CHAPTER--8

LEGISLATIVE MEASURES IN COMBATING DRUG ABUSE AND JUVENILE DELINQUENCY

(A) LEGISLATION TO CONTAIN DRUG ABUSE:

LEGAL POSITION PRIOR TO 1985

Until 1985, the drug offenders in India were prosecuted under the provisions of the following Central laws:

(I) The Opium Act, 1857,
(II) The Opium Act, 1878, and
(III) The Dangerous Drugs Act, 1930.

Besides these, some provisions of the Drugs and Cosmetics Act, 1940, The Medical and Toilet Preparation Act, 1953 and Customers Act, 1952 were also made use for the prevention and control of drug abuse in India.

However, it was not possible to combat the growing, menace of drug abuse with these obsolete legislations. The maximum term of imprisonments under these statues were only three to four years. Moreover, the central enforcement agencies like the Customs and Excise and the Revenue Intelligence Department were not vested with sufficient powers for investigation. As a result, drug addiction remained more a less a medical problem and existing laws proved totally ineffective in tacking the problem.

MODERN LEGISLATION

In the above context, to replace the obsolete legislation, two new statutes relating to drug abuse have been enacted by the Central Government.
These are:

(I) The Narcotic Drugs and Psychotropic Substance (NDPS) Act, 1985,


The above two Acts cover the entire gamut of the narcotic trade, punitive measures and vest the law enforcing agencies like the police, the custom and central excise, etc. with wide ranging powers of search, seizure and prosecution.

AUTHORITIES AND OFFICERS UNDER THE NDPS ACT

The Act authorised the Central Government to appoint a Narcotic Commissioner¹ and other officers and authorities² as it deems necessary to combat the abuse and illicit traffic in narcotic drugs and to exercise the power under the Act. The State Governments have also been empowered to appoint such officers as are necessary³.

PROHIBITION AND REGULATIONS UNDER THE ACT

The Act prohibits the cultivation of any coca, opium-poppy or cannabis plant, the gathering of any portion of coca plant or the production, manufacture, possession, sale, purchase, transport, ware house, use, consumption, import inter-state, export inter-state, import into and export from India the products of coca, opium-poppy and cannabis plants except for medical or scientific purposes,⁴ and without proper license or permission from the Central or State Government.⁵

The Act further prohibits any person from engaging in or controlling any trade whereby narcotic drugs or psychotropic substance is obtained

¹ Section 5(1),
² Section 5 (1),
³ Section 7(1),
⁴ Sections,
⁵ Section 9 and 10., of NDPS Act.
outside India and supplied to any person outside India without prior authorisation of the Central Government and subject to conditions imposed. Permission may, however, be granted by the Government for cultivation, gathering, production, sale, purchase, transport and import into India of coca leaves for use in the preparation of any flavouring agent which shall not contain any alkaloid and to the extent necessary for such use. Similarly, permission may be granted for the cultivation of any cannabis plant for industrial purpose only or for obtaining fibre or seed for horticultural purposes.

**PENAL PROVISIONS**

The Act provides for severe punishment for persons who commit offences relating to drugs. The punishment is normally imprisonment for a period ranging from 10 to 20 years and also fine ranging from Rs. 1.00 lakh to Rs. 2.00 lakhs.

However, when a person commits an offence for the second time, he is liable for imprisonment for 15 to 30 years and fine between Rs. 1.5 lakh to 3.00 lakhs. The drugs and psychotropic substance seized are liable to confiscation. Further, offences under the Act are non-bailable and in sharp variance with the general rule that a person is treated as innocent till proved guilty. The Act provides that the accused is considered guilty till he proves his innocence in the court of law.

Another important aspect of the NDPS Act is that the wealth and property earned through drug-trafficking is also made liable to be frozen and confiscated not only of the traffickers but of his relations or associates.

6. Section 12
7. Section 13
8. Section 14
9. Section 31
as well. Similarly, the PIT Act, 1988, also provides for preventive detention of the persons involved in drug offences. They can be detained for period from one to two years.

The NDPS Act, besides providing for regulation in India, also states that the government is to provide assistance to the concerned authorities in the foreign countries to facilitate co-ordination and universal action\(^\text{10}\). For this purpose, India is a part of the Geneva Convention 1925, the single convention on narcotic drugs of 1961 and the convention on psychotropic substance of 1971. The Act also provides that the government should take steps for the identification, treatment, education, after-care, rehabilitation and social reintegration of the addicts.

Several studies made by government as well as non-governmental agencies revealed that despite very stringent penal provisions, drug abuse is on the increase in the country. Reports appearing in the press also indicate that illicit drug trafficking in the country continues in full swing. This reflects that the stringent penal provisions and the regulations under the Act have had very little impact on the drug offenders. The penal provisions against drug trafficking and unlawful production, warehousing and distribution have been steeped up substantially under the NDPS Act, 1985. The amending Act 1988 even provides for death penalty for certain activities and for the setting up of special courts to speed up the trials. But increase in prescribed punishment has not paid any satisfactory result. Thus, effective and sure enforcement of the panel provisions, not just their hardness, is the need of the hour. Deterrence may come from effective implementation of the provisions of the statutes, not by providing harsher penalties in the statute books. The offenders have to be put out of the trade by actual confinement, both punitive and pre-emptive, for one or two years so that

\(^{10}\) section 4 (d) of NDPS Act.
their business gets closed. Thus, the newly enacted PIT Act, 1988, which provides for preventive detention is likely, if administered wisely, to prove an effective deterrent.

The provision for punishment for possession or consumption of even small quantities of drugs by addicts appears to be inhuman and anachronistic. Rather, they need sympathetic handling and treatment in their present predicament of helplessness. Counselling and de-addiction clinic, rather than jail, is the proper place for them. Thus, the amendment (1988) to the NDPS Act, which provides for giving option to the addicts between jail and de-addiction centre, is an appreciable step.

Many drug users have good chances of reverting back to normal life after giving up drugs, but once a person gets stamped as a criminal such a return normally becomes difficult and unlikely. The stigma of criminalisation hamper their rehabilitation. Moreover, branding drug user as criminals leads to the emergence of a deviant drug-sub-culture. The criminality in due course may extend to many other acts besides drugs consumption.

In fact, with the latest legislation and its subsequent amendment in 1988, the law against drug addiction in our country is at par with its counterparts anywhere else in the developed countries. The introduction a death penalty and power for the forfeiture of assets as well as powers of preventive detention clearly indicate that the punitive edge of the law is sufficiently deterrent.

In October, 2001, the GOI amended the NDPS Act, 1985. The most significant amendments include changing the law to allow for sentencing to be based on the size of the drug seizure and to formally authorise controlled deliveries inside and outside India. Prior to this change, individuals found with small amount of illicit drugs were subjected to the same penalties as large-scale drug-traffickers.
ROLE OF JUDICIARY

Though the NDPS Act, 1985 clearly demarcates the areas where the Central and the State Governments can operate and has also streamlined the procedure, still experience of the working of the Act has shown that while the Act makes drug-peddling a non-bilabial offence, there are reports that an accused spends on an average only eighteen days in jail. The onus of proof that the accused had consumed drug fell on the police. The police has also to establish the type of narcotic consumed by the accused. As a result, in the period from October, 1985 to April 1988, when the Bombay police had filed 1680 charge sheets under the NDPS Act, only 88 could be decided\textsuperscript{11}. Thus, at this rate, setting up of special courts too cannot be of much help in clearing the backlog.

Apart from the procedural loopholes, inordinate delay in trials and the tendency for under-estimating the gravity of the offence by granting bails also result in making the NDPS Act ineffective. Atmacoori-Vs-State\textsuperscript{12} is a classic example of judicial indifference even in a serious matter like drug-peddling. In this case, a merchant from Barhampur, Orissa, was cough with 13 maunds and 16 seeds of poppy seeds from his go down and shop. He was given the benefit of the probation Act by Orissa High Court because in the opinion of the court, “he was a respectable merchant and a fairly important businessman”.

Manindra Lal Das-Vs-Emperor\textsuperscript{13} is another case where even the higher judiciary is not adequately sensitized about the issue. In this case, the accused, a police officer, under intoxication, shot and wounded a prostitute with whom he was friendly. He was charged with the offence of

\textsuperscript{11} Times of India, 7th June, 1989.
\textsuperscript{12} AIR 1967 Orissa 54
\textsuperscript{13} AIR 1937 Cal-432
attempt to commit murder under section 307 IPC and voluntarily causing 
griveous hurt under section 316. He set up the defence of intoxication. But 
he was made liable for his acts by the trial judge on the ground that the 
intoxication was voluntarily incurred by the accused. In an appeal before the 
High Court, the direction of the trial judge was held to be wrong on the 
ground that "knowledge" is not synonymous with "intention".

In both the cases, it appears that court has not appreciated the 
gravity of the social menace brought out by the accuseds and instead pre­
ferred to stand on mere technicality. The fact that the accused in the second 
case is a member of the law enforcing agency and that he had himself 
violated the law under dubious circumstance did not weigh with the argu­ 
ment of the judges.

It is, therefore, imperative that the special courts contemplated in the 
NDPS Act. are to be established and should be manned by judges who 
are properly oriented towards the social melady and its eradication.

(B) LEGISLATION ON JUVENILE DELINQUENCY IN INDIA

The Apprentice Act, 1850 was the earliest piece of legislation covering 
the children in the age group of 10-18 years. In this Act the children 
convicted by courts were intended to be provided with some vocational 
training which might help their rehabilitation. Children found destitute by the 
trying magistrate were also covered by this Act.

The apprentice Act was followed by the Reformatory Schools Act, 
1876. It provided that a child below 15 years found guilty of an offence 
might at the discretion of the court be detained in a Reformatory School for 
a period of three to seven years. It also provided that a boy over 14 would 
be released on license, if a suitable employment was found for him and the 
head of the institution was able to indicate certain conditions in regard to 
licensing if they were fulfilled.

As a part of the movement for a special law for children, some 
committees and commissions had played important roles. The Indian Jail
committee (1919-20) brought to the fore the need for separate trial and treatment of young offenders. Its recommendations prompted the enactment of the Children Act in Madras in 1920. In this Act, a “child” was defined as a person under 14, a “young person” belong to the age group of 14 and 16, and a “youthful offender” meant a person convicted of an offence punishable with transportation or imprisonment who at the time of such conviction was under 16. The Act also provided for establishment of certified schools-- junior certified schools for training of “children” and senior certified schools for training of “youthful offender”.

The Bengal Children Act was passed in 1922. The definitions as given in the Madras Children Act were also incorporated in the Bengal Children Act with significant changes. The Bombay Children Act of 1924 was based on the English Children Act of 1908. At the time of enactment, three statutes were already in force in Bombay-- the Reformatory Schools Act, 1897, the Whipping Act of 1909 and the Criminal Tribes Act (Act 6 of 1929). In 1940 the Bombay Children Act was made applicable to Delhi. In Assam, the Assam Students and Juvenile Smoking Act was passed in 1923.

In 1930 and 1936 the Suppression of Immoral Traffic Act and the Probation of Offenders Act were passed. By 1946 more statutes on children were passed by different provinces. The vagrancy Act of 1943 provided for the care and training of children below 14 years who (i) lived on begging or (ii) were under unfit guardianship, or (iii) were under the care of parents of drinking or criminal habits, or (iv) frequently visited prostitutes, or (v) were destitute, or (vi) were subjected to bad treatment.

The three pioneer statutes namely Madras, Bengal and Bombay Children's Act were extensively amended between 1948 and 1959. The West Bengal Children Act of 1959 replaced the Act of 1922. The Central enactment the Children Act of 1960 was passed to cater the needs of union territories. This Act was treated as a model Act on the subject.
In the constitution of India, Article 15(3) entrusted the state to make special provisions for woman and children. Article 24 prohibits employment of children in factories, mines etc. Article 45 provides for the free and compulsory education for all children until they complete the age of 14 years.

The Children Act, 1960 was amended in 1978 to widen the definition of the neglected child to include children whose parents were not only unfit but also unable to exercise proper care and control. Under the pre 1978 system, the neglected child dealt with by the Child Welfare Board and the delinquent child dealt by the juvenile courts were kept together in observation home. The amended Act provided for the transfer from one custody to another where it was found that delinquency had nothing to do with neglect. After care legal assistance etc. were provided in the Act of 1978.

Finally, for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and the adjudication of certain matters relating to delinquents have been provided in the Juvenile Justice Act 1986. It is a more sensitive and comprehensive legislation. The Children Act, 1960 enacted for union territories and similar other Acts on the subject enacted by different states stand repeated with the enforcement of the Juvenile Justice Act, 1986.

The Juvenile Justice Act, 1986 aims at giving effect to the guidelines contained in the Standard Minimum Rules for the administration of juvenile justice adopted by the UN countries in November 1985. The Act which extends to whole of India except in Jammu and Kashmir, provides for the care, protection, treatment, development and rehabilitation of delinquent juveniles. The main objectives of the Act are as follows:

1. It lays down a uniform framework for juvenile justice in the country so as to ensure that no child under any circumstance is lodged in jail or police-look-up;
(2) It spells out the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of children coming within the purview of juvenile justice system;

(3) It sets out norms and standards for the administration of justice;

(4) It seek to develop appropriate linkage and co-ordination between formal system of juvenile justice and voluntary agencies engaged in the welfare of neglected and socially maladjusted children;

(5) The Act seeks to substitute special offences in relation to juvenile and provides for punishment thereof.

Section 4 of the Act authorises the state governments to constitute Juvenile Welfare Board which shall function as a bench of Magistrates having powers of judicial magistrate of the first class. The Act further provided that the state government shall constitute Juvenile courts. The procedure in relation to working of Boards and Juvenile courts are contained in sections 6 of the Act and their powers in section 7.

The Act empowers the state government to establish Juvenile Homes for reception of neglected juveniles and Special Homes for the custody of delinquent juveniles. The Act also provides for the establishment of Observation Homes for temporary custody of juveniles during the pendency of any inquiry or trial. The Act dealt at length with the procedure for inquiry and trial, appeal and revision and miscellaneous other things for dispensing justice to delinquent and neglected juveniles.

A review of the working of the Juvenile Justice Act 1986, indicate that much greater attention is required to be given to children in conflict with law or those in need of care and protection. It is also necessary that the
juvenile justice system must be easily accessible to a juvenile or a child or any one on their behalf including police, voluntary organisations, social workers or parents or guardians throughout the country. There is also an urgent need for creating adequate infrastructure necessary for the implementation of the proposed legislation with a larger involvement of informal systems specially the family, the voluntary organisations and the community.

With the above objectives in view the GOI enacted the Juvenile Justice (Care an Protection of Children) Act, 2000. The Act of 2000 repealed and re-enacted the Juvenile Justice Act, 1986, with a view to achieve the following objectives:

1. to lay down the basic principles for administering justice to a juvenile or the child;
2. to make the juvenile justice system meant for a juvenile or the child more appreciative of the developmental needs in comparison to criminal justice system as applicable to adult;
3. to bring the juvenile law in conformity with the United Nation's Convention on the Rights of the child;
4. to prescribe a uniforms age of eighteen years for both boys and girls;
5. to ensure speedy disposal of cases by the authorities envisaged in the Act;
6. to spell out the role of the State as a facilitator rather than doer by involving voluntary organisation and local bodies in the implementation of the provisions of the Act.
7. to create special juvenile police unit with a human approach through sensitization and training of police personnel;
8. to enable increased accessibility to a juvenile or the child by establishing Juvenile Justice Board, Child Welfare Committees and Homes in each district or group of districts;
(9) to minimise the stigma and in keeping with the developmental needs of the juvenile or the child, to separate the Act into two parts—one for juvenile in conflict with law and the other for the juvenile or the child in need of care and protection;

(10) to provide for effective provisions and various alternatives for rehabilitation and social reintegration of the juvenile or the child such as adoption, foster care, sponsorship and aftercare of abandoned, destitute, neglected and delinquent juvenile and child.

Section 4 of the Juvenile Justice (Care and Protection of Children) Act, 2000, authorise the state government to constitute for a district or a group of districts, one or more Juvenile Justice Boards for exercising powers and discharging duties under the Act in relation to juveniles in conflict with law. The Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be and two social workers of whom at least one shall be a woman, forming a Bench. Section 5 and 6 of the Act provides for the procedure in relation to the Board and the powers of the Board respectively. The “juvenile in conflict in law” under section 2(k) of the Act means a juvenile who is alleged to have committed an offence.

Section 29 of the Act authorise the state government to constitute for every district or group of districts, one or more Child Welfare Committees for exercising the powers and discharging of duties conferred on such committees in relation to child in need of care and protection under this Act. The Committee shall consist of a Chairperson and four other members as the state government may think fit to appoint, of whom at least one shall be a woman and another an expert on matters concerning children. The Committee shall function as a Bench of Magistrate and shall have powers conferred by the Cr. P.C., 1973 on a Metropolitan Magistrate or a Judicial Magistrate of first class. The Child in need of care and protection, under section 2 (d) of the Act, means a child —
(i) who is found without any home or settled place or abode and without any ostensible means of subsistence,

(ii) who resides with a person —

(a) who has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or

(b) has killed, abused or neglected some other child or children,

(iii) who is mentally or physically challenged or ill children or children suffering from terminal disease or incurable diseases having no one to support or look after;

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

(v) who does not have parent or no one is willing to take care or whose parents have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable inquiry,

(vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts;

(vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking;

(viii) who is being likely to be abused for unconscionable gains;

(ix) who is a victim of any armed conflict, civil commotion or natural calamity.

The Act empowers the state government to establish Observation Homes in every district or a group of districts for temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding them under this Act. The Act, further, empowers the state government to establish Special Homes in every district or a group of districts, as may be required, for reception and rehabilitation of juvenile in conflict with law.
under this Act. The Act further, empowers the state government to establish and maintain Children's Homes in every district or a group of districts, as the case may be, for reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.

The Act dealt at length with the procedure for inquiry and trial, appeal and revision, and miscellaneous other things for dispensing justice to juvenile in conflict with law and child in need of care and protection.

**ROLE OF JUDICIARY:**

**JUSTICE IN JUVENILE CASES IN INDIA: SOME NOTABLE SUPREME COURT AND HIGH COURT DECISIONS**

**ARREST, AGE DETERMINATION & PRE-TRIAL DETENTION**

In Munna-vs-State of U.P.\(^{14}\), the Supreme Court observed that according to section 18 of the Children Act 1960, when a child is arrested for an offence and is not released on bail, he must be placed in children's home or other place of safety and not in jails. The court also held that it is the duty of the Magistrate to see that no person under the age of 16 years is sent to jail and this inhibition against sending the child to jail does not depend upon any proof that he is a child under 16 years is enough to attract this prohibition.

The Supreme Court in Gopinath Ghose-Vs-State of U.P.\(^{15}\), observed that where a juvenile delinquent is arrested he/she must be brought before the juvenile court and if there is no juvenile court established in that area, the court in session will have the power of juvenile court. Ordinarily such a delinquent must be released on bail irrespective of the nature of the of-

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15. 1984 SSC 228 (Supreme Court Cases).
fence alleged to have been committed, unless there exist reasonable grounds to believe that the release is likely to bring him under the influence of any criminal or expose him to moral danger or defeat the ends of justice.

The court also held where a minor is being tried with adult for murder, it is the duty of the Magistrate to see that the plea as to minor is raised at the proper stage and not before the Supreme Court for the first time.

In Sanjoy Suri-Vs- Delhi Administration the Supreme Court held that it is the duty of the Magistrate or trial Judge authorised to issue warrant of detention of prisoners to see that every warrant specified the age of the person to be detained. It called upon the jail authorities throughout India to refuse to honour a warrant if the age of the person remanded to jail custody is not indicated.

TRIAL EXCLUSIVELY BY JUVENILE COURT

Prior to 1979 the majority of the High Courts in India continued the practice of differentiating between juvenile delinquency cases concerning minor offences and those of serious offence. Majority of the courts favoured exclusive juvenile jurisdiction for minor offences and jurisdiction of ordinary criminal courts for serious offences. The procedure to be followed in a judicial proceeding against a child or juvenile offender as laid down in Children Act and the code of criminal procedure was challenged in Rohtas-Vs-State of Haryana, wherein the controversy arose whether the child facing trial for an offence punishable with death or imprisonment will be tried by Juvenile court or Session Court? The Supreme Court settled the uncertainly in law and ruled for the first time that a juvenile delinquent must be subjected to exclusive juvenile jurisdiction even in respect of serious offences. This view was further fortified by a subsequent decision of the Supreme Court in Sheela Barse-Vs-Union of India.

16. AIR 1988 SC. 415,
17. AIR 1979 SC. 1839,
18. AIR 1986 Sc. 1773,
DETENTION OF JUVENILE OFFENDER IN
APPROPRIATE INSTITUTION

In Sunil Kumar-Vs-State\(^\text{19}\); the Kerala High Court highlighted the purposes and function of the three types of institutions—the Children Home, Special Schools and Observation Homes in which juveniles may be detained under the Children Act of 1960. The court laid down that the Act obliged the government to take care of physical, educational and moral needs of the children and that the programmes in the Children Home and Special Schools must be so designed as to achieve this objective.

The Supreme Court in Sheela Barse-Vs-Union of India,\(^\text{20}\) has cast a duty upon the state government to set up necessary remand homes and observation homes where children accused of an offence can be lodged pending investigation and trial.

The Supreme Court deprecated the detention of children below 16 years of age in jails. The court held that it is a matter of regret that despite statutory provisions and frequent exhortations by social scientists, there are still a large number of children in different jails in the country. On no account should the children be kept in jails and if a state government has not got sufficient accommodation in its remand homes, the children should be released on bail instead of being subjected to incarceration in jails. The court also stated that dedicated social welfare officers should be permitted to run institutions like remand homes.

In view of sections 4, 5, 6 & 7 of the Juvenile Justice Act 1986, sections 4, 5, 6, 7, & 29, 30, 31, 32 and 33 of the Juvenile Justice (Care and Protection of Children) Act, 2000, was made applicable. But the above said provisions were remained unattended in Haryana Children Act. As a result, in the case of Brij Kishore-Vs-state of Haryana it was held by the Punjab

\(^{19}\) 1983 Cr. L.J.
\(^{20}\) AIR 1986 SC. 1773.
and Haryana High Court that the law made by Parliament is supreme and to the extent the state law (provisions of the Children Act) are void i.e. the trial of offences punishable with death or imprisonment for life cannot be held under the Children Act.

In another case Raghbir-Vs-State of Haryana\textsuperscript{21}, the Supreme Court referred to the case of Rohtas-Vs-State of Haryana\textsuperscript{22}, that trial of child under the provisions of the Children Act was not barred. In that case, section 27 of the Cr. P.C., 1973 was not brought to the notice of the Supreme Court. In that case the appellant along with three others were convicted of the offence of murder and sentenced to imprisonment for life by the session judge. The appellant was under 16 years of age at the time of commission of the offence and was a child under clause (d) of section 2 of Haryana Children Act. The appeal was dismissed by the High Court. But finally, the Supreme Court allowed the appeal, set aside the conviction and sentence imposed upon the appellant and ruled that it is clear that one of the main purpose of juvenile legislation is to provide special courts/boards and special procedure for hearing of case concerning juveniles or child in need of care and protection. The difficulty however appears to be posed by section 27 of the code of criminal procedure, 1973.

\textbf{JURISDICTION IN CASE OF OFFENCES COMMITTED BY JUVENILE}

Section 29-B and 399 of the code of criminal procedure, 1898, contained the provisions as to the jurisdiction of courts and custody of juvenile offenders. The present position regarding the jurisdiction is contained in section 27 of the code of criminal procedure, 1973. It says: "Any offence not punishable with death or imprisonment for life committed by any person who at the date when he appears or is brought before the court is under the

\begin{footnotesize}
\begin{enumerate}
\item AIR 1979 SC. 1839
\item AIR 1979 S.C. 1839 S.C.C. 229.
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age of 16 years may be tried by the court of Chief Judicial Magistrate, or any court specially empowered under the Children's Act, 1960 or any other law for the time being in force providing for treatment, training and rehabilitation of youthful offenders.”

Almost all the Children's Act passed before 1st April, 1974 contained a specific provision which stopped the operation of section 29-B of Cr.P.C. to the areas where the Act shall be applied under the provisions of Haryana Children Act, 1974. This view was further fortified by subsequent decision of the Supreme Court in Sheela Barse-Vs-Union of India\textsuperscript{23}.

The Juvenile Justice Act, 1986, make no distinction between a major and a minor offences, and the jurisdiction to try juvenile offenders is solely conferred on juvenile courts to be constituted under the Act and in the absence of such court by the concerned Magistrate of 1st class. The Juvenile Justice (Care and Protection of Children) Act, 2000, conferred jurisdiction in relation to juveniles in conflict with law to Juvenile Justice Board to be constituted under the Act. The Act under section 29 provided for constitution of Child Welfare Committee for every district or group of districts, for exercising powers and perform duties conferred on such committee in relation to child in need of care and protection under the Act.

**NO IMPRISONMENT IN CASE OF JUVENILE OFFENDERS**

In the first place it can be observed that the Juvenile Justice Act, 1986 and Juvenile Justice (Care and Protection of Children) Act, 2000, do not make any reference to the punishment of a delinquent juvenile or juvenile in conflict with law. According to section 21 of the Juvenile Justice Act, 1986, where a juvenile is found to have committed an offence, the court, if thinks it expedient, may order him to be sent to a Special Home.

\textsuperscript{23} AIR 1986 S,C, 1773.
The Act also provides for release on admonition, release on probation of good conduct etc. Under sections 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000, provided that where a Juvenile Justice Board is satisfied on inquiry that a juvenile has committed an offence, then notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if thinks fit, allow the juvenile to go home after advice or direct the juvenile to participate in group counseling and similar activities, or order the juvenile to perform community service, or order the parents of the juvenile or juvenile himself to pay fine, if he is over 14 and earns money, or direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or any fit person, or direct the juvenile to be released on probation of good conduct and placed under the care of any fit institutions, or make an order directing the juvenile to be sent to a Special Home in case of juvenile over seventeen years but less than eighteen years of age for a period not less than two years.

It is, thus, clear that no juvenile shall be sent to prison as a measure of default sentence. In case of Reepik Ravider-vs-State of A.P\textsuperscript{24}, the accused, 15 years old at the time of commission of the offence, was convicted by the trial court under section 376 I.P.C. and sentenced to 10 years regions imprisonment and also to pay a fine of Rs. 500/-. In appeal, while conforming the conviction the court held that the accused being a juvenile cannot be committed to prison in view of section 21 and 22 of the Act. The sentence of imprisonment and fine are accordingly set aside by the Andhra Pradesh High Court.

It, thus, appears that the court are required to give reason in their judgement for not applying the provisions of those specially laws where ever they are applicable. The court shall record reason for not applying provisions of Juvenile Justice Acts, but in practice it is not so.

\textsuperscript{24} 1991 Cr. LJ, 535 (A.P)
APPLICATION OF JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 PENDING TRIALS INCLUDING APPEALS

The next question for consideration is as to what procedure has to be followed by the courts where a trial against a child is pending on the date the Juvenile Justice (Care and Protection of Children) Act, 2000, came into force.

If any proceeding is pending on the date of enforcement of the J.J. Act, 2000, that proceeding shall be conducted under the provisions of the old Act. However, it provides that in case the court finds that the accused was juvenile and he committed the offence, the court shall record its findings, but shall not pass any sentence and send the juvenile to the Board for appropriate orders. The sending of the juvenile before the Board would arise after conclusion of the trial and finding that the accused had committed the offence. But it is clear that except the said procedure the provisions of the new Act would not be applicable to the above proceeding. The provisions of section 64 of the Act of 2000 are also not applicable to the present case-Lallan Singh—Vs.—State of U.P. 25

It is, thus, evident that welfare and treatment of youthful offender is the basic approach of the courts in India. Social rehabilitation and treatment of juvenile offender or juvenile in conflict with law is the primary concern of the courts. The treatment offered to juvenile offender or juvenile in conflict with law is prompted by humanitarian consideration and is very much in tune with modern philosophy of juvenile justice. Judiciary in India adheres to such aims and objectives while deciding cases involving juvenile offender or juvenile in conflict with law or the child in need of care and protection.

25. 2002 Cr. LJ. 1242 (All) at 1242 (All)

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