to make sure that international drug control treaties are properly implemented by the governments.
- iv. It can initiate recommendations to provide technical and financial assistance to governments who need them.
- v. It can draw attention of individual governments, the CND and the ECOSOC in case its recommendations are flouted.

- vi. It has to maintain a dialogue with governments on their commitment on implementation of world drug policy, mutual co-operation and co-ordination at regional and world levels.
- vii. It will organize training programmes in collaboration with UNDCP, WHO, Interpol, etc.
- viii. It has to submit an annual report to the ECOSOC through the CND. The report is expected to identify the world trends in drug abuse, production and trafficking.

A basic principle of the enforcement of International Conventions is that any violation of the provisions thereof is punishable only under the domestic law of the country. It therefore, implies that signatories to the UN Conventions and other international agreements and treaties will have to frame or amend their laws accordingly.

5.2.17.3. United Nation Office on Drugs and Crime (UNODC)

It is the most visible face of the UN efforts on the drug and crime front including corruption. It has a three-pronged approach, namely, research, building a strong enforcement framework and making proper operational response. It provides training facilities for drug law administrators and scientists and sustains a partnership of nation states for combating drug abuse, organizing treatment and rehabilitation, controlling drug trade by causing reduction of demand and supply and signalling to corrupt leaders that there would be no safe haven for stolen and illegal assets. It advocates a balanced approach to drug control with an emphasis on preventive education and corrective measures, like treatment of addicts. It exhorts government to frame their drug policies with utmost care for public policy implications of the drug issue.¹⁰⁹

The UNODC has two main objectives, namely demand reduction and supply reduction in respect of all forms of drugs. It tries to fulfil the objectives in following ways:

¹⁰⁹ Supra note 80, at 240.

1. By assisting the member nations in developing a high quality information system.
2. By analysing the information provided by member states in respect of drug abuse, trafficking patterns and measures taken by them to prevent the evils of drug abuse.
3. By introducing international control on disinhibiting properties of psychotropic substances.
4. By expanding and diversifying preventive education and drug dependence treatment programme.
5. By involving the youth in a wider anti-drug strategy.
6. By assisting the enforcement of law, working directly with governments to enhance their effectiveness against illicit drugs and developing their capacity to successfully investigate, dismantle and prosecute trafficking groups.
7. By providing assistance to governments offering technical expertise, organizing training programmes for their enforcement personnel and delivering technical equipments to support frontline operations.
8. By assisting nations with legal assistance services through its legal teams in the field to help them address the problem of money laundering and funding of terrorism which are both a cause and an effect of drug trafficking.

Worldwide the UNODC has been taking various other types of initiative to combat the problem of drug abuse and trafficking. These initiatives do not follow a stereo typed pattern but are designed as the circumstances demand. Some of the interventions are recorded below:

5.2.17.3.1. Paris Pact, 2003

It is an initiative launched by the UNODC in 2003 to promote co-ordinated measures to counter narco-trafficking in and from Afghanistan. It is a partnership of 50 countries. It has been playing an increasingly assertive role in view of the fact that the

opium economy in Afghanistan constitutes 53% of the licit GDP of the country (as per 2007 figures) and poses a serious threat to international community in respect of health, terrorism and national security.¹¹⁰

5.2.17.3.2. Towards an Opium-free Laos

In 1998, Laos was the third largest producer of opium after Afghanistan and Myanmar and harvested 27,000 ha of opium poppy. It had nearly 63000 opiate users who together consumed about half of the total produce. However, a 2005 survey showed that all the farmers whose poppy fields were eradicated were not provided with the wherewithal to go in for alternative crops. The country also suffered from a low HDI (Human Development Index). The danger is that Laos may very well revert to its original pattern.

The UNODC therefore introduced a Strategic Programme Framework (2006-2009) (SPF) for Laos incorporating four points of action, viz, actions to provide special assistance to 1000 former opium producing villagers, to focus on treatment, rehabilitation, HIV/AIDS and drug abuse prevention, to strengthen the rule of law by training the judiciary and the supporting law-enforcement machinery and to foster international co-operation to these ends. The UNODC facilitates these programmes with its resources.¹¹¹

The International Narcotic Control Bureau in its 1990 report says that opium and poppy cultivation were largely responsible for the severe damage to the environment in a number of countries. The report said that drug related crime was rising faster than any other type of criminal offence in Western Europe.

¹¹⁰ Supra note 80, at P.241.

¹¹¹ Supra note 76, at P.241.

In conclusion, it is observed that drug abuse and illicit narcotics drug and psychotropic substances had emerged as two of the most serious scourges of the civilized society in the end of 21st century. These evils have grown in many parts of the world; they are threatening to jeopardize the health and well being of mankind. To fight this menace at the international level effectively, there is need for ensuring close co-operation among nations.