CHAPTER III

WHO IS A DELINQUENT?

3.1.1. Who is a delinquent? There is no agreement as to the exact meaning of juvenile delinquency. Several factors are responsible for not allowing a clear cut formulation. One hurdle is similar to that encountered while defining crime in general i.e. the choice between the social and legal definitions. Sociologists insist that the legal definitions are of no help in understanding the true nature of delinquency and in knowing who are juvenile delinquents, since the arrest or conviction of a child may depend upon various fortuitous circumstances. They also maintain that legal definitions differ from place to place and time to time and hence are not suitable for scientific studies. The reasons as to why legal definitions are to be preferred are the same as in the case of definition of crime. The legal definition of juvenile delinquency is obvious. "Any act prohibited by law for children upto a prescribed age limit is juvenile delinquency and it follows, therefore, that a child found to have committed an act of juvenile delinquency by a court is a juvenile delinquent".¹ According to Cyril Burt, "A child is said to be regarded technically as a delinquent when his anti-social tendencies appear so grave that he becomes or ought to become the subject of official action."² Resnick also defines it in the legal sense. He defines a delinquent as "a minor who has committed an unlawful act for which he would be sent to prison if he were an adult".³ Delinquency of children includes acts that if

¹ Ahmad Siddique, Criminology, Problems and Perspectives, Eastern Book Company (1977), p 117.
committed by adults would be considered criminal, as well as patterns of behaviour that are peculiar to childhood, principally truancy, waywardness, and incorrigibility. Accordingly, a delinquent is a person under age who is guilty of anti-social acts and whose misconduct is an infraction of the law.

3.1.2. Another aspect of the definition problem is that quite frequently the statutes defining the various delinquent acts are vague in terms of their contents, which is contrary to the basic principle of criminal law as expressed through the Latin expression, "nullum crimen sine lege" - no crime without law. Laws defining crimes should not be vague since the citizens must be able to know with a fair amount of certainty the acts which are prescribed for them. To quote Ruth Cavan: "Most of the behaviour which gets a child into trouble with the police and courts comes under a much less definite part of the law on juvenile delinquency. The Illinois law defines a delinquent who is incorrigible or who is growing up in idleness, one who wanders about the streets in night time without being on any lawful business, or one who is guilty of indecent or lascivious conduct. Laws in some other States are still more vague. New Mexico rests its definition on the word 'habitual'. A delinquent child is one who, by habitually refusing to obey the reasonable and lawful commands of his parents or other persons of lawful authority, is deemed to be habitually uncontrolled, habitually disobedient, or habitually wayward, or who habitually is a truant from home or school; or who habitually so deports himself as to injure or endanger the morals, health or welfare of himself or others. In these laws there is no definition of such words or phrases as incorrigible, habitual, indecent conduct, or in night time. How

much disobedience constitutes incorrigibility? How often may a child perform an act before it is considered habitual?\footnote{Ruth Cavan, "The Concept of Tolerance and Contraculture as Applied to Delinquency," Sociological Quarterly, 2 (Fall 1961) P. 243.}

3.1.3. This vagueness in the definition given in the Statutes is defended on the ground that the maxim "nullum crimen sine lege" which applies in relation to criminal statutes is not relevant in delinquency laws since the latter are not created to punish the delinquents but to protect them.

3.1.4. Delinquency laws are characterised by the feature that they prescribe many acts which are regarded as non-criminal or even socially acceptable if indulged in by adults, like drinking alcohol or smoking. Some of the acts prescribed for children would be torts if committed by adults. The great variety of the acts declared by laws to be acts of delinquency can be appreciated with the help of the following list which catalogues the acts generally prohibited in the various American States. Of course, not every State, nor any State, has all these items in its definition of delinquency. However, eight or nine items in the list are apart from and in addition to violations of law\footnote{Sol Rubin : Crime and Juvenile Delinquency, National Probation and Parole Association (1958) Year Book, P46.}:

(I) Violation of any law or ordinance.
(II) Immoral or indecent conduct.
(III) Immoral conduct around school.
(IV) Engaging in illegal occupation.
(V) Knowingly associating with vicious or immoral persons.
(VI) Growing up in idleness or crime.
(VII) Knowingly entering or visiting houses of ill repute.
(VIII) Patronising saloon or dramshop where liquor is sold.
(IX) Patronising, visiting policy shop or gaming place.
(X) Wandering in streets at night, not on lawful business.
(XI) Habitually wandering about railroad yards and tracks.
(XII) Habitually remaining truant from school.
(XIII) Jumping on to trains or entering cars or engines without authority.
(XIV) Incorrigible.
(XV) Habitually using vile, obscene or vulgar language in public place.
(XVI) Absenting oneself from home without permission.
(XVII) Loitering and sleeping in alleys.
(XVIII) Smoking cigarettes (around public places).
(XIX) Begging or receiving alms (or wandering in streets for purpose of).

3.1.5. Earlier, even in the United States of America, the need was felt for shrinking the extent of delinquency and the Standard Juvenile Court Act, modelled by the National Probation and Parole Association, avoids most of the items of delinquency cited in the list by Rubin. The Standard Act includes in its provisions corresponding to the usual delinquency definition, only two items in addition to the violation of law or ordinance. These items are a child "who deserts his home or who is habitually disobedient or is beyond the control of his parent or other custodian; and who, being required by law to attend school, wilfully violates rules thereof or absent himself therefrom."7

3.1.6. Lowell J. Carr8 indicates the possible meanings of the term "juvenile delinquent" and illustrates them by a diagram of certain concentric circles:

(1) The outer circle includes the total juvenile population

7 Ibid
8 Lowell J Car, Delinquency Control (1940), (Harper and Bros. New York) 1940, P 59.
- all children in a given area, below a given age, specified by law as coming under the heading of juveniles. A large proportion of these are not delinquent.

(2) The second outer circle includes all juvenile deviants - all children showing deviant behaviour, whether or not anti-social.

(3) Legal delinquents - all deviants committing anti-social acts as defined by law.

(4) Detected delinquents - all anti-social deviants detected.

(5) Agency delinquents - all detected anti-social deviants reaching any agency.

(6) Alleged delinquents - all apprehended anti-social deviants brought to court.

(7) Adjudged delinquents - all court anti-social deviants 'found' guilty.

3.1.7. Carr further emphasises on the complexity of the problem of delinquency when he says, morally it may mean one thing, legally something else, practically a third thing, and statistically a fourth and it seems impossible to define the term in such a way as to satisfy all concerned. The number formally found to be delinquent is considerably smaller than the number alleged to be delinquent and taken to court. To apply the term 'delinquent' to any of these groups of young persons to the exclusion of the rest is illogical and confusing. The Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in August, 1960 in London, recommended the following:

"The Congress considers that the scope of the problem of juvenile delinquency should not be unnecessarily inflated."
Without attempting to formulate a standard definition of what should be considered to be juvenile delinquency in each country, it recommends (a) that the meaning of the term juvenile delinquency should be restricted as far as possible to violations of the criminal law, and (b) that even for protection, specific offences which would penalize small irregularities or maladjusted behaviour of minors but for which adults would not be prosecuted, should not be created.

3.1.8. It is important to note that, in juvenile research, the term 'delinquents' specifically denotes children who have been acted upon officially by court authorities or police officers and does not signify types of cases generically different from cases of non-delinquent problem children or of those whose problems have not been officially recognised. Between them no deep gulf exists. To quote Neumeyer, "It is largely a matter of degree, of a gradual continuity, with the normal merging into the abnormal by almost imperceptible shades."

3.1.9 Inspite of all these difficulties, it can be said that juvenile delinquency refers to "certain anti-social behaviour on the part of children and young adolescents which, it is felt, indicates their need for specialised supervision, guidance and treatment. Neumeyer's remark on juvenile delinquency seems worth quoting here. He says, "In the broader cultural or social sense, delinquency implies that the behaviour is in contradiction with the value demands of the dominant culture within which a child lives. That is, the behaviour runs counter to the dominant value system within which the child's character formation takes place. Delinquency thus implies some form of anti-social behaviour,"

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involving personal and social disorganisation, a value judgment applied to the form of conduct in terms of the norms and laws of society, and the act tends to affect people adversely." Thus we see that deviation from socially recognised standard of behaviour and action by non-adults, which is indictable, constitutes juvenile delinquency.\(^{11}\)

### 3.2.1. The concept of Juvenile Delinquency in India.

In India the definition of Juvenile delinquency is confined to the violation of the ordinary penal law of the country so far as the jurisdiction of the Juvenile Court is concerned. The Reformatory Schools Act, 1897, which is a landmark in juvenile legislation in India, defines a 'youthful offender' as a juvenile offender under the age of fifteen years and convicted of any offence punishable with imprisonment or transportation.\(^{12}\) The Madras Children Act of 1920 defines the delinquent as one who violates law, order or the ordinances and steals, gambles, escapes from lawful custody, travels without ticket, hawks without licence, is engaged in riot, causes grievous hurt, commits sex offence and who breaks a probation order, trespasses or commits nuisance, cheats counterfeits coins and picks pockets. The Bengal Children Act of 1922 defines a young person who is fourteen years of age or upwards and under the age of sixteen years.\(^{13}\) The Bombay children Act of 1948 refers to two categories of juveniles: 'Children' and youthful offenders.\(^{14}\) Child means a boy who has not completed the age of 16 years, or a girl who has not completed the age of 18 years. 'Youthful offender' means any child who has been found to have committed an offence.

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12 Section 4(a), The Reformatory Schools Act, 1897.
13 Section 3(6), The Bengal Children Act, 1922.
Bengal Children Act, 1959 has specifically made a clearer distinction between the delinquent and the non-delinquent child. This Act defines a 'child'\textsuperscript{18} as a person who has not attained the age of 18 years. The juvenile delinquent\textsuperscript{18} means a child who has been found to have committed an offence whereas the 'neglected child'\textsuperscript{17} means a child who-

(i) is found in any street or place of public resort begging or receiving alms; or

(ii) has no home or settled place of abode or is found wandering without any ostensible means of subsistence, or is found destitute, whether he is an orphan or not; or

(iii) has a parent or guardian who is unfit to exercise or does not exercise proper care and control over the child or forces, persuades, encourages or abets the child to lead an immoral or depraved life; or

(iv) lives in a brothel or with a prostitute or frequents a place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken, depraved or criminal life.

3.3.1. Definition of Delinquency under the Children Act, 1960

The Children Act, 1960, defines a delinquent child as a child who has been found to have committed an offence.\textsuperscript{18} Under this Act, a child means a boy under 16 years of age and a girl under 18 years.\textsuperscript{18} The word 'offence' means any act or omission made punishable under any law in force at a given time.

3.3.2. Under the Children Act, separate provisions have been

\textsuperscript{18} Section 2(d), The West Bengal Children Act, 1959.
\textsuperscript{18} Ibid. Section 2(h)
\textsuperscript{17} Ibid. Section 2(i).
\textsuperscript{18} Section 2(j), The Children Act, 1960.
\textsuperscript{18} Ibid, Section 2(e)
laid down for neglected and uncontrollable children. They are dealt with by the Child Welfare Boards and not by the Juvenile Courts. Neglected child has been defined by the Act as a child who —

(i) is found begging; or

(ii) is found without having any home or settled place of abode or any ostensible means of subsistence or is found destitute, whether he is an orphan or not; or

(iii) has a parent or guardian who is unfit to exercise or does not exercise proper care and control over the child; or

(iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life.

Uncontrollable children are to be dealt with in the same way as neglected children under the Act.

3.4.1. Definition of Delinquency under the Juvenile Justice Act, 1986. The Juvenile Justice Act, 1986, which is now extended to the whole of India except the State of Jammu and Kashmir, defines a delinquent juvenile as a juvenile who has been found to have committed an offence.

3.4.2. According to the scheme of the Act, the following graphic representation of the profiles of juveniles in difficult situations may be made —

20 Ibid, Section 2(1)
21 Section 2(e), The Juvenile Justice Act, 1986.
3.4.3. However, the Juvenile Justice Act, 1986 makes a
distinction between the delinquent and the non-delinquent child.
The Juvenile Welfare Board is primarily concerned with the
neglected juveniles,\(^{22}\) whereas the Juvenile Court is primarily
concerned with the delinquent juveniles.\(^{23}\) The 'delinquent
juvenile' means a juvenile who has been found to have committed
an offence. In this Act, neglected juvenile\(^{24}\) means a juvenile
who -

(i) is found begging; or

(ii) is found without having any home or settled place of
abode and without any ostensible means of subsistence and is
destitute;

(iii) has a parent or guardian who is unfit or incapacitated
to exercise control over the juvenile; or

(iv) lives in a brothel or with a prostitute or frequently

\(^{22}\) Ibid, Section 4.

\(^{23}\) Ibid, Section 5.

\(^{24}\) Ibid, Section 2(1)
goes to any place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life;

(v) who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain.25

3.4.4. It follows, therefore, that the Indian position is different from the one in the U.S.A. in two ways: First, the children courts in India do not have jurisdiction in relation to the neglected children as they have in the U.S.A. and also in England. Delinquency is the only area which given jurisdiction to the children courts in India. Secondly, the Indian definition has been given more briefly and clearly and the content of delinquency is the same as that of adult offences. The only difference between adult and juvenile offenders is that in the jurisdiction of the Courts and the procedure followed by them. On this point, the Indian position is closer to the Canadian position where the parliamentary law provides:

"Juvenile delinquent means any child who violates any provision of the Criminal Code or any Dominion or provincial statute, or any by-law or ordinance of any municipality, or who is liable by reason of any other act to be committed to an

25 In this clause 'child neglect' and 'child abuse' have been defined or described as one, the distinction has been treated loosely. Neglect and abuse are no doubt closely related but by no means identical. Neglect represents failure to perform duty (viz. nurture, protection, supervision) while abuse is not merely an omission but associated with commission, such as intentional non-accidental use of force. Omission, if any, in case of abuse must also aim at doing some harm to the child. For example, omission to take care with the intention to hurt or injure or even cause death of the child. Then there may be emotional or intellectual negligence or deprivation. A child is often victimised by a broken marriage. As a consequence, it may also be neglected or abused. But then there are dangers if the law removes a child on the basis of some uncertain prediction. It is, therefore desirable, that the laws should confine itself to matters of clear and present or foreseeable danger whereas a social worker may be concerned more with the child's future.
industrial school or juvenile reformatory under the provisions of any Dominion or provincial statute.\textsuperscript{26}

\textsuperscript{26} Juvenile Delinquents Act of the Central Parliament (R.S. 1952, C. 160).