Chapter IV
EVOLUTION OF CORRECTIONAL PROCESS AND ADMINISTRATION

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EVOLUTION OF CORRECTIONAL PROCESS AND ADMINISTRATION

4.1 CAUSES OF DELINQUENCY

The problem of delinquency among the children and youth has been always on the increase. In the recent years, it has become so prominent, that it occupies the highest place in the branch of criminology. The war and its consequence had a great role in accelerating the magnitude of the problem. The significance of these factors manifested itself in transforming juvenile delinquents into chronic adult criminals. As discussed earlier, the causes of delinquency are varied. They may be due to economic, social, cultural and religious reasons. Our society is always exposed to constant changes due to industrialization, urbanization and modernization. As a result people are always caught up in the mad race for advancement. In this wild chase, many persons are losing ties with their families. They are more interested in acquiring wealth and power than maintaining discipline among their children. The absence of control among the parents or guardians has led to misbehaviour among the children and youth.
4.2 ABETTERS OF DELINQUENCY

There are several studies pertaining to the pre-delinquency phases of juveniles and misbehaviour among youth that have brought to light the role of disorganised adults who are responsible for many of children's ills. Innocent, poor children with no proper love, affection, guidance and control often become victims at the hands of these adults. They initiate children into a number of anti-social activities and impart training in delinquent behaviour. These children are exploited physically, economically, mentally and morally by these adults.

4.3 PLIGHT OF DELINQUENCY

Delinquency among juveniles was considered a great crime in the early years. These delinquents were given the same harsh punishment as the adult criminals. Much injustice was done to the poor children and youth who had no one to fight for their release. These children due to contact with their adult counterparts would end up becoming hard-core criminals. No importance was given to the motive behind delinquency.
After some time, there was a slight shift from severe punishment to a more humane method of treatment of young offenders. It was at this stage that many social reformers and intellectuals stressed the need to understand the factors for making a child delinquent. There were separate juvenile courts to deal with the juvenile cases. The rights that concerned the juvenile court were the child’s right to shelter, protection and proper guardianship. The powers of the court could be justified by assuming that the welfare of the child was foremost in decision making. Efforts were also taken to ensure that the treatment was more effective and was geared towards the welfare of the child.

In recent years, the approach towards the treatment of juvenile delinquency has been shifted from a humane aspect to the responsibility of the society. It has now been realised that many children and youth became delinquents mainly because of societal changes and lapses. Hence it becomes the responsibility of the public to rehabilitate and transform these juvenile delinquents to become responsible citizens in society. Once the public becomes aware that teenagers become delinquents because of lack of proper reasoning in their
social environment, they realize the necessity not only to deter children and youth from committing offences, but also to bring about an effective transformation and rehabilitation in their lives.

These progressive lines of thinking to curb delinquency and bring about reformation among the young offenders are explicitly explained by the various schools of criminology.

4.4 SCHOOLS OF CRIMINOLOGY

4.4.1 CLASSICAL SCHOOL:

According to the classical school of criminology, children were considered to be responsible for their criminal acts. They could be convicted and sentenced as adults. This classical school was headed by Cesare Beccaria of Italy and Jeremy Bentham of England in the late eighteenth and early nineteenth centuries. These leaders were only concerned about the arbitrary and severe punishments that were meted out to child offenders. They wanted to remove such inhumane and cruel practices through a system of new laws that
would protect the individual from the state. They were of the opinion that laws must be specific, renewed and applicable equally to all persons, irrespective of caste, 1 creed, sex or possession of wealth. To attain this equality, mitigating circumstances could not be used as pretexts for behaviour. Punishments should be devised in such a manner that they would be appropriate for the crime that was committed, since it was believed that people exercised free will in order to maximise pleasure and to minimise pain. It was thought that when enough pain was attached to a criminal act, it would deter the offender from committing further acts. Although the classical school encouraged reforms that insured due process in trial procedures and limited judicial discretion, individual differences among offenders were still ignored. Thus the French Penal Code of 1791, which grew out of the classical reforms, treated minors, mental defectives, psychotics, and normal adults as equally competent to stand trial. 2

2 Ibid., p.4.
The classical school strived for the protection of the rights of the individual. It also stressed the application of equal punishment for offences, and dealt with problems in the daily administration of the law. A new harshness for some offenders was created due to lack of flexibility in considering the specific circumstances of a case. Subsequent revisions of the classical position granted some discretionary powers to judges in certain situations. Occasionally exceptions were made for minors, the elderly, and the incompetent. The neo-classical reformists encouraged punishments that would contribute to the rehabilitation of the offender.

4.4.2. **Positivist School of Criminology**

Enrico Ferri, at the beginning of the twentieth century, presented a new perspective of crime and human nature. This led to the creation of a new school of criminology known as 'Positivism'. According to this new school, the 'free will' ideas of the classical school

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were refuted. The positivists proposed a science of society instead of stressing the choice to convict offenders. The 'actual causes of crime could be discovered using scientific techniques and appropriate treatments should be made available to the criminal. The positivists, unlike the thinkers of the classical school believed in the protection of society over the rights of the individual. The criminal law was to be used to protect society and reform the criminal. Justice in each case had to be individualized through indefinite sentences. These sentences also were used in the treatment of those who were pathologically disturbed.

The biological positivist school was evolved as one of the explanations of criminality that resulted from the scientific approach of the positivist school. This school was founded by Cesare Lombroso in 1876. His theory rested on the notion that some people were atavistic criminals, that is, reverting back to an earlier evolutionary period. The born criminal's behaviour was determined by biological factors that were

responsible for certain physical characteristics, included abnormal teeth, toes, fingers, large-ears, asymmetrical faces and eye defects. Lombroso’s research, in which he convicted criminals with control groups of soldiers, uncovered significant differences between the two groups in the number of stigmata.

Lombroso did not postulate that all offenders were evolutionarily discarded ones. There were two types of criminals that were taken into consideration in addition to the born criminals - insane criminals and criminoloid. The criminoloid was physically and psychologically normal but committed crimes in response to pressures in the surrounding circumstances. Here environmental influences as well as biological traits were thought to contribute to crime.

The impact of Lombroso’s ideas was great, though his research was subsequently refuted by other researchers.

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4.4.2.1. SOCIAL DARWINISM:

In the United States the idea of Social Darwinism meshed easily with biological positivism. Social Darwinism suggested that only the strongest, or 'fittest' members of a society survive in the competitive struggle for life and in doing so improve the quality of society. These beliefs discouraged the concept of rehabilitation. It also helped to explain the failure of criminal law effectively to deter crime. The early positivist criminology in the United States stressed the irreversible character of criminal behaviour, but this position was modified to emphasize the importance of environmental factors in the origins of crime. By 1890, modified version of biological determinism had become more popular, especially among penologists. The existence of 'degenerate classes' was recognised but there was also a belief in the possibility that offenders could be reformed.

4.4.2.2 CHILD SAVING MOVEMENT

The popularity of positivist criminology paved the way for the implementation of special treatment programme

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for children in foreign countries, especially, in the United States. It was found that a modification in criminological beliefs was not sufficient to bring about the development of the juvenile court. During the late nineteenth and early twentieth centuries other social and political forces were at work. These forces led to the child-saving movement. The 'child savers' were reformers who were less fortunately placed in the social order. One often wonders how these child savers had become more powerful so as to be able to influence the legislatures to establish juvenile courts.

4.5 DETERMINANTS OF CHILD SAVING MOVEMENT

There are three significant factors that had been instrumental in initiating child saving and juvenile court legislation. They were:

(a) Increased concern about the treatment of children under the criminal law;

(b) Increased concern about the effects of urban life and the threat is posed to middle class rural American values, and

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(c) Rise of the feminist movement.

In some cases the cruel treatment of children and the evils of urban life had been blown out of proportion. In the genuine cases which were studied in detail, these issues became the focal point for women who were concerned about the welfare of the young.

4.5.1. CONCERN FOR TREATMENT OF CHILDREN UNDER THE CRIMINAL LAW

The tenets of classical criminology held that all citizens are equal and could be treated in the same manner under the law. Children could be held responsible for criminal actions.

They could be tried, convicted and punished for offences as if they were adults. It has long been assumed that children were regularly subjected to harsh punishment, but there is much evidence to suggest that in fact they were shown great leniency. Sentences given were not always carried out, and frequently juries

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Wiley B. Sander, "Some Early Beginnings of the Children's Court Movement", in F. Faust and P. Brantingham, op. cit. p.43.
acquitted children from charges due to child's 'lack of knowledge' or inability to understand the importance of the offence. The common law of England had long presumed that felonious intent was impossible for a child of seven or under, and a child between the ages of seven and fourteen was also incapable, unless it could be shown that there was an understanding of the consequences of action. Inspite of various laws for the protection of young offenders, the inhuman treatment of children was of great concern during the 1800s.

4.5.2 URBAN LIFE AND THREAT TO VALUES

Among children, there were some who were found guilty and were convicted and ill-treated along with the adults. On the other side, there were others who escaped punishment by appealing to the sympathy of the jury. These problems led to the establishment of special institutions for children in the United States and all over the world. In order to circumvent issues of due process in criminal court, the power of parents, patriae

was used. The parens patriae doctrine had been established in the English Chancery Court to issue the protective jurisdiction of the King over all the children of the realm. In American Courts, parens patriae acknowledged the right of the state to intervene on the behalf of children and to place them in apprenticeships or institutions.

Children could be placed in special institutions which had been designed for their welfare and reform under parens patriae doctrine. Such institutions had become popular in the United States in the 1830s with the establishment of private, orphan asylums, and within a short period of time another type of caretaker institution was set up known as the 'Reformatory' or 'Refuge'. The Refuge took in orphans, delinquents and disobedient children. It maintained a flexible admission policy that allowed commitment of a child to the institution by the 'decisions of a judicial body, the


13 Rendleman, R. Douglas, 'Parents Patriae: From Chancery to the Juvenile Court', in Faust and Brantingham, op. cit., p.58.
less formal recommendations of overseers of the poor, or the personal inclination of the head of a household.

The Refuge or Reformatory was established in order to transform the character of children so that they could survive within a disordered community. At the centre of the treatment programmes set upon these institutions was the belief that strict discipline and complete obedience by children were required to train the young for appropriate social behaviour. As a result, the authority of the institution replaced that of the parent and strict regimentation was employed. Each day would be scheduled to conclude work, some schooling and religious instruction. Punishment for infractions of rules could be severe and included the use of the whip, solitary confinement, and the ball and chain.

These Reformatory institutions were both private and state owned. Though they were originally private they were also established by the states and claimed to offer industrial training and educational opportunities

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15 Ibid. p.231.
for children. Their structure, more or less, consisted of cottages in which the children lived in a more home like setting. But in practice, many of these Refuges were large structures and resembled prisons. A congregate system, or one in which large numbers of juveniles could be housed together was common in institutions built in urban areas.

URBAN AREAS AND THREAT TO MIDDLE CLASS VALUES:

Urban surroundings were considered to be the most dangerous settings for children. As a result these institutions for the care of children were built in rural areas. The city was thought to serve as a breeding ground for criminals, and the poorly educated, unskilled immigrants, who had come in increasing numbers to urban areas, were thought to be particularly vulnerable to this influence. Attitudes towards immigrants ranged from empathy to condemnation, but there was agreement that city life was beneficial and necessary to save their children from such unhealthy environments.

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A. Platt, Child Savers, op. cit., pp.36-43
4.5.3. FEMINIST MOVEMENT

It was the responsibility of the child savers to rescue children from the harsh treatment they received under the criminal law and from the ill effects of the city slums. Women most often, were among the reformers who strived for such change. Their qualifications for saving children were widely accepted. Women were seen to be better teachers and child bearers than men and so they knew what was appropriate for children. Although middle-class women had leisure time and were well educated in the nineteenth century, there were very few career opportunities open to them. Child saving provided a reputable task for any woman who wanted to extend her house-keeping functions into the community without denying anti-feminist stereotypes of women's nature and place. Child saving did not encourage competition for jobs usually held by men and was less threatening to those who opposed changes in the female role. Ultimately this new professional role for women, the role of social worker.

17 Ibid., p.76.
4.6. SOCIAL REFORMERS - EMPHASIS ON THE JUVENILE COURT SYSTEM

The efforts of the child savers resulted in a juvenile court system that differed drastically from that of other courts. The aims of this new court were prevention of future delinquency and treatment of those juveniles who had already committed delinquent acts. Prevention required early intervention in the life of a youngster who might become dependent, truant and neglected children were included under the jurisdiction of the court. During this period, a neglected child was considered to be a destitute, with no home or has parents who exercise no care and control or lives in a brothel or has illicit relations in prostitution. A delinquent child, on the other hand, was considered to be one who had been found to have committed an offence.

These delinquent, dependent and neglected children could be taken from their parents and placed in institutions or given other treatment. This was a practice that resembled the more informal procedures existing prior to the establishment of the juvenile

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court. The enactment of juvenile court legislation did not create a totally new institutional mechanism for the control of juveniles, but, instead, expedited policies set up prior to 1879.

In those days the procedures of the juveniles court were civil and not criminal in nature. The informality of civil proceedings was necessary since the constitutional constraints placed on criminal courts were thought to impede efforts to help the child. Moreover, the formality of criminal proceedings would stigmatize the juvenile as a 'criminal'. Attorneys were rarely present, and the proceedings were antagonistic in nature. The use of hearsay evidence was acceptable as it was thought to provide a clearer insight into the child's history or background and past experiences. Because the act that had been committed was not considered to be as important as the child's condition, a 'preponderance of evidence' was required to establish the child's condition rather than 'proof beyond a reasonable doubt' that the specific act had been committed.

20 Platt, op.cit., p.176.
21 Faust and Brantingham, op.cit., p.146.
Several efforts were made to protect and help individual juveniles that were processed through the court. Proceedings and records were private, and different terminology was used with juveniles. The arrangement procedure was called 'intake', the trial was called a 'hearing' and sentencing was called the 'disposition of the case'. Many of the posts or roles filled by lawyers in criminal court were performed by social work or probation officers in juvenile courts. For instance, at the initial stage, a social worker can take the decision to bring a child into court. In the case where a court hearing, a presentence investigation on the youngster was presented to the judge. The report would then be completed by a probation officer. This report would include information on school performance, home environment and other contacts that the child may have had with the court. As a part of the report, a recommendation on appropriate treatment was also included. The judge in the juvenile court was entrusted to make decisions concerning the child on the basis of need for treatment rather than punishment for offences. One writer described the requirements of juvenile court judge as not only knowledge of law but
also deep interest in the problems of philanthropy and child life, as well as a lover of children.

4.7 EVOLUTION AND ENACTMENT OF CHILDREN’S ACT

The progressive trends of thought brought out by the different schools of criminology led to the formulation of particular principle to be followed by society to reduce the rate of juvenile delinquency. These principles when accepted by society becomes acts for the welfare of the public.

4.7.1. CHILDREN’S ACT IN FOREIGN COUNTRIES

The Children’s Acts were enacted by many statutory bodies in the western countries, of which the U.K., U.S.A. and U.S.S.R., are most common.

In England, the Children’s Act was enacted in 1908. This Act stresses the protection of the children and youth from misconduct and misbehaviour. It was amended several times to ensure that a child is not denied the rights unlike an adult.

Ibid., p.146.
In the U.S.A., the state takes the responsibility to fulfill the wants of the child, if the parents or guardians are unable or unwilling to satisfy.

In the U.S.S.R., there is a great emphasis on legal education. The students of secondary schools are taught basic state and legal concepts. They are acquainted with their political labour, property rights, duties and punishment for all kinds of law violations.

4.7.2. CHILDREN’S ACT – INDIA

The attention of the people in developing countries, especially, India was drawn to the Children’s Act that was adopted by the developed countries. The Children’s Act in India was formulated on the principles of the British model.

In 1894, the Reformatory Act was passed for the first time in India. Later in 1920, the Tamil Nadu Children’s Act was passed. It was replaced by the Central Children’s Act in 1960.

The Central Children’s Act, 1960, and the various State Children’s Acts have recognised such persons and
have prescribed suitable penalties for offences committed against children by adults. According to the Acts,

i) If any person who assaults, abandons, exposes or purposefully neglects a child and who causes mental and physical suffering to the child, shall be punishable with imprisonment or with a fine or with both.

ii) If a person who has actual charge of or control over a child, abets the commission of an offence against the child, he is also liable to be punished with imprisonment, with a fine or with both.

iii) If a person administers intoxicated liquors or dangerous drugs to a child, he is punishable with a fine. A person who exploits a child for his earnings, is punished with a larger fine.

Rigorous enforcement of these provisions would prove to be a great preventive measure against juvenile vagrancy, juvenile truancy, juvenile delinquency and

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problems of juvenile misbehaviour as unscrupulous adults would be brought into light.

There is need to bring the various States under a uniform act for children.

4.7.2.1 JUVENILE JUSTICE ACT OF INDIA - SALIENT FEATURES

The Reformatory Act was passed for the first time in 1886 in India. Later in 1920, the Tamil Nadu Children Act was passed.

It was again replaced by the Central Act, that is, Juvenile Justice Act, 1986, which came into force on 2nd October 1987. According to the present Act, the Juvenile Welfare Board, which consists of a Chairman and members with the powers of the Judicial First Class Magistrates as laid down in the Criminal Procedure Code, 1973, will inquire into the matters relating to the neglected juvenile for which thirteen Juvenile Welfare Boards have been constituted in G.O.Ms.No.1919, Social Welfare, dated 29-9-87 in the city of Madras and in some of the district headquarters. The matters relating to the delinquency

shall be enquired by a Bench of salaried Magistrates with assistance from two honorary social workers, of whom, at least one shall be a woman and such panel shall be appointed by the State Government.

The bench of Magistrates consists of such number of Metropolitan Magistrates or Judicial Magistrates of the first class, as the case may be, as the State Government thinks fit to appoint, of whom, one shall be designated as the Principal Magistrate.

The present juvenile Justice Act, which was amended in 1986, provides a broad perspective to juvenile law. It deals with the entire problems of juvenile welfare. The new nomenclature has been useful in elevating the status of those who have devoted their services for several young boys and girls. By changing 'Approved Schools' to 'Special Juvenile Homes', the Department of Approved Schools and Vigilance Service provides care, treatment (correctional), training - educational and vocational and rehabilitation of the institutionalised delinquents and non delinquents. The provision by the juvenile court for extending the period of stay in these homes till the juvenile attains the age of eighteen years in the case of a boy or twenty years in the case of a girl, has been
beneficial. This provision helps many girls and boys during their danger period of adolescence and protects them under the shelter of law and other institutions which are vigilant in the work of prevention of crime.

The present Act stresses not only the care and protection of juvenile delinquents and non-delinquents but also the after care of such youth. By this provision, released children who are not equipped to face the world would be taken care of. The Act permits the juvenile court to function in an informal way. That the court can refuse permission to a lawyer to plead on behalf of any juvenile offender is proof of its eagerness to retain the informal atmosphere within the court. Informality also exists when the Lady Magistrate builds trust and confidence in the young offender and asks him/her to confess so that effective steps could be taken to provide a secure future.

A striking feature of the juvenile court is the process of interaction among the personalities involved. They include judiciary, police, social workers and members of the family. They evince a human touch in what they say or do. All of them should be more worried about
the proper rehabilitation of the accused than just meeting out a penalty.

Another important characteristic of the juvenile court is that the decisions taken do not strictly and entirely rely on the evidence that is produced by the police prosecution or by the witness, as is done in other courts. An important person who plays a significant role in eliciting non-routinized and reliable evidence, which adds a new dimension to the entire case, is the probation officer. The decision of the Magistrates of the court heavily rests on the honest and socially-based report of the probation officer. This person acts as a mediator between the court and the society. Thus the juvenile court functions more as a social institution than as a legal one as its approaches are more social than legal. The probation officer's role continues even after the young offender is sent to an institution or to the care of parents.

The circumstances to be taken into consideration in making any order in respect of a juvenile under the Act are the age of the juvenile, the situations in which the juvenile was and is living, the reports made by the probation officer, the religious persuasion of the
juvenile and other factors in the interest of the welfare of the juvenile.

Finally, the mechanism of the juvenile court helps in understanding the problem of juvenile delinquency. The tackling of the problem has to be done outside the court.

The Act has emphasized the need for trained professional personnel who will look after not only the problems of probation, but also, those dealing with placement and liaison.

No report in any newspaper, magazine or news-sheet of any inquiry regarding a juvenile under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile nor shall any picture of any such juvenile be published. Any person responsible for such publication shall be punishable with fine.

Whoever employs or uses any juvenile for begging, giving intoxicating liquor or narcotic drugs or psychotropic substance or purposes of exploitation shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.
Special care is taken to see that cases of delinquency are not kept pending for a long time. Under the Act, the State Government may establish and maintain industrial schools and other educational institutions for the reception of neglected children and youthful offenders. It has the power to discharge and transfer neglected and delinquent juveniles from a juvenile home or a special home to a fit person or a fit institution or to another home or institution in any other State.

Finally, the Act has provided for the effective administration of child welfare activities.