JUVINILE JUSTICE SYSTEM

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**JUVENILE DELIQUENCY**

**INTRODUCTION**

The term juvenile delinquency is very often used in common man’s vocabulary. The dictionary meaning of ‘juvenile’ is a ‘young person’ or a child and of ‘delinquency’ is failure in or ‘omission of duty’ or ‘fault’ or crime. Juvenile delinquency indicates any failure in or omission of duty or fault or crime on the part of a child. Likewise delinquent according to dictionary means an individual who fails or leaves his duty or a transgressor. So it refers to a offender or a transgressor who is a child. That is to say that by juvenile delinquency, one should bear in mind the offences committed by the individuals who are under certain ages as specified in the law of the land. Though the age varies from society to society and even among the different strata of the society it has been noticed that the majority of the nations in the world fix the age, with little variations at 18 years approximately. Thus the concept juveniles embraces both the children and adolescents. So in brief, delinquent propensities or acts of children as well as adolescents are treated as juvenile delinquency.¹

In this paper we project to examine the nuances of juvenile delinquency thereby focussing on many aspects like the factors behind the delinquency, like the sociological factor, the family centered approach, which work behind the juvenile taking recourse to crimes. Now we will also be discussing as to how they should be rehabilitated, and how it has been strive at by the international humanitarian law and also our indigenous laws. We will then be proceeding to examine the rift, which exists between law ion paper and the law in practice. We will then be proceeding to give suggestions as how these rifts should be narrowed down.

¹ For example, the second united nations Congress on the prevention of crime and treatment of offenders in 1960 stated that juvenile delinquency should be understood by the commission of an act which, if committed by an adult would be considered as a crime.
We are fond of using the term delinquency rather than crime. When either a child or an adolescent commits an offence. So we have to see whether there is any distinguishable notion of concepts-delinquency and crime. No uniformity of opinions regarding the conceptions of delinquency as well as of crime. So Dr. Manshardt desires to draw a distinctive line between delinquency and criminality. It is perhaps due to the fact that juvenile delinquency starts with no definite purpose or motive. At the first stage, there is no motive of material gain. The offence is committed just to earn livelihood with minimum labor. Moreover, Csare Becearea, the founder of classical school of criminology, while discussing punishment for criminality has exempted the children and the insane from punishment viewing that the children are incapable of skilful judgment as to the importance of their acts. Hence in case of crime there should a definite motive or purpose, a capacity of skilful judgment of the act. While delinquency includes any type of wrong doing, either having a motive of material gain or not. A delinquent child can be defined as a “wayward, incorrigible or habitually disobedient child.” The national probation Association of US had given a definition of delinquent child as

- A child who has violated any law of the states or any ordinance or regulation of a subdivision of a state.
- A child who by reason of being wayward or being habitually disobedient is uncontrolled by his parent or by guardian or custodian
- A child who habitually so deports himself so as to injure or endanger the morals or health of himself or the other.

Thus running away from school, truancy, visiting places where liquor is used, wandering about protected places, indulging in sexual promiscuity, associating with deviants smoking cigarettes and the like are considered as juvenile offences. So it can be said that delinquency is more inclusive in nature, although the range of inclusion varies among

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2 According to Cyril Burt, ‘when anti-social tendencies of a child appear so serious that he becomes or ought to become a subject of official action’ then the child is marked as delinquent child.

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different societies of the world. It can be seen that hat is an offence to a juvenile is not an
offence to an adult. For example running away from home or smoking cigarettes is not
considered as an offence in case of adults, but it is very often treated as offence when
committed by an juvenile. Hence the term delinquency rather than crime is used in a
wider sense of the concept. Juvenile delinquency is one of the major social problems of
deviation, which almost all the modern societies have to face. To give an example, as the
category of activities is being recognized in the United States as delinquent acts:

- Driving a car without a license,
- Skipping school,
- First fighting
- Running away
- School probation or expulsion
- Stealing items worth less than 42$
- Stealing items worth more than 450 US $
- Gang fighting
- Using narcotics
- Having sex relations.

**Juvenile Delinquency in India**

It is something different in nature as compared to other societies. For example, vandalism
is treated as an expression of juvenile offence. In our country one can find that urchins
are destroying public properties like street bulbs, buses, school property, and so on. Then
theft is also prevalent. Different types of cases are found. To give an example there are
youngsters who are employed in households as servants or cooks. Generally these boys if
they get opportunities depart secretly with valuables. There are also pilfering cases. In
fact the most vulnerable part is railways, juveniles are doing pilfering of whose property
generally. A large number of neglected or destitute children take shelter in railway
stations. It is the valuables of railway station very often tempt a common sight that
neglected child. *Neglected children, who are allowed to* hawk in the streets, learn
smoking and get addicted to cinema and bad literature and like. So in order to get money for this, they try to steal, cheat, and thereby involving themselves in many other wrongful activities.

Another reason is that they are more often very easily tempted by asocial elements and are being used for circumventing law. These children who are in need of basic needs want money even for their bread. They get money by involving themselves in minimum of labor. In this way, the anti-social, corrupt their morals and they in the long run develop delinquent propensities. It is delightful to note that, sex offence is practically absent in India. Syed Hussain who has discussed about the nature and extent of juvenile rebellion has also mentioned vandalism, theft, pilfering, and street hawking as the nature as well as the source of juvenile delinquency in India.4 This fact will be getting reflected in our studies later on, on the juvenile homes where the Railway Police is catching most of the children from the railway station or in the trains.

**BACKGROUND OF THE JUVENILE PROBLEM IN MODERN SOCIETIES**

Let us see the nature of the problem in modern societies. Undoubtedly juvenile delinquency is one of the several important problems of social deviations is not totally new. But it has markedly increased in many countries throughout the world since World War II. This worldwide upsurge in delinquency is due to the growing complexity in social structure. And the breakdown of the traditional pattern of social organization. The reason behind such breakdown of traditional pattern of social organization is mainly due to the rapid pace of industrialization in the country. Don C. Gibbons has stated that “greater the degree of industrialization, modernization, urbanization and the like, the higher the rates of delinquency and criminality.5

**TRADITIONAL SOCIETY:** It is desirable to see how industrialisation, being coupled with urbanisation gives birth to the problems like juvenile delinquency. We know that traditional societies were relatively simple and small-scale with little specialisation and division of labor. Traditional society is predominantly rural in nature depending on food

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gathering, hunting or on pastoral activities or on subsistence agriculture. This society has **mainly two distinction features**. In the first place, *the social norms and values of the social setting regulate social behaviour to a large extent*. Secondly, *these social norms and values are closely related to kinship in such society*, kinship plays pivotal role in regulating the rights, duties, expectations and actions of the members of the society. Again *cultural uniformity* is prevalent in the traditional society and the keen members act the mediators of culture in such society. It involves the transfer of social heritage from generation to another. Hence, the en-culturation of the new organism is carried out by the new members of the family, which is considered as the miniature of the society. Thus traditional society has to face less problems social deviation, the traditional family plays a crucial its in the process of socialisation of a new born babe. The senior members of the family exercise their control over others in relation to rights, duties, expectations, and actions. The children of such society learn the societal accepted behavioral pattern and thus become socially adoptive in character.

*inception of the industrial revolution, in the beginning of the 18th century* had shaken the very foundation of the traditional society in Europe, particularly in England. Technological inventions have brought about a tremendous effect on the structure of the traditional society. Industrial revolution is the outcome of the technological innovation.

**Urbanization:** One of the most striking features of the industrial age is the *growth of city life*. Facilities of transport and communication have brought thousands of people nearer to each other and made it convenient for them to live together in cities. *The industrial revolution has changed the mode of production*. Economic production has been transferred from home to the factory. Market economy is one of the main characteristics of such society. Thus large-scale production has taken both the work and the worker in the factory and people more and more have started to shift from farming to urban occupation. This stage is known as *urbanisation and practically urbanisation is the result of rapid industrialisation*.

In conjunction with urbanisation, *industrialisation has brought changes in the family pattern*. The community of interest, outlook and income has been replaced by the new
occupational pattern. This leads to partial interpersonal and superficial relationships in all areas of social-life. The alienation caused by urbanisation has shattered the very foundations of well lead family life. He dynamic developments are agitating the elementary basis of social order. The established tenders of social norms are undergoing perplexed transformations. This process in the long run leads to deviations in the individual behaviour. The enculturization of the child is essentially the primary function of the family. But the members of the modern families have either a little time or zeal to perform this function effectively and efficiently. Thus, growing intensity of superficial and of impersonal relations among the members ultimately leads to the lack of smooth family relationship. Any defective family relationship generates stress and strain on the part of individuals and begets tendency towards socially mal-adaptive character formation. Juvenile Delinquency is one of the major social problems resulting from the rapid pace of urbanisation and industrialisation. This statement can be supplemented by, they have collected a large number of data on delinquencies among Eskimos and at the same time they have studied delinquency in Mexico, India, England, Russia and eight European countries. Their study has explicated that delinquency was non-existent among Eskimos due to the social control exercised by their traditional family until the non-Eskimos influenced their social organization. Thus juvenile delinquency is mainly an urban problem.

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6 Seth has stated that “the criminal in the adult and the delinquent in the juvenile are none but the upshots of this process, the process of social disorganisation and maladjustment’s.” Similarly Homans “Social Disorganisation and Disintegration,” marked by a decline in a number of activities in which members of a group collaborate by a decrease in frequency of interaction between those members and by weakening of control exercised by the group over the behavior of individuals.

7 This is based on the empirical study conducted by Jordan Covan and Ruth Covan, who collected a large amount of data on delinquency among Eskimos.
THEORIES OF CRIME CAUSATION

Regarding the theories of crime causation, though they are not adequate, we can discuss some of them in a very general way. Three approaches given by three schools, namely:

THE CLASSICAL AND CLINICAL APPROACH

The classical has led emphasis on the crime factor. Cesare Beccarea is the founder of the classical school of criminology.\(^8\) He and his school believed in the doctrine of free will. He advocated punishment as appropriate measure to the moral guilt irrespective of economic status, that is rich or poor because it is the individual who is morally responsible for his acts.

He again argued that everyone generally prefers pleasure to pain. So one would not involve in criminality if he anticipated painful ones instead of pleasure. Thus he advocated punishment as penalties to deter crime. The degree of punishment would be severe depending on the nature and extent of crime. But he exempted children and the insane from punishment because they were incapable of skilful judgement as to the importance of their acts. On the contrary, to him children should be provided should be protection and for this purpose they should be removed from the society. Hence the classical school emphasises more on the nature of treatment for criminal activity rather than on the theory of crime causation.

The clinical school developed various types of intelligence tests to find out the relation between the intelligence and delinquency. John Slawsan was the main defender of this school and he studied 1543 delinquent boys. The following are his major findings regarding the relationship between intelligence and delinquency:

- In abstract verbal intelligence test, 8/10 delinquent did not get course compared to those of the unselected public school children

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\(^8\) His Crime and Punishment, published in 1764, ‘was intended as an antidote to the arbitrary imposition of the penalties according to the whim of individual Judges of the day.’
Mechanical aptitude and non-verbal intelligence were not correlated with delinquency. The delinquency scores were about normal on the stenquist test of the mechanical aptitude.

IQ had no relation with the seriousness of the offences or the number of arrests.

So he concluded by saying that IQ should not be regarded as the measurable instrument of delinquency. Even psychologists today argue that IQ depends upon environmental factors and it should not be the only way to measure one’s ability. That is why, Ferentz does not agree on the point that of a person’s ability because there are so many social functions that are as important as IQ to judge a person’s mental efficiency within a social setting.

Further studies prove that there is no causal relationship between low IQ and delinquency due to the fact that IQ by and large depends on educational opportunities and it is generally argued that delinquents in all societies belong mostly to deprived socio-economic groups. According to Cyril Burt, defective discipline, that is parental indifference and vacillation, disagreement between parents about control of their children and observity occurred about seven times more frequently in the delinquent groups than in the non-delinquents. Thus Cyril-Burt has advocated a different type of view. He for the first emphasised on the social factors instead of personal factors in order to develop a theory of crime causation. His parental discipline is undoubtedly a striking point in the causative factor of delinquency today.

**PSYCHOLOGICAL APPROACH**

Sigmund Freud, the pioneer of the psychiatric school stated that the role of the unconscious should be given importance in order to determine the individual behaviour. David M. Levy's of this school emphasised that delinquency was mainly due to defective parent child relationship that resulted in inner psychological disturbance on the part of the child. Besides, Eric Ericson advocates that feeling of insecurity and diffusion of identity play important role on the youth. These generate delinquent tendencies in his
Psychologists argue that need for security, need for acceptance, etc are the basic needs, not only for the child, but also for the adult. According to him, thus when a child is deprived of these basic needs he divorces himself from ideal control. But the psychologists believe that the psychological fact is the crucial variable and as such the solution is to redress the mental imbalance of the delinquents.

**Sociological Approach**

The psychological school in general argues that *certain situations lead to personal psychological problems of adjustment for an individual and in turn a person develops a socially maladjusted behavioral pattern*. Thus they argue that attention must be focussed on the boy, his family and their problems because delinquency is assumed to be a form of reaction to the problems.

In this way, situational or environmental factors claim for an intensive study in order to get a crime causation theory. Consequently, the sociological school has developed to deal with the social situational or environmental factors that are conducive to behaviour pattern formation. According to the sociological approach, social behaviour is not something given in the individual psyche independently of his experience in society but produced in social groups and internalised within the individual as a result of his exposure to the pressure of these groups.

**Family-Centered Approach**

*Cooley and others* have led emphasis on the face to face relationship in the primary group-family-as the determinant factor of character formation and group behaviour. According to this approach, *deviations from normal family settings should be examined repeatedly for their bearing on delinquency*. So, the sociologists of different nations of the world have studied juvenile delinquency from socio-economic and cultural viewpoints. They point out that family conditions, neighbourhood influence, peers influence, school environment, economic factors etc, are some of the social factors that play decisive role ion behaviour pattern of an individual.
Unfavourable environment in the family, there is the loss of family consciousness and the development of detachment or the disruption of previous existing relationship or the breakdown of consensus and loyalty is ultimately responsible to make the juvenile delinquents, because such a family cannot carry out its desirable functions properly and effectively. **Edvin.H. Suthetland** discovers *characteristics prevalent in the homes from which delinquent children come most frequently*.\(^{11}\) These are

- Criminality, immorality or intoxication, etc, among the members of the family
- Separation, divorce or any desertion in the family
- Overcrowding home condition,
- Defective discipline due to ignorance, blindness, etc. on the part of parentés or substitute parents.
- Negligence of parents.
- Unsympathetic conditions at home.
- Anger, excitement at home,
- Rigorous treatment of parents.

The child is deprived of parental affection due to the absence of one parent or both. John Bowlby states, “*the more complete the deprivation in early years, the more isolated asocial the child.*”\(^{12}\) Moreover need of acceptance is closely related to nee for affection.

*The child must not feel that he is unwanted or rejected, that is he is a neglected child.* “Neglect is not merely failure to provide the physical needs the clothing, shelter, and medical care needed, failure to provide proper supervision leadership and guidance within the home is a more serious form of neglect.” So it has been seen that broken home condition is one of the determination of delinquent acts. Now one may argue that all delinquents do not belong to broken homes. A child who does not belong to a broken home may also commit delinquent acts. Perhaps, here the lack of orderliness in the family leads to non-normative character formation. Orderliness in the family plays a crucial role in the formation of behaviour pattern of an individual. By orderliness, we mean the character of parents, systematic household work, family pride or prestige, etc. to quote an

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\(^{12}\) John Bowlby, “Maternal care and mental health, Geneva” 1952, pg 47.
example, income of a family must be utilised properly. Haphazard management of income must be avoided for the interest of a healthy atmosphere in the family. If the income of a family is not being utilised properly then there may be ever increasing tendency of deficit between income and expenditure. This leads to bankruptcy. As a consequence there is a growing tendency of breakdown of normal family ties among the members due to economic tensions of insecurity. The child can adjust himself in such a situation. Maladjustment and a sense of frustration may result from such a situation. Gluecks advocates that poor management of family income is more prevalent in delinquent families than in non-delinquent ones.13 Again, an orderly family always maintains a sense of discipline and a careful time budgeting its daily chorus, that is specific bedtime, leisure time, meal time and study time and the like. A careful and a systematic household routine help in developing a healthy personality of an individual. A sense of just and unjust also develops through the systematic daily work of the family life. Gluecks investigation reveals that only 24.4 % of delinquents as compare with 49% of non-delinquents had a systematic household routine.14

**EMPIRICAL STUDY ON JUVENILE-DELINQUENCY CONDUCTED IN THE AREAS OF BOMBAY**

Before moving on to the next examining the various conventions, international documents in the light off above discussion, we would like to have brief appraisal of a empirical study conducted in the two areas of Bombay, by one of the eminent scholars, Malcolm Bloom Cooper

The author in his study starts from the problem of excessive urbanisation in the city of Bombay and the consequences flowing out of it. Problems of urban migration, population outbursts, increasing unemployment, worsening civic conditions of the city, mechanisation of agriculture in the nearby areas. Increasing density of population all have contributed to the steep increase of crimes in the metro. Juvenile delinquency for

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13 S.Glueck and E. Glueck ‘Unravling Juvenile Delinquency”, Cambridge, 1951,
14 ibid, table x2 at pg 109.
Bombay (and for other cities as he took out the inference) has been mostly in the form of robbery and theft.

Thus the author selected two areas, both of which had the population living in the slums. The decision was oriented with the objective of matching the information that would be collected from Municipal Corporation of Mumbai, on factors like education, health, etc, with the views of respondents selected from the area.

A1 – *It Is One Of The City Wards,*

A2 - *Is One Of The Suburban Wards.*

Rich, middle and poor classes inhabit both the areas. Occupation wise, business, service-class and both white and blue-collar workers are well represented in both the areas.

80% of respondents live in the slum areas.- huts and shacks. The majority of hut-dwellers are in Area A2. *As there is no planning, rapid and recent urbanisation is associated with slum-living conditions.* Now the majority of respondents in Area 1 are shack-dwellers.

**PUBLIC**

**TABLE 1**

*Future trends of Juvenile social maladjustment*

<table>
<thead>
<tr>
<th></th>
<th>Area 1</th>
<th>Area 2</th>
<th>Row total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decrease</td>
<td>75</td>
<td>165</td>
<td>240</td>
</tr>
<tr>
<td>Remain Constant</td>
<td>68</td>
<td>44</td>
<td>112</td>
</tr>
<tr>
<td>Increase</td>
<td>119</td>
<td>92</td>
<td>211</td>
</tr>
<tr>
<td>No information</td>
<td>4</td>
<td>3</td>
<td>7</td>
</tr>
<tr>
<td><strong>Column total</strong></td>
<td><strong>266</strong></td>
<td><strong>304</strong></td>
<td><strong>570</strong></td>
</tr>
</tbody>
</table>

When we turn to the future trends as perceived by the public in the above table, we see that 45% of the public in Area 1 think that, juvenile social maladjustment will increase, while only 30% in Area 2 think so. The pessimism shown is not so great, but it
is greater in Area 1 than in Area 2, which is not surprising as they perceive the situation in Area 1 to be deteriorating in earlier responses.

**PUBLIC**

**TABLE 2**

*If conduct problems have increased, what, in your opinion, are the reasons?*

*(Give three reasons in order of seriousness)*

<table>
<thead>
<tr>
<th>Ranking</th>
<th>A1 + A2</th>
<th>A1</th>
<th>A2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1&lt;sup&gt;st&lt;/sup&gt;</td>
<td>49.8%</td>
<td>7</td>
<td>38.3%</td>
</tr>
<tr>
<td>2&lt;sup&gt;nd&lt;/sup&gt;</td>
<td>14.4%</td>
<td>1</td>
<td>18.2%</td>
</tr>
<tr>
<td>3&lt;sup&gt;rd&lt;/sup&gt;</td>
<td>14.3%</td>
<td>2</td>
<td>18.1%</td>
</tr>
<tr>
<td>4&lt;sup&gt;th&lt;/sup&gt;</td>
<td>9%</td>
<td>6</td>
<td>11.4%</td>
</tr>
<tr>
<td>5&lt;sup&gt;th&lt;/sup&gt;</td>
<td>6.4%</td>
<td>3</td>
<td>7.2%</td>
</tr>
<tr>
<td>6&lt;sup&gt;th&lt;/sup&gt;</td>
<td>3.7%</td>
<td>5</td>
<td>4.0%</td>
</tr>
<tr>
<td>7&lt;sup&gt;th&lt;/sup&gt;</td>
<td>2.5%</td>
<td>4</td>
<td>2.7%</td>
</tr>
</tbody>
</table>

**Reasons:**

1. Lack of control.
2. Influence of bad company.
3. Lack of education.
4. Neighbor’s indifference.
5. Influence of media.
6. Bad family conditions.
7. Not applicable.

Those in Area 1 give the first three in the order – influence of bad company, lack of control, bad family conditions; while those in area 2 give them in this order- lack of control, influence of bad company, and bad family conditions.
There is a considerable degree of agreement, especially when we consider the same order given for the other reasons.

**PROFESSIONALS**

**TABLE 4**

*What in your opinion are the reasons for the increase of socially maladjusted behavior? (Give three answers in order of priority)*

<table>
<thead>
<tr>
<th>Ranking</th>
<th>A1 + A2</th>
<th>A1</th>
<th>A2</th>
</tr>
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<tbody>
<tr>
<td>1st</td>
<td>24.8%</td>
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<td>26.7%</td>
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<tr>
<td>2nd</td>
<td>23.1%</td>
<td>1</td>
<td>21.7%</td>
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<tr>
<td>3rd</td>
<td>17.7%</td>
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<tr>
<td>4th</td>
<td>16.3%</td>
<td>2</td>
<td>13.9%</td>
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<tr>
<td>5th</td>
<td>9.4%</td>
<td>5</td>
<td>9.3%</td>
</tr>
<tr>
<td>6th</td>
<td>7.1%</td>
<td>3</td>
<td>7.7%</td>
</tr>
<tr>
<td>7th</td>
<td>1.6%</td>
<td>4</td>
<td>1.5%</td>
</tr>
</tbody>
</table>

**Reasons:**

1) Lack of control
2) Influence of bad company
3) Lack of education
4) Neighbour’s indifference
5) Influence of media
6) Bad family conditions
7) Not applicable.

In the above table on the other hand the professionals give their reasons for the perceived increase in the juvenile social maladjustment. For Area 1 they give them in
this order- lack of control, bad family conditions, and influence of bad company, while for Area 2- for those who said that it had increased, the order is the same for Area 1.

It is to be noted that both the Public and the Professionals are in agreement as to the major reasons for the increase in the juvenile social maladjustment, and attention should be paid to these reasons. It is easy to speculate that if the home conditions are bad and control is defective, children will easily succumb to undesirable peer pressure and unacceptable behavior will be reinforced. The emphasis therefore is on bad family conditions-, which is the primary socializing factor.

**JUVENILES**

**TABLE 5**

*Are you of the opinion that Social Welfare Organizations contribute to solve juvenile’s personal problems?*

<table>
<thead>
<tr>
<th></th>
<th>Area 1</th>
<th>Area 2</th>
<th>Row total</th>
</tr>
</thead>
<tbody>
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<tr>
<td>Column Total</td>
<td>200</td>
<td>203</td>
<td>403</td>
</tr>
</tbody>
</table>

The juveniles were asked; if they think that social welfare organisations contribute to solve their personal problems. The majority of them (64%) say that the organisations do, but more so in Area 1 (78%) than in Area 2(51%).
Are you of the opinion that the School contributes to solve juvenile’s personal problems?

<table>
<thead>
<tr>
<th></th>
<th>Area 1</th>
<th>Area 2</th>
<th>Row total</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
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<td>No</td>
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<td>22</td>
<td>32</td>
</tr>
<tr>
<td>Column Total</td>
<td>200</td>
<td>203</td>
<td>403</td>
</tr>
</tbody>
</table>

The same question was asked regarding Schools. An overwhelming majority of the juveniles admit that Schools contribute to solve juvenile’s personal problems. This manifests a very high degree of confidence in the schools in this regard, and a much higher confidence than they have in social welfare organizations. This lower level of confidence in those organizations has been attributed to the fact that they are more involved in the provision of services than in face-to-face interaction with juveniles and their problems.

Are you of the opinion that courts of justice contribute to solve juvenile’s problems?

<table>
<thead>
<tr>
<th></th>
<th>Area 1</th>
<th>Area 2</th>
<th>Row total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>125</td>
<td>74</td>
<td>199</td>
</tr>
<tr>
<td>No</td>
<td>75</td>
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</tr>
<tr>
<td>Column Total</td>
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<td>203</td>
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</tbody>
</table>
The same question was asked regarding the courts of justice. Only 49% of all the juveniles interviewed say that the courts of justice contribute to solve juvenile’s personal problems, 62.5% of the youths in Area 1 and 36% in Area 2. This points to a very low level of confidence in the courts, lower than social welfare organizations and schools.

**JUVENILES**

**TABLE 7**
*Are you of the opinion that reformatories contribute to solve juvenile’s personal problems?*

<table>
<thead>
<tr>
<th></th>
<th>Area 1</th>
<th>Area 2</th>
<th>Row total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>186</td>
<td>165</td>
<td>351</td>
</tr>
<tr>
<td>No</td>
<td>14</td>
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</tbody>
</table>

A great majority (87%) of the juveniles declares that they do, 93% in Area1 and 81% in Area 2. This indicates a very high level of confidence in reformatories.

**JUVENILES**

**TABLE**
*How do the Police treat Juveniles?*
When it comes to the Police, in the above table, the question was put differently. It asked how the Police treat Juveniles. 60% of the juveniles interviewed avow that the police treat juveniles tolerantly, and 27% leniently. There is a striking difference between the two areas; more juveniles in Area1 (70%) than in Area 2(50%) say that police are tolerant.

On the whole juveniles in Area1 have more confidence in the formal agencies- social welfare organizations, schools, courts of justice, reformatories and police than those in Area 2. The reason for this is hard to find in view of the general similarities between the two areas. The fact that the Area 1 is an older part of the city does not appear to be sufficient explanation.

PROFESSIONALS

<table>
<thead>
<tr>
<th></th>
<th>Area 1</th>
<th>Area 2</th>
<th>Row total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tolerantly</td>
<td>140</td>
<td>102</td>
<td>242</td>
</tr>
<tr>
<td>Leniently</td>
<td>41</td>
<td>68</td>
<td>109</td>
</tr>
<tr>
<td>Harshly</td>
<td>19</td>
<td>33</td>
<td>52</td>
</tr>
<tr>
<td>Column Total</td>
<td>200</td>
<td>203</td>
<td>403</td>
</tr>
</tbody>
</table>

When it comes to the Police, in the above table, the question was put differently. It asked how the Police treat Juveniles. 60% of the juveniles interviewed avow that the police treat juveniles tolerantly, and 27% leniently. There is a striking difference between the two areas; more juveniles in Area1 (70%) than in Area 2(50%) say that police are tolerant.

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PROFESSIONALS

TABLE 9

Do you think that the family and the community play an effective role in the prevention of juvenile social maladjustment? (Affirmative answers)

<table>
<thead>
<tr>
<th></th>
<th>A 1</th>
<th>A 2</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Family at present</td>
<td>65.3%</td>
<td>48.8%</td>
<td>77.6%</td>
</tr>
</tbody>
</table>
Family five years ago

<table>
<thead>
<tr>
<th></th>
<th>Area 1</th>
<th>Area 2</th>
<th>Row total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reinforce traditional values</td>
<td>12</td>
<td>10</td>
<td>22</td>
</tr>
<tr>
<td>Make civil justice system more efficient</td>
<td>3</td>
<td>9</td>
<td>12</td>
</tr>
<tr>
<td>Make criminal justice system more efficient</td>
<td>24</td>
<td>9</td>
<td>33</td>
</tr>
<tr>
<td>Make social welfare system more efficient</td>
<td>21</td>
<td>42</td>
<td>63</td>
</tr>
<tr>
<td>Make educational system more efficient</td>
<td>85</td>
<td>103</td>
<td>188</td>
</tr>
</tbody>
</table>
The adult members of the public were asked, what in their opinion is the most effective means to reduce juvenile social maladjustment. As can be seen from the above table, the first four measures indicated by all the respondents in all the areas are:

- Increasing working opportunities 35%
- Making educational systems more efficient 33%
- Making social welfare systems more efficient 11%
- Introducing harsher punishment 9%

When response are broken down into two areas, we get the following:

**Area 1** - Increasing working opportunities 39%
  - Making educational systems more efficient 33%
  - Making criminal justice system more efficient 9%
  - Making social welfare system more efficient 8%

**Area 2** - Making educational system more efficient 34%
  - Increasing working opportunities 32%
  - Making social welfare system more efficient 14%
  - Introducing harsher punishment 11%

Table 3 shows the responses by the public to the question

*Whether juvenile behaviour problems have increased over the previous five-year problems.*
56% of them in area 1 say that they have increased and 39% say the same in area 2. This suggests that the public in area 1 think that the situation there in their area 1 has deteriorated.

<table>
<thead>
<tr>
<th></th>
<th>Area 1</th>
<th>Area 2</th>
<th>Row Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>148</td>
<td>118</td>
<td>266</td>
</tr>
<tr>
<td>No</td>
<td>101</td>
<td>154</td>
<td>255</td>
</tr>
<tr>
<td>Same</td>
<td>17</td>
<td>32</td>
<td>49</td>
</tr>
<tr>
<td><strong>Column Total</strong></td>
<td><strong>266</strong></td>
<td><strong>304</strong></td>
<td><strong>570</strong></td>
</tr>
</tbody>
</table>

**REHABILITATION**

Thus from the above discussion what transpires is that what works behind the juvenile resorting to darker side of his life is the psychological factor looming in his mind, coupled with other societal factors, familial, peer-ties factors. Thus, the objective with the observation home, or children care and protection homes are constituted, should not be punitive, but be rehabilitation of the child in the social structure, to remould his distorted personality in such a way as to enable him to get himself get adjusted in the social fabric when he returns back to the society. Even if the juveniles are being deprived of their liberty, that should be effected in conditions and conditions which ensures the respect for human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their heath and self-respects, to foster their sense of responsibility and encourage those attitudes and those skills which would assist them in developing their potential as the members of society. The design of juvenile facilities should be in keeping without the rehabilitation aim of residential treatment, with due regard to the need for juvenile for privacy, leisure time
activities, every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of right to fair and humane treatment and is essential for the preparation of the juveniles for their return to the society. Juveniles should be allowed to communicate with their families, friends, and other persons or the representatives of the reputable outside organisations, to leave detention facilities for a visit to their home, for vocational, educational or other important reasons.

Thus we see that all juveniles should benefit from the arrangements designed to assist them in re-establishing themselves in the society, family-life, education or employment after release. The competent authorities should ensure juveniles to be provided with suitable residence, employment, clothing, and sufficient means to maintain him or her or upon release to facilitate successful rehabilitation.

Now having discussed all this we endeavour to elaborate on how various international conventions and our own, Children Care and Protection Act 2000 embodies the above principles and objective; we will be examining the different categories of provisions which in a way aspire to achieve the above mentioned goals:

**RELEVANT ARTICLES**

Now we set on to mention the relevant provisions relating to Juvenile Delinquency from various international conventions.

*INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS’ (ICCPR)*

**Article-10 (2) (b)** “Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.”

(3). “The penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”

**Article-14.** It relates to the equality being accorded to the criminals before the courts and tribunals and the procedure to be followed.
In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.


PREAMBLE

‘Recalling that, in the Universal Declaration of Human Rights the United Nations has proclaimed that childhood is entitled to special care and assistance.

‘Recognising that the child for the full and the harmonious development of his personality should grow up in a family environment, in an atmosphere of happiness, love and understanding.

‘Considering that the child should be fully prepared to live an individual life in the society, and brought up in the spirit of ideals in the proclaimed in the charter of united nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.

‘Bearing in mind that the need to extend particular care to the child has been stated in the geneva declaration of the rights of the child of 1924 and the declaration of rights of the child adopted by the general assembly and recognised in the universal declaration of human rights, in the international covenant on the civil and political rights, in the international covenant on economic, social and cultural rights and in the status and relevant instruments of specialize agencies and international organisations concerned with the welfare of children.’

ARTICLE 1

For the purposes of present convention, a child means every human being below the age of 18 years unless the law applicable to the child, majority is attained earlier.

ARTICLE 9
State parties shall ensure that a child shall not be separated from his or her parents against their will, except when the competent authorities determine that such a separation is necessary for the best interests of the child. Such determination may be made in a particular case where there is an abuse or the neglect of the child by the parents, or one where the parents are residing separately and a decision must be made as to child’s place of residence.

4. Where such separation results from the action initiated by a state party, such as detention, imprisonment, exile deportation or death (including death arising from the cause while the person is in the custody of the State) of one or both the parents or of the child, the state party shall, upon request, provide the parents, the child or, if appropriate, or another member of the family with the essential information concerning the whereabouts of the absent member.

**ARTICLE-37**

State parties shall ensure that-

a). “No child shall be subject to torture, or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment, nor life imprisonment, without possibility of release shall be imposed for offences committed by persons below 18 (eighteen) years of age.”

b). “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate of time.”

c). “Every child deprived of his liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in manner which takes into account, the need of persons of his or her age. In particular, every child deprived of his or her liberty shall be separated from adults unless it is considered in the child’s interest not to do so, and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.”
d). “Every child deprived of his or her liberty shall have the right to prompt legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to prompt decision on any such action.”

*Art. 40:*

(1.) State parties recognise the rights of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in an manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for human’s rights and fundamental freedoms of others and which takes in to account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in a society.

(2.) To this end, and having regard of the relevant provisions of international instruments, state parties shall in particular ensure that:

a.) No child shall be alleged as, be accused of or recognised as having infringed the penal law by reason of acts or omissions, that were not prohibited by the national or international law at the time they were committed.

b.) Every child alleged as well as accused of having infringed the penal law has at-least the following guarantees:

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

ii.) To be informed promptly and directly of the charges against him or her and if appropriate, through his or her or legal guardians and too have legal or other appropriate assistance in the preparation and presentation of his or her defence

iii.) To have the matter determined without delay by a competent, independent and impartial authority, or a judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interests of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians.

iv.) Talks about the bar against self-incrimination.

v.) Talks about the decision to be reviewed by a authority and appelate poweres.
vi.) To have the free assistance of an interpreter, if the child cannot understand or speak the language used.

vii.) To have his or her privacy fully respected at all stages of the proceedings.

3.) State parties shall seek to promote the establishment of laws, procedures, authorities and institutions, specifically applicable to children alleged as accused of, or recognised as having infringed the penal law and in particular:
   (a.) The establishment of a minimum age below which children shall be presumed not to have the capacity to have the infringe the penal law.
   (b.) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings providing that human rights and safeguards are fully respected.

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

**THE CONVENTION ON JUVENILES DEPRIVED OF THEIR LIBERTY.**

11. For the purpose of the Rules, the following definition should apply:
   (a) A juvenile is every person under the age of 18. The age limit, below which it should not be permitted to deprive a child of his or her liberty, should be determined by law.

**MINIMUM NECESSITIES**

**Preamble:** The juvenile justice system should uphold the rights and safety and promote the physical and mental well being of juveniles. Imprisonment should be the last resort.
‘Juvenile should only be deprived of their liberties in accordance with the principal and procedure set forth in these rules and in United Nations standard minimum rules for administration of juvenile justice (Beijing Rules) deprivation of a liberty of a juvenile should be a disposition of the last resort and for the minimum necessary period and should be limited to exceptional cases. ‘

**ACTIVITIES AND PROGRAMMES**

‘The competent authorities should constantly seek to increase the awareness of the public, that the care of detained juveniles and preparation for their return to society is a social service of great importance, and to this end active steps should be taken to foster open contacts between the juveniles and the local community.’

Art. 12. The deprivation of the liberty should be effected in conditions and circumstances, which ensure respect for the Human Rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of minimum and programmes which would serve to promote and sustain their health and self-development, to foster their sense of responsibility that would assist them in developing their potentials as the members of society.

18(b) Juveniles should be provided, where possible, with the opportunities to pursue work, where possible, with remuneration and continue training or education, but should not be required to do so. Work, education or training should not cause the continuation of detention.

**Art 59**

Every means should be provided to ensure that juveniles have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society. Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organisations, to leave detention facilities for visit to their home and family and to receive special permission to leave the detention facility for educational, vocational or other important reasons. Should the juvenile be serving a
sentence, the time spent outside a detention facility should be counted as a part of the period of sentence.

**RIGHTS**

**Art. 13**

Juveniles deprived of their liberty, shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

**Art. 17**

Juveniles who are detained under arrest or awaiting trial (“Untried”) are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention. Untried detainees should be separated from the convicted juveniles.

**Art. 21.**

In every place where juveniles are detained, a complete and secure record of the following information should be kept concerning each juvenile received:

- Information on the identity of the juvenile;
- The fact of and reasons for commitment and the authority therefore;
- The day and hour of admission, transfer and release;
- Details of the notifications to parents and guardians on every admission, transfer or release of juvenile in their care at the time of commitment;
- Details of known mental and physical health problems, including drug and alcohol abuse.

**Art. 22.**
The information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned.

**Art. 28**

In all detention facilities juveniles should be separated from adults, unless they are the members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a social programme that has been shown to be beneficial for the juveniles concerned.

**Art. 28**

The detention of juveniles should only take place under conditions that take full account of their particular needs, status, and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.

**Art. 69**

All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour should always be viewed as an educational tool and as a means of promoting the self-respect of the juvenile in preparing him or her in return to the community and should not be imposed as a disciplinary sanction. No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.

**RECREATION FACILITIES**

**Art. 18.c.** Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.
Art. 31
The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. Detention facilities should not be located in areas where there are known health or hazards or risks.

Art. 47
Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever the weather permits, during which time appropriate recreational and physical training should normally be provided. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development.

Medical Care
Art. 53
A juvenile who is suffering from mental illness should be treated in a specialised institution under independent medical management. Steps should be taken, by arrangements with appropriate agencies, to ensure any necessary continuation of mental health care after release.

Education Facilities
Art. 38
Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of the juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.
**Art.42**

Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future development.

**Salient Features of Juvenile Justice Act of 2000**

It has a *specific chapter dealing with the ‘juvenile in conflict with laws.’*

- **Constitution of juvenile justice boards for a district and a group of districts specified in the notification for exercising the powers, and discharging the duties in relation with the juveniles in conflict with law under this act. (sec. 4)**

- **The state government to maintain and establish observation homes in every district or a group of districts, either by itself or under an agreement with the voluntary organisations. Sec8 (3), says that government should with the rules made in this behalf, provide for the standards and various types of services to be provided by them, for rehabilitation and social integration of a juvenile. Sec.8 (4.) Provides for the separation of children according to their age groups.**

- **Where a juvenile is arrested, the officer in-charge of the police station or the special juvenile police unit should inform the parents or the guardian of the juvenile, if it can be found that such an arrest and direct him to present at the board before which the juvenile will appear. Sec.13**

- **Where an inquiry is being initiated against a juvenile, by the board, it should be completed within four months of date of its initiation, unless it is being extended by the board having regard to the circumstances of the case and in special cases after recording the reasons in writing. Sec. 14.**

- **Rehabilitation program and social reintegration:** The rehabilitation and social reintegration of child shall begin during the stay of the child in a children’s home or a special home and it should be carried out alternatively by adoption, foster care, sponsorship and sending the child to an after care organisation. Section 40.

- **Adoption shall be resorted to for the rehabilitation of such children as are orphaned, abandoned, neglected and abused through institutional and non-institutional methods.**
The board shall be empowered to give children in adoption and carry out such investigations as are required for giving children in adoption.

- The state government may make rules for the purpose of carrying out various schemes of foster care programs for the children.
- The state government may make rules for the purpose of carrying out various schemes of sponsorship of children, such as individual to individual sponsorship, group sponsorship or community sponsorship.
- The state government may make rules for the purpose of carrying out various schemes for the recognition of after care organisation and the functions that may be performed by them under this act.
- The state government may make rules to ensure effective linkages between various governmental, non-governmental, corporate and other community agencies for facilitating the rehabilitation and social reintegration of the child.

**PERVIEW OF THE BEIJING RULES:**

The Beijing Rules, adopted by the United Nations in 1985, provide for the guidance of the State for the protection of children’s rights and respect their needs in the development of separate and specialized systems of juvenile justice.

These broad fundamental perspectives refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the juvenile justice system, and in turn, will reduce the harm that may be caused by any intervention. Such care measures for the young, before the onset of delinquency, are basic policy requisites designed to obviate the need for the application of the Rules. *These rules are recommendatory and not binding per se.*

**FORMAT OF THE BEIJING RULES:**

The Rules are divided into six parts and are accompanied by a commentary expanding upon and explaining each individual rule. These six parts are:
AN OVERVIEW OF THE RELEVANT PROVISIONS:

2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

(a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult;

(b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems;

(c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

3. Extension of the Rules

3.1 The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult.

3.2 Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.

3.3 Efforts shall also be made to extend the principles embodied in the Rules to young adult offenders.

Commentary

Rule 3 extends the protection afforded by the Standard Minimum Rules for the Administration of Juvenile Justice to cover:

(a) The so-called "status offences" prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults
(for example, truancy, school and family disobedience, public drunkenness, etc.) (rule 3.1);
(b) Juvenile welfare and care proceedings (rule 3.2);
(c) Proceedings dealing with young adult offenders, depending of course on each given age limit (rule 3.3).

The extension of the Rules to cover these three areas seems to be justified. Rule 3.1 provides minimum guarantees in those fields, and rule 3.2 is considered a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.

13. Detention pending trial
13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.
13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.
13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.
13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical—that they may require in view of their age, sex and personality.

Commentry:
The danger to juveniles of criminal contamination while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, rule 13.1 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile. Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights, especially article 9 and article 10, paragraphs 2 (b) and 3.

INSTITUTIONAL TREATMENT

26. Objectives of institutional treatment

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance—social, educational, vocational, psychological, medical and physical—that they may require because of their age, sex, and personality and in the interest of their wholesome development.

26.3 Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

26.4 Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

26.6 Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do no leave the institution at an educational disadvantage.
Commentary

The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect.

Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons.

The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its resolution 4. The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4)

29. Semi-institutional arrangements

Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.

Commentary

The importance of care following a period of institutionalisation should not be underestimated. This rule emphasises the necessity of forming a net of semi-institutional arrangements.

This rule also emphasises the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.
CASE LAWS:

(1). *Bhoop Ram V. State of M.P.*[^15]

The question that arose in this case was that – Whether the appellant, who was convicted along with 5 others by the district and Sessions judge under Section-148 and 302,323 and 324, all read with 149 of the Indian Penal Code and sentenced to imprisonment for life besides, should have been treated as a ‘Child’ within S-2(4) of the U.P. Children Act, 1951 and sent to an approved school for detention, therein he attains the age of 18 years, instead of being sentenced to undergo imprisonment in jail?

The Supreme Court in this case mainly considered the controversy with regard to the age of the appellant- *Whether he had completed the age of 16 years or not?* The Court came to the conclusion that he is below 16 years of age, on the date when the offence was committed. Therefore it held that the appellant should have been dealt under the U.P. Children Act, instead of being sentenced to imprisonment, where the Sessions judge on the various counts convicted him. The court stressed on the aspect that the Trial judge had passed a lesser sentence of imprisonment for life instead of Capital Punishment.

(2). *Sunita V. State (U.T. Chandigarh)*[^16]

[^15]: AIR 1989 SC 1329
In this case the appellant (Sunita) was convicted for an offence punishable under Section-302 of Indian Penal Code and was sentenced for rigorous imprisonment for life also to pay a fine. The appellant had been tried for having committed the murder of one Sarla by sprinkling kerosene on her and then setting her on fire on 16th December 1989, in her house, Sarla had died after making the dying declaration. The main controversy that arose in this case was with regard to the age of the appellant that, she was a juvenile and therefore, she could not have been sentenced to imprisonment for life.

Since, there was a controversy with regard to her age, so as a result of which an enquiry was conducted, and it was proved that on the date of the incident, the appellant was aged between 15-16 years of age or in other words she was a Juvenile in terms of Section-2 (4) of the Juvenile Justice Act, 1986.

(3). Ramchandran V. The Inspector of Police\textsuperscript{17}

In this case the Petitioner’s son Venkat, aged according to him 16 years, has been detained under various acts, for committing criminal offences, according to the respondents, it has become necessary to detain him, as he was acting in a manner prejudicial to the maintenance of public order. Firstly, he has committed a murder on 20\textsuperscript{th} May 1993, by forming an unlawful assembly along with his associates, they were all armed with deadly weapons and they have also wrongfully restrained one Mr. Sunder, who was dead. In another, he was charged with indulging in unlawful activities causing mischief and criminal intimidation to one Mr. Mustafa, he also committed this along with his accomplice, by forming an unlawful assembly on the same day. Even preceding to his detention order he his said to have attacked one Mr.Umpathy. In a way he was said to have threatened the public.

\textsuperscript{16} 1998 (104) Cr. LJ. P &H.
\textsuperscript{17} 1994 (100) Cr.LJ. 3722 Mad.
The court in this case led emphasis on the special enactment for the Juvenile Offenders. It is said that, “the justice system as available for adults is not considered suitable for being applied to a Juvenile”. There is also a need for larger involvement of informal systems and community based welfare agencies in the care, protection, treatment, development and rehabilitation of such juveniles and in this context, the proposed legislation aims at achieving the following objectives-

a). To lay down a uniform legal framework for juvenile justice in the country so as to ensure that no child any circumstances is lodged in jail or police lock-up. This is being ensured by setting up ‘Juvenile Welfare Boards’ and ‘Juvenile Courts’.

b). To provide for a specialized approach towards the protection and treatment of juvenile delinquency in its full range in keeping with the development needs of the child found in any situation of social maladjustment.

c). To spell out the machinery and infrastructure required for the care, protection, development and rehabilitation of various categories of children coming within the preview of Juvenile Justice system. This is proposed to be achieved by establishing Observation homes, juvenile homes for neglected juveniles and Special homes for delinquent juveniles.

d). To develop appropriate linkages and co-ordination between the formal system of juvenile justice and voluntary agencies engaged in the welfare of neglected or socially maladjusted children and to specifically define their roles and responsibility.

e). To constitute the special offences in relation to juveniles and provide for punishments thereof.

f). To bring the operation of juvenile justice system in the country in conformity with the U.N. standard minimum rule for the administration of juvenile justice.

It was observed by the Supreme Court in- Sheela Barse V. Union of India18, “If a child is a national asset, it is the duty of the State to look after the child with a view to ensuring full development of its personality. That is why all the States dealing with the children provide that a child shall not be kept in a jail. Even apart from the statutory

18 AIR 1986 SC 1773
prescription, it is elementary that a jail is hardly a place where a child should be kept. There can be no doubt that incarceration in jail would have the effect of dwarfing the development of the child, exposing him to baneful influences, coarsening his conscience and alienating him from the society.” It further observed that, “Really speaking the trial of children must take place in the juvenile courts and not in the regular criminal courts.” Even if a child has committed a murder or a rape, in view of the statutory provision (S-22 of the Juvenile Justice Act) he should be subjected to death sentence or any capital punishment.

This court observed in another important case- *Vide Islam V. State of U.P.*[^19] Here the petitioner, who was a child of 14 years, was charged with an offence under S-379 and 411 of IPC along with others. Here as per the impugned order of the District Magistrate, the petitioner was kept in a detention for about 10 months. His detention was inconsistent with the legislative policy, which demands that, a child of 14 years of age should not be sent to jail, as he may fall in the company of criminals. Here, the court said that, the ‘preventive detention’ is different from ‘punitive detention’. ‘Preventive detention’ does not partake in any manner, the nature of punishment. The detaining authority is accordingly, under a bounden duty to consider the facts and circumstances of the case with an abundant caution and care, especially in a case where the police submits proposals for the detention of a child of immature age.

On the basis of these cases the court in the present case made the following observation: “Unlike in the case of an adult – accused of an cognizable offence, in the case of a child accused, it is the safety of the accused, which is most important. Arrest of a juvenile is not for the purpose of putting him in a jail, but for the purpose of keeping him in such a custody, which shall ensure that he is not affected by the vices, which adult criminals carry with them. Such custody is recommended, while enquiry is held in to the charges as well as, as a part of the sentence after the juvenile is found guilty of having committed any offence.

Therefore, if a child is put under detention as a ‘goonda’, he is exposed to everything, which, juvenile justice act says that he should not be exposed to. There fore in the present

[^19]: 1986 All. LJ 46
case it is difficult to think that his delinquency will make him a habitual offender and a ‘goonda’ in that sense. So, he is not entitled to be detained.

(4). Sanjay Suri V. Delhi Administration\(^{20}\)

Here, a news reporter and a trainee sub-editor of a newspaper moved the Supreme Court with a petition in public interest for appropriate directions to the Delhi administration and the authorities of the Central Jail at Tihar, pointing out features of misadministration within the jail relating to juvenile under trial prisoners. The main question that came up before the Supreme Court was that- *Whether the juvenile prisoners are being housed in that part of the jail, which is said to have been reserved for them or whether they are to be found in the other two parts of the jail also which housed adult prisoners?*

When the SC was entertaining these writ petitions, then simultaneously it had also made an order to the District Judge, Delhi to visit the jail and make an enquiry as to the conditions of the juvenile prisoners residing in juvenile wards. The District Judge interviewed some of the juvenile prisoners, I regard to whom he learnt, as a result of the enquiry made by him, that they had been subjected to sexual assault by the adult prisoners, and they were also worried that through this enquiry, if their names will be disclosed then, they might be victimized, so that the adequate protection be granted to them. Court on the basis of this enquiry decided to disclose their names and felt that there is no need for protection, rather they should be released forthwith also along with some other convicted juvenile prisoners.

\(^{20}\) (1989) SCC 511