Chapter XXIII

JUVENILE DELINQUENCY

One and a half century ago, *Adolphe Quetelet*, the eminent Belgiam social statistician observed that adolescents, particularly the young males are prone to crime, disorder and delinquency because of their childish impulsiveness or adolescent conflict. To quote him, "the propensity to crime is at its maximum at the age when strength and passions have reached their height, yet when reason has not acquired sufficient control to master their combined influence". Since a nation's future depends upon young generation, the children deserve compassion and bestowal of the best care to protect this burgeoning human resource. A child is born innocent and if nourished with tender care and attention, he or she will blossom with faculties physical, mental, moral and spiritual, into a person of stature and excellence. On the other hand, noxious surroundings, neglect of basic needs, bad company and other abuses and temptations would spoil the child and likely to turn him a delinquent.[1] Therefore, expressing his concern for child-care, the noted *Nobel Laureate Gabrial Mistral* long ago observed :

> "We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait, the child cannot, right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him, we cannot answer 'tomorrow'. His name is 'Today'."

Thus children being an important asset, every effort should be made to provide them equal opportunities for development so that they become robust citizens physically fit, mentally alert and morally healthy endowed with the skills and motivations needed by society.[2]

Radzinowicz observed that neglected children and juveniles fall an easy prey to criminality. He asserted that the adolescents claim the highest share in violence due to dashing nature, lack of foresight, uncritical enthuasiasm, physical strength, endurance and desire for adventure.[3]

It must be conceded that the over-flowing criminality of youth cannot be attributed to biophysical factors alone. There are other influences such as population explosion, social, econcmic and political changes, pattern of education, etc., which account for the growing incidence of juvenile delinquency, particularly, in developing and third-world countries. The problem, therefore, has assumed alarming dimensions in recent years.

1. Justice V. R. Krishna Iyer 'JURISPRUDENCE OF JUVENILE JUSTICE : A PREAMBULAR PERSPECTIVE'—Souvenir of the International Conference on Shaping The Future of Law hosted by the Indian Law Institute, Delhi on 21-25 March, 1994.
2. *Ibid.*
3. Radzinowicz & Joan King : The Growth of Crime (1977) p. 17.

The early penology did not recognise any discrimination between adult and juvenile offenders so far punishment was concerned.[1] The problem of juvenile delinquency is therefore essentially of a recent origin. The youngsters between a certain age-group are easily attracted to the temptations of life and thus lend into criminality. As is often said, the child of today is the citizen of tomorrow, the criminal tendency in youngsters must, therefore, be timely curbed so that they do not turn into habitual criminals in their future life. It is with this end in view that most countries are presently tackling the problem of juvenile delinquency on priority basis. Many of them have established separate juvenile courts to deal with young offenders and the procedure adopted in these courts radically differs from that of a regular trial courts.

In India, special provisions providing for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and their trial and disposition are enacted under the Juvenile Justice Act, 1986[2] (Act No. 53 of 1986) which are uniformly applicable throughout the country excepting the State of Jammu & Kashmir.[3]

Movement for Juvenile Justice

The movement for special treatment of juvenile offenders started towards the end of eighteenth century. Prior to this, juvenile offenders were dealt with exactly like those of adults. They were prosecuted in criminal courts and were subjected to same penalties as adults. That apart, they served their sentence in the same prison in which other hardened criminals were lodged. The obvious result of lodging juveniles and habitual offenders in the same prison was that these institutions virtually turned into breeding centres of vices and criminality. The greater evil of the system was that it exposed young offenders to contamination due to their incarceration with other criminals.

The period of industrialisation did not bring any remarkable change in the attitude of reformists towards the young offenders. Juveniles were nothing more than a pawn in the game of trade. They were even sold as slaves for menial work. However, the wave of liberalism and legislative reforms during the mid-eighteenth century brought in its wake a radical change in the attitude of law reformists towards young offenders. They drew the attention of penologists towards the fact that what a child requires is not so much of reformation as formation.[4]

The crusade against harshness towards young offenders began in 1772 when certain special concessions were granted to juvenile delinquents in civil matters, such as probate, gift and will, etc. The adoption of the principle of *parans patriae* evolved by Court of Chancery[5] in England necessitated special provisions for handling the estates of minors as they could not manage their property themselves. Similar concessions were later extended to children under the law of crimes and finally the problem of

1. Sen P. K. : Penology Old & New, p. 149.
2. For the amended Act, 2000 *see* Appendix VI.
3. Section 1 (2) of the Juvenile Justice Act, 1986.
4. Fitzgerald, P. J. : Criminal Law and Punishment, (1962), p. 260.
5. *Eyre* v. *Shaftesbury*. (1772) 24 ER 659.

juvenile delinquency emerged as an independent movement. Today, the penal laws of most countries have adopted the principle that a child below a certain age[1] is *doli incapex*, that is, incapable of committing a crime, and hence cannot be convicted ; whereas a child between the age of seven and twelve can only be convicted if he has attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion.[2] This age range, however, varies from country to country. Thus, the age of responsibility in France was previously sixteen years which is now extended to eighteen years while under the Roman law it is the age of attainment of puberty.

Juvenile Delinquency—What it means ?

Etimologically, the term 'delinquency' has been derived from the Latin word *delinquer* which means 'to omit'. The Romans used the term to refer to the failure of a person to perform the assigned task or duty. It was *William Coxson* who in 1484, used the term 'delinquent' to describe a person found guilty of customary offence. The word also found place in Shakespearean famous play *'Macbeth'* in 1605. In simpler words it may be said that delinquency is a form of behaviour or rather misbehaviour or deviation from the generally accepted norms of conduct in the society.

However, the penologists have interpreted the word "juvenile delinquency" differently. Generally speaking, the term refers to a large variety of disapproved behaviours of children and adolescents which the society does not approve of, and for which some kind of admonishment, punishment or corrective measure is justified in the public interest. Thus, the term has a very extensive meaning and includes rebellious and hostile behaviour of children and their attitude of indifference towards society. Certain other acts such as begging, truancy, vagrancy, obscenity, loitering, pilfering, drinking, gambling etc. which vicious persons very often commit are also included within the meaning of the term juvenile delinquency.[3] It may, therefore, be inferred that a juvenile is an adolescent person between childhood and manhood or womanhood, as the case may be, who indulges in some kind of anti-social behaviour, which if not checked, may turn him into a potential offender.[4]

Expressing his view on juvenile delinquency, *Albert Cohen* observed that the only possible definition of delinquency is one that relates to the behaviour in question to some set of rules. The rules themselves are a heterogeneous collection of regulations, some common to all communities and others only to be found in one or two.[5] *Caldwell* prefers to leave the term vague and includes within it all acts of children which tend them to be pooled indiscriminately as wards of the State.[6]

Ruth Shonle Cavan (USA) observed that "irrespective of legal

1. Section 82 IPC provides that a child below the age of seven is *doli incapex*.
2. Section 83.
3. Sethna, M. L. : Society and the Criminal (2nd Ed.), p. 329.
4. It is suggested that this definition of juvenile delinquency is generic rather than specific and, therefore, it might be regarded as incompatible with the fundamental principle of criminal law which requires a distinct breach of law.
5. Cohen Albert : "Delinquent Boys". p. 3.
6. Caldwell : Criminology, p. 375.

definition, a child might be regarded as delinquent when his anti-social conduct inflicts suffering upon others or when his family finds him difficult to control. So that he becomes a serious concern of the community."

Some critics argue that the statutes defining the various delinquent acts are vague in terms of their contents because they are contrary to the fundamental principle of criminal law as expressed through the latin maxim *nullum crimen sine lege*, which means an act cannot be a crime unless it is so defined under the existing law. The idea is that there should be certainty about acts which are prescribed as crimes. Thus, a child or an adolescent who is growing up in idleness or wanders about the street in late night without any purpose or is habitually disobedient or uncontrolled is deemed to be a delinquent under certain statutes. This is obviously not in strict accordance with the definition of crime but such conducts are still treated as delinquent acts under the statutes relating to juveniles because they are created not to punish them but to keep them away from such indecent and lascivious conducts which are detrimental to the development of their personality.

In a broad generic sense, juvenile delinquency refers to "a variety of anti-social behavior of a child and is defined somewhat differently by different societies, though a common converging tendency may be noted in those forms, namely, socially unacceptable tendency of the child at any given time."

It may be noted that a great variety of acts included within the term 'juvenile delinquency' are otherwise non-criminal in nature and are freely tolerated if done by adults. For example, smoking, drinking or absenting oneself from home may be a permissible conduct for adults but the same is treated as a delinquent act if committed by children or adolescents.

It is sometimes argued that delinquency is not a criminal status. But this view has been repelled by *Paul W. Tappen* who asserts that euphemistic terminology such as "hearing" instead of "trial", or "disposition" instead of "sentence" should not conceal from us the fact that nature of entire procedure may be little different from that of a criminal court, but it may be even worse, for it may abandon the fundamentals of justice in the guise of promoting superior justice.[1]

The question of exact definition of juvenile delinquency has always remained a debatable issue among criminologists. It has been engaging the attention of United Nations for quite some time. The Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in August, 1960 in London, took up the problem of juvenile delinquency, and the concensus was that the issue of definition need not be stretched too far and the meaning of the term 'juvenile delinquency' be restricted to all violations of criminal law and maladjusted behaviours of minors which are disapproved by society.

The General Assembly of the United Nations adopted the convention on Rights of the Child on 20th November, 1989 which prescribed a set of standard to be adhered to by all the State parties in securing the best interest of the child. The convention also emphasised on social reintegration

1. Tappen Paul, W. ; Juvenile Delinquency, p. 170.

of child victims, to the extent possible, without resorting to judicial proceedings. The Government of India ratified the convention on 11th December, 1992 and therefore, it became expedient to re-enact the existing Juvenile Justice Act, 1986 to meet the requirements of the standard prescribed by the Convention on the Right of the child and all other international instruments. It is in this backdrop that the Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted repealing the Juvenile Justice Act, 1986.

In the Juvenile Justice (Care and Protection of Children) Act, 2000, the term 'delinquent juvenile' used in the earlier Juvenile Justice Act, 1986 has been substituted by the words 'juvenile in conflict with law.'[1] It is, therefore, obvious that every conduct prohibited by statute is not to be taken as an act of delinquency. Instead, the conduct which tends to constitute an offence, not only from the legal standpoint but also from the angle of prevalent social norms and values shall be included within the meaning of the term 'delinquency'. For example, smoking, begging, vagrancy, etc. being harmful for the growing children are intended to be controlled by the enforcement of the Act.

Similarly, the children who are incorrigible, uncontrollable, destitute or orphans etc. who need active support and care of the community and who were termed as 'neglected children' under the repealed Juvenile Justice Act of 1986 have been called as 'children in need of care and protection',[2] under the Juvenile Justice (Care and Protection of Children) Act, 2000 which came into force on December 30, 2000. Under the Act, 'juvenile' or 'child' means a person who has not completed eighteenth year of age, be he a boy or a girl.

Causes of Juvenile Delinquency

Juvenile delinquency has become a global phenomenon these days. Despite intensive rehabilitative measures and special procedure for tackling the problem of juvenile delinquency, there is a growing tendency among youngsters to be arrogant, violent and disobedient to law with the result there has been considerable rise in the incidence of juvenile delinquency. The main causes for this unprecedented increase in juvenile delinquency are as follows :

(1) The industrial development and economic growth in India has resulted into urbanisation which in turn has given rise to new problems such as housing, slum dwelling, overcrowding, lack of parental control and family disintegration and so on. The high cost of living in urban areas makes it necessary even for women to take up outdoor jobs for supporting their family financially, with the result their children are left neglected at home without any parental control. Moreover, temptation for modern luxuries of life lures young people to resort to wrongful means to satisfy their wants. All these factors cumulatively lead to an enormous increase in juvenile delinquency in urban areas. It has rightly been commented that today "there is no crime but there are only criminals in the modern sense of penology". It is, therefore,

1. Section 2(l) of Juvenile Justice (Care and Protection of Children) Act, 2000.
2. Section 2(d).

desired that the society be protected from offenders by eliminating situations which are conducive to delinquency.

(2) Disintegration of family system and laxity in parental control over children is yet other cause of increase in juvenile delinquency. The British Home Secretary *Mr. Butler* once said that the natural consequences of broken homes are lack of parental control, absence of security and want of love and affection towards children, which are contributing factors for juvenile delinquency.

(3) Unprecedented increase in divorce cases and matrimonial disputes is yet another cause for disrupting family solidarity. Today, man's hold over his family is declining fast. Undue discrimination among children or step-motherly treatment also has an adverse psychological effect on youngsters. Once a child feels neglected, he is bound to go astray and this furnishes a soothing ground for juvenile delinquency.[1] The children, therefore, need affection, protection and guidance at home and have to be handled very carefully. Greater emphasis should be on preventing them from indulging into criminality rather than curing them after they have committed the offence. The parents and other elderly members of the family must provide adequate opportunities for their youngsters to develop their personality. This is possible through proper education and training and child care.

(4) The rapidly changing patterns in modern living also make it difficult for children and adolescents to adjust themselves to new ways of life. They are confronted with the problem of culture conflict and are unable to differentiate between right and wrong. This may derive them to commit crime.

(5) Biological factors such as, early physiological maturity or low intelligence, also account for delinquent behaviour among juveniles. The age of puberty among girls has gone down by three or four years on an average. Today, Indian girls attain puberty at the age of twelve or thirteen while they still remain mentally incapable of conceiving about the realities of life. In result, they fall an easy prey to sex involvements for momentary pleasure without, however, realising the seriousness of the consequences of their act. It is, therefore, desired that the parents should explain to their children, particularly the girls, the possible consequences of prohibited sex-indulgences which might serve a timely warning to them. Special care should be taken to ensure effective protection to girls against prostitution and child pornography.

(6) Migration of deserted and destitute boys to slums brings them in contact with anti-social elements carrying on prostitution, smuggling of liquor or narcotic drugs and bootleggers. Thus, they lend into the world of delinquency without knowing what they

1. Burt, C : The Young Delinquents, p. 96.

are doing is prohibited by law.

(7) Poverty is yet another potential cause of juvenile delinquency. Failure of parents to provide necessities of life such as food and clothing etc. draws their children to delinquency in a quest for earning money by whatever means. At times, even the parents connive at this for the sake of petty monetary gains.

(8) Besides the aforesaid causes, illiteracy, child labour, squalor, etc., are also some of the contributing factors aggravating juvenile delinquency.

It must be stated that the nature of delinquency among male juveniles differs radically from those of girls. Boys are more prone to offences such as, theft, pick-pocketing, gambling, eye-teasing, obscenity, cruelty, mischief, etc., while the offences commonly committed by girls include sex-involvements, running away from home, truancy and shop lifting. It is further noteworthy that delinquency rate among boys is much higher than those of girls, the reason being that boys by nature are more adventurous and enduring than those of girls.

Justifications which the Juveniles may advance against their Delinquent act

David Matza (UK)[1] in his theory of delinquency has attributed the following justifications or excuses which the juveniles quite often advance to explain or neutralise their criminal activity :—

(1) They usually deny responsibility by claiming that the act was a result of uncontrollable passion, accident, poverty or parental neglect etc.

(2) The delinquent may take the plea that no one is actually harmed, either physically or financially by his criminal act. Those indulging in alcoholism, drug-tracking vagrancy etc. may justify their act on this ground. They may even perceive it as an act being done for their victim's good.

(3) He may claim that the victim was also criminal and therefore, he should not complain or that the victim was the first to start trouble hence he has no moral justification to attribute criminality to the delinquent. For example, in the case of sex-offence, the delinquent may allege that it was the victim who initiated the cause or in case of domestic violence, that the victim deserved the violence because he or she had misbehaved.

(4) The juvenile offender might claim that since everyone has at sometime or the other committed a criminal act, hence no one has a moral justification to blame or condemn him.

(5) The approval of the gang or group or criminal organisation may be more important to the delinquent than that of his family or society and he may justify his criminal act on that ground. This is generally true with juveniles associated with criminal gangs whose loyalty they consider more important than that of their own family members.

1. Matza David : Delinquency & Drift (1964) p. 39.

Juvenile Justice in U.K.

While handling the problem of juvenile delinquency, the English criminal justice administrators have preferred to deal with it outside the framework of criminal law. Though the problem has attracted nationwide attention, many reformists feel that delinquency among adolescents is a transient phase and will disappear as they grow older, hence they need to be tackled differently. Moved by this consideration, the English penal reformists adopted different procedure and methods for treatment of juvenile offenders in United Kingdom.

In England the "Ragged Industrial School Movement" started in the second quarter of the nineteenth century was perhaps the first constructive institutional endeavour which enabled the public to appreciate the desirability of corrective methods of treatment for juvenile offenders. An industrial school was set up for homeless, destitute and delinquent children. A social activist, *Miss Marry Carpenter* did a pioneering work in this field and as a result of her persistent efforts legislation was enacted which received approval of House of Lords in 1847. She started a Ragged Industrial School in Bristol. Later, another Day Industrial School was started at Alberdeen.

In 1838, Parkhurst prison was set up for the treatment of juvenile offenders. Soon after, the British Parliament enacted the Summary Jurisdiction Act, 1879, which provided that a child below the age of seven (raised to eight by the statute subsequently) is incapable of committing a crime and, therefore, cannot be convicted. The Act provided for a simple trial-procedure for juvenile delinquents and stressed that the magistrate should recommend individualised treatment for the reformation of such offenders. Similar legislations were enacted by other countries with a view to affording special consideration to children and adolescent offenders.

The delegates of the International Congress on Prevention of Crime and Treatment of Offenders held in Paris in 1895 unanimously agreed on the necessity of special procedure and greater scope for the discretionary power of the courts while dealing with the cases of juvenile offenders. Consequently, an Act called the Probation of Offenders Act, 1907 was enacted in England which empowered the courts to grant release to juveniles in appropriate cases. The Act further provided for the appointment of probation officers who were to visit, supervise and report to the courts about juvenile delinquents and help and advise the young offenders in solving their problems.

Juvenile Courts were first established in England under the Children Act, 1908. These courts differed from ordinary courts inasmuch as they were less public, less formal, and less formidable.[1] The identity of accused or of any juvenile witness was not to be disclosed, nor photographs etc. could be taken for publication. Guardianship of the child was the guiding principle in the procedure to be followed in juvenile courts. The prime duty of these courts was to afford proper care and protection to the child or young offender and take necessary steps for removing him from undesirable surroundings and ensure that proper arrangements were made for his education and

1. Fitzgerald, P. J. : Criminal Law & Punishment (1962), p. 261.

training.[1] In addition to criminal jurisdiction, the Children and Young Offenders Act, 1933, also conferred civil powers[2] to juvenile court in certain important matters. The Act provided that any child[3] and young person[4] who committed a crime, should be summarily tried by a juvenile court.

The Act contemplated that before commencing the trial of juvenile delinquent, proper enquiries into his family background should be made in order to find out the probable cause of his delinquent conduct. However, this task is now assigned to probation officers who seek co-operation of the parents of the under-trial.

The trial of children and adolescents by a juvenile court could result into two consequences, namely—

(i) He could either be allowed to return to his home on being discharged, fined or on an undertaking of attendance at the Attendance Centre.[5] Doubts have always been expressed about the justification for imposition of fine in cases of juveniles since it is the parents and not the delinquent child who are penalised under this mode of punishment. There seems no justification in punishing the parents unless, of course, there is a failure to exercise due care of the child on their part.

(ii) Another mode of treatment of young offender was to remove him from his home to a correctional institution or a Borstal.

The Children and Young Persons Act, 1933, provided for the establishment of Remand Homes[6] in England for the treatment of children and young offenders. The children and adolescents below the age of seventeen were kept under observation in these Homes before their trial in a juvenile court. Similar arrangements were recommended for young adults between the age group of 17 and 21 by the English Criminal Justice Bill, 1938. But the Bill could not be finally passed due to the outbreak of World War II. The Criminal Justice Act, 1948, however, provided certain degree of security to young adult offenders through Remand Homes. Two Remand Centres were set up one each at Ashford and Middlesex in July 1961 for handling juvenile offenders who were in the age group of seventeen and twenty-one years of age. With the enactment of Criminal Justice Act, 1982 in U.K., the law relating to juveniles has been considerably liberalised.

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1. Children & Young Offenders Act, 1933.
2. The civil jurisdiction of juvenile court extended to three categories of cases which Fitzgerald characteries as (1) 'beyond control cases', that is when children and young persons are brought before the court by parents or guardian being uncontrollable, (ii) 'Care and Protection Cases', that is, when local authority or the police bring the delinquent before the court believing that he needed care and protection ; and (iii) the child who persistently plays traunts from school could be brought to the juvenile court.
3. A person under fourteen years of age.
4. A person between the age of fourteen and seventeen.
5. Attendance Centres are set up under the Criminal Justice Act, 1948. Now the Act of 1961 provides normal total of twelve hours attendance which may be extended to a maximum of 24 hours in appropriate cases.
6. Section 77 of the Act.

Juvenile Justice in U.S.A.

The origin of juvenile courts in the United States can be traced back to the system of appointment of State Agents in Massachusetts (Boston) in 1869. These State Agents were to take protective care of juveniles. In 1878, the work of the State Agent was transferred to probation officer who took care of the juvenile offenders placed under his charge.

Today there is a Juvenile Court in each State of the United States. It is usually a specialised unit in the State judicial service which is established in the local community. The legislature determines its proceedings while the higher courts supervise its functions. The various State agencies such as State Welfare Departments influence the fiscal policies in relation to the juvenile courts. These Courts are usually financed by local governments. The Judge is elected and the police, school and other agencies make frequent referrals to it.

The working of a Juvenile Court in USA is relatively simple and more or less informal. As first, the police takes custody of the juvenile offender. The police officer has the discretion either to keep the child in custody or to immediately release him, admonish him/her or to do both, and allow parents to take the custody of the child. Next, the police contacts the juvenile court for notification of parents and the person notified by the Court assumes responsibility of custody of the delinquent. The police also interrogates the offender and takes his finger prints or photographs. These records provide important clues for tracing the juvenile.

The Court while trying the juvenile, gives a hearing to probation officer who apprises it about the antecedents of the delinquent. The juvenile having been placed under probation officer's protective care, it is for the latter to find a suitable home, school or employment for the child. In case the child violates any of the conditions of probation, he is sent to a 'Certified School' or to Children Home by an order of the Court. The age limit for juvenile trial is seventeen years.

However, at times the waiver of juvenile leads to his trial by an Adult's Court. Some youngsters who according to statutory age limit are close to adulthood, may have been involved in repeated offences and prove a danger to society. Such offenders are sent for trial in an ordinary court.

Juvenile Delinquency in other Countries

The problem of juvenile delinquency still remains a paradox despite unbriddled efforts on the part of penologists to curb this menace. Several causes such as poverty, slum-dwelling, neglect or partiality by parents towards their children, lack of parental care or social security may be attributed to the unprecedented increase in juvenile delinquency.[1] The situation in European countries in this regard is, however, not so alarming as in United States where the problem has touched its climax in recent years. *Ms. Sophia M. Robinson* in her learned article entitled "Why Juvenile Delinquency Programmes are Ineffective" has ably pinpointed the causes of the failure of preventive efforts in suppressing juvenile delinquency in

1. Observation made by Prof. Hons Heff formerly Chief of Vienna's Psychiatric Neurologic University Clinic.

United States.[1]

Norway

In Norway, the criminal cases of young offenders between the age group of 14 and 18 are referred to the Municipal Juvenile Welfare Committee consisting of five members. This Committee functions to suggest adequate measures with regard to juvenile delinquents. The enactment of Child Welfare Act, 1953, however, provides that delinquent child should be allowed to stay at home and the Juvenile Welfare Committee should take preventive steps by visiting the delinquent's home at frequent intervals and suggest effective measures to keep the offender away from criminality. Thus, there is greater emphasis on medico-psychological method of treatment of young delinquents in modern times.

Turkey

Turkey has shown keen interest in juvenile justice. Even though rate of juvenile delinquency is not very high, slightest rise in child delinquency excites concern in that country because of the stronghold of the family institution.

The eminent Turkish scholar *Nephan Saran* dealt with socio-cultural pecularities of the children under 18 years of age who were involved with the police of Istambul during 1956-68. He observed that thefts, violence, sexual offences, smuggling and pickpocketing were the most prevalent crimes and delinquency was concentrated in the age group of 16 to 18 years. The main causes of delinquency were crowded families, poor housing, unemployment and culture conflict.

International Concern for Juvenile Justice

The immensity of the problem of juvenile delinquency has been engaging the attention of penologists at international level also. The international Penal And Penitentiary Commission[2] worked successfully on the prevention of crime and treatment of offenders till October, 1951 and repeatedly stressed on the necessity of rationale and humane treatment methods which could avoid the need of keeping juvenile offenders in prison and thus disassociate them from the criminal world.

The preparatory meeting of experts in social defence (African Region) for the Fourth United Nations Congress (Kyoto in Japan held during 17-26 Aug. 1970) on prevention of Crime and Treatment of offenders was held in Addis Ababa on 5-7 November, 1971. The consensus in that meeting was that family tensions make the problem of juvenile delinquency more extensive because of neglect and misbehaviour of parents.

The pressing problems of juvenile delinquency in developed and developing countries drew attention of the United Nations to work out some guiding principles for Juvenile Justice System. The United Nations Asia and Far East Institution made significant contribution in this behalf as a result of which the Seventh U.N. Congress on Prevention of Crime & Treatment of Offenders adopted, in September 1985, the Standard Minimum Rules for

1. Quoted by David Dressler in Readings in Criminology (2nd Reprint). p. 681.
2. This was called International Penal Commission before 1928.

Administration of Juvenile Justice.[1] These rules were subsequently adopted by the U.N. General Assembly in November 1985 and embodied the following basic principles :

(1) Juveniles in trouble with law should be provided with carefully constructed legal protection.

(2) Pre-trial detention should be used only as a last resort. Child and juvenile offenders should not be held in a jail where they are vulnerable to the evil influences of the adult offenders.

(3) Juvenile offenders should not be incarcerated unless there is no other appropriate response that will protect the public safety and provide the juvenile with the opportunity to exercise self-control.

(4) Member nations should strive individually and collectively to provide adequate means by which every young person can look forward to a life that is meaningful and valuable.

India, being a U.N. member has responded favourably to this call of the international body and enacted a comprehensive law on the subject called the Juvenile Justice Act, 1986.[2]

Juvenile Justice in India

Available statistics on juvenile delinquency in India reveal that the problem is not as tense here as in the western world. This may be due to variations in living conditions such as greater family affiliation and parental control, stronghold of religious convictions and due regard for moral precepts in Indian society. This is not to suggest that the proportion of juvenile delinquency in India is negligible. The impact of western civilization and temptation for luxuries and pompous life has greatly disturbed the modern Indian youth. Consequently, there has been a considerable growth in crimes committed by juveniles. Like any other country, India also seeks to tackle the problem of juvenile delinquency on the basis of three fundamental assumptions :—

(i) young offenders should not be *tried*, they should rather be *corrected* ;

(ii) they should not be *punished* but be *reformed*; and

(iii) exclusion of delinquents *i.e.* children in conflict with law from the ambit of court and stress on their non-penal treatment through community based social control agencies such a Juvenile Justice Board,[3] Observation Homes,[4] Special Homes[5] etc.

The Indian law contains a more precise and clear-cut definition of juvenile delinquency. It provides that any violation of existing penal law of the country committed by a child under eighteen years, shall be an act in conflict with law for the jurisdiction of the Juvenile Justice Board.

It is significant to note that the Juvenile Justice Act, 2000, lays down a separate procedure for dealing with the neglected and uncontrollable

1. Briefly called as SMR JJ.
2. For the amended Act, 2000 *see* Appendix VI.
3. Section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000.
4. Section 8.
5. Section 9.

juveniles who have been termed as 'children in need of care and protection'. The former are to be dealt with by the Juvenile Justice Board.

The provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 would clearly indicate that unlike USA and England, the courts in India do not have jurisdiction in relation to child in conflict with law. That apart, the term 'delinquency' in relation to juveniles has the same meaning as 'offences' committed by adults. Thus, there is no difference between the contents of delinquency and an offence. The only difference is that an offence committed by an adult person is triable in ordinary court whereas the juvenile who commits a delinquent act is proceeded against in the Juvenile Justice Board through a special procedure.

Besides, certain special provisions also exist in the Indian Penal Code and the Code of Criminal Procedure, 1973 in relation to the young and juvenile offenders which provide for their special treatment and procedure. They are as follows :—

(1) Sections 82 and 83 of the Indian Penal Code contain elaborate provisions regarding the extent of criminal liability of children belonging to different age groups. A child below the age of seven is *doli incapex*, that is, incapable of committing a crime.[1] Likewise, a child between seven and twelve years of age has only a limited criminal liability.[2] The contention is to justify a lenient treatment to young offenders because they cannot appreciate the nature and consequences of their act due to lack of sufficient maturity and understanding. Under the circumstances, it would be grossly unjust to treat them at par with the adult offenders.

(2) That apart, Section 360 of the Code of Criminal Procedure, 1973 provides that when any person who is below twenty-one years of age or any women, is convicted of an offence not being punishable with death or imprisonment for life, and no previous conviction is proved against such person, the court may, having regard to the age, character and antecedents of the offender, and to the circumstances in which the offence was committed, order release of the offender on probation of good conduct for a period not exceeding three years on entering into a bond with or without sureties, instead of sentencing him to any punishment. Thus such a 'first offender' is not to be tried in a criminal court through the ordinary procedure. Instead, he is to be dealt with and corrected through special methods or treatment under the law. The object is to segregate the young offender from hardened criminals so that he is not exposed to recidivistic tendencies.

(3) Section 27 of the Code of Criminal Procedure, 1973 further suggests that a lenient treatment to juveniles has already received statutory recognition in the Indian law. The section provides that if a person below sixteen years of age commits an offence other than the one punishable with death or imprisonment for life, he should be awarded a lenient punishment depending on his previous history, character and

1. Section 82 IPC.
2. Section 83.

circumstances which led him to commit the crime. His sentence can further be commuted for good behaviour during the term of his imprisonment.

With a view to preventing the juvenile offender from stigmatisation and embarrassment, the proceedings instituted against him are neither published nor publicised. His name, address or identity is not disclosed and general public is excluded from witnessing the trial. The delinquent's parents may, however, be allowed to attend the trial. The object of these closed-door proceedings is to keep off the delinquent from the rigours of procedural law and make the trial simple and less formal.

The guiding principles relating to the treatment of children and young delinquents are now contained in two Central Acts, namely, the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Probation of Offenders Act, 1958. The latter Act provides for release of juvenile offenders on probation. The theme underlying these legislative measures pre-supposes that youngsters are "naughty" by nature and, therefore, society's attitude towards them should be one of tolerence and generosity. That apart, the mental attitude of juvenile delinquent at the time of committing crime certainly differs from that of a confirmed adult criminal. It would, therefore, be grossly unjust to punish the two alike.

Historical Conspectus of the Law Relating to Juvenile Justice in India

Prior to the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000 which came into force w.e.f. December 30, 2000, the Juvenile Justice Act, 1986 was the governing law on the subject. Before this Act was introduced w.e.f. October 2, 1987, the Children Act, 1960 was operative throughout the country. The States were, however, authorised to enact their own laws for the care and protection of the delinquent children and juveniles. Thus, besides the U.P. Children Act 1951, the State of Uttar Pradesh also enacted laws prohibiting teenagers from smoking *bidis* and cigarettes. Some of the States had their own Children Acts.[1]

A review of the working of the Children Act, 1960 (subsequently repealed by J.J. Act, 1986) would indicate that greater attention was required to be given to children who were found in situations of social maladjustment, delinquency and neglect. The justice system as available for adults was not considered suitable for being applied to juveniles. It was deemed necessary that a uniform juvenile justice system should be introduced throughout India which would take into account all aspects of the social, cultural and economic changes in the country. There was also need for greater involvement of informal systems and community based welfare agencies in the care, protection, treatment, development and rehabilitation of juveniles.

It must be stated that the Children Act, 1960 was preceded by the United Nations Declaration of the Rights of the Child in 1959. Thereafter,

1. Examples are the Bombay Children Act, 1954, the Madhya Pradesh Children Act, 1970, the Hyderabad Children Act, 1951 and the Saurashtra Children Act, 1956, Assam Children Act, 1971, the Rajasthan Children Act, 1970, the Kerala Children Act, 1973, the Haryana Children Act, 1974 etc.

113 nations, by consensus, promulgated the Vienna Declaration & Programme of Action where the rights of child in general and *girl child* in particular, received worldwide recognition. It was resolved that the member States should integrate the Convention on Rights of the Child into their national action plan. This provided a blue-print for juvenile justice legislation for developed and developing nations. India, being a signatory to the Convention, drew up a comprehensive uniform legislation to replace the Children Act, 1960 and the State enactments framed thereunder. Thus the Juvenile Justice Act, 1986 came into existence and was in force w.e.f. October 2, 1987.

The Juvenile Justice Act, 1986 (repealed by J.J. Act, 2000)

The Juvenile Justice Act, 1986 which replaced the earlier Children Act, 1960, aimed at giving effect to the guidelines contained in the Standard Minimum Rules for the Administration of Juvenile Justice adopted by the U.N. countries in November, 1985. The Act consisted of 63 sections spread over seven chapters. The Act which extended to whole of India except in Jammu & Kashmir provided for the care, protection, treatment, development and rehabilitation of neglected delinquent juveniles and for the adjudication of certain matters relating to, and disposition of delinquent juveniles. The main objectives of the Act were as follows :—

(1) It laid down a uniform framework for juvenile justice in the country so as to ensure that no child under any circumstances is lodged in jail or police lock-up.

(2) It spelled out the machinery and infra-structure required for the care, protection, treatment, development and rehabilitation of various categories of children coming within the purview of juvenile justice system.

(3) It set out the norms and standards for the administration of justice in terms of investigation and prosecution, adjudication and disposition, care and protection, etc.

(4) It sought to develop appropriate linkage and coordination between the formal system of juvenile justice and voluntary agencies engaged in the welfare of neglected and socially maladjusted children.

(5) The Act constituted certain special offences in relation to juveniles and provided punishment for them.

The Act remained operative for nearly thirteen years when it was repealed and replaced by the Juvenile (Care and Protection of Children) Act, 2000 which is now the central law operative throughout the country w.e.f. December 30, 2000.

The Juvenile Justice (Care and Protection of Children) Act, 2000

As stated earlier, one of the special features of this Act is that a juvenile who has committed an offence is not addressed as 'juvenile delinquent', instead he is called a 'juvenile in conflict with law'. The object perhaps is to avoid stigma which the word 'delinquent' carries with it in case of juvenile offenders.

The trial of a juvenile in conflict with law is held by the Juvenile Justice Board which has to consider the following issues in respect of the age of the juvenile before proceeding with the trial:

(i) whether the person before it *i.e.* Juvenile Justice Board, is within the prescribed age of 18 years or not; and

(ii) for the purpose of determining the age, the relevant date is the date on which the juvenile is brought before the Board for inquiry and proceedings.

The Supreme Court in *Deoki Nandan Dayma* v. *State of Uttar Pradesh*,[1] held that entry in the school register as to the date of birth of student is admissible in evidence to show whether the accused is juvenile or not. Its acceptance shall, however, depend on the probative value of such entry in the school register, that is, whether it was proper or not. The Court further clarified that in case of difference of date of birth between school certificate and medical certificate, the date mentioned in school certificate should be taken as authoritative because the certificate of medical officer may be based on mere guess. Allowing the appeal, the Court directed the High Court of Allahabad to re-hear and dispose of the revision at the earliest as it was already long pending before it.

The Madhya Pradesh High Court in its decision in *Sunil & another* v. *State*,[2] clarified that the Court cannot leave the determination of age of juvenile entirely on the evidence of juvenile, but it is required to make an inquiry *suo motu*. In this case, the ADJ, Chhatarpur had rejected the bail application of the accused on the basis of ossification test and medical report which showed that the appellant was not a juvenile. The High Court ruled that ossification test is not a conclusive proof in the matter and it is the primary duty of the court to find out whether applicants are covered by the Juvenile Justice Act or not and the juvenile may not be able to lead any evidence as to his exact age. "The Court must do participatory justice and exercise *suo motu* powers rather than be a silent spectator". The case was, therefore, remanded to the learned ADJ, Chhatarpur for retrial.

In *Izaz Ahmad* v. *State of Madhya Pradesh*,[3] reiterating its earlier ruling as to the manner and the procedure for determination of age of the juvenile concerned, the Court held that the Sessions Judge is bound to hold an inquiry and record a finding whether the accused is juvenile or not. In the instant case, the petitioner accused was never produced before the Juvenile Court or any other authority under the Juvenile Justice Act. Therefore, there was no occasion for any such authority to hold inquiry under section 32 of the Act. As such, the Court below was directed to itself hold an inquiry and record a finding and it is only after doing so, it should proceed with the trial of the case.

In *Mohd. Dahaur Mia* v. *State of Bihar*,[4] the petitioner alleged that he was a juvenile below the age of 16 years under the Juvenile Justice Act, 1986 (now repealed). The CJM, however, held no enquiry for determination of the age of the accused under Section 32 of the Act nor did he record any

1. (1997) 10 SCC 525.
2. 2001 (1) C.Cr.J. 149 (MP) (C.Cr.J. stands for Current Criminal Judgments).
3. 2001 (1) C.Cr.J. 212 (MP).
4. 1995 (2) Crimes 116 (Pat).

opinion about the age of the petitioner. The Patna High Court held that in case of a juvenile accused, his bail application has to be considered only under Section 18 of the Act and bail application under Section 439 of Cr.P.C. would not be maintainable and if a person is aggrieved by an order passed under Section 18 of the Act, he has a remedy to appeal before the Court of Session under Section 37 of the Act. The High Court has only the revisional power under Section 38 of the Act.

In *Ajay Pratap Singh* v. *State of Madhya Pradesh*,[1] the High Court set aside the charges against the juvenile accused because no inquiry as to the determination of his exact age was made by the trial court. In this case, Session Judge had decided *vide* his order dated 10th July, 2000 that according to the medical report of the accused he was above the age of 16 and, therefore, could not be allowed the benefit of trial under the Juvenile Justice Act, 1986. On appeal, the High Court ruled that where the accused has claimed himself to be a juvenile, it is the primary duty of the trial court to enquire and ascertain about the exact age of the accused and decide whether he or she is entitled to the benefit of being tried under the Juvenile Justice Act.

In the case of *Dhruvendra Singh* v. *State of Rajasthan*,[2] the High Court observed that for the purpose of application of the Juvenile Justice Act, the Court should not depend on the medical report of the accused or his physical built of the body for determination of the age of the accused but should take into consideration the date of birth as recorded in the school register or any other available evidence as to his age.

The Supreme Court in *Prabhunath Prasad* v. *State of Bihar*,[3] reiterated that in case of trial of juvenile accused the trial court should *suo motu* hold an inquiry as to the exact age of the accused so as to eliminate any kind of dispute or doubt as to the eligibility of the accused for being tried under the Juvenile Justice Act.

In *Ku. Anita* v. *Atal Behari*,[4] the High Court of Madhya Pradesh ruled that the date of birth of the juvenile accused as recorded in the Register of Birth & Death, are more authentic than the one entered in the medical report and, therefore, the former should be given priority while considering the age of the accused for his or her trial under the Juvenile Justice Act.

The Supreme Court in *Ramdeo* alias *Rajnath Chouhan* v. *State of Assam*,[5] observed that for the determination of the age of juvenile for the purpose of his trial under the Juvenile Justice Act, his date of birth as recorded in the school register may be accepted provided it is entered by a competent authority. In the instant case, the accused was a juvenile according to his date of birth as recorded in the school register but there was no evidence to prove that it was recorded by a public servant or a competent authority in discharge of his official duty and, therefore, could not be accepted as an authentic evidence for the determination of the age of the accused.

1. 2000 (1) C.Cr.J. 137 (MP).
2. 1990 Cr.L.R. 481 (Raj.).
3. AIR 1988 SC 236.
4. 1993 (1) C.Cr.J. 240 (MP).
5. AIR 2001 SC 2231.

Relevant date as to determination of age of the Juvenile : Whether it should be the date on which offence is committed or the date on which the juvenile is brought before the Court for trial.

In the case of *Krishna Bhagwan* v. *State of Bihar*,[1] the full Bench of the Patna High Court observed that for determination of the age of the juvenile for the purpose of his trial under the Juvenile Justice Act, the relevant date should be the date on which the offence was committed. Therefore, where the juvenile accused is within the age-limit prescribed by the Act, he or she should be tried in a Juvenile Court (now Juvenile Justice Board under the Juvenile Justice Act of 2000) despite the fact that he exceeded that age-limit at the time when he was brought before the Court for trial.

Reiterating the same view, the Supreme Court in *Bhola Bhagat* v. *State of Bihar*,[2] held that for being entitled to be tried under the Juvenile Justice Act, the age of the accused on the date of occurrence of the offence should be taken into consideration and it is immaterial if he exceeds the prescribed age on the date of his being produced before the Court for trial.

But the Supreme Court in its decision in *Arnit Das* v. *State of Bihar*,[3] overruling its earlier decision, held that the crucial date to decide the issue whether a person is juvenile or not, is the date when he/she is brought before the competent authority and not the date of commission of the offence. The competent authority shall proceed to hold inquiry as to the age of that person for determining the same by reference to the date of appearance of the person before it.

In *Rajender Chandra* v. *Chandigarh Administration*,[4] the accused was charged under Section 302/34, IPC on February 27, 1997 and was taken into custody the same day. He claimed himself to be a juvenile and demanded the benefit of being tried under the Juvenile Justice Act, 1986 (now repealed). The Court of Magistrate First Class rejected the plea of the accused after holding an inquiry about his age and the Sessions Court also maintained the trial court's decision. The accused filed a revision petition against this order and the High Court accepted the petitioner's plea that he was a juvenile and was entitled to be tried under the Juvenile Justice Act. The complainant and father of the victim, both appealed against the order of the High Court to the Supreme Court.

The Supreme Court came to the conclusion that on the basis of BHP, Birth & Death Register and the High School certificate, the date of birth of the accused was 30th September, 1981 and this was supported by evidence of the parent and teachers of the accused. The Court held that the burden of proving that the accused was within the prescribed age-limit for being treated as juvenile is on the accused himself. But the plea of the accused that he was a juvenile and hence be tried under the Juvenile Justice Act having been rejected by the trial court and the Court of Session, there were two distinct opinions about this issue. Therefore, the Court ruled that where

1. AIR 1989 Pat. 217.
2. AIR 1998 SC 236.
3. AIR 2000 SC 2264; See also *Santenu Mitra* v. *State of West Bengal*, AIR 1999 SC 1587.
4. AIR 2000 SC 748.

there are two conflicting views about a particular issue, the one which is beneficial to the accused, should be accepted. Accordingly, the accused was to be treated as juvenile and be tried under the Juvenile Justice Act.

In a recent case, namely, *Pratap Singh v. State of Jharkhand*,[1] a three-judge Bench of the Supreme Court, while considering the question regarding the date by reference to which age of a boy or a girl has to be determined so as to find out whether he or she is a juvenile or not, observed that there exists conflict between the decisions of the Court in *Arnit Das* v. *State of Bihar*,[2] and *Umesh Chandra* v. *State of Rajasthan*.[3] The Bench, therefore, observed that since the question involved is one of the frequent recurrence and the view of law taken in this case is likely to have bearing on the new Juvenile Justice Act, 2000, the matter deserves to be heard by a Constitution Bench of the Court.

The view expressed by the Supreme Court in *Arnit Das's* case, finds support in the provision contained in Section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2000 which provides that where the Court is satisfied that at the beginning of inquiry, the accused was a juvenile, his trial under the Act would continue even if he or she crosses the prescribed maximum age of 18 years during trial proceedings. Thus the crucial date for determination of the age of the accused to be tried under the Juvenile Justice Act would be the date on which he was produced before the competent authority or Juvenile Justice Board for inquiry or trial.

A 'Juvenile in conflict with law'[4] is dealt with by the Juvenile Justice Board[5] while the 'child in need of care'[6] is to be proceeded by the Child Welfare Committee, Children Home and Shelter Home to look after the interest of the child.

As defined in Section 2(l) 'juvenile in conflict with law' means a juvenile who is alleged to have committed an offence. He is placed in Observation Home[7] which is meant for temporary reception of such juvenile during the pendency of any inquiry against him.[8]

Section 4 of the Act provides for the constitution of Juvenile Justice Board for the inquiry and hearing in the case of a juvenile in conflict with law. The section also lays down the qualifications for appointment, removal etc. of the members of the Board.[9] The procedure in relation to the working of the Juvenile Justice Board is contained in Section 5 of the Act.

During the pendency of inquiry or hearing, the juvenile in conflict with law is placed in Observation Home in which juveniles are kept in three separate groups according to age *i.e.* 7 to 12 years, 12-16 years and 16-18 years giving due consideration to their physical and mental condition and the degree or gravity of the offence committed by them.

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1. 2004 (5) SCALE 617.
2. AIR 2000 SC 2264.
3. 1982 (1) SCALE 335 (SC).
4. Sec. 2 (l) of Juvenile Justice (Care and Protection of Children) Act, 2000.
5. Sec. 4.
6. Sec. 2(d).
7. Sec. 8.
8. Sec. 8(2).
9. For details see Appendix VI.

In the case of *Sanjay Prasad Yadav* v. *State of Bihar*,[1] the Court was called upon to decide whether a juvenile accused who is found guilty of an offence under section 302/34 IPC and ordered to be kept in Observation Home during inquiry under the Juvenile Justice Act, has to be shifted to jail in case he/she has crossed the prescribed age for being treated as juvenile. The Court held that such a juvenile must be continued to be kept in the Observation Home even if he has crossed the age-limit for juvenile during the pendency of inquiry against him and he need not be shifted to jail. Citing its earlier Full Bench decision in *Krishna Bhagwan* v. *State of Bihar*,[2] the Court observed :

> "Different sections put a strict bar on the juvenile being sent to jail custody either before an inquiry or after the conclusion of the inquiry in respect of the offence alleged or proved to have been committed. The benefit has to be extended not only to an accused who is a juvenile at the time of commencement of the inquiry but even to an accused who has ceased to be so during the pendency of the inquiry."

Section 8 of the Act provides for the establishment of Observation Homes for the temporary reception of the juvenile in conflict with law during inquiry and trial of his case whereas Section 9 makes provision for Special Homes for juveniles who are found guilty of an offence. The object of Special Homes is to provide for rehabilitation of the juvenile whose guilt has been proved. The juvenile in Special Homes are classified in different categories according to their age, gravity and nature of the offence, physical and mental health condition *etc.* and are kept separately.

In *Sheela Barse* v. *Union of India*,[3] the Supreme Court had observed that despite statutory provisions to the effect that children should not be kept in jail, a large number of children and juveniles were still lodged in jails. The Court observed that there is no controversy or doubt that the juveniles have to be kept in Observation Homes and not in jail pending inquiry or trial irrespective of the fact that they have crossed the age-limit of being treated as juvenile pending inquiry or trial.

In *Hava Singh* v. *State of Haryana*,[4] the accused an adolescent was convicted under Section 302/34, IPC and sentenced to imprisonment for life and sent to Borstal School under the Punjab Borstal Act, 1926. After having completed the age of 21 years, he was shifted to jail to serve the remaining sentence and he spent over seven years in jail. The Supreme Court held that the accused was entitled to be released on the ground that he being convicted by the Sessions Judge, the maximum period of detention as prescribed under the Act could be seven years which he had already completed in jail.

Section 12 of the Act provides that the juveniles should be released on bail as a general rule and should be sent to jail only in special cases.

In *Gopinath Ghosh* v. *State of West Bengal*,[5] the Supreme Court

1. 1995 (1) Crimes 476 (Pat.).
2. AIR 1989 Pat 217.
3. AIR 1986 SC 1773.
4. AIR 1987 SC 2001.
5. (1984) SCC (Cri.) 478.

observed that when a juvenile is brought before the Juvenile Court (now Juvenile Justice Board under the Juvenile Justice Act of 2000) and in the opinion of the Court, after release on bail he is not likely to fall in company of hardened or known criminals or exposed to physical, mental or psychological danger or his release is not going to result in failure of justice, the bail should be granted to him and he should be released.[1]

Where the Board rejects the bail application of the juvenile keeping in view the gravity of the offence and his antecedents, he should not be remanded to jail custody but instead, sent to Observation Home or any other safe place or institution.[2]

Where after holding an inquiry or hearing in the case of a juvenile in conflict with law, the Juvenile Justice Board finds that the offence is not of a serious nature it may order discharge of the juvenile after admonition.[3]

In *Jaipal Singh Tej Singh* v. *Ram Avtar Devilal*,[4] the High Court of Madhya Pradesh held that for allowing the benefit of release after admonition to the accused under Section 15(1)(a), the Court (now Juvenile Justice Board) shall take into consideration the (i) circumstances of the case; (ii) the nature of the offence; and (iii) the character and antecedents of the accused or juvenile as the case may be. While discharging the juvenile after admonition, the Juvenile Justice Board should warn him that he shall have to face the sentence in case he repeats the offence or commits any other offence. Taking a similar view the High Court of Andhra Pradesh in *State* v. *Ghanshyam Das*,[5] held that "admonition by a Judge is a reprimand, a censure or a re-proof warning the accused that he is let-off, but in case of repetition, he will be punished severely in accordance with law.

The Juvenile Justice Board may order the release of juvenile in conflict with law on probation[6] of good conduct and place him under the care of his parents, guardian or any other proper person. Having regard to the circumstances of the case, the Board may also direct the juvenile to enter into a bond, with or without sureties. But the period of such order of release on probation shall not exceed 3 years. Besides, the Board may order the placement of juvenile in a Special Home.[7] But the period of such placement—

(i) shall not be less than two years where the age of juvenile is more than seventeen years but less than eighteen years;

(ii) in case of other juveniles, until they cross the age-limit of 18 years, both for boys as well as girls.[8]

The release of a person on probation being a treatment reaction to crime, it offers an opportunity to the juvenile to reform and rehabilitate himself. It is a violable alternative for juvenile being placed in jail where there is possibility of his contamination in association with hardened

1. *Rajesh Kumar* v. *State of Rajasthan*, 1989 Cri. L.J. 560 (Raj.).
2. Sec. 12(3).
3. Section 15(1)(a).
4. 1981 MPLJ 478.
5. 1994 Cri. L.J. 351 (AP).
6. Section 15(e).
7. Section 15(g).
8. Sub-clauses (i) and (ii) of Section 15(g).

offenders.[1] But at the same time, the Board should make sure that release of juvenile on probation is not misused by him for ulterior purposes.[2]

The Juvenile Justice Board is also empowered to order the placement of the juvenile found guilty of an offence to be placed under the supervision of the Probation Officer for a period not exceeding three years and the Probation Officer shall submit the periodical report about the juvenile and his progress in reformation. However, where on the basis of the report of the Probation Officer, the Board finds that the juvenile is not keeping good behaviour or it is difficult to keep him under control, it may order the placement of such probationer juvenile in Special Home.[3]

Section 16 of the Act prohibits the Juvenile Justice Board from making certain orders against the juvenile who is found guilty of an offence. The following orders cannot be made by the Board—

(i) an order awarding death sentence; or

(ii) an order awarding the sentence of imprisonment for life; or

(iii) an order for imprisonment in default of payment of fine; or

(iv) an order for imprisonment in default of furnishing security.

The purpose of these provisions is to prevent the juvenile from contamination and stigmatisation.[4]

The Act does not permit joint trial of a juvenile with a person who is not a juvenile.[5] The reason being that if the juvenile has to go through the general criminal procedure of arrest, prosecution, defence, burden of proof, conviction, imprisonment etc. as in case of adult offenders, the very purpose of Juvenile Justice Act will be defeated.

The Juvenile Justice Board can make an order against the juvenile on his being found guilty of having committed an offence, only under the Juvenile Justice (Care and Protection of Children) Act, 2000 and under no other law.

Section 19 of the Act specifically provides that a juvenile who has committed an offence and dealt with under the provisions of this Act, shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. The provisions of this section are analogous to those of Section 12 of the Probation of Offenders Act, 1958 which removes disqualification attaching to conviction.[6] It is for this reason that sub-section (2) of Section 19 requires the Board to issue directions that the relevant records of conviction of juvenile should be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules in pursuance of the Act. The object of this section to make sure that conviction of the juvenile does not spoil or tarnish his future life.

The proceedings of the Juvenile Justice Board being of a confidential nature, their publication is strictly prohibited in the interest of the juvenile. No newspaper or magazine etc. shall publish the name, address, photograph

1. *Munna* v. *State of U.P.*, (1982) 1 SCC 545.
2. *Lekh Raj* v. *State*, AIR 1960 Punj. 482.
3. Proviso to sub-section (3) of Section 15.
4. *Rajesh Khaitan* v. *State of West Bengal*, 1983 Cri. L.J. 877 (Cal.).
5. Section 18.
6. *Hari Chand* v. *Director, School Education;* AIR 1998 SC 788.

or details or particulars of the juvenile or report of proceedings against him. Any contravention of this provision shall be punishable with fine which may extend to one thousand rupees.[1]

Section 22 of the Act contains special provision in respect of juveniles who have escaped from Observation Home, Special Home or from the custody of a person. The section expects a liberal and sympathetic approach towards such juveniles. He/she shall be sent back to the Home or person from where he/she had escaped and no proceedings shall be instituted against him/her.

The penal provisions regarding cruelty to juvenile or child, employing them for begging or giving him intoxicating liquor or narcotic drug or psychotropic substance without prescription of a qualified medical practitioner etc. are contained in Sections 23, 24 and 25 respectively.[2] Besides, Section 26 prohibits utilisation of juvenile or child for any hazardous employment or withholding of his earning and makes the contravention of this provision punishable with imprisonment which may extend to three years and fine. This provision is analogous to the provision contained in Article 24 of the Constitution of India. The offences specified in Sections 23, 24, 25 and 26 shall be cognizable.[3]

The provisions relating to child in need of care and protection are contained in Chapter III of the Act which consists of eleven sections (*i.e.*, Section 29 to 39). A child in need of care and protection as defined in Section 2(d) of the Act means a child who is found without any home or settled place of abode and without means of subsistence or who is neglected by his parent or guardian or does not have parent and no one is willing to take care of him or who is likely to be grossly abused, tortured or exploited or who is found vulnerable and is likely to be induced into drug abuse or trafficking or who is a victim of any armed conflict, civil commotion or natural calamity.

the Act empowers the State Government to constitute Child Welfare Committees[4] for care and protection of children who are in need. The Child Welfare Committee shall consist of the Chairperson and four other members of whom at least one shall be a woman and another an expert on matters concerning children.[5] The functions and procedure etc. in relation to Committee are contained in Sections 30 to 33 of the Act.

Section 32 provides that when a report under section 32 of the Act about a child is received by the Child Welfare Committee, the Committee or a Police officer of Special Juvenile Police Unit or the designated police officer shall hold an inquiry in the prescribed manner and the Committee may pass an order to send the child to the Children's Home for speedy inquiry by a social worker or a child welfare officer. Where on the basis of inquiry it is found that the child has no family or any ostensible support, the Committee may allow the child to remain in Children's Home or Shelter Home till suitable arrangement for the rehabilitation is made for him or till he attains the age of 18 years.

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1. Sec. 21.
2. For details see Appendix VI.
3. Sec. 27.
4. Sec. 29.
5. Sub-section (2) of Sec. 29.

The Act provides for the establishment of Children's Home for the reception of child in need of care and protection.[1] The Supreme Court has directed that children in Children's Home should not be subjected to *Begar i.e.*, work without wages[2] and they should be paid adequate remuneration for the work taken from them. These Homes may be inspected periodically by the Inspection Committees appointed by the State Government.

In addition to the Observation Homes (for under-trial juveniles) and Children's Home (for juvenile found guilty of an offence), the Act also provides for establishment of Shelter-Homes under Section 37 for destitute and shelterless children. The main object of providing Shelter Homes is to ensure protection and restoration of destitute and neglected children.[3]

The ultimate aim and objective of establishment of Children's Home and Shelter Homes is protection and restoration of children who are deprived of the family atmosphere and are leading a shelterless life. The restoration of child as envisaged by Section 39 of the Act implies handing over the child to care of his parent or parent by adoption or foster parent for the purposes of rehabilitation and social re-orientation.

The provisions relating to rehabilitation and social reintegration of juveniles in conflict with law and neglected children are contained in Chapter IV of the Act which comprises Sections 40 to 45. Four alternative measures for the rehabilitation and re-orientation of such juveniles and children are suggested in Section 40 of the Act which are as follows :—

(1) **Adoption** of orphaned, abandoned, neglected or abused children through institutional or non-institutional means;

(2) **Foster care** is used for temporary placement of those infants who are ultimately to be sent to some institution or individual for adoption;

(3) **Sponsorship** programme may provide supplementary support to families, children, Home, Special Homes etc. to meet the medical, nutritional, educational and other needs of children.

(4) **After-care Programme** provides necessary supervision and guidance to juvenile and children after their release from Children's Home or Special Home so that they may be rehabilitated and lead an honest and industrious life in future.[4]

The Chapter V of the Act entitled 'Miscellaneous' incorporates the matters which are related to the subject-matter of the Act but could not find place in the text of the enactment. The matters which are related to the administration of juvenile justice have been incorporated in Sections 46 to 70 of this Chapter.

It is the general principle of law that the inquiry or trial in each case should be held in the presence of the accused and this principle is equally applicable in case of juvenile delinquents as well. But if in the opinion of the

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1. Sec. 34.
2. *Sheela Barse* v. *Union of India*, AIR 1986 SC 1775; See also *Sheela Barse* v. *State of Maharashtra*, AIR 1983 SC 378.
3. Sec. 35.
4. Sec. 41 (Adoption); Sec. 42 (Foster Care); Sec. 43 (Sponsorship) and Sec. 44 (After-care Programme).

competent authority, the presence of juvenile in conflict with law or child is not necessary in proceedings against him, it may be dispensed with. The personal attendance of accused in inquiry or trial is generally dispensed with keeping in view the nature and position of parties in the case.[1] At times it may become necessary to dispense with the attendance of the juvenile or child if he/she is interrupting the trial or proceedings repeatedly. Therefore, Section 47 of the Act empowers the competent authority to dispense with the personal attendance of the juvenile or child who is uncontrollable.

Where the juvenile or child is suffering from a disease which requires a prolonged treatment or from a physical or mental disorder which may be cured by medical treatment, he may be sent to the approved place or institution for necessary treatment.[2] But if he is found to be suffering from a serious disease as specified in sub-section (2) of Sec. 48, he shall be referred to special treatment centres under the relevant law.

The provisions relating to presumption and determination of the age of juvenile in conflict with law are contained in Section 49 of the Act. The case-law on this point has already been discussed earlier. The law in this regard is governed by the Supreme Court decision in *Arnit Das* v. *State of Bihar*.[3] But as rightly observed by the three judge Bench of the Supreme Court in its decision in *Pratap Singh* v. *State of Jharkhand*,[4] "since the question involved is one of frequent recurrence and the view of law taken in this regard is likely to have bearing on new cases coming for decision under the Juvenile Justice (Care and Protection of Children) Act, 2000, the matter deserves to be heard by a Constitution Bench of the Court.

The report of the Probation Officer to be made under Section 15 of the Act is treated as confidential[5] and the competent authority cannot be compelled to disclose the contents thereof. However, if the competent authority deems it fit, it may communicate the substance of the report to the juvenile or the child or his/her parent or guardian and offer them an opportunity of producing relevant evidence about any matter contained in the said report.

The appeal against the order passed by the competent authority after inquiry and proceedings in respect of juvenile in conflict with law or the child shall lie to the Sessions Court and the time limit prescribed for appeal is thirty days from the date of order.[6] This limit may be extended if the Court finds that there was sufficient reason for delay in filing the appeal by the appellants.[7] Any cause beyond the control of a person is generally accepted as a sufficient cause for extending the period of limitation for appeal. These include death of a person in the family, serious illness, failure of vehicle or mode of transport in journey, any natural calamity etc. Filing of

1. *B.B. Das Gupta* v. *State of West Bengal*, AIR 1969 SC 381; *Sushila Devi* v. *Sharda Devi*, 1961 Cri. L.J. 819 (MP); *Jagatguru Srengeri Math* v. *State of Mysore*, AIR 1969 Mys. 95 etc.
2. Sec. 47.
3. AIR 2000 SC 2264.
4. 2004 (5) SCALE 617.
5. Sec. 51 (The provisions of this section are analogous to those of Sec. 7 of the Probation of Offenders Act, 1958).
6. Sec. 52(1).
7. *Sri Ram Chits Fund Investment (P) Ltd.* v. *M. Krishnan*, AIR 2000 Mad 78.

the appeal in improper Court was held to be a sufficient cause for extending the time limit for appeal in the case of *Sunder Theatres* v. *Allahabad Bank, Jhansi*,[1]

In *Ganesh* v. *Mithalal*,[2] the Bombay High Court held that the term 'sufficient cause' should be interpreted liberally so as to provide opportunity of appeal to the appellant.

Section 52(2) of the Act, however, provides that an appeal shall not lie against the order of acquittal made by the competent authority *i.e.*, the Juvenile Justice Board or an order made by the Child Welfare Committee in respect of finding that a person is not a neglected juvenile.

Thus the decision of the Sessions Court in the case of juvenile in conflict with law or child, shall be final and there is no scope for further appeal against its order. It may be noted that similar provisions relating to appeal in case of juvenile delinquents existed in the repealed Juvenile Justice Act, 1986.

Section 53 of the Act confers revisional powers on the High Court against an order made by the Board or the Sessions Court. But it has no appellate powers in this regard. Thus, the High Court may itself call for the record of the proceedings in which the Board or the Sessions Court had passed an order and may do so on a revision petition having been received in this behalf. The High Court in exercise of its revisional power under section 53 of the Act, satisfies itself about the correctness, legality and reasonableness of the order passed by the Board or Sessions Court, as the case may be.

The procedure to be adopted in inquiries, appeals and revision proceedings is laid down in Section 54 of the Act. The competent authority *i.e.* Juvenile Justice Board may amend its orders without prejudice to the provisions for appeal and revision.[3] It also has the power to discharge or transfer the juvenile or child from one Home to another. But the period of stay of the juvenile or child cannot be extended by such order of transfer.[4] Normally, the provisions relating to discharge or transfer of juvenile or child under Section 56 of the Act are invoked when it becomes necessary consequent to his no longer remaining a juvenile or a child in need of care or protection.

The Act also authorises the Juvenile Justice Board or the State Government to make an order for reducing the period of stay of a juvenile or a child in the children's Home or the Special Home when it thinks it proper to do so in the interest of the juvenile or the child, as the case may be.[5]

If any juvenile or child kept in Children's Home or Special Home or Shelter Home is suffering from leprosy or is of unsound mind or is addicted to any narcotic drug or psychotropic substance, he may be removed to a leper asylum or mental hospital or a de-addiction treatment centre respectively or to a place of safety for such period as may be recommended

1. AIR 1999 All. 14 (UP).
2. AIR 1999 Bom. 120.
3. Sec. 55.
4. Sec. 56 proviso.
5. *In Re* Harold Hamreay & Allen Osland Norvegian Nationals, AIR 1999 Bom 325.

by the specialist.[1]

Section 59 provides that a juvenile in conflict with law or child in need of care and protection may be released or granted leave of absence from the Children's Home or the Special Home on *bona fide* grounds such as marriage or death of any relative or serious sickness or accident of parent or any emergency of the like nature.

The Central or State Government may constitute Central or State Advisory Board as the case may be, to advise the Government on any of the following matters—

(1) establishment of Children's Home, Special Homes and Shelter Homes;

(2) management of the aforesaid Homes;

(3) mobilisation of resources for running these Homes;

(4) education, training and rehabilitation of children who need care and protection;

(5) ensuring co-ordination and co-operation among various official and non-official agencies and organisations.[2]

As provided in sub-section (2) of Section 62, the Advisory Board shall consist of eminent social workers, representatives of corporate sector, voluntary organisations, medical professionals, academicians and representatives of the concerned Department of the State Government. The number of members in the Advisory Board shall be as prescribed by the Central or State Government, as the case may be.

The Act provides for the establishment of Special Juvenile Police Units for handling of the juveniles and children under the Act and prevention of juvenile crimes. These police units shall be specially trained for the purpose.[3]

Section 67 extends protection for actions taken under the Act in good faith. The officials of the Government, voluntary organisations running the children's Homes, Special Homes or Shelter Homes and other staff associated with the functioning under the Act are protected for acts done by them in good faith in pursuance of this Act or the rules or orders made thereunder.

The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.[4] The rules so made should be laid before the Legislature of the State concerned as soon as possible.

The provisions relating to repeal and savings are contained in Section 69 of the Act which provide that with the coming into force of this Act, the earlier Juvenile Justice Act, 1986 *ipso facto* stands repealed. But the repeal of the Act of 1986 shall not have any adverse effect on acts done under that Act.

The provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 clearly indicate that the object is to save the juvenile in conflict

1. Sec. 58.
2. Sec. 62.
3. Sec. 63.
4. Sec. 68.

with law or child from the rigours of criminal law procedure and arduous court trial. The procedure of inquiry and proceedings under the Act is informal so that the juvenile has not to undergo the process of normal criminal trial which involves arrest, prosecution, trial, defence, burden of proof, conviction etc. The provisions of different Homes are intended to prevent prisonisation of juveniles in conflict with law.

Despite the aforesaid innovations and reformative techniques adopted for juveniles and children under the Act, some penologist are not satisfied with the justice administration system adopted under the Act. In their opinion, the involvement of judicial Magistrate and police still play a dominant role in the working of the Act which should have been assigned to social service organisation.

Special Juvenile Police Units

It cannot be denied that the first contact of the delinquent juvenile is always with the police. Every juvenile offender has to be taken to police station for however short the period may be, before he is sent to Observation Home or Children's Home. Thus, other welfare agencies come into picture at a later stage only. Their cooperation in dealing with juvenile offenders is, no doubt, valuable but from the administrative point of view it is only the police organisation which can prevent and control the ever-increasing quantum of juvenile crimes.

Section 63 of the Juvenile Justice (Care and Protection of Children) Act, 2000 provides that there should be Special Juvenile Police Units in every State to handle juvenile in conflict with law and neglected children. Each police station should have such Special Juvenile Police Unit which should be assigned the following functions :—

(1) Supervisory field work.—It should initiate steps to prevent juvenile delinquency at all levels in all forms. This would necessitate intensive field-work including surveys, identification of juvenile and child delinquency and collection of socio-economic data about delinquent's family background. The Unit should maintain detailed records and send periodical statistical reports about juvenile delinquents *i.e.* juveniles in conflict with law.

(2) Co-ordination.—The Special Juvenile Police Unit should coordinate and maintain close liaison with social welfare agencies, Juvenile Justice Boards, Observation Homes, Children's Home, Shelter Homes etc. and also with the members of the Child Welfare Committee. It should also help the probation officers in keeping surveillance on the juveniles in conflict with law under their charge.

(3) Counselling.—Special Juvenile Police Unit should be well trained in counselling services and they should seek co-operation of psychologists, psychiatrists, medical jurists etc. to know about the personality habits etc. of juveniles who are persistent delinquents or addicts.

(4) Training.—In each Special Juvenile Police Unit, there should be at least one officer with aptitude and appropriate training and orientation in child welfare who should be designated as child welfare officer. His main function shall be to handle juveniles or children in co-ordination with the general police.

It may be stated that the Committee on Women Prisoners headed by

Justice Krishna Iyer, in its report submitted to the Government in February 1988 had recommended deployment of women police for handling women and juvenile offenders and neglected children because in the opinion of the Committee "women have greater potential to cool, defuse and de-escalate many situations."

Trial of Juveniles under Cr.P.C. and the Repealed Juvenile Justice Act, 1986

The procedure to be followed in a judicial proceeding against a child or juvenile offender as laid down in the Children Act, (1960 which was later repealed by the Juvenile Justice Act, 1986) and the Code of Criminal Procedure was challenged in *Rohtas* v. *State of Haryana*[1] wherein the controversy arose whether the child facing trial for an offence punishable with death or imprisonment for life could be tried by the Juvenile Court or by Sessions Court. The Supreme Court finally ruled that the child shall be tried under the provisions of the Haryana Children Act, 1974 though the offence is punishable with death or imprisonment for life. This view was further fortified by a subsequent decision of the Supreme Court in *Sheela Barse* v. *Union of India*.[2] In this case the Supreme Court reiterated that despite statutory provisions to the effect that children should not be kept in jail, a large number of children were still lodged in jails. In this case, the Supreme Court issued a direction that in case of offences punishable with less than seven years, investigation must be completed within a period of three months failing which the case must be closed. The maximum time-limit for completion of trial in such cases was fixed at six months. The Supreme Court, further observed that there is no controversy or doubt that the juveniles have to be kept in Remand Homes or Observation Homes and not in jail pending trial or enquiry irrespective of the fact that they have attained the age of 16 years pending trial. But the question arises whether they should be allowed to remain in the company of under sixteen group of juveniles after they cease to be juveniles ? "If the company of the criminals kept in ordinary jail can have deleterious effect on their mental hygiene, it cannot be denied that their continued association with persons of still under-age *i.e.* below 16 years living in the Observation Home may not be in the interest of the younger ones." Therefore, the State Governments should make arrangements so that such juveniles who have crossed the age of 16 are not only kept away from the evil influence of ordinary criminals but at the same time, are also kept at a distance from under-sixteen group of persons.

Grant of Bail to Juvenile

The case of *Rahul Mishra* v. *State of Madhya Pradesh*,[3] involved the consideration of grant of bail to a juvenile delinquent. In this case the accused, a juvenile was charged under Sections 147, 294, 452, 323, 506, Part II, 307 and 302 IPC and it was proved that appellant juvenile under the age of 16 was present at the spot when the crime was committed and, therefore, his bail application was rejected. Deciding the question of grant of bail to a

1. AIR 1979 SC 1839.
2. AIR 1986 SC 1773.
3. 2000 (1) C Cr J 86 (MP).

juvenile, the High Court in this case observed that "normally juvenile should be released on bail but bail should be refused when grant of bail itself is likely to result in injustice, that is when it appears that his release on bail is likely to bring him into association with any known criminals or expose him to moral danger or his release would defeat the ends of justice. That is, there is likelihood of the juvenile delinquent to whom the bail is granted, interfering with the course of justice or he is likely to abscond from the jurisdiction of the court. The Court pointed out that the juvenile delinquent may appear to be guilty *prima facie* but he specially protected and favourably considered for grant of bail under Section 18 of the Juvenile Justice Act, 1986 which is now repealed. The Court, therefore, directed that the applicant shall be released on bail on his furnishing a bail bond of rupees ten thousand only with the surety of the like amount to the satisfaction of the Juvenile Court subject to reasonable conditions imposed upon him by that court.

Neglected Children

It would also be pertinent to refer to the decision of the Supreme Court given in *Laxmi Kant Pande* v. *Union of India*,[1] wherein the Court modified its judgment given under the Children Act, 1960 prior to coming into force of the Juvenile Justice Act, 1986 and ruled that the cases of neglected children would henceforth be dealt with by the Welfare Boards instead of juvenile courts. The Apex Court held that by operation of law consequent to Juvenile Justice Act, the Juvenile Courts under the earlier Children Act would no longer deal with the matters of neglected juveniles and the Welfare Boards constituted under the Juvenile Justice Act shall be the appropriate authority for such cases. This alteration shall be operative from 1st September, 1990 so that adequate notice shall be available of this change in the law. The decision in this case clearly reflects the judicial wisdom of the Apex Court in implementing the new philosophy of judicial justice.

Trial of Juveniles where there is no Juvenile Court (now Juvenile Justice Board)

Mention may also be made of the Supreme Court's decision in *Abdul Mannan and others* v. *State of West Bengal*,[2] wherein the Court ruled that juvenile offenders are required to be tried by Juvenile Courts (now Juvenile Justice Board under the Juvenile Justice Act of 2000) and in case of non-constitution of Juvenile Court,[3] Additional Sessions Judge is competent to proceed with the trial of the juvenile accused as he has all the power and jurisdiction of the Sessions Judge to try offences enumerated under the Code of Criminal Procedure as laid down in Section 9(1) & (3) of the Code. The Apex Court further ruled that if by the passage of time due to juvenile accused's own act of protracting the trial, he crosses the age of juvenile and becomes an adult, then in that case, the benefit of Juvenile Justice can be denied to them as no useful purpose under the Juvenile Justice Act would be served.

In the instant case, the appellants were charged for various offences

1. Cri. Misc. Petition No. 3357/1989 & No. 2045/1990.
2. (1996) 1 SCC 665.
3. Now Juvenile Justice Board under the Juvenile Justice Act of 2000.

including offence of murder punishable under Section 302, I.P.C. They were 17 and 18 years of age on the date of the commission of the offence. Since no Juvenile Courts were constituted by the State of West Bengal, the appellants were tried by the Additional Sessions Judge. Their contention that only the Sessions Judge was competent to try the cases of juveniles and not the Additional Sessions Judge, was rejected by the High Court on the ground that Section 9(3) clearly provides that Sessions Judge includes Additional Sessions Judge. As to their contention that the benefit of Juvenile Justice Act was denied to them even though at the relevant time they were juveniles, the Supreme Court held that by passage of time they no longer remained to be juvenile offender due to their own act of protracting the trial. As the object of the Juvenile Justice Act is to reform and rehabilitate the juvenile offenders as useful citizens in the society, no useful purpose would be served in application of the provisions of the Act in case of the appellants who deliberately kept the trial pending by protracting litigation and meanwhile became adults. Therefore, no interference of the Supreme Court was called for, hence the appeal was accordingly dismissed.

Special Procedure of the Juvenile Justice Board

The procedure followed in the proceeding against juvenile offender under the Juvenile Justice Act, 2000, differs from that of an ordinary criminal trial, and, therefore, it can be rightly termed as 'special procedure' in view of the following considerations :—

(i) The proceedings cannot be initiated on a complaint from a citizen or the police.

(ii) The hearing is informal and strictly confidential.

(iii) The juvenile offender while under detention, is kept in separate Observation Home.

(iv) The young offender may be reprimanded on security or bond for good behaviour.

(v) The trial of juvenile in conflict with law is usually conducted by lady Magistrate specially deputed for the purpose.

(vi) The procedure followed in the trial of juvenile in conflict with law being informal, he has no right to engage the services of a lawyer in the case.

(vii) No appeal lies against the order of acquittal made by the Juvenile Justice Board in respect of a juvenile alleged to have committed an offence. An appeal shall, however, lie against the order of the Board to the Sessions Court within a period of 30 days whose decision shall be final and there is no provision for second appeal.[1]

An Appraisal of the Juvenile Justice System in India

It must be stated that the treatment offered to juvenile offenders under the Indian law is prompted by humanitarian considerations but the fact remains that the very concept of juvenile delinquency goes against the spirit

1. Section 52 of Juvenile Justice (Care and Protection of Children) Act, 2000.

of the law relating to liberty,[1] which provides that no one can be proceeded against unless he is charged for some specific offence.[2] Other points which deserve mention in context with the juvenile trial are :—

(1) Assigning the function of apprehending juvenile offender to the police agency due to lack of an alternative effective machinery goes against the basic principle on which this corrective system is founded. The contact of juvenile with the police at the very first stage of trial is contrary to the basic policy accepted for juveniles.

(2) The effectiveness of juvenile trial, by and large, depends upon the efficiency of probation officers. It is quite probable that the probation officer might submit a 'routined' report about a juvenile offender without making any real enquiry into the offender's case or it may even be a false or a cooked report. It is thus clear that the object underlying special trial of juvenile can only succeed if the probation officers are honest and sincere in their duties. Unfortunately, the probation in India lacks the services of experienced personnel to be appointed as probation officers. As a result of this, the cause of juvenile justice is seriously jeopardised.

(3) As stated earlier, extracting confession from young offenders is contrary to the principles of justice and criminal law of the land.[3] Moreover, while trying a juvenile's case the magistrate is acting on the evidence of probation officer. This is something basically wrong. The language handicaps of the under-trials and the judicial magistrate may present some difficulty in the fair trial of the case.

(4) Even from the practical standpoint, the proceedings in a Juvenile Justice Board present a very dismal picture. In practice, it greatly differs from what it is expected to be. The informal procedure adopted by the competent authority or Judicial Magistrate leaves sufficient margin for judicial discretion which may lead to erroneous judgment.

(5) Despite Juvenile Justice (Care and Protection of Children) Act, 2000 having come into force years back in 2000, "the State Acts continue *de facto* in many States because the new Act visualises structures and functionaries and expenditures and the States may not be ready for these matters". Therefore, a very strange situation exists where Juvenile Justice (Care and Protection of Children) Act, 2000 is adorning the Statute book, but it is not yet effective in many parts of India due to lethargy of the State Governments.

(6) Though the Juvenile Justice Act, 2000 lays down that boys and girls under 18 years of age cannot be imprisoned under any circumstances whatever, and that they can be tried only by a

1. Art. 21 of the Constitution of India.
2. *In Re* Holmes (1955) and *In Re* Gault, 387 US 1 (1967) decided by US Supreme Court.
3. Section 24 of the Indian Evidence Act.

Juvenile Justice Board, and should be placed in suitable corrective Home if their own home is not suitable or they may be put on probation or simply allowed to go home. Bail for juvenile is automatic unless there is a reasonable apprehension that the delinquent child may associate with bad characters. But in spite of all these glorious legal provisions, there are instances where many young and juvenile prisoners are sent to jail.

(7) Section 21 of the Juvenile Justice Act, 2000 prohibits adverse publicity of the juvenile which may lead to his identity during proceeding against him. But the newspapers, magazines etc., are violating this provision with impunity. Perhaps a meagre fine of Rs. 1,000/- for such violation is nothing for most of the newspapers and, therefore, it is has deterrent effect at all. The press and media must be made aware of the philosophy underlying the Act.

An empirical study of juvenile delinquency in India shall reveal that the fault lies not with the policy but with the proper implementation of it. Some critics even argue that in an anxiety to reform youngsters we lose sight of the basic values of law and its implications. But it must be pointed out that treatment of juvenile delinquent is a progressive movement, hence mechanical application of legal provisions in case of young offenders should not be unduly stressed. Despite certain shortcomings, the following facts regarding juvenile delinquency in India deserve a special mention :—

(1) A large number of juvenile delinquents are found not to be acting on their own but are exploited by adults. This is particularly true with offences relating to delivery of illicit brew and liquor and immoral traffic in women and girls.

(2) Juvenile delinquency in India is typically a male activity and females contribute only 5 per cent of juvenile arrests in India as compared to 22 per cent in United States.

(3) Juvenile delinquency is not a nationwide phenomenon as central Indian States particularly Madhya Pradesh, Maharashtra, Uttar Pradesh, Bihar and Orissa account for nearly 50 per cent of India's juvenile delinquency.

(4) There is little scope for delinquent gangs in India. By and large, Indian society does not seem to generate conditions which repel the youth from the home to street.[1]

(5) Juvenile delinquency in India makes a relatively much smaller contribution to the total crime picture of the country as indicated in the statistical data in 'CRIME IN INDIA—2002.[2] The percentage of juvenile crime to total IPC crimes for the year 2002 is 1.0 per cent despite an increase in population of the country. Significantly, there has been a decline in the crimes such as theft, burglary and culpable homicide not amounting to murder but crimes relating to women and girls such as kidnapping abduction and rape, have shown an increase as compared to

1. S. Venugopal Rao : Facets of Crime, p. 157.
2. Source : The Registrar General of India, New Delhi.

previous years. It may, therefore, be inferred that the Juvenile Justice (Care and Protection of Children), Act, 2000 has shown favourable results in bringing down the incidence of juvenile delinquency in India in some specific areas. The comparative year-wise figures of Juvenile delinquency in India for the period 1992-2002 is given in the Table below :—

Table showing Incidence and Rate of Juvenile Delinquency under IPC (1992-2002)

Year	Incidence of		Percentage of Juvenile Crimes To Total Crimes	Estimated Mid-Year Population* (In Lakh)	Rate (Incidence of Crime Per Lakh of Population)
	Juvenile Crimes	Total Cognizable Crimes			
1	2	3	4	5	6
1992	11100	1689341	0.7	8677	1.3
1993	9465	1629936	0.6	8838	1.1
1994	8561	1635251	0.5	8999	1.0
1995	9766	1695696	0.6	9160	1.1
1996	10024	1709576	0.6	9319	1.1
1997	7909	1719820	0.5	9552	0.8
1998	9352	1778815	0.5	9709	1.0
1999	8800	1764629	0.5	9866	0.9
2000	9267	1771084	0.5	10021**	0.9
2001	16509@@	1769308	0.9	10270**	1.6
2002	18560@@	1780330	1.0	10506	1.8

* Source : The Registrar General of India.

** Actual Population as per 2001 Census.

@@ As per the revised definition of 'Juvenile' under Juvenile Justice Act of 2000, the boys and girls under the age of 18 years have been considered as juveniles.

Undoubtedly, the Juvenile Justice (Care and Protection of Children) Act, 2000 is a comprehensive legislation which contemplates the creation and institution of authorities for the care, protection and correction of juvenile delinquents but the manner of implementation of this welfare legislation is not yet effective in large parts of India on account of "laggard behaviour of the States."

Treatment of Juvenile in Conflict with Law and Children in Need of Care & Protection

It will be worthwhile to review the functions of various institutions which are presently engaged in handling juvenile offenders. Reformation of offenders is the central theme of domiciliary treatment in these correctional institutions. The institutions such as Observation Homes, Childrens' Homes, Special Homes, Shelter Homes, Reformatory Schools and Borstals are meant to eliminate prison sentence to children and adolescents under a particular age group.

Observation Homes

The juveniles who need only a short-term custody during inquiry or trial are kept in an Observation Home.[1] This institution is also used for the custody of under-trial children and juveniles in conflict with law about whom inquiry is pending or who are awaiting trial or removal to an appropriate Home or Borstal.

There are Children's Homes for the treatment of neglected children for whom a short-term regulatory protective care is necessary but a long term residential training is not necessary.[2] This reform has, however, not resolved the contradictory approaches of welfare and punishment which still persists. The emphasis in this institution is on strict discipline rather than constructive training. The system has, however, been subjected to severe criticism in Britain due to enormous increase in juvenile crimes in recent years.

Special Homes

The Juvenile Justice Act, 2000 also provides for setting up Special Homes for custody of delinquent juveniles. Basic amenities such as accommodation, medical care, education and vocational training are available to delinquent juveniles in these Homes.

Certified Schools

The Certified Schools are a modified form of the nineteenth century Reformatories or Industrial Schools for homeless, destitute and delinquent children. These Schools are now run under the State tutelage for catering to the needs of delinquent children of different age, sex and religion. The purpose of these approved Schools is to provide training to those juveniles who are unfit for release on probation. The Schools are open-institutions where young offenders are educated and trained for normal living. The duration of stay and training in a Certified School varies according to inmate's requirement depending on the discretion of the School Administrator. This normally ranges from a minimum of six months to a maximum of three years. In practice, majority of inmates are released much earlier.

Certified Schools have warranted criticism from several quarters. Some people criticise the working of these institutions on the ground that they are far more comfortable than even the homes of the delinquents. But it must not be forgotton that the loss of liberty in these institutions is in itself a heavy punishment. On the whole, more than two-thirds of the inmates return to normal life after their release from the institution. These schools provide training facilities for inmates to make them proficient in different trades so that they can engage themselves in some useful occupation.

Separate Schools & Hostels for the Children of Prostitutes

The children of prostitutes, if not segregated from their mothers, may lead into the career of prostitution which may lead to aggravate juvenile delinquency. Therefore, a suggestion has been mooted out from some

1. Section 8 Juvenile Justice (Care and Protection of Children) Act, 2000.
2. Section 34.

quarters that these children should be brought up in separate schools or hostels exclusively meant for the purpose. The question of feasibility of establishing separate schools and hostels for prostitute's children came up for decision before the Supreme Court in a social action writ petition in *Gaurav Jain* v. *Union of India*.[1] Answering in the negative, the Apex Court held that segregating prostitute's children by locating separate schools and providing separate hostels would not be in the interest of such children. The Court further observed that "normally prostitutes do not want children to be born to them. But once born, it is in the interest of the children and society to separate them from their mothers and they be allowed to mingle with others and become a part of society. They should not be permitted to live in undesirable surroundings of prostitute houses". Particularly, the young girls whose body and mind are likely to be abused with growing age for being admitted to profession of their mothers should be separated from the vicious surroundings of prostitute houses.

The Supreme Court reiterated its earlier stand in *Vishal Jeet* v. *Union of India*[2] and refrained itself from expressing any opinion on the issue of rehabilitation of the children of the prostitutes through separate schools or hostels for them. The Court, however, issued direction to constitute a Committee to examine the problem and report to the Court.

In yet another public interest litigation writ under Article 32 of the Constitution, namely, *Gaurav Jain* v. *Union of India and others*,[3] the Supreme Court reiterated its earlier stand seeking improvement in plight of child prostitutes and children of prostitutes and observed that "it is the duty of the State and all voluntary non-government organisations and public spirited persons to come to their aid to retrieve them from prostitution, rehabilitate them with helping hand to lead a life of dignity of person, self-employment, education, financial support. Marriage and acceptance by the family is another important input to rekindle faith of self-respect and self-confidence in them". The rescue and rehabilitation of the child prostitutes and children should be kept under the Department of Women & Child Welfare under the Ministry of Welfare & Human Resources which should devise schemes for proper and effective implementation of reform and rehabilitation schemes. In addition, the Supreme Court appointed a Committee to enquire into the problem of children of fallen women and submit a report. Consequent to the report submitted after extensive travelling to far and wide parts of the country the Court ruled that the direction given in the Order, aim not only at giving benefits to the children but also to root out the very source of the problem and the Government should evolve suitable programme of action.

Borstals

A "Borstal" is yet another correctional institution for the long term treatment of juvenile offenders. The term "Borstal" owes its origin to Borstal village in England where Rochester Prison was first converted into a reformatory for boys in 1902. The Prevention of Crime Act, 1908, expressly

1. AIR 1990 SC 292.
2. AIR 1992 SC 1412.
3. AIR 1997 SC 3021.

prohibited the lodging of young delinquents between sixteen and twenty-one years in ordinary prisons and directed that they should instead be sent to the Borstal. It was due to streneous efforts of *Sir Alexander Paterson* that a few more Borstals were opened in England in subsequent years.

The English Borstal Institutions

Borstals are institutions where adolescent offenders receive training in lieu of imprisonment so that they can be reformed under conditions which are different from those of prisons.

Borstal training is exclusively meant for adolescents between the age group of fifteen and twenty-one. Only such offenders who are found guilty of offences punishable with imprisonment may be sent to Borstal institution for training. The maximum period is now two years and release is possible only after the expiry of six months. After release, the offender remains subject to supervision and recall for next two years from the date of his release. Before recommending a delinquent for Borstal training, his suitability and physical as well as mental fitness is thoroughly examined.

Though booking to a Borstal provides for an effective deterrent to the potential offender, it is certainly not a prison. Borstals are usually open institutions having no walls, no bars and no closed cells. There are, however, a few closed Borstals also which are meant for the treatment and training of hardened offenders.

Borstal institution prepares the offender for normal life in society by providing him facilities for industrial training and disciplined life. It is an institution meant for salvation of young offenders under State tutelage. Adequate facilities for work, education and recreation are available to inmates in every Borstal and all possible efforts are made to make the place homely. Borstals provide for a phased training programme to inmates. When the inmate reaches the final stage of training, he is allowed sufficient liberty to move in the society.

Despite rigorous training and discpline in Borstals, the system can hardly be said to have delivered the goods. This is evident from the fact that there has been a large number of escapes from Borstals during recent years. The causes which impede the success of Borstals are abnormal increase in the number of inmates, lack of adequate facilities for psychiatric treatment and want of sufficient number of institutions to cater to the needs of juveniles.

Borstal system in India

Borstals have been established in India under the Borstal School and Reformatory Schools Act, 1897. These institutions provide for adequate educational and vocational training to young offenders who are committed by the juvenile courts. After release, which may be either absolute or conditional, from a Borstal institution, the offender is placed under the supervision of an officer appointed by the court, if necessary. The various State laws also provide for the release of juvenile offenders on a bond or security for good behaviour with or without sureties. At times, the parents or the guardians are ordered to pay fines if their child who was released on bond repeats the offence.

There are at present a number of Borstals and Reformatories functioning throughout India. The general lack of adequate 'After-care' programme, however, undermines the utility of these institutions. Particularly, the States of Gujarat, Maharashtra and Tamil Nadu have done a commendable work in the direction of encouraging Borstal system through a well planned strategy. The young offenders in these States are released on licence or parole after they have served at least two-thirds of commitment in a certified correctional school. Thereafter, they are placed under the supervision of a probation officer for the remaining period of their final release. These States have also established After-care Associations and Children Aid Societies to rehabilitate young offenders released from Borstals and Correctional Schools.

In the context of institutional rehabilitation through Borstal, it would be pertinent to refer to the Supreme Court decision in *Hava Singh* v. *State of Haryana & another*[1] wherein the accused, an adolescent was convicted under Section 302/34, I.P.C. and sentenced to life imprisonment and sent to Borstal School under the Punjab Borstal Act, 1926. After having completed the age of 21 years, he was sent to jail to serve the remaining sentence and he spent over seven years in the jail. The Supreme Court held that the accused was entitled to be released on the ground that he being convicted by the Sessions Judge, the maximum period of detention as prescribed by the Act could be seven years which he had already completed in jail.

The States of Andhra Pradesh, Uttar Pradesh and Madhya Pradesh have also adopted a system of follow-up service which provides for periodical visits of probation officer to the home of the released juvenile delinquent to watch latter's progress and give him necessary help and advice for a period of three years from his release.

Particularly in Maharashtra, a number of Borstals and correctional institutions for young offenders are operating in the State. More important among them are Saint Catholine Home, Andheri ; Chembur Children's Home, Mankhurd ; Salvation Army Girl's Home, Sion ; David Sasoon Industrial School, Mahim, Mumbai ; Yarvada Industrial School, Pune ; Seva Samiti, Nasik ; Shradhanand Women Orphanage, Mumbai and Mahila Sevashram, Wardha. The Chembur Children's Home is meant for children with rural background whereas the David Sasoon Industrial School is a Ragged school for orphans and vagrant juveniles with urban background. Similar Borstal institution is functioning under the name of Vidhya-Bhawan at Udaipur in Rajasthan. There is a Reformatory School at Jabalpur and Narsinghpur in Madhya Pradesh and Hazaribagh in Bihar. There are several other voluntary welfare associations functioning in Pune, Broach, Delhi, Ahmedabad, Surat, Sholapur, Satara, Dharwar, etc. which are engaged in the rehabilitation of delinquent women and children.

Juvenile Delinquency in Different States of India

The intensity of juvenile delinquency in India can be gauged from the comparative figures of juvenile crimes occurring in different States and Union Territories. The States of Maharashtra, Madhya Pradesh and Bihar were largely affected by juvenile delinquency during 2002 as these three

1. AIR 1987 SC 2001.

States taken together registered more than 50 per cent of the total incidence of juvenile crimes in the country. Theft and burglary constituted 39.2 per cent of total I.P.C. crimes. Murder by juveniles showed significant increase in Madhya Pradesh. The State of Bihar recorded steep rise in theft, kidnapping and abduction by juveniles. The State of Delhi registered highest incidence of juvenile delinquency in 2002 though there was some marginal decline in total crimes in the territory. The State of Tamil Nadu continued to record the highest percentage of total crimes committed under local and Special laws during 1997-2002.

Significantly, among the larger States, West Bengal recorded lowest number of juvenile crimes. The incidence of theft and burglary committed by juveniles was highest in Maharashtra whereas murder by juveniles showed significant increase in the States of Haryana and Tamil Nadu besides Madhya Pradesh.

Table Showing Incidence of Juvenile Delinquency Under Different Crime Heads (IPC) During 2002

(State and UT-wise)

Sl. No.	State/UT	Murder	Attempt to Commit Murder	C.H. not Amounting to Murder	Rape	Dacoity	Robbery	Theft	Kidnapping and Abduction of Women & Girls	Dowry Deaths	Total Cognizable Crimes under IPC
1	2	3	4	5	6	7	8	9	10	11	12
States											
1.	Andhra Pradesh	19	7	0	36	1	6	414	9	3	1270
2.	Arunachal Pradesh	0	8	0	0	0	3	19	0	0	71
3.	Assam	12	9	0	15	2	10	47	10	0	152
4.	Bihar	6	5	0	1	4	8	61	4	2	602
5.	Chhattisgarh	35	12	1	58	0	9	144	5	2	931
6.	Goa	1	1	0	1	0	1	16	0	0	45
7.	Gujarat	37	43	0	11	21	18	272	16	0	1616
8.	Haryana	40	34	3	17	0	16	185	14	5	1421
9.	Himachal Pradesh	5	0	1	4	0	0	13	0	0	98
10.	Jammu and Kashmir	1	0	0	0	0	0	0	0	0	03
11.	Jharkhand	10	6	0	38	0	1	57	5	8	190
12.	Karnataka	16	5	1	2	1	36	88	2	0	211
13.	Kerala	8	3	0	2	0	19	31	0	0	121
14.	Madhya Pradesh	117	182	6	152	10	345	435	27	23	5701
15.	Maharashtra	111	59	3	50	21	395	737	18	9	3128
16.	Manipur	0	0	0	0	0	0	0	0	0	0
17.	Meghalaya	4	1	0	7	2	7	15	1	0	53
18.	Mizoram	1	0	0	3	0	5	13	0	0	26
19.	Nagaland	0	0	0	0	0	1	3	0	0	08
20.	Orissa	12	6	0	6	0	27	37	1	0	134
21.	Punjab	5	2	0	4	0	15	13	2	1	102
22.	Rajasthan	32	63	1	27	0	151	189	11	4	1335
23.	Sikkim	0	0	0	0	0	1	1	0	0	02
24.	Tamil Nadu	14	6	1	5	0	96	300	16	0	571

1 2	3	4	5	6	7	8	9	10	11	12
25. Tripura	0	0	0	0	0	0	2	0	0	07
26. Uttar Pradesh	10	1	0	12	0	0	6	11	05	58
27. Uttaranchal	2	0	0	0	0	1	0	0	0	04
28. West Bengal	2	0	0	2	0	0	5	1	0	14
(Total States)	500	453	17	453	62	1646	3103	153	62	17874
Union Territories										
29. A & N Islands	0	0	0	0	0	2	01	0	0	6
30. Chandigarh	2	3	0	3	0	5	15	2	0	52
31. D & N Haveli	0	0	0	0	0	0	0	0	0	0
32. Damn and Diu	0	0	0	0	0	0	0	0	0	0
33. Delhi	29	13	5	29	1	67	239	9	3	610
34. Lakshadweep	0	0	0	0	0	0	0	0	0	0
35. Pondicherry	0	0	0	0	0	3	3	0	0	18
Total UTs	31	16	5	32	1	77	258	11	3	686
Total All India	531	469	22	485	63	1723	3361	109	65	18560

Note—As per revised definition of Juvenile under the Juvenile Justice (Care and Protection of Children) Act, 2002 boys and girls upto 18 years have been considered as juveniles.

Source—Crime in India—2002 published by NCRB, New Delhi.

The crime statistics of the year 2002 again indicate that the juveniles of the age-group between 12 to 16 years, continued to be more susceptible to juvenile crimes and recorded highest number of arrests *i.e.* 74 per cent amongst all age-groups. The proportion of boys and girls in the total arrests remained more or less unchanged as compared to previous years. Girls were mostly involved in crimes falling under prohibition laws and the Immoral Traffic Prevention Act.

Clinical Service can Serve Best to Prevent Juvenile Delinquency

Studies on juvenile delinquency generally conclude that clinical service can serve best to prevent youngsters from indulging in criminal behaviour. The all India Crime Prevention Society established in 1950 is doing a commendable service to suppress juvenile delinquency on national front. This organisation has now assumed an international status and has received recognition from United Nations. The Society has strongly pleaded for the revision of the criminal law[1] and the law of evidence to conform to the modern corrective methods of treatment. There is greater emphasis on probation service for the guidance and supervision of released offenders. This society has further suggested that adequate employment opportunities should be provided to ex-convicts and they should be allowed suitable age-relaxation in matters of recruitment to public services. Another

1. The old Code of Criminal Procedure, 1898, has already been repealed and replaced by the Code of Criminal Procedure, 1973. The Indian Penal Code, however, needs to be thoroughly revised.

significant point raised by the Crime Prevention Society for reducing juvenile delinquency is the need for greater police-public co-operation. The police should actively assist the social agencies which are engaged in the reformation of offenders. The establishment of Special Juvenile Police Unit in each police station and deployment of more women in the police force is certainly a welcome step in this direction.

Empirical researches in juvenile delinquency have suggested that the only alternative to suppress criminality among children and adolescents is to impart them proper education and training in schools and homes. A well planned scheme of education will intellectually prepare them to accept social responsibility. Active co-operation between the teacher and delinquent's parents is also necessary to solve the problems of teenagers and thus reduce the incidence of juvenile delinquency. Setting up of Guardians Guide may prove useful for this purpose. The educational institutions may perhaps serve best to intensify preventive programmes and suppress juvenile delinquency. Community programme through public-police participation in rehabilitative techniques for juveniles and young offenders may also help considerably in reducing the incidence of juvenile delinquency. It may be stated that the problem of juvenile delinquency is intimately related to other social problems and, therefore, it can be effectively tackled by devicing measures to secure community cooperation and public support through voluntary service organisations. Needless to say that the institution of 'family' has a significant role to play in resolving this socio-legal problem.

It has been generally accepted that children become delinquent by force of circumstances and not by choice. It is possible to reform the anti-social attitudes of children by improving the unfavourable surroundings and giving them suitable training. Therefore, there is need to establish 'social therapy' approach towards juvenile delinquents and this should constitute the basic philosophy underlying administration of juvenile justice in India and elsewhere. Ultimately, it may be concluded that there is need for effective control, supervision and assistance of the offender in the whole juvenile correctional process. It is desirable to establish at various levels people's committee to tackle the problem of juvenile delinquency right from the time of apprehension of the offender to his final rehabilitation in the community. That apart, monitoring of the working of the Juvenile Justice Act and the functionaries working thereunder is also equally important. For this purpose, it has been suggested that an Ombudsman for juvenile justice with statutory powers to watch, report, inspect and audit the institutions functioning under the Act should set up to give it a more democratic dimension and at the same time exercise effective control on bureaucracy in performance of this social task.

The working of the Juvenile Justice (Care and Protection of Children) Act, 2000 has shown that the pattern of implementation of the Act reflects a quantitative approach by increasing the number of Juvenile Justice Boards, Child Welfare Committees, and juvenile institutions so as to cover a larger area. The time has now come when greater attention be focused on qualitative aspect of the working of the Act. For example, only those magistrates should be selected for Juvenile Justice Board who have special background or training in child psychology and welfare work. The

appointment of the panel of two social workers to assist Juvenile Justice Board will be more helpful. There is need to activate the Advisory Boards mandated in Section 62 which would ensure better coordination between the various segments of the juvenile justice system. It would be worthwhile to appoint visitors for each Juvenile Home who may act as a spokesperson for the inmates. The selection and training of right kind of personnel will also prove useful in solving the problems associated with the smooth functioning of the juvenile justice system in India.

It hardly needs to be emphasised that the Juvenile Justice Act is a beneficial statute which aims at fulfilling the constitutional mandate contained in Article 39(f) by ensuring care and protection of neglected children and juveniles who are in conflict with law. It is, therefore, the bounden duty of the State to initiate adequate measures to safeguard children and juveniles against exploitation, deprivation and criminalisation as they are a valuable national asset, besides being the future citizens of India. The Act as modelled, has the potential to achieve this end provided it is implemented in a right earnest manner by the enforcement agencies.

Chapter XXIV

RECIDIVISM

The ever-increasing recidivism is undoubtedly a crucial problem for penologists in the control of crime and rehabilitation of offenders. The term 'recidivism' connotes persistent indulgence in crime. The jails of most civilized countries are full of prisoners and the court rooms jammed with under-trials. The offenders are locked-up, released, rearrested and re-sentenced. Many of them go undetected and they are never convicted or sentenced. Considerable public money is wasted on prisons and other correctional institutions for combating crime but the problem still persists. American records show that more than fifty per cent of prisoners admitted to the State and Federal prisons and reformatories have been found to be recidivists.[1] The Indian Statistics, however, reveal that there is a slight decline in the incidence in recidivism in recent years.

Who is a Recidivist ?

Before analysing the causes of recidivism it seems pertinent to consider as to who is a 'recidivist'. As *John W. Mannering* points out, "criminological literature is replete with descriptions of the personality and background characteristics of recidivists and hypotheses as to why they persist in crime."[2] In his opinion recidivists or crime-repeaters are often characterised as being basically anti-social, aggressive, highly competitive, indifferent to well-being of others and exceedingly egocentric. Thus, it can be said that an offender who has a long criminal record and has been a frequent inmate of penal or correctional institution and who shows scant regard for institutional adjustment, can be characterised as a "recidivist". Such an offender is obviously a poor risk for social adjustment.

Causes of Recidivism

The personality of recidivists and social factors underlying recidivism being complex, the real problem confronting penologists is the proper identification of criminals for rehabilitative processes and to ascertain the extent of effectiveness of these treatment methods. Experience has shown that certain criminals are "better risks" for rehabilitative processes while others may not respond favourably to the correctional measure of treatment. This reflects upon the futility of reformative measures of punishment for certain categories of offenders and at the same time raises a very pertinent question as to why recidivists repeat crime even at the risk of facing severe punishment. As *Kathleen Smith* rightly comments, "the professional criminal that we are dealing with today is no poor, deprived, demented moron. The

1. Dressler David : Readings in Criminology & Penology, (1966), p. 614.
2. John W. Mannering : Significant Characteristics of Recidivists NPPA Journal IV (July 1958), pp. 211-17.

crimes he succeeds in, speak for him. He is often a technical expert and a psychological one ; he is clever, patient, observant, scientific as well as greedy and vicious. The most severe penalties which are awarded by courts are so inadequate and so ineffective that they leave a major crime so glaringly profitable that they invite people to make it their career".[1]

According to *G. B. Vold*, "prevalence of recidivism offers a serious stumbling block to a too ready acceptance of the idea of readily achieved reformation".[2] He prefers to classify criminals into four major categories for the purpose of analysing the problem of recidivism :—

(1) Psychologically disturbed criminals who commit crime because of their mental depravity or emotional instability. Such psychopathic personalities should be treated in a mental hospital rather than a penal institution. According to *Vold*, almost thirty per cent of offenders belong to this category.

(2) Criminals who are relatively unskilled, less educated and possess proportionately low level of ability. Such offenders are psychologically normal persons but they suffer from inferiority complex and are, therefore, not able to withstand the hazards of modern complex society. The ultimate result is that they try to overcome their shortcomings through an unrealistic self-assertion and thus lend into criminality. The appropriate remedy for such offenders is to develop self-sufficiency, honesty and competitive ability in them by institutionalising them in an appropriate penal or correctional institution. Since prison life is essentially non-competitive and provides for an intensive training of inmates to prepare them for an upright living in the society, such criminals can best be treated in prisons and reformatories. About forty per cent of the total population of criminals are covered under this category.

(3) The third category of criminals comprises persons who are psychologically normal and possess proper education but their identification with law violators makes them criminals. Thus persons who indulge in communal activities of political rivalry are often included in this category of criminals. In such cases neither imprisonment nor reformation can serve any useful purpose. Only ten per cent of the criminals fall under this category.

(4) The fourth category of criminals consists of hardened criminals who are professional in crimes and have embraced criminality as a regular way of life. Such criminals quite often organise themselves into regular group associations and syndicates and usually carry on their activities in a well planned and organised manner. These criminal organisations generally operate at prostitution houses, gambling dens and illicit liquor shops. They are habitual and hardened criminals well aware about the possible consequences of their crime, yet they prefer to chance their skill in criminal activities rather than earning their

1. Kathleen J. Smith : A Cure for Crime, p. 53.
2. Vold G. B. : Theoretical Criminology, (1958) pp. 297-301.

livelihood through legitimate means. Apparently, there are lesser chances for rehabilitation of such criminals as they commit crime deliberately in a calculated manner. About twenty per cent of the total criminals constitute this category of offenders.[1]

The drug traffickers carry on their illegal activities in a regular chain which extends from the main dealer to the large number of users at the base. Each one of them relies on another and they operate as a well organised network. Drug offences are largely consensual.

(5) Some criminologists believe that recidivism depends to a large extent on the response to the initial criminal act of the offender. In particular, it may depend on whether the offender is detected and, if so, how his actions are treated. The official, administrative and community responses will interact to change the attitude and experience and his possibility of abandoning criminality or becoming a persistent criminal.

(6) As pointed out by *Sir Robert Mark*, permanent and determined criminals do not regard the present criminal justice system as sufficiently deterrent. They are aware of the limitations of the police and the system of criminal justice and find crime to be highly profitable and rewarding.[2] In India, professional criminals get the protection of resourceful patrons and get the advantage of slow moving criminal justice system. The need of the time, therefore, is to realise that cure for crime lies not only in speedy criminal justice but in certainty of punishment rather than its severity.

Penologists have expressed divergent views about the co-relationship between intelligence and recidivism. *Goring*, the noted penologist in his study on recidivists concluded that with increasing degree of recidivism there is a small but regular regression in the mean intelligence of convicts. But *Professor Gillin* opposed this view and observed that Intelligence Quotient (I.Q.) has no statistical relationship with the success or failure in crime.

Dr. Sutherland seeks to tackle the problem of recidivism from the psychological standpoint. He attributes two major causes for recidivism,[3] namely,

(i) Social psychology of the offender ; and

(ii) Inadequacy of reformative techniques.

Commenting on the social psychology of criminal as a cause of recidivism, *Sutherland* pointed out that urbanised regions are more prone to recidivism than rural areas. The congested dwellings, slums, high cost of living and highly mechanised life in cities and urban places offer sufficient opportunities for offenders to carry on their criminal activities undetected and unnoticed for years. Criminality thus becomes a habit with them and finally makes them recidivists. The living in rural areas, on the other hand, is relatively cheaper and simple and, therefore, offers lesser chances for

1. *Vold G.B. : Theoretical Criminology, (1958) pp. 297-310.*
2. *Sir Robert Mark* : Policing A Perplexed Society, p. 67.
3. Sutherland and Cressey : Principles of Criminology (6th Ed.) pp. 592-5.

criminality. That apart, there are almost no chances of escape from detection in rural places and this makes these areas unsuited for crime and recidivism. *Dr. Sutherland* futher concludes that men are unquestionably more recidivistic than women because of their dominating social status in the society.

Some penologist suggest that continued isolation of inmate from normal society due to long stay in prison renders him unfit for a normal life after release. The stigma of prisonization makes him shun and avoid the normal society. He, therefore, finds no charm in free life and prefers a routined life of a prison to which he is well accustomed. Another psychological reason for non-adjustability of released inmate to normal life is that he begins to feel that the law-abiding members of society look at him with suspicion, distrust and doubt. Thus he suffers from inferiority complex and in an anxiety to overcome this weakness he repeats crime which he considers to be an adventurous task.

Yet another potential cause of recidivism is to be found in the fact that criminals by reason of their criminal tendency organise themselves into groups and associations and devote to loyalties and attitudes which tend to persist in the criminal world.[1] The offender who talks of reformation is ridiculed by his fellowmen and at times even aggressive and violent methods are used to prevent him from disassociating with the criminal group. All possible efforts are made to convince him that he can make fortune only by continuing his criminal career. That apart, continuous association of the offender with a particular criminal group inculcates a sense of faithfulness, devotion and loyalty in him for his fellow-criminals. He, therefore, feels obliged to help those who helped him earlier in his criminal activities.

There are certain activities in society which are either criminal by themselves or are very near to criminality. Persons who undertake these activities adopt many of the criminal traits as a part of their business routine. Thus hoarding, smuggling, black-marketing, racketeering, tax evasion, bribery, fraud and infringement of trade marks, copyrights or patents, etc., are some of the examples of crimes which are customarily followed by the members of business community as a part of their day to day dealings. In India, political grafts, pressure tactics and corrupt practices are widespread and have become so common that offenders committing these offences hardly lose any social status even if they are caught and punished for any of these offences.

The pathological personality-traits such as mental disorder, emotional instability, egocentrism and mental conflicts also lead to persistence in criminality among recidivists. In such cases treatment through correctional processes does not serve any useful purpose because the personality traits of these criminals remain unchanged and they continue the old criminal behaviour.

Inadequacy of correctional measures in treatment of offenders is yet another cause of recidivism. A large number of failures in parole, probation and reformatories certainly reflect upon the ineffectiveness of correctional methods in cases of hardened and habitual offenders. These rehabilitative

1. Goswami, P. : Criminology, (1964) p. 116.

measures prove effective only in selective cases where the offender is specifically recommended for such treatment after careful observation by the experts. It must be noted that in the present context when unemployment, poverty and economic depression, are rampant, many persons take these correctional institutions as convenient places of shelter where they can be sure of atleast two square meals a day. Thus they deliberately indulge into criminality to find a legitimate entry into the prison institution where they feel more homely than the outside competitive life in normal society.

Attributing short-term sentences as a potential cause of recidivism, *S. Adolph Prins*, the noted penologist of Belgium, once observed that "mechanical apportionment of punishment to guilt usually results into short terms of imprisonment and the multitude of minor punishments means the incessant coming and going of habitual delinquents ; it means that prison becomes a hostelry, that the prisoner goes free in good time and remains in a state of war against society ; it means in a word that the Judge enlarges, without being aware of it, the records of recidivism."[1]

Recidivistic Offenders

Studies on recidivism generally reveal that there are certain specific offences which are more likely to be repeated by recidivists than the others.[2] Thus theft, robbery, burglary, larceny and forgery are referred to as the most recidivistic crimes while homicide, assault, rape, embezzlement and income-tax frauds are not so often likely to be repeated. The most recidivistic offences committed by male offenders are narcotic-law violation, fraud, burglary and auto-thefts while sex offences are most likely to be repeated by women delinquents.

Measures to combat Recidivism

The classical theory of punishment upheld infliction of sufficient pain and suffering on the offender as an adequate measure to bring about his reformation. The modern psychological and psychiatric trends in the correctional field, however, do not favour infliction of pain and suffering on the offender. It is now generally accepted that severity of punishment makes the offender all the more worse and he becomes indifferent to society. This impedes his chances for rehabilitation to normal life. Thus deterrent punishment does more harm than good to criminals so far their reformation is concerned.

Medieval penologists believed that expiation or penance is also an equally effective method of suppressing recidivism. In their view, leaving the offender in complete isolation without any contact with outside world provides him sufficient opportunity for penance and remonstrance. But this view does not find support in modern times as it has been proved beyond doubt that solitary confinement of prisoners leads to their degradation and makes them worse for the normal life in the community.

The old method of keeping the offender under constant surveillance has now also become obsolete and outdated for the reason that it carries with it a sense of distrust for him. The offender's consciousness of being under a

1. S. A. Prins : Criminal tei et Repression, (1888) p. 95.
2. Dressler David : Readings in Criminology and Penology, p, 619.

constant watch makes him hostile and indifferent towards the security guards who are deputed to keep a watch on him. Alternatively, the modern techniques of open air camps, probation, parole, etc., are devised to afford maximum liberty to the inmates so that they begin to feel that they are being trusted.[1] This inculcates a sense of responsibility and trustworthiness among them which helps considerably in their rehabilitation.

Corrective work inside the prison institution and keeping inmates engaged during the period of their incarceration is perhaps the most effective method of their ultimate reformation. The process of putting inmates to work reduces monotony of prison life and at the same time keeps them physically and mentally fit. The talents of inmates are also properly channelised and they get an opportunity to prove their worth and ability through hard work.

With the advance of science, technology and human knowledge the old mechnical methods of repressing recidivism have lost their credence and new clinical methods are now devised for the reformation of criminals. Modern penal science lays greater importance on individualised treatment of offenders which, in other words means shifting the emphasis from crime to the criminal. Thus every endeavour is made to ascertain the cause of criminality to be cured through a process of diagnosis and institutional treatment. Expressing his views on reformation of offenders *Dr. Sutherland* observed that criminality is now considered as a defect or a symptom of disorder which can be treated on individual basis without reference to offender's group just as the biological disorder can be treated on an individual basis.[2] This proposition is carried further to explain that an offender commits crime due to psychological disorder in him rather than the biological defects. At times, an offender is unable to overcome his egoistic tendencies and anti-social impulses and suffers from emotional conflicts which make his social adjustment difficult. The modern method of treatment seeks to mitigate these emotional maladjustments for bringing about the reformation of offenders. Thus, criminality is now regarded as a mental disease to be cured by clinical treatment through the process of psycho-therapy and psychiatry. The ultimate aim is to make the inmate realise the undesirability of his unacceptable behaviour and assist him to follow a socially acceptable course of conduct.

Modern penological researches have shown beyond doubt that correctional programmes have failed to deliver the goods because of over-emphasis on individual traits of the offender rather than his group. Speaking about criminology, Danish penologist *Dr. George Sturup* comments, "it is a poor service to science to anticipate progress by excessive propaganda endeavouring to turn the medical experts who are such excellent collaborators in the administration of justice into magicians".[3] Today, a number of professionally trained personnel are engaged by law-courts and other correctional agencies to assist in the treatment of criminals. Several social agencies are also at work to help and guide the offenders in the

1. Sethna, M.J. : Society and the Criminal (3rd Ed.) p. 234.
2. Sutherland & Cressy : Principles of Criminology (6th Ed.) p. 598.
3. Andreas Aulie : Criminology, Criminal Policy and Propaganda, published in Studies In Penology (IPPS), p. 27.

process of their reformation yet the problem of recidivism continues to persist. This sufficiently demonstrates that the importance of clinical and corrective measures should not be over-emphasised and greater reliance be placed on existing penal sanctions and legal methods for minimising the recurrence of recidivism. This would perhaps be a more rational and realistic approach to the problem of recidivism.

Sir Lionel Fox, the Chairman of the British Prison Commission, expressed great concern for the growing tendency of recidivism among offenders and suggested some concrete measures to curb it.[1] He pointed out that almost ninety per cent of the discharged criminals wish to live an honest and upright life but the society denies them this opportunity on account of its hostility and distrust for them. With a view to solving this intricate problem of released offenders, *Sir Lionel Fox* introduced *Hostel System* in England in 1953 which was extended throughout England in subsequent years. United States followed the suit and started similar institutions in the name of Pre-release Guidance Centres. These Guidance Centres are meant for those juveniles and young offenders who are to be paroled out having completed their institutional treatment. These Centres also provide adequate guidance and offer work opportunities to inmates in commercial firms and private undertakings. They are well equipped with recreational facilities and have all amenities of a normal living. The system has been found useful in bringing down the incidence of parole violations. A similar system has recently been also devised for adult offenders.

As a veteran prison reformist, *Sir Lionel Fox* further suggested that if the society is receptive to ex-prisoners, recidivism can be considerably reduced. In his opinion no amount of after-care plan can successfully bring down the incidence of recidivism unless there is a change in society's attitude towards offenders. This is possible through proper understanding and education. He was distressed to find that many prisoners on release carry with them the stigma of prisonisation and hide it as a secret disgrace to avoid being shunned by the society. It is unfortunate that they have to do so and it is terribly wrong that society should force them to do so.[2]

Despite far reaching development in correctional practices and improvement in the administration of criminal justice, the steep rise in crime-rate has so often been a cause of concern for penologists and law-reformers. It has been suggested that excessive conservatism and mass illiteracy are the two potential causes of growing recidivism in India. It is, therefore, desired that an offender be treated as a person who has deviated from the normal path and gone astray in social life for certain reasons. It must be borne in mind that confinement of the criminal in prison or a similar institution makes him suffer considerably and, therefore, he should be treated sympathetically after his release so that he can readjust himself to normal life in society. Thus there is greater need for change in society's outlook towards ex-prisoners in order to prevent their lending back into world of criminality.

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1. Sir Lionel Fox was the Chairman of the British Prison Commission during 1942-60.
2. Studies in Penology edited by Lopez-Rey & Germain (1964) p. 48.

Recidivism in India

Like any other country, the problem of recidivism has reached alarming dimensions in India in recent years. The available statistics on recidivism in India indicate a wide fluctuation in different States. Significantly, the percentage of recidivism has shown a declining trend during the preceding three years. The proportion of recidivism has come down from 8.2 in 1993 to 7.7 per cent in 1998. Out of the total recidivists for the year 1998, about 73.4 per cent were those convicted once in the past, 18.1 per cent were convicted twice, while 8.5 per cent were habitual offenders who were arrested thrice or more.[1] The available data on recidivism indicates that from 1989 to 1993, there was an increasing trend of recidivism in the country while the same has shown a reversing trend thereafter. Nevertheless, the problem still persists causing great concern for criminal law administrators. It must be stated that incidence of crimes in urban areas is far more than those of rural regions. Again, sex-wise, males are more prone to recidivism than female offenders perhaps because of their physical strength and adventurous temperament.[2]

Supreme Court on Recidivism :

The Supreme Court has suggested liberal use of parole as a penological innovation to check recidivisim through its decision in *Suresh Chandra* v. *State of Gujarat*[3] and *Krishan Lal* v. *State of Delhi*.[4] The Court has stated that parole has the effect of premature release and it is an accepted mode of incentive to a prisoner as it saves him from extra period of incarceration thus preventing him from turning a recidivist. The apex Court once again emphasised the reformative aspect of penal justice in *Mohd. Giasuddin* v. *State of Andhra Pradesh*[5] and observed, "the State has to rehabilitate rather avenge". *Mr. Justice Krishna Iyer*, speaking for a two-Judge Bench, pointed out that "the sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturisation."[6] These directives of the Supreme Court certainly go a long way in combating recidivism.

Prevention of Recidivism

Some of the measures which may be suggested for suppressing recidivism are as follows :—

1. The modern correctional methods of treatment of offenders essentially involve classification of criminals into different categories so that they can be adequately punished or sent to an appropriate institution. From this point of view, the offenders may be classified into following categories :—

(i) innocent convicts ;

(ii) insane criminals ;

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1. Source : CRIME IN INDIA—1998, Published by the National Crime Record Bureau, (NCRB), New Delhi.
2. *Ibid.*
3. (1976) 1 SCC 654.
4. (1976) 1 SCC 655.
5. AIR 1977 SC 1926.
6. Cited in *Ramamurthy* v. *State of Karnataka*, (1997) 2 SCC 642.

(iii) criminals by accident ;
(iv) occasional criminals ;
(v) habitual offenders ;
(vi) white collar criminals ;
(vii) political offenders.

This classification rests on the responsibility of the criminal to his act. Thus innocent convicts are those who are convicted and imprisoned due to erroneous or misguided judgment of the law court. They are, therefore, innocent persons who have been wrongly implicated, sentenced and brought to prison or a similar institution. Obviously, such persons should be dealt with leniently because by nature they prefer to avoid the company of recidivists and hardened criminals.

The insane criminals, on the other hand, commit crime due to certain mental disorder and are considered *irresponsible* to their crime. They are, therefore, suited to clinical methods of treatment rather than penal servitude. Normally such criminals are not recidivists.

The criminals by accident are also called "situational criminals". They are not habitual or professional offenders but lend into criminality per chance. Their crime is never premeditated but is the result of momentary impulsiveness or soothing opportunity in which the offender finds himself placed incidently. This is often true with many of the sex offenders. There are no recidivistic trends among such criminals.

The crime committed by occasional criminals are often well planned and pre-meditated but these criminals do not accept criminality as a profession. The treatment of such occasional offenders should depend on their psychological and psychiatric condition. These offenders are most likely to turn recidivists if not properly handled. They should, therefore, be treated cautiously.

A habitual offender or a person habitually addicted to crime is one who is a criminal by habit or by disposition formed by repetition of crimes. These are the persons who have embraced criminality as a mode of life and commit crime with boldness and courage. Reformative measures of treatment completely fail in case of such offenders. Perhaps imprisonment is the only alternative to prevent habitual offenders from repeating crime.

There is yet another category of criminals known as white collar criminals. They are persons of high social status who commit crime in course of their legitimate business. These criminals are seldom detected or if detected, hardly punished. Moreover, there is no social condemnation for such white collar criminals. It is for this reason that there has been an enormous increase in white collar crime in recent decades. The remedy suggested for repressing white collar criminality is to award severe punishment to white collar criminals through stringent laws.

It must be stated that the aforesaid classification of criminals holds good to both, male as well as the female offenders. It is, however, a different matter that women generally commit offences which by their very nature, are hard to detect and even if detected, are rarely reported or prosecuted. That apart, despite equality of men and women before law, the fact remains

that courts treat women more leniently than men in matters of sentencing.[1]

2. Experience has shown that individualised methods of treatment serve no useful purpose in case of recidivists. At the same time, deterrent punitive measures have also proved equally ineffective in their case. It is, therefore, desired that an integrated programme of legal sentence and treatment be improvised in the penal system for the rehabilitation of recidivists. It is for this reason that the power of the Judge to keep a recidivist under detention for an extra-period than the term of his sentence prescribed for that particular offence, has been withdrawn[2] in Britain.

3. Recidivists should be kept in prisons equipped with maximum security arrangements. They should be under constant surveillance so that society is fully protected against these miscreants.

4. Adequate After-care treatment at the time of inmate's release from prison or a correctional institution may prepare him for an upright living in society, shedding aside his inferiority complex. This would inculcate hope, self-confidence and self-respect in the offender which would enable him to adjust himself to the conditions of normal life in society.

It is also realised that mere treatment in institutions does not help in the ultimate rehabilitation of habitual offenders as it cannot bridge the gap between the individual experience and the stigma society attaches to the recidivists. Therefore, the punishment for crime never end with the completion of the prison-term but it rather continues as a life-long record and sometimes it becomes difficult for the offender to return to the society as a decent law-abiding citizen despite his sincere and genuine desire to live honestly. The discharged prisoners are confronted with multifarious problems such as stagmatisation, social neglect, financial handicaps and so on. Therefore, it is of vital importance to develop after-care services as an essential requisite in the correctional field. This can help in arresting recidivism in two ways, namely, (1) by bringing about social rehabilitation of the offender, and (2) extending vocational rehabilitative services. Thus, there is need for effective control, supervision and assistance of the offenders in the community. Since criminal is the product of the community, it is for the community to devise ways and means to tackle this problem. Perhaps, setting up of People's Committees to tackle the problem of crime right from the time of apprehension of an offender to the final disposal of his case, may help in preventing recidivism to a considerable extent.

5. *Dr. Walter Reckless* has suggested that there are two major factors which contribute to recidivism. They are psychological aspects and social pressures. According to him, psychological desires or propensities, such as restlessness and aggression might be internal elements which drive a person towards recidivism. Further, the external factors which may push a person towards criminality and repetition of crime could be social pressures such as poverty, family conflicts, neglect, lack of opportunities etc. Studies have shown that recidivists generally lack in four elements which are essential attributes of a law-abiding citizens. They are (i) lack of attachment to family and the community; (ii) want of sense of responsibility and commitments; (iii) disregard for morality and social values; and (iv)

1. Herman Mannheim : Comparative Criminology, Vol. II, p. 693.
2. Barnes and Teeters : New Horizons in Criminology, (3rd Ed.) p. 59.

absence of beliefs that forbid delinquency. If all these elements are inherent in a criminal, he is less likely to become a recidivist.

Some recidivists chose criminality because it brings them recognition and position and this is often a motivation for them to indulge in crimes. The notorious sandalwood smuggler Veerappan[1] who was operating in dense forests bordering Kerala and Tamil Nadu and committed as many as 138 murders and killed nearly 2000 elephants during the past twenty years is an illustration on the point.

Roshia Bob (1989) claims that the factors accountable for recidivistic tendency in criminals may be countered by inculcating in them the elements of affection, status, autonomy security and self-consciousness which may dissuade them from committing crimes.

6. Last but not the least, unduly lengthy procedure of criminal trial should be suitably amended to secure summary conviction of recidivists and hardened offenders. Avoiding delays in criminal trials is all the more necessary to ensure that the gravity of the offence is not washed off by long delays. Speedy trials and punishment can further be effective in putting a check on the offender reaping undue benefit of his criminal act. His immediate conviction after the incidence of crime shall act as a sufficient deterrent to dissuade him from repeating crime.

It must be stated that twenty-first century materialism has contributed substantially to the growing incidence of recidivism. The concepts of morality, mutual respect, fear, love and faith have lost their importance in modern times. Consequently, humanity and human values have lost their credence. Under the circumstances, resort to crime is considered as an easy mode of earning money and satisfying egoistic needs of life. The need of the time, therefore, demands that law courts should take notice of this psychology working behind the modern "criminal" and award punishment which may suit the individual offender, the society as also the ends of criminal justice. Punishment as a form of incapacitation seems inevitable in case of recidivists but it should not be unduly harsh, barbarous or cruel in nature, else it would have an adverse effect on the offender.

It is true that for centuries it was believed that crime could be effectively controlled by inflicting severe punishment or penalties on the offenders, particularly the recidivists, so that they would be made to realise their guilt, repent and pay for their crime and at the same time could be restrained from repeating the crime in future. In this manner, the society could be protected from the onslaught of criminals by a rigorous method of punishment and intimidation. However, with new developments in the field of psychology, sociology and criminal science, the criminologists have realised the futility of this conventional approach to crime and criminals. The modern trend is, therefore, to treat crime as a social and individual phenomenon and prevent its recurrence or repetition by adopting an attitude conducive to the re-socialisation and reformation of the criminal within the community itself through an intensive treatment and after-care programme.

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1. Veerappan was killed in an encounter with STF on 18th October 2004 in the Satyamangalam forest.

Chapter XXV

CRIME PREVENTION

The mounting toll of criminality and alarming rise in juvenile delinquency has become a problem of national concern all over the world. Most countries now recognise that prevention of crime and treatment of offenders is not an isolated problem ; that social defence and correction cannot be considered as unrelated to the total culture and the social and economic fabric of society.[1] This is evident from the fact that the "battle against crime does not end at the court-room door but continues through imprisonment to release and beyond". Despite improved correctional methods and recent innovations in criminal procedure and sentencing law, the problem of crime and criminal continues as a challenge to "new era of penology".[2]

With the changing trends in penology, the old penal philosophy which rejected any intervention by the behavioural sciences stands completely discarded. The old belief that harsh and lengthy punishments are necessary for the security of the society has become obsolete in the present context. Currently, the approach of penologists to crime prevention centers round five major considerations, namely :

(i) The offender is essentially a human being. Therefore, greater stress should be on individualisation of the offender for his reformation ;

(ii) The object of imprisonment is to bring about prisoner's re-socialisation through the process of rehabilitation ;

(iii) There is greater need for legislative participation in the shaping of correctional policy and subjection of correctional theory and practice to rule of law in the administration of criminal justice.[3]

(iv) Control of delinquency implies ecological interpretation of sociological problems. Therefore, in order to hold in check the incidence of crime, the conditions conducive to criminality must also be kept under control.

(v) There is need for 'socialising' the administration of criminal justice by greater public participation and intervention by representatives of the community, both in criminal court proceedings and in the execution of sentences. Thus, criminal justice and the community must be brought closer together, since those who judge and those who are judged are both parts of the same society. Social participation in the administration of

1. Perlman & Allington : The Tasks of Penology (Third Reprint 1970) p. 4.
2. *Ibid* Preface.
3. Silving : "Rule of law in Criminal Justice" in ESSAYS IN CRIMINAL SCIENCE (1961 Ed.). Chap. 5.

criminal justice is possible through introduction of jury system, honorary magistrates, people's assessors, technical advisers and administrative Boards.[1]

Twentieth century pragmatism has brought in its wake a new wave of reformation in the realm of penal justice and correctional services. The shift of emphasis from "crime" to "criminal", that is, from the criminal *act* of the offender to his *personality*, has brought about revolutionary changes in the field of penology and criminal science. The modern systems of probation, parole, juvenile justice reformatories and open institutions have proved potentially helpful in elimination of isolationism from which preventive and correctional schemes have suffered for long. New scientific methods are now devised for crime detection and apprehension of criminals. The working of prison institutions has been remodelled to suit the modern corrective methods of treatment of offenders. All these measures speak of the growing concern of modern penologists for crime prevention.

The progress of penal science in different parts of the world has been more or less on a uniform pattern. The old brutal and barbarous methods of punishment are abandoned in favour of modern correctional measures. Sentencing procedures have been radically changed to suit the requirements of the individual offender. As rightly pointed out by Justice *Theodore Levin*, "the courts in sentencing of convicted persons must be something more than mechanical instruments of punishment".[2] The Judge should not lose sight of the fact that it is the human being who stands before him as a criminal. Thus, the modern criminal law administrators are not relieved of their responsibility merely by sentencing and sending the convicted person to prison or a similar institution ; but they have an active role to play in making the rehabilitation of the offender possible through institutional methods.

Reviewing the progress of sentencing procedures in context of prevention of crime, *Curtis Bok* suggests that we are presently passing through the fourth phase of criminological development.[3] The earlier three phases, as pointed out by the learned author are as follows :—

The first phase covering the period of seventeenth century and the first-half of the eighteenth century when punishments were generally brutal, barbarous and harsh, and the emphasis was on deterrence and retribution.

The second phase which covered the period of later half of the eighteenth century and early decades of nineteenth century is remarkable in the history of penal science because emphasis shifted from crime to criminal and individualisation of offender became the cardinal principle of penal reforms.

The third phase of criminological development covers the period of past one hundred years when "*treatment*" and not "*punishment*", became the guiding principle for all penological reforms. Greater emphasis was on the treatment of offenders through clinical methods rather than confining them inside the closed prisons. A number of minimum security institutions such as

1. Agarwal R. S. : Prevention of Crime (1977 Ed.) p. 46.
2. Theodore Levin was the Chief Judge of the United States District Court for the Eastern District of Michigan.
3. Curtis Bok : Problems in Criminal Law, (1952), p. 58.

open air camps, prison-farms, etc. were established for the rehabilitation of offenders.

In most countries, unprecedented rise in recidivism is perhaps the most disturbing problem in relation to crime prevention in present times. The problem of recidivism has always been discussed in the recent international conferences on prevention of crime and treatment of offenders. It has been generally accepted that recidivists and hardened criminals must be punished with long-term sentences to ensure their elimination from society. There are however, certain penal reformists who firmly believe that correctional programmes can be equally effective in case of recidivists as in case of other offenders. In their opinion the reformation of offender must be sought within the society itself. Significantly, the working of open Jails for the rehabilitation on dacoits from Chambal ravines and Bundelkhand regions of Madhya Pradesh has shown beyond doubt that even the most hardened and dangerous criminals can be corrected and redeemed to society as law-abiding citizens if they are properly treated through correctional institutions.

Another reason so often attributed to rise in crime-rate is the widespread discrimination in the treatment of persons accused of crime on grounds of social position and financial status. The criminal law procedure should be so amended as to eliminate needless arrest and detention of suspected offenders. Persons should be detained in custody only when absolutely necessary. Uniformity of sentence for similar offences should be the guiding principle of sentencing the convicted persons. The criminal law should not allow any disparity in trial or sentencing on the basis of social status of the offender. Courts have at least four main types of sentences for mentally normal adults at their disposal. They are admonition, fine, imprisonment and probation.[1] They must make use of these methods rationally keeping in view the requirement of the accused who is standing trial before them.

Besides the necessity for a change in legal attitude towards correctional services, there is a need for greater legislative participation in shaping of penal policies. The law should be flexible so as to adapt itself to the changing socio-economic needs of society.[2] It is heartening to note that this principle has been fully recognised by the Indian law-makers. The liberalisation of abortion law[3] and the changes introduced by the Criminal Law First and Second Amendment Acts, 1983, in law relating to rape and dowry deaths[4] consequent to *Mathura Bai's Rape case*,[5] are some of the illustrations to support this contention. Relaxation in legal restrictions on gambling and liquor-consumption has not only reduced crime statistics relating to these offences but also eliminated other allied crimes which were closely linked with these illegal activities.

1. Now-a-days, payment of compensation to the victims of crime is also being ordered by the courts by way or punishment to guilty offenders.
2. The Third United Nations Congress on the Prevention of Crime and Treatment of Offenders, Agenda item (1965).
3. The Medical Termination of Pregnancy Act, 1971. The Act came into force on April 1, 1972.
4. See *Shanti* v. *State of Haryana*, AIR 1991 SC 1226 ; *Sarojini* v. *State of M.P.*, (1993) 4 SCC 532 ; *Brij Lal* v. *Prem Chand*, AIR 1989 SC 1661.
5. AIR 1979 SC 185.

Recent trends in correctional measures have proved beyond doubt that only one-fourth of the total population of criminals consists of incorrigible offenders while the majority of them are corrigibles and respond favourably to the treatment methods. It must be reiterated that treatment of offenders through modern clinical methods symbolises society's preparedness to accept delinquents as trustworthy citizens. The concept of individualised treatment through correctional measures presupposes that offender is a deviant who can be redeemed to normal life in society if adequate opportunities for rehabilitation are offered to him. The system of parole, probation, indeterminate sentence and open prisons are some of the rehabilitative techniques which find place in the modern penal programmes of most countries of the world. Needless to say that these measures are intended to remove or reduce offender's disposition to repeat the offence or break the criminal law in any way.[1] The corrective devices *inter alia* include :

(i) Custodial measures which deprive the offender of his liberty and test his responsiveness to self-control, discipline, etc., within the institutional life, help him to live as a law abiding citizen after his release.

(ii) Semi-detention method is intended to restrict liberty without completely separating the offender from his occupation or family.

(iii) Reformative measures such as probation and parole enable the offender to rehabilitate himself within the society.

Distinction between Crime Prevention and Treatment

Though prevention of crimes and treatment of offenders, both are directed at the same end, *i.e.*, elimination of crime and criminals from the society, the two differ in their approach and methodology. The chief points of distinction between prevention and treatment are as follows :—

(1) Crime prevention is a stage prior to incidence of crime whereas treatment follows the commission of crime and conviction of the offender.

(2) The object of crime prevention is to check the occurrence of crime while the purpose of treatment is to prevent repetition of crime.

(3) Crime prevention essentially involves elimination of conditions which are conducive to crime causation but treatment involves reformation of the offender to reclaim him as a useful member of the community.[2]

(4) In crime prevention, it is the police which plays a major role and the courts and prison institutions have only an indirect role to play. As against this, in the treatment of offenders, the court and correctional institutions have a vital role to play and the police merely acts as an assisting agency.

Prevention of Juvenile Crimes

The constantly mounting toll of juvenile delinquency is presenting a major threat to problem of crime prevention in recent decades. Commenting

1. Nigel Walker : Sentencing in a Rational Society (1972) p. 98.
2. Sutherland & Cressy : Principles of Criminology (6th Ed.) p. 590.

on the problem of juvenile offenders, *Thad F. Brown* observed that the crime problem of the day is to a large extent a problem of youthful offenders.[1] In India, the legislation on Juvenile Justice (Care and Protection of Children) Act, 2000 is a beneficial statute fulfilling the constitutional obligation under Article 39 (f) and seeks to provide security and protection to neglected and delinquent juveniles within the framework of law. The Act for the first time recognises that the 'child' is a national asset and it is the duty of the State to look after the child with a view to ensuring development of its personality.

Despite special trial arrangements for youthful offenders in juvenile Boards and institutionalising them in a reformatory or Borstal, there seems no remarkable progress in mitigating this evil. Although prevention of crime is primarily a police function but the parents and guardians can actively help in preventing their children from landing into delinquency or anti-social behaviour. The institution of "family" or "home" plays a vital role in controlling juvenile delinquency. The neglect of wards by their parents is perhaps the basic cause of juvenile misbehaviour. The parents should, therefore, be made legally liable and even penalised in case of failure on their part to exercise parental control or supervision over their children.

Some criminologists have drawn attention to the fact that juvenile delinquency is the result of the influence of mass-media, movies, television, etc., on human mind, particularly the teenagers. The television and films have the maximum impact on the viewers due to their audo-visual impact. Most of the films and T.V. serials depict scenes of sex, violence which pervert the minds of youngesters and they often tend to imitate the same in real life situations. Likewise, pornographic literature also has an unwholesome influence on the impressionable minds of the youths. What is, therefore, desired is the proper censorship and a sense of social responsibility on the part of producers and directors of such films.

Criminality and domestic violence in families also deserve some attention in context of crime prevention. The world today is witnessing a rapid change in values culminating in a breakdown of time-honoured family system. Emotional pressures and frustration often end in family violence and victimization of females and children. Poverty, dependency of women and insufficient housing generally lead to violent behaviour in the family. Though family violence appears to be an age-old phenomenon, it was not questionable in the past due to patriarchal family system. It is in the wake of women's movement in early 1970's in Europe and late 1980's in India that attention of sociologists and criminologists was drawn to this kind of violence and need for its prevention became eminent. It is generally agreed that in India and elsewhere, the victims of domestic violence are mostly adult women,[2] married or otherwise, and unwanted children. Though husbands and old parents may also be victims, but in rare cases only.

The acts which are included in family violence are women battering and their physical and sexual abuse causing them untold pain and suffering.

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1. Thad F. Brown's article entitled 'Crime Prevention and the Youthful Offender'. published in the Police Year Book, 1957, pp. 77-80.
2. The incidents of dowry-deaths and wife beating or burning are common occurrence in India in recent years.

Violence against children includes use of physical force causing injury and neglect.

Every kind of domestic violence is generally viewed as private affair and it becomes extremely difficult for law enforcement agencies to intervene in domestic violence incidents. Hardly 5 per cent of women dare to file complaint against their husband or in-laws and get them arrested. Most women who approach the police really do not want to initiate formal proceeding but instead only look for help. Therefore, general public disapprobation seems to be the only remedy for offences involving domestic violence.[1]

It is being increasingly felt that marital rape is a common form of domestic violence. There is proposal before the Law Commission for inclusion of marital rape in the law but many believe that the provision may be misused and that our society is not yet prepared for such a law.

Yet another potential cause of recidivism is mushrooming of slums due to rapid industrialisation. This has resulted into tremendous rise in slum-related crimes. Most of these slums are dens of illicit distillation, gambling, drug-peddling and even prostitution. Besides, there are frequent scuffles, attempted murders and illegal relations leading to heinous crimes. Thus slums are a menace as they are contributors in crime. Slum-dwellers also indulge in burglaries and chain-snatching. Some psychologists feel that it is futile to think that crimes in this section of society will ever disappear completely as it is an off-shoot of our socio-economic system. Slum related crimes have almost become a growing industry in which most of the beginners in crime turn into recidivists and pose a serious threat to the economy and the society. It is for the police to curb this menace.

From the foregoing discussion it is evident that social conditions and penal laws have a close bearing on the problem of crime prevention. Again, crime being a relative term, the concept of "criminal" also varies from place to place depending on the relevent provisions of criminal law. Thus, conceptual differences arise from variations in legal definitions. For example, murder under the Indian Penal Code is more or less similar to that of a manslaughter under the American criminal law. Therefore, amending substantive law of crime according to need of the time would indirectly help in reducing the incidence of crime at a given place. It is for this reason that the American Law Institute prepared a Draft of Model Penal Code in 1965. The Republic of Germany also prepared its retribution oriented Draft Penal Code in 1962. The New Swedish Penal Code which came into effect from January 1, 1965 lays greater stress on rehabilitation rather than retribution or deterrence. It must be stated that there is an urgent need for the re-statement of Indian penal law and the law of evidence which are more than 140 years old[2] and are hardly suited to the changed socio-economic and political conditions of the Indian society. The ultimate object of criminal law should be to create conditions which are conducive to progress and prosperity of the community and afford "good life" to people in general.[3]

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1. Year 2001 is referred to as the Year of Women's Empowerment.
2. The Indian Penal Code was enacted in 1860 and the Evidence Act in 1872.
3. Hall Jerome : Studies in Jurisprudence and Criminal Theory, p. 253.

Suggested changes in Criminal Law & Procedure

From the point of view of social perspective and suppression of criminality, the following changes in the Indian criminal law and procedure may be suggested to make it responsive to the needs of the Indian society :—

(1) The existing law does not sufficiently provide for reparation or compensation to victims of the crime for injuries caused or loss suffered by them due to the offender's criminal act. Punishment of the accused may offer some consolation to the victim but it offers no pecuniary satisfaction to him. It is, therefore, desired that compensation be awarded to the injured parties particularly, in cases of crime relating to property. The payment of compensation may be made from the money recovered by the State from the offender by way of fine. It is further suggested that imposition of heavy fines instead of imprisonment in case of crimes relating to property seems to be a rational policy in the present context of penological development. It is heartening to note that more recently, a judical trend is developing to award compensation to the victims of police atrocities or deaths or serious injuries caused due to use of third degree methods by police officials.[1] The compensation is to be paid by the guilty official who is accountable for these wrongs.

(2) The existence of double sets of law for certain offences present difficulties for the magistracy to determine punishment for offenders in such cases. To take a concrete illustration, the law relating to bribery in India is governed by two different sets of laws, namely, Section 161 of the Indian Penal Code[2] and the Prevention of Corruption Act, 1988. So also is the case with the offences relating to trafficking in girls and minors for immoral and illegal purposes.[3] It is, therefore, desired that dichotomy of legal provisions for the same offences should be avoided to make sentencing more definite and effective. The other examples are adulteration laws, pollution laws, nuisance etc.

(3) In view of the changed socio-economic conditions of the present time, there is an urgent need to re-classify the offences contained in the Indian Penal Code. With the growing political indiscipline in the country and criminalisation of Indian politics, it has become necessary that political offences be included in the Penal Code under a separate chapter. The cases of defections, resort to

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1. See *Neelbati Behra* v. *State of Orissa*, AIR 1993 SC 1960 ; *Gauri Shanker Sharma* v. *State of U.P.*, AIR 1990 SC 709 ; *Saheli* v. *Police Commissioner, Delhi*, (1990) 1 SCC 422 .
2. Sections 161 to 165-A are omitted by the Prevention of Corruption Act, 1988 w.e.f. 9-9-1988.
3. The relevant provisions are contained in Section 372 of the Indian Penal Code and there is also a special enactment, i.e., the Immoral Traffic Prevention Act, 1956 as amended in 1986.

corrupt practices,[1] booth-capturing, rigging, etc., during election campaigns and such other offences should be made severely punishable under the Penal Code itself. Likewise, white collar crime should also find place in the Indian Penal Code under a distinct head.

Speaking about the magnitude of corruption in India, *Bertrand de Speville*, the International Anti-corruption expert who is presently (April-May 2001) appointed as consultant to the State Government of Andhra Pradesh, was startled to find corruption so rampant in almost every department of the State Government. According to him, it is either **need** or **greed** which is responsible for making an individual a corrupt person and it is not correct to think that rich people are less corrupt and poor people are more prone to corruption. Greed is the motivation for corruption for everyone.

(4) Crimes relating to person should be punishable with a term of imprisonment while those relating to property should be punished with fine or reparation of damages to the affected parties. Unnecessarily long terms of sentences should be avoided to make rehabilitation of the offender possible after his release. Likewise, too short a sentence will also defeat the object of punishment. A rational policy in this regard would be to determine the term of sentence according to the gravity of crime, sociology of the offender and his personality traits.

(5) As to the retention or abolition of capital punishment, the generally accepted view is that its abolition should not be over-emphasised. The retention of death sentence undoubtedly serves as an efficient deterrent for recidivists and hardened criminals. The retention of this penalty in the statute book is further justified on the ground of protection of society from dangerous and incorrigible offenders. It would, therefore, be expedient to retain death penalty, though in practice, it may be sparingly used in *rarest of rare* cases as held by the Supreme Court in the historic case of *Bachan Singh* v. *State of Punjab*.[2] This contention also finds support in the report of the Law Commission of India.

(6) The modern western trend favours deletion of all such offences from the Penal Code which are solely dependent on morality. Thus in England, homosexuality is no longer an offence if committed in non-public place. Likewise, in India many States have scrapped prohibition laws because they are convinced that it is difficult to put a check on liquor habits of people by imposing external legal restrictions unless the liquor-addicts themselves voluntarily give up drinking being convinced that it is a vice. So is the case with gambling and "*satta*" etc., which

1. The Tahelka Dot Com's exposure (20th March, 2001) on corruption in high ranks is the latest illustration showing how politicians, bureaucrats and armymen do not flinch from taking bribe even at the cost of nation's security.
2. AIR 1980 SC 898.

have become a common menace these days. It is true that there are many offences which cannot be suppressed by legal penalties alone unless the members of society voluntarily begin to think that what they are doing is morally wrong and against social interest.[1] However, keeping in view the Indian taboos it is difficult to agree with the western view that most sex-offences should be deleted from the statute book because they largely depend on moral perceptions. Unquestionably, this cannot be recommended as an effective measure to reduce sex-crimes in India.

(7) Elimination of violence against woman should be among the priorities in the field of crime prevention and criminal justice administration. The Model Strategies formulated under the UN Declaration on the Elimination of Violence Against Women[2] (1993) should be adopted which emphasises that any act of gender biased violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life must be sternly dealt with. The Model Strategies do not suggest any preferential treatment to women but they are aimed at ensuring that any inequalities or forms of discrimination that women face in achieving access to justice, particularly in respect of acts of violence, must be redressed.

(8) Though the Habitual Offenders Act in various States provide for regulatory measures such as reporting by the habitual offender about his whereabouts or residence at fixed intervals, domiciliary visits of police officers to the residence of potential offenders, externment, security bond under section 110 of the Code of Criminal Procedure, 1973, etc., it would be advisable to set up corrective institutions on the pattern of Maharashtra and Uttar Pradesh for selected offenders keeping in view their age, health, antecedents for their rehabilitation and re-socialisation. Suitable work or vocational training may be provided to inmates in these correctional institutions.

(9) It has been realised that vagrancy may be a potential source of criminality. The English and the American criminal law have made statutory provisions in their vagrancy laws to keep the suspects and undesirable persons well under control and prevent them from indulging into disorderly behaviour. In India, during the East India Company rule, Regulation X of the Bengal Regulation XXII of 1873 provided that the police could apprehend a person who was without any means of subsistence and who could not give a satisfactory account of himself and the

1. Dowry is another illustration on the point. Despite stringent provisions of the Dowry Prohibition (Amendment) Act, 1986, doubts are being expressed about the abolition of dowry in actual practice.
2. The Declaration provides that except where otherwise specified, the term 'women' encompasses "girl children".

magistrate was empowered to employ such person for some 'public work'. During the British rule in India, Section 109(b) of the Code of Criminal Procedure, 1898 empowered a magistrate of the first class to secure bond with security for good behaviour for a person who was of doubtful antecedents. No such provision is, however, incorporated in the Code of Criminal Procedure 1973. It is, therefore, felt that an anti-vagrancy law may be enacted in the country to prevent vagrants from being turned into criminals. It would be a forward step towards crime prevention.

(10) The misuse and abuse of the law of preventive detention such as FERA, MISA, COFEPOSA, etc., in recent years particularly during emergency period, have led to serious re-thinking to repeal these statutes. In most of the cases, the final authority for detention is the officer-in-charge of the police station whose report is generally rubber-stamped in turn by Superintendent of Police or the District Magistrate. The law relating to preventive detention, therefore, needs to be modified so as to prevent its abuse and misuse.[1]

(11) The system of collection of intelligence and reporting should be overhauled so that facts are reported correctly. Many a times persons prompted by evil motives such as spite, jealousy, anger and self-interest do not even hesitate to set the law into motion against their enemies or rivals. Therefore, if the intelligence and police personnel perform their duties honestly without being influenced by external pressures or party politics, then only respect for law enforcement agencies can be restored.

(12) Undoubtedly, crime control is the responsibility of police agency. But there is need to recognise the role and importance of State agencies other than the police, such as Customs and Excise officials, revenue authorities, medical and other social service agencies in prevention of crime. They may help in dealing with particular offences, offenders and victims pertaining to their respective field. For example, in drug-trafficking the Customs and Excise professionals may be involved. Similarly, corporate offences, may involve factory officials or environmental agencies. The active cooperation of these State agencies in prevention of crime pertaining to their respective field will certainly help the police agency in its crusade against crime prevention.

It must be stated that crime problem is a complex and complicated one. The crime results from multiple factors intricately inter woven with one another. Therefore, efforts of police alone to control crime will meet with limited success, unless there is a multi-pronged attack from different agencies of

1. The repeal of the TADA in May, 1995 is perhaps a right step in this direction. Its substitute POTA (Prevention of Terrorist Activities Act, 2002 has also been repealed by the Unlawful Activities (Prevention) Amendment Act, 2004 which contains provisions relating to prevention of terrorism in the Principal Unlawful Activities (Prevention) Act, 1967.

society and also an endeavour is made to eradicate the real causes of crime, like poverty, ignorance, unemployment, deprivation etc.

(13) Frequent interference in investigation of cases by politicians or politically motivated prosecuting machinery headed by politician lawyers who are more interested in party in power, has distorted the image of criminal law administering agencies, particularly the police. Therefore, there is a manifest need for determined efforts to deal with this problem more effectively.

(14) Crime reporting in India continues to be faulty even to this day. As a result of this, crimes are either suppressed, minimised or not reported. The reporting procedure, therefore, needs to be overhauled.

Problems involved in Crime Prevention

An objective evaluation of crime-prevention programme further suggests that there is a growing need for enhancing the existing powers of the police relating to arrest, interrogation and search of suspected persons. Police officials should be empowered to arrest a suspected offender even without a warrant. Experience has shown that much time is lost in observing the procedural formalities of law which afford sufficient opportunity for the offender to escape detection. Moreover, it is quite often noticed that proceedings against the apprehended person are dropped on flimsy grounds of procedural irregularity. As a result of this, many offenders go unpunished due to procedural flaws in the system of arrest, detention, interrogation and search which certainly threatens the security of society. That apart, the police in India is looked with distrust and bias. They are generally accused of misuse of power. In situations warranting stern action the police is often criticised for atrocities and excesses. Public criticism has a demoralising effect on police officials and they find it difficult to perform their law enforcement duties with confidence without an active support from the public. The lack of public-police co-operation is, therefore, a contributing factor for the failure of efforts to cope with the rising incidence of crime and delinquency.

Another important aspect of crime problem relates to certain new offences such as bank-robberies,[1] forgery, counterfeiting, causing death by slow poisoning or committing theft or robbery by administering anesthetics, etc. which are of a comparatively recent origin. They are essentially an outcome of modern developments in science and technology.

The development of Information Technology and widespread use of electronic communications has brought with it new challenges in the form of computer related crimes on global networks which require new legal and technical mechanisms to combat and fight these cyber offences. These crimes are committed from or against a computer or network and they differ from terrestrial crimes in four ways, namely, (i) It is easy to learn how to commit them; (ii) they require relatively less resources as compared to damages caused, (iii) they can be committed without being physically present on the

1. With the expansion of banking in rural areas, bank robberies in India have become a common occurrence.

spot; and (iv) they are not clearly illegal. The real problem faced in combating these crimes is that the existing laws are un-enforceable against such crimes because of the transnational nature of cyberspace. The cyber criminals can defy the conventional jurisdiction of foreign nations, by originating an attack from almost any computer in the world, passing across multiple national boundaries, or designating attacks that appear to be originating from foreign sources. Therefore, there is need for an International Model Legislation to tackle cyber crime.[1]

Politicalisation of democratic institutions and party-politics of politicians have added new dimensions to the crime problem. Group rivalaries, caste based politics and vote-catching malpractices have a devastating effect on public order and tranquillity as the incidents of tensions, assaults, violence, arson, kidnapping and even murders are common occurrence in the state of political turmoil.[2] Prisonisation is hardly an appropriate remedy for such offenders. Moral education and creative awareness about social responsibility may perhaps bring these law-violators on proper track.

Terrorism is yet another crime problem of recent origin. Terrorists indulge in large scale violence and anti-social activities which have disturbed public life. The States of Punjab, Jammu & Kashmir and even Assam and north-east border regions are in the grip of terrorism these days. The terrorist risk their life under a compelling moral conviction and indulge in a kind of heroic aura. They are fully aware that their life is at stake but the fascination of violence and risked death for possible martyrdom tends to make them law violators. Needless to say, that death penalty is hardly a suitable punishment for terrorists as it would mean accepting their misconceived values. Perhaps, deprivation of civil rights and public indignation may be a better alternative for such murderous offenders.

Growing awareness of criminals about new methods of criminality and devices to escape detection makes it necessary for the law enforcement agencies to acquaint themselves with the newer techniques of crime and device measures to ensure crime detection. Among the more recent detection devices are the use of fingerprints or foot-prints, forensic ballistics, truth-telling drugs, tapes, polygraph lie-detector, computers, etc. These methods have proved immensely useful in spotting out criminals. The admissibility of confession made by the accused under the influence of truth telling drugs has, however, been seriously questioned by certain legal authorities. They argue that such a confession cannot be accepted as a valuable piece of evidence because it can hardly be said to have been made voluntarily.[3]

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1. CBI's first Cyber Crime Digest released on 23rd Feb., 2001. It covers cyber crimes such as pheakers, fraud, hackers, pornography, viruses, pedophiles, harassment, e-mail, security, Data Diddling, piracy, stalking etc.
2. The anti-reservation stir launched by the students against the implementation of Mandal Commission Report in Aug-Sept. 1990 is an illustration on the point in which there were large scale arsons, road blockades, Bundhs and self-immolation attempts by the students. Several lives were lost and property worth crores of rupees was destroyed in this mass agitation.
3. R. Deb : Principles of Criminology, Criminal Law and Investigation, Vol 1 (2nd Ed.) p. 47.

It must be realised that criminality cannot be dealt with effectively without adequate knowledge of forensic science. Unfortunately, this area has remained fairly neglected in India. Therefore, there is need to develop expertise in the field of forensic science which may be used in investigation and detection of crimes. More recently, the science of hypnotism is also being used for crime detection and police officials are being trained in this branch of knowledge at the Forensic Training Institute at Calcutta.

Utilisation of the services of 'police dogs' in spotting out criminals is one of the most significant developments in the area of crime detection in recent times. The device is extensively being used in tracing out the offenders and detecting crimes which are committed under mysterious circumstances.[1] It is significant to note that in cases where the services of police sniffer-dog are utilised for the detection of crime, it is necessary to ensure that the place of its occurrence must be left completely untampered. The sniffer-dog must be brought to the place of crime within fortyeight hours of its occurrence. There is again a controversy about the evidentiary value of the detections made with the assistance of police-dogs. The American Courts accept police sniffer-dog as a valid piece of evidence against the accused provided it corroborates with other evidence in the case. But if this evidence is not corroborated by other evidence, then in that case, it cannot be accepted as an evidence sufficient enough to warrant conviction of the accused. The Indian law also takes a similar stand in this regard. The reason advanced for the necessity of corroboration of police-dog's evidence is that these trained dogs may err in tracing out the offender correctly.[2] Moreover, they being animals, can neither speak nor be subjected to cross-examination.

Crime control essentially involves the services of well trained personnel who possess adequate knowledge about different kinds of offences and the related statistical data about crime and criminals. It must be remembered that the magnitude of the various form of crime in a particular State can be ascertained by an analysis of the crime statistics. The crime statistics generally do not present a true picture of crime incidence because many a crimes remain undetected and many more unreported. Moreover, statistics being the measuring rod for gauging the efficiency of the institutions connected with crime and criminals, the police, the courts and the prisons, may be inclined to furnish deceptive figures about their performance. Despite this possibility, the fact remains that statistics do play an important role in crime detection. Rise in crime statistics of a particular area draws the attention of law administrators to locate the cause of mounting criminality in that region and suggest measures to combat it. Crime statistics, therefore, provide necessary guidance and clue to those who are concerned with the prevention of crime. Computerisation of statistics is sure to put a check on the possibility of manipulations of manual statistics and present a true picture of crime incidence. It is heartening to note that the

1. The services of Police sniffer dog are being extensively utilised for detection of terrorist activities in Punjab and other States.
2. More recently, some sniffer dogs are also given special Narcotic Training in the National Dog Training Centre, Delhi after their basic obedience training. The police dogs from Nepal, Bhutan, Mouritius, Thailand, etc., are also being trained in this training centre.

police headquarters of most of the States have a separate Computer-Department of their own for this purpose.

In India, the CRIME IN INDIA published by the National Crime Bureau, Ministry of Home Affairs, Government of India, publishes annually the incidence of total cognizable crimes under the Indian Penal Code and the local and special laws. Although these statistics do not reflect the actual extent of crime in the country as a whole, distinct trends are, however, easily discernible from them. It is on the basis of these statistics that strategies for prevention of crimes and repetition thereof are planned by the criminal law administrators.

Law's delay has often been treated as a potential hindrance in crime prevention. With the loss of time between the incidence of crime and punishment of the offender, the gravity of crime is completely lost. It is, therefore, desired that criminal trials should be speedy and offenders should be expeditiously punished so that the law does not lose its deterrent effect.

The increasing role of psychology and psychiatry in the field of penology has helped in understanding the problem of crime and criminals in its proper perspective. Criminality is now attributed to psychiatric defects in the offender. It is now universally accepted that infliction of pain and suffering through imprisonment serves no useful purpose for the rehabilitation of offenders. As stated earlier, the basic philosophy that underlies the modern clinical methods is that the offender should be *treated* and not *punished*. It is because of this fundamental perception that the importance of prisons is receding day by day and correctional measures such as probation, parole, open camps and reformatories are being extensively used for the rehabilitation of offenders. The modern clinical measures stress on the need for a deeper insight into the human nature and psychology working behind the offender. The goal of modern penology is to bring about a change in the mentality of the criminal through a process of moral education and social reformation.[1] It must be conceded that crime is not a unitary phenomenon but a composite reaction of multiple factors.[2] Therefore, no single theory can provide a satisfactory explanation for the varieties of the behaviour involved[3] in the criminal act. Reformation of the offender should be brought about within the community itself through the process of rehabilitation.

In drawing up any programme for prevention of crime, it must be realised that mere treatment does not help in the ultimate rehabilitation of offenders. The stigma which the society attaches to the released inmates continues as a life-long punishment to him even after the end of the period of his incarceration. Therefore, it sometimes becomes difficult for an offender to go back to the community as a decent citizen despite his sincere and genuine desire to live an honest and upright life. The social, economic, psychological and legal problems faced by the released prisoner make his life difficult. Therefore, it is of vital importance to develop adequate after-care services as an integral part of the correctional penology. It can help a discharged inmate in his social as well as vocational rehabilitation. Britain

1. Carrel Alexix : Man the Unknown, pp. 240-41.
2. Sutherland and Cressy : The Principles of Criminology, 6th Edn. p. 391.
3. Vold. G. B. : Theoretical Criminology, p. 314.

has introduced hostel service for the released prisoners to provide them shelter and protection. Similar system may be adopted in India which may help in prevention of crime to a great extent.

According to *Nigel Walker* one of the indirect techniques of crime prevention is reduction of opportunities for criminal acts. This includes control over the sale of fire-arms, explosives, poisons, etc., and restrictions on holding public meetings, prohibiting illegal entry and adequate lighting of public places and roads. This will make the task of *opportunity-seeker* criminals difficult.

International Perspective of Crime Prevention

The subject of crime prevention and treatment of offenders has received attention of various nations all around the world. Efforts are being continuously made to work out a common programme of crime prevention and treatment of prisoners which may be acceptable to all the countries. For this purpose international Congresses are being held every five years under the auspices of United Nations to discuss the problems relating to crime prevention and suggest measures for effective treatment and rehabilitation of offenders. The details of the deliberations of the various crime prevention Congresses held ever since 1955 are given hereunder :

United Nations Congresses on the Prevention of Crime and the Treatment of Offenders

The United Nations Crime Congresses bring together representatives of the world's national Governments, criminal justice professionals, scholars of international repute and members of concerned non-governmental organizations (NGOs) to discuss common problems, share experiences and seek viable solutions to crime. Their recommendations have impact on legislative and policy-making bodies of the United Nations and of national and local governments.

The First Congress 1955 (Geneva)

Five hundred and twelve participants met in Geneva, Switzerland, to convene the first UN Crime Congress. Their credentials were strong enough and their backgrounds sufficiently diverse to lend credibility to this fledgling attempt at international cooperation in criminal justice policy. There were delegates from 61 countries and representatives from international organisations such as the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), the Council of Europe and the League of Arab States; and from 43 NGOs.

At this Congress, held in the heart of Western Europe, the nations of Europe fielded the greatest number of governmental delegations (in 1955, half the world's territories were not yet independent and were not represented at the United Nations). The topics of the First Congress accordingly reflected the pressing concerns of post-war Europe. There was an urgent need to set standards for the prevention of crime and treatment of prisoners whose numbers were swelling due to the turmoil and black-markets of the war and post-war years. The poignant and bewildering question of how to respond to juvenile delinquency, which was taking root

among young people was another focus of attention.

Consideration of the proper functioning of penal institutions led to the drafting and adoption by the Congress and subsequent approval by ECOSOC of the 95 Standard Minimum Rules for the treatment of prisoners. Whatever the extent of their crime, it was felt, that prisoners are entitled to human dignity and minimal standards of well-being. This view was especially supported by the delegates present who, during the Second World-War occupation of countries by Facist powers, experienced brutality and deprivation while incarcerated. The carefully thought out, comprehensive provisions of the Standard Minimum Rules and the broad representation of national and professional viewpoints incorporated in them exerted a strong moral consciousness that over the years has brought improvements to prisons around the world. Its provisions are frequently cited by prisoners protesting substandard conditions. The success of the the Standard Minimum Rules paved the way for many other international models, standards, norms and guidelines touching on every aspect of criminal justice and set a precedent for United Nations initiatives to humanize the administration of criminal justice by principles agreed upon by the world community.

Other matters relating to the operation of penal institutions considered by the First Congress included recommendations for the selection, training and status of prison personnel; possibilities for "open" penal and correctional institutions; and appropriate use of prison labour for effective prevention of crime incidence.

Discussion of the prevention of juvenile delinquency attracted the greatest number of participants at the First Congress. Juvenile delinquency was treated as a broad category under which problems relating to youthful offenders as well as abandoned, orphaned and maladjusted minors were dealt with. Prevention was deemed to be the operative concept, and the problem was analyzed in terms of its social, economic and psychological causes.

The Second Congress 1960 (London)

At the invitation of the Government of the United Kingdom of Great Britain and Northern Ireland, the Second Congress was convened in London. Increased participation reflected the addition of newly independent nations as Member States. Representatives of 70 Governments were in attendance, along with delegates from 50 NGOs and, in addition to the international bodies involved in the First Congress, the Commission for Technical Assistance in Africa South of the Sahara. All in all, there were 1,131 participants, 632 of whom attended as individuals. The large percentage of attendees representing NGOs were chosen because of their scholarly credentials reflected the prevailing view that scientific and social analyses were required to tackle this complex problem at hand.

Once again juvenile delinquency was on the agenda. The deliberations involved newly emerging forms of delinquency, their origin, prevention and treatment; the possibilities of special police forces for the prevention of youthful offences; and the impact of the mass media on the problem. Debate posed supporters of broad treatment programmes for all manner of youthful

maladjustments against those who perceived a distinction between the maladjusted and young people who commit crimes for more straightforward reasons. Proponents of the latter view argued that not all delinquents are socially deprived; moreover, no one, juvenile or adult, is perfectly adjusted in every respect. The outcome of the debate was a recommendation that the concept of juvenile delinquency should be restricted to violations of criminal law, excluding vaguely anti-social postures or rebellious attitudes which are widely associated with the process of growing up.

The addition of new Member States to the United Nations required broadening of the largely European perspective of the First Congress. This led to a precedent-setting analysis of crime and criminal justice in relation to overall national development. Two general reports were submitted to the Second Congress on the "Prevention of Types of Criminality Resulting from Social Changes and Accompanying Economic Developments in Less Developed Countries." These examined the relation between socio-economic development and crime prevention in light of available data on demography, the environment, economics, culture, town planning, industrialization and migration. It was recommended that rational planning and social policy-making should be applied to the problem of crime. It was generally accepted that improvement in economic condition is not necessarily a contributing factor to lessen criminality. Unevenly distributed economic growth can also provoke criminal activity.

The Third Congress 1965 (Stockholm)

The Third Congress, convened in Stockholm, Sweden, addressed the ambitious theme of "Prevention of Criminality". The work of the Congress was propelled to a large extent by the enthusiasm of the Swedish hosts, who had embarked on a comprehensive national experiment in crime prevention. Topics on the agenda included a continuation of the discussion on social change and criminality; social forces and the prevention of crime; community-based preventive action; measures to curtail recidivism; probation policies; and special preventive and treatment programmes for young adults, who constitute the most crime-prone sector of the population.

Under the headings of "social change" and "social forces" the effects of urbanization, public opinion, education and migration were dealt with.

Seventy-four Governments, 39 NGOs and all of the specialized agencies attending the previous Congress were present in Stockholm. The total number of participants reached 1,083, of whom 658 represented non-governmental bodies. The presence of representatives from a still-increasing pool of newly independent countries bolstered the assertion that developing nations should not restrict themselves to mechanically copying criminal justice institutions developed in Western countries.

The Fourth Congress 1970 (Kyoto)

Set in the city of Kyoto, once the capital of ancient Japan, this was the first Congress held outside of Europe. The number of participants declined slightly, but the number of Governments represented rose to 85.

The Fourth Congress was convened under the slogan "Crime and Development". Its conclusions centred around the need for crime control and

prevention measures—referred to as "social defence policies"—to be built into the development planning of nations. The groundwork for much of the discussion had been laid by a set of working papers prepared by the Secretariat and the World Health Organization and by reports of an *ad hoc* group of experts. It was emphasized that the promotion of social and economic integration should not be seen as a solution to criminality; it might give rise to the misleading impression that crime control involved little more than provision of social services.

A theme touched on by the Third Congress—community based prevention—was expanded upon at the Fourth Congress. The positive contributions of public participation to crime prevention and control were explored.

The Congress also investigated the nation-by-nation implementation of the Standard Minimum Rules for the Treatment of Prisoners, relying on results of a questionnaire previously submitted to Member States.

The use of research as a tool of social policy came under scrutiny. A consensus supported the practical conclusion that the primary object of research was the identification not of the causes of crime *per se*, but of factors that could be applied to a planned action.

The broad scope of the Fourth Congress deliberations led to a re-ordering of the UN's crime prevention programme and the creation in 1977 of the Committee on Crime Prevention and Control.

The Fifth Congress 1975 (Geneva)

The Fifth Congress on the Prevention of Crime and the Treatment of Offenders returned to Geneva, site of the First Congress. The number of nations represented again increased to 101, and the participation of specialized agencies was augmented by the presence of Interpol,[1] the IPPC[2] and the Organization for Economic Co-operation and Development (OECD).

The theme of the Fifth Congress was "Crime Prevention and Control; the Challenge of the Last Quarter of the Century". Under this forward-looking rubric, the Congress treated a larger number of specific concerns than ever before. They included :

(i) Changes in the form and dimensions of criminality, at national and transnational levels;

(ii) Crime as a business and organized crime;

(iii) The role of criminal legislation, judicial procedures and other forms of social control in the prevention of crime;

(iv) the addition of crime-prevention activities and related social services to traditional law enforcement roles of police and other law enforcement agencies;

(v) Treatment of offenders in custody or in the community, with special reference to implementation of the Standard Minimum Rules;

(vi) Economic and social consequences of crime and new challenges for research and planning;

1. International Police Organisation.
2. International Penal & Penitentiary Commission.

(vii) Alcohol and drug abuse; and

(viii) Victim compensation as a substitute for retributive criminal justice.

The Fifth Congress was responsible for two notable documents, which stand alongside the Standard Minimum Rules for the Treatment of Offenders as influential international guidelines to criminal justice practice. One was a "Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment". The Declaration was adopted by General Assembly resolution 3452 (XXX) of 9 December, 1975, and led to a subsequent convention on that topic. The Congress also paved the way for drafting the "Code of Conduct for Law Enforcement Officials" which was adopted by the General Assembly in 1979.

General conclusions reached by the Fifth Congress focused on the crucial role of social justice in preventing crime, the importance of coordinating criminal justice programmes within overall national social policy and the importance of respect for human rights.

The Sixth Congress 1980 (Caracas)

The UN Crime Congress in Caracas, Venezuela, was the first to be hosted by a developing nation and the first to take place in the Western hemisphere. The widespread interest it evoked among long established and newly independent nations and national liberation groups was reflected in delegations representing 102 nations, and bodies such as the League of Arab States, the Organization for African Unity (OAU), the Pan-Arab Organization for Social Defence, the Palestine Liberation Organization (PLO), the South West Africa People's Organization (SWAPO), the African National Congress (ANC) and the Pan Africanist Congress of Azania.

The theme of the Sixth Congress was, "Crime Prevention and the Quality of Life." It was realised that the success of criminal justice systems and strategies for crime prevention, especially in light of the growth of new and sophisticated forms of crime and the difficulties encountered in the administration of criminal justice, depends above all on the progress achieved throughout the world in improving social conditions and enhancing the quality of life.

Conceptualization of juvenile delinquency, which to some extent had been narrowed by the Second Congress, was once again broadened. Emphasis was placed not only on the application of criminal sanctions to youthful offenders but also on the provision of social justice for all children so that they would not be driven to offend. The Caracas Declaration addressed the need for standard minimum rules for juvenile justice and further research into the causes of juvenile delinquency.

The items relating to juvenile delinquency were among 19 resolutions incorporated in the Caracas Declaration. Among the recommendations were promotion of broader public participation in crime prevention; improvement of statistics relating to crime and criminals; and eradication of the practice of extra-legal executions which was deemed a particularly abhorrent crime and abuse of power.

The contributing achievement of the 1980 Congress was the "Report of

the Working Group of Experts from Latin America and the Caribbean on Criminal Policy and Development". The Working Group argued that the relationship between development and crime favours a two-way process of criminalization and decriminalization of offences. Thus, the scope of criminal law statutes should be broadened to include wilful actions harmful to the national wealth and well-being—offences such as destruction of the ecology and participation in networks for drug trafficking and trafficking in persons. As a corollary, the Working Group recommended a reduction in the number of statutes covering petty crimes and those of little or no socially destructive effect.

The Seventh Congress 1985 (Milan)

This Congress is best known for the Milan Plan of Action, which called for a concerted response from the community of nations to address socio-economic factors relevant to the commission of crimes. Taking place in the Italian city for which the Plan of Action is named, the Congress dedicated itself to the theme of "Crime Prevention for Freedom, Justice, Peace and Development".

The expanding purview of United Nations criminal justice concerns presented the delegates with an imposing agenda : 21 major substantive documents deriving from General Assembly and ECOSOC mandates were prepared for the Congress, in addition to previously issued reports of regional and inter-regional preparatory meeting.

The work of the Congress was organized under five topic headings—

(i) "New Dimensions of Criminality and Crime Prevention in the Context of Development" continued and updated UN interest in the relation between social development policies and criminal justice systems. Fraud and crime in international commerce and financial transfers was one of the areas under scrutiny.

(ii) "Criminal Justice Processes and Perspectives in a Changing World" covered the need to revise, reform or reinforce the working of criminal justice systems.

(iii) "Victims of Crime" addressed the rights of victims of crime and abuse of power, compensation and restitution schemes and means of assisting them through criminal justice systems.

(iv) "Youth, Crime and Justice" extended perennial UN interest in members of the age bracket with the highest percentage of criminal offenders.

(v) "Formulation and Application of United Nations Standards and Norms in Criminal Justice" constituted a review of the value of UN instruments in the criminal justice field and the extent of their implementation among Member States.

In addition to the Milan Plan of Action, five other major international instruments setting norms and standards were approved by consensus :

1. Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development;
2. United Nations Standard Minimum Rules for the Administration of Juvenile Justice;

3. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;
4. Basic Principles on the Independence of the Judiciary;
5. Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the Treatment of Foreign Prisoners.

It is significant to note that the Inter-regional Preparatory Meeting of Experts of the UN Congress on Prevention of Crime and Treatment of Offenders had met in New Delhi on April 22-26, 1985. The meeting was convened to deliberate over the "New Dimensions of Criminality and Crime Prevention in the context of Development, Challenged and Future". The experts expressed concern over the "deepening crisis of growing violence and crime, a cynical contempt for law and order and considerable degrees of immorality". The agenda was served before the diplomats of some of the Third World countries with a view to finding solutions to counter these problems so as to achieve "freedom, justice, peace and development" in world in general and the Third World countries in particular. The theme was taken up for deliberation in the Seventh Congress (Milan) but without much success because of the "pull of debates in diverse directions".

The Eighth Congress 1990 (Havana)

The United Nations Crime Congress returned to Latin America in 1990. The Eighth Congress was convened in Havana (Cuba), under the theme of "International Crime Prevention and Criminal Justice in the Twenty-First Century".

The Eighth Congress maintained the UN's traditional portfolio of concerns while dealing with contemporary developments. Among the latter were a growing alertness to the theft of archaeological treasures, the dumping of hazardous wastes in ocean waters, the flourishing international trade in illicit drugs and the lethal connection between drug abuse and AIDS and the appearance of both among prison populations.

Offering encouragement for the future were the lessening of tensions between the Eastern and Western blocs of nations, increased awareness of the value of international cooperation in the law enforcement field, and presentations and exchanges of experience regarding new techniques such as computer networks and provisions for seizing the financial proceeds of organized crime and examining bank records.

Despite the growing body of information and experience relating criminal justice planning with socio-economic development, it was recognised that the international debt crisis, steep declines in primary commodity prices and general outflow of capital from many of the developing countries pose a threat to progress in this area.

Reflecting these hopes and concerns, the Eighth Congress produced more international instruments than all the preceding Congresses put together. Five model treaties recommended to and later approved by the General Assembly covered (i) bilateral agreements on extradition, (ii) mutual assistance in criminal investigations and other matters, (iii) transfer of proceedings in criminal prosecutions, (iv) transfer of supervision of offenders, and (v) prevention of crimes infringing on the cultural heritage of peoples. Six major documents were adopted setting guidelines on criminal

justice system standards, ranging from non-custodial measures to the prevention of juvenile delinquency.

Resolutions drawn up in Havana dealt with, *inter alia*, the computerization of criminal justice operations, the problem of domestic violence, the instrumental use of children in criminal activities, the role of criminal law in protecting nature and the environment, computer-related crime, corruption in government and measures to prevent infection of prisoners with HIV/AIDS.

In a resolution detailing measures against international terrorism, the Congress urged States to consider favourably national and international action against terrorism. An annex to the resolution lists a number of areas of particular concern. Among these are State policies and practices that may be considered a violation of international treaty obligations; the absence of specific norms on State responsibility for carrying out international obligations; abuse of diplomatic immunity; lack of international regulation of the trade in arms; and the inadequacy of international mechanisms for peaceful resolution of conflicts and enforcement of human rights. The annex calls for greater uniformity in laws concerning territorial and extra-territorial jurisdiction and bilateral and multilateral cooperation between police, prosecutors and the judiciaries of Member States. It also recommends looking into the possibility of an International Criminal Court or some other international mechanism with jurisdiction over offences including those connected with terrorism and illicit trafficking in narcotic drugs or psychotropic substances.

Another task of the Congress was to review the UN's criminal justice programme for crime prevention. On the recommendation of the Eighth Congress, the General Assembly subsequently adopted a resolution convening a Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme, which in turn led to the establishment of the UN Commission of Crime Prevention and Criminal Justice in 1992

The Ninth Congress 1995 (Cairo)

New measures for combating international crime syndicates, terrorism, ecological crimes, violence inflicted on women, illegal traffic in aliens and corruption of public officials were recommended by the Congress held in Cairo, Egypt.

"Crime in its various dimensions and forms is a problem requiring coordinated international action, with close cooperation among States", Secretary-General Boutros Boutros Ghali said in a message delivered to the Congress.

Emphasising that the UN regards crime as a crucial development issue, the Secretary-General said that "economies in crisis, or in a delicate period of transition, need help from the international community to combat the dangers posed by crime."

The first UN Crime Congress on the African continent and the first to take place in the Arab world was attended by 1,732 participants from 138 countries and 15 intergovernmental and 48 non-governmental organisations, as well as 22 United Nations agencies and programmes. Among the 1,290

governmental representatives were 33 Ministers of Justice and 6 Ministers of the Interior, along with heads of police agencies, public prosecutors, high-ranking Judges and heads of prison systems.

Endorsement by the Congress of a wide array of measures to combat transnational crime reflected the growth of consensus among Governments and experts that international cooperation is needed if the rapid spread of criminal syndicates is to be stemmed.

An early focus of the Congress was on a draft resolution calling attention to links between terrorism and organized crime and calling for concerted international action to combat both. Several delegations and experts pointed out that condemning both kinds of organisations should not be taken to mean that terrorist organisations are simply an adjunct to crime syndicates. Such an identification might lead to injustices against organisations or popular causes incorrectly labelled as "terrorist". The final resolution adopted by the Congress condemned terrorist acts and recommended to the Commission that it examine further links between these acts and organized transnational crime.

In another action, the Congress asked that the views of States be solicited on the possible elaboration of new international instruments such as a convention against organized transnational crime. Such a treaty might cover arrangements for international cooperation at the investigative, prosecutorial and judicial levels and for prevention and control of money laundering. A similar measure was adopted at the World Ministerial Conference on Transnational Crime, held in Naples, Italy in 1994.

An omnibus resolution asked States to facilitate transnational criminal investigations through extradition, provision of relevant records, exchange of evidence, and cooperation in locating persons. It also called for stricter laws on registration of imported motor vehicles as a means to combat the large-scale trafficking in stolen cars.

In response to widespread concern about the involvement of organised crime in smuggling and selling weapons, a resolution was adopted calling for urgent measures to restrict international traffic in firearms and urging States to regulate more closely domestic availability.

A strongly worded resolution urged States to adopt laws against acts of violence that may victimise women and sanctions against rape, domestic violence, sexual abuse and all practices harmful to females, including the traditional practice in some societies of genital mutilation. Legal measures prohibiting harassment, intimidation or threats against women or their families, and laws regulating the acquisition and storage of firearms in the home were also recommended by the same resolution of the Congress. States are asked to take special account of women's vulnerability to violence including murder, torture, systematic rape and sexual slavery.

Plenary discussions and a wide variety of workshops presenting ground-breaking research projects led to wide-ranging debate and discussion, including the following :

(i) An unprecedented debate on corruption of public officials was introduced by an international panel of five experts. They noted the increasing interaction between cases of official corruption and

transnational crime organisations. It was stated that corruption affects all countries, although it is often rooted in entrepreneurial opportunism of businesses in the industrialised countries. Many of the recommendations made during the debate involving Congress participants as well as the panelists were later taken by the Commission, which at its fourth session recommended to ECOSOC the adoption of a resolution on the subject on July 24, 1995.

(ii) A Congress workshop discussed both the benefits and the potential problems of using criminal justice systems to protect the environment. The ecological crimes included the illegal disposal and trafficking of hazardous wastes, smuggling or theft of cultural treasures, and newer forms such as the illicit release of genetically engineered organisms into natural environments. Proposals ranged from elaborating a detailed list of environmental crimes and establishing special police and prosecution units to an international convention on the protection of the environment. Establishment of a world environmental protection agency under UN auspices was also suggested.

(iii) Another innovative workshop investigated the role of the mass media in crime prevention. Dramatic testimony by journalists from Russia, Kenya, India, the Philippines and the United States underscored the importance of the media's watchdog function and its potential in preventing crime. Participants recommended that the United Nations reassert the "enormous importance of a free press as part of the democratic process" and commit resources for countering the negative effects of the mass-media on young people; call upon Governments to create an education campaign to ensure that crimes against the environment are recognised in the media as criminal and moral offences; and encourage, through the media, the development of ways to eradicate violence against women, enhancing respect for their dignity and discouraging negative stereotyping.

(iv) An urban policy workshop analysed successful prevention policies, including grass-roots participation in criminal justice systems, appropriate design of housing complexes and public spaces, consultations among governmental agencies and between the public and the private sectors, and the strengthening of social safety nets. While highlighting workable solutions to crime, participants cautioned against ignoring the growing feeling of urban insecurity.

In addition to workshops, a variety of ancillary meetings were organised by NGOs. One of them, conducted by the International Scientific and Professional Advisory Council of the UN Crime Prevention and Criminal Justice Programme, produced a comprehensive investigation of the relation between crime and migration. Speakers detailed the involvement of transnational crime syndicates in trafficking in illegal aliens and identified factors that tend to make legal and illegal migrants both victims and perpetrators of crime.

The Tenth Congress 2000 (Vienna)

The Tenth UN Congress on Prevention of Crime and Treatment of

Offenders was held at Vienna on 10-17 April, 2000. More than 150 countries participated in the Congress. Besides, members of UNESCO and other specialised agencies *e.g.* African Legal Consultative Committee, European Police Office, Organisation for Security and Co-operation In Europe etc. participated in the Congress. The main Agenda items were :—

1. State of crime and criminal justice;
2. International co-operation in combating transnational crimes which were new challenges in 21st century;
3. Promoting Rule of Law and strengthening criminal justice system;
4. Effective crime prevention—keeping pace with new developments;
5. Offenders and Victims—Accountability and fairness in justice process;
6. Combating corruption;
7. Crimes related to computer network;
8. Community involvement in crime preventions;
9. Women in criminal justice system.

A workshop on women in the criminal justice system was also organised which consisted of four modules :—

(i) Women as offenders and prisoners;
(ii) Women as victims and survivors;
(iii) Women in criminal justice system;
(iv) Research and Policy Issues relating to women in criminal justice system.

There was consensus among the participants in the following areas :—

(a) Women and girls who are victimised should be afforded the fundamental right of protection, justice, support, in breaking the cycle of victimization and reintegration into the community.
(b) Efforts should be made to raise the awareness of the public and officials concerning the dehumanising and exploitative nature of women's victimization.
(c) The international community should reject the attempts to justify the victimization of women on cultural grounds.
(d) In offences involving women, the criminal justice system of the Member-States should focus on the abuser and exploiter as well as on the abused victim, including by recognising the role of facilitators in trafficking in women and girls.
(e) Civil remedies should be made available to victimized women and girls in order to permit them to pursue claims against those who committed the crimes against them.
(f) There should be collective response in addressing women's victimization.
(g) Concerted efforts should be made at global level to correct the economic conditions that facilitate the economic and sexual exploitation of women and girls.
(h) Harmonized and co-ordinated strategies should be pursued

including joint action programmes and research efforts, strengthened communications and collaborative networks involving governmental agencies and non-governmental organisations.

The participants emphasised the need and importance of dealing with root causes of crime and measures to prevent them. They felt that rapid social changes could lead to a sense of lawlessness and in turn to the commission of crime. The problems were identified as being particularly acute in the developing countries and countries with economies in transition where growth in crime was said to be becoming part of everyday life. Several members noted that the crime could increase poverty and stunt the rate of development. Corruption and terrorism were identified as crimes that could undermine the stability of the entire society. The crimes such as drug trafficking, terrorism and illegal trafficking of human beings were identified as offences of particular concern in many States.

The Vienna declaration on crimes and justice constituted a significant step forward in international co-operation in the prevention and control of crime and in the development of criminal justice system.

In this Congress India was represented by Shri R.K. Raghvan, Director of Central Bureau of Investigation.

Victimology—Its Expanding Dimensions

It may be useful to enlarge the scope of victimology as a branch of knowledge to elucidate the role of victim in the causation of crime. It is well known that the factors and circumstances are constantly acquiring different meanings with changes in the structure of society and growing realisation of the complexity of problems involved in crime causation. There are occasions when the role of victim of the crime might be a contributory factor in causation of crime. This aspect of criminological research has remained practically neglected all these years. Therefore, there is need to look into the conduct of the victim and his contributory negligence in the causation of crime and attribute proportionate criminal liability on him. This has been termed victimology which is gaining attention of criminologists in recent years.

One important aspect of victimology is the reluctance of victims to report cases to the police. Some of the reasons for this non-reporting of crimes are : (1) indifference, (2) the loss being petty or insignificant, (3) identity of the offender being unknown (4) apprehension of threat or harassment from the culprit, (5) social and public indignation, particularly in cases of rape, illegal abortion and other sex offences, (6) considerable loss of time and money in prolonged criminal trials, (7) reluctance of witnesses to testify or possibility of their turning hostile; and (8) lack of faith and confidence in police action.[1] Obviously, apathy of the victims to report against the offender encourages criminality. Therefore, these factors relating to victimology need proper attention of the criminal justice administrators.

Adequate compensation to the victims from the accused or alternatively, from the State is yet another objective of the science of

1. Dr. K.D. Gaur : 'Poor Victims of Uses & Abuses of Criminal Law & Process In India,' article published in 35 JILI (1993).

victimology which deserves serious attention of penologists. The ultimate end of penal justice will protect and add to the welfare of the State, society and the individual and compensatory measures shall surely go a long way in achieving this purpose.

Adequate education and intensive propaganda against the conduct involving law-violations can also contribute to reduce crimes considerably. An effective censorship on the media of entertainment shall help in inculcating a sense of morality among youngsters and the public. Mass media which depicts violence and undesirable behaviour is bound to add to the crime problem.

Concluding Observations

Despite legal, social, psychological and penal measures for combating crime, the problem still persists in alarming dimensions. With the change of time, new crimes are coming up and the traditional crimes are vanishing fast. The advancement in knowledge of human behaviour and growth of commerce and industries have brought in their wake new complexities in life. These complexities account for the rising incidence of criminality. It is, therefore, apparent that crime, though an evil, is an inevitable phenomenon of a progressive society. There is no reason to be upset with the present increase in crime-rate. Nor should it create a misleading impression that the penal programmes have totally failed or proved ineffective. It must be stated that criminality in India is far less than in many other countries of the world. The reason being that Indian society still retains the virtues of tolerance, mutual respect and co-existence through its social institutions such as religion, family, parental control, etc.

Before concluding, a word must be said about the general tendency among people to keep away from agencies administering criminal law and justice. The root cause of this apathy is to be found in common man's distrust for law, justice, prosecutors and the members of the bar. Instances are not wanting when people watch a crime being committed in their presence but they never report it to the police because of the fear of the culprit or possible harassment from the police or tiresome trial and court procedure. A commoner always prefers to avoid police or law courts even at the cost of suffering a slight harm or injury. He refrains from instituting criminal proceedings against the offender to avoid the botheration of contacting police or visiting law-courts. This apathy of people towards law enforcement agencies provides fertile ground for offenders to carry on their criminal activities undeterred which hinders the cause of crime prevention. It must be accepted that there is a great divergence in practice and precepts so far working of police and law courts is concerned. The problem of the day, therefore, is to restore confidence among the public for these agencies of justice through an extensive propaganda and convince people that these institutions are meant to help and not to harass them. Prevention of crime should be treated as everyone's concern.[1] Unless this broader outlook is developed among the members of society, elimination of crime seems rather difficult. In general, the state of lawlessness indicates lapses on the part of the State agencies and the abuse of State power by corrupt coteries and

1. David Dressler : Reading in Criminology and Penology (Second Reprint), p. 650.

their immoral behaviours by way of deviating from professional standard and accepted norms both within the organisation and the society.[1] This obviously causes the public to harbour a feeling of distrust and contempt for the law enforcement agencies and authorities on whom the responsibility of crime prevention devolves. It is, therefore, necessary that the traditional outlook that crime prevention is solely the concern of law enforcement agencies, must be changed and it should be treated as a social cause necessitating involvement of every citizen. It is only then that the measures to prevent crimes and criminals can succeed and public tranquillity maintained in the community.

Yet another potential cause which adversely affects the crusade against crime prevention is lack of adequate proportionality between crime and punishment. It has been rightly pointed out by Friedman that "the criminal law continues to have a decisive reflection on social consciousness of society." Therefore, protection of society and stamping out criminals must be the object of law which should be achieved by imposing appropriate sentence. In other words, in operating the sentencing system, the proportion between crime and punishment should be the guiding principle and serious crimes must be punished with severity. The Supreme Court has expressed deep concern for the disappearance of the principle of proportionality from criminal law in recent times and warned some very undesirable consequences of such disproportionate punishment.[2] Imposition of sentence without considering its impact on the social order may be in reality a futile exercise. The social impact of crime where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude which have a great impact on social order and public interest *per se* require exemplary treatment and any liberal attitude or leniency in respect of such offences is bound to be counter-productive in the long run and the common man is likely to lose faith in Courts and criminal justice system.[3]

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1. Pande D.C. : "An Approach to Crime Prevention & Crime Control"—Criminology and Criminal Law (2003) p. 509.
2. *Adu Ram* v. *Mukhna & others*, Cri. Appeal Nos. 646 and 647 of 1999 decided on 8-10-2004.
3. *Mahesh* v. *State of M.P.*, (1987) 2 SCR 710.