CHAPTER – VI
PROTECTION UNDER JAIL AND CORRECTIONAL INSTITUTIONS

A) Introduction

Correction is the third and final phase of the Criminal Justice Administration. Beginning with law enforcement as the case-finding phase, the courts determine by trial under due process of law and correctional attempts to rehabilitate the neutralized and deviant behaviour of adult criminals and juvenile delinquents. The successes and failures of the criminal justice system are measured in the field of corrections. The productivity of the entire criminal justice system is judged by the productivity of corrections.¹

The basic purpose of the criminal justice system is to eliminate or at least to reduce crime and delinquency. It is to the benefit of the society as a whole to remove those conditions that spawn crime. The factors that contribute to the making of delinquents and criminals are many and complex.²

Over the centuries, corrections and punishments have been synonymous. Even today, this attitude is held by a sizable segment in society particularly in cases that involve serious crimes. Although basic attitude towards punishment have not been significantly changed. Today, through more ‘humane’ techniques, society acts as the agent of punishment on behalf of the victim rather than permitting the private settling of feuds. In some views, punishment has been defended as permitting the offender, the feeling of having atoned for his or her anti-social action while reaffirming the appropriateness of noncriminal behaviour among the law abiding members of society.³

The reformative view of penology suggests that punishment is only justifiable, if it looks to the future and not to the past. “It should not be regarded as settling an old account but rather as opening a new one.” Thus, the supporters of this view justify prisonisation not solely for the purpose of isolating criminals and

² See, Charles. F. Hempmill, Criminal Procedure the Administration of Justice, 1978, p.247
³ See, Robert D. Pursley, Introduction to Criminal Justice, 1977, p.352
eliminating them from society but to bring about a change in their mental outlook, through effective measures of reformation during the term of their sentence.

The modern systems of probation, parole and juvenile justice reformatories and open institutions have proved potentially helpful in elimination of isolationism from which preventive and correction scheme have suffered for long. The working of prison institutions has been remodeled to suit the modern corrective methods of treatment of offenders. The correctional process is charged with carrying out two fundamental responsibilities of government i.e. the protection of society and the rehabilitation of the convicted offenders. The correctional function is apportioned primarily among prison, probation, parole and juvenile justice system.

**B) Prison Administration and Criminal Justice System**

Crimes and criminals are the by-product of a social system. In other words, roots of crimes lie deep in society, of which the individual is an integral part. When a crime is committed, the guilty is subjected to punishment according to the law of the land. The modes of punishment may vary keeping in view the offence committed. When a person is adjudged guilty of having committed a crime and sentenced to imprisonment, prison is usually the place where he is to be kept while undergoing sentence.

The history of prisons in India and elsewhere clearly reflects upon the changes in the society’s outlook for reaction to crimes from time to time. The system of imprisonment represents a curious admixture of different objectives of punishment. Thus, it may be intended to deter the offender or used as a method of retribution or vengeance by making the life of the offender unfavorable and unpleasant in the prison.

The fact that the criminals undergoing imprisonment in prison are leading an isolated life thus incapacitating them from committing the crime again fulfils the preventive purpose of punishment. This also helps to keep the crimes under control.

As early as in 1597, jails were established. The jails of old times were miserable places, which afforded opportunities for graduation to a life of crime. Recidivism was rampant. Men, women and children, first offenders and habitual

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were all hurled together like, “rats in a hamper and pigs in arty”⁵. Prisons in the modern sense of the term were unknown in the medieval times; a person could be incarcerated while trial was pending. It was in the 18th century, that cellular prisons were built.

The prisons in India were in a terrible condition, when the East India Company took over some of the provinces of India. During the period preceding the British rule, the prisoners were ill-treated, tortured and subjected to barbarous treatment. However, with the advent of the British rule, some serious efforts to improve the conditions of prison and prisoners were initiated. Many Committees were appointed from time to time to look into the system of prison management and suggest measures to eradicate evils which were existing there. It was the result of these recommendations by the Committees that better amenities to the various kinds of jail inmates were extended and the number of prisoners which could be accommodated in each of the existing jails was also prescribed⁶. The Committee for jail reforms headed by Justice A. N. Mulla which gave suggestions on various aspects of jail administration including those relating to modernization of jails and segregation of young prisoners from the hardened criminals.

The real purpose of sending criminals to prison is to transform them into honest and law abiding citizens by inculcating in them distaste for crime and criminality. But in actual practice, the prison authorities try to bring out reformation of inmates by use of force and compulsive methods. Consequently, the change in inmates is temporary and lasts only till the period they are in prison and as soon as they are released, they quite often return to the criminal world. It is for this reason that modern trend is to lay greater emphasis of psychiatric conditions of the prisoners so that they can be rehabilitated to normal life in the community. This objective can be successfully achieved through the techniques of probation and parole.

**C) Administration of Prison under Prison Act, 1894**

The State Government shall provide, for the prisoners in the territories under such Government, accommodation in prisons constructed and regulated in such

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⁵ See, M.J. Sethna, *Society and Criminal*, 1971, p. 303
manner as to comply with the requisitions in respect of the separation of prisoners.\(^7\)

An Inspector General shall be appointed for the territories subject to each State Government and shall exercise, subject to the orders of the State Government, the general control and superintendent of all prisons situated in the territories under such Government.\(^8\)

For every prison there shall be a Superintendent, a Medical Officer (who may also be the Superintendent), a medical Subordinate, a Jailer and such so other officers as the State Government thinks necessary.

Whenever it appears to the Inspector General that the number of prisoners in any prison is greater than as can conveniently or safely be kept therein and it is not convenient to transfer the excess number to some other prison or whenever from the outbreak of epidemic disease within any prison or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoner, provision shall be made, by such officer and in such manner as the State Government may direct, for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison.\(^9\)

All officers of a prison shall obey the directions of the Superintendent; all officers subordinate to the Jailer shall perform such duties as may be imposed on them by the Jailer with the sanction of the Superintendent or be prescribed by rules.\(^10\)

Subject to the control of the Superintendent, the Medical Officers shall have charge of the sanitary administration of the prison and shall perform such duties as may be prescribed by rules made by the State Government.

Whenever the Medical officer has reason to believe that the mind of a prisoner is or is likely to be injuriously affected by the discipline or treatment to which he is subjected, the Medical officer shall report the case in writing to the Superintendent, together with such observations as he may think proper. This report, with the orders of the Superintendent, shall forthwith be sent to the Inspector general for information.\(^11\)

\(^7\) See, The Prison Act, 1894, Sec. 5
\(^8\) See, Ibid, Sec.5
\(^9\) See, Ibid, Sec.7
\(^10\) See, Ibid, Sec.8
\(^11\) See, Ibid, Sec.17
On the death of any prisoner, the Medical officer shall forthwith record in a register the particulars, so far as they can be ascertained, namely:12

a) The day on which the deceased first complained of illness or was observed to be ill,
b) The labour, if any, on which he was engaged on that day,
c) The scale of his diet on that day,
d) The day on which he was admitted to hospital,
e) The day on which the Medical Officer was first informed of the illness,
f) The nature of the diseases,
g) When the deceased was last seen before his death by the Medical Officer or Medical Subordinate,
h) When the prisoner died, and
i) (In cases where a post-mortem examination is made) and account of the appearances after death, together with any special remarks that appear to the Medical Officer to be required.

The Jailer shall reside in the prison, unless the Superintendent permits him in writing to reside elsewhere.

The Jailer shall not, without the Inspector General’s sanction in writing, be concerned in any other employment.

Upon the death of a prisoner, the Jailer shall give immediate notice thereof to the Jail Superintendent and the Medical Subordinate.

The jailer shall be responsible for the safe custody of the records to be kept, for the commitment warrants and all other documents confided to his care and for the money and other articles taken from prisoners13.

Every criminal prisoner shall also, as soon as possible after admission, be examined under the general or special orders of the Medical officer, who shall enter or cause to be entered in book, to be kept by the Jailer, a record of the state of the prisoner’s health and of any wounds or marks on his person, the class of labour he is fit for it sentenced to rigorous imprisonment and any observation which the Medical Officer thinks fit to add14.

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12 See, Ibid, Sec.15
13 See, Ibid, Sec.16-18
14 See, Ibid, Sec. 24(2)
In the case of female prisoners the search and examination shall be carried out by the matron under the general or special orders of the Medical Officers.

All money or other articles in respect whereof no order of a competent court has been made and which may with proper authority by brought into the prison by any criminal prisoner sent to the prison for his use, shall be placed in the custody of the Jailer.

No prisoner shall be removed from one prison to another unless Medical Officer certifies that the prisoner is free from any illness rendering him unfit for removal and no prisoner shall be discharged against his will from prison, if labouring under any acute or dangerous distemper, nor until in the opinion of the Medical Officer, such discharge is safe.

In a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings or separate parts of the same building, in such manner as to prevent their seeing or conversing or holding any intercourse with the male prisoners.

In a prison where male prisoners under the age of twenty-one are confined, means shall be provided for separation them altogether from the other prisoners and for spearing those of them who have arrived at the age of puberty from those who have not unconverted criminal prisoners shall be kept apart from convicted criminal prisoners and civil prisoners shall be kept apart from criminal prisoners.

No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate.

Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by order of the Jailer and all articles shall be taken from him whom the Jailer deems it dangerous or inexpedient to leave in his

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15 See, Ibid, Sec. 25
16 See, Ibid, Sec. 26
17 See, Ibid, Sec. 27(1)
18 See, Ibid, Sec. 27(2-4)
19 See, The Prison Act, 1894, Sec. 20
A civil prisoner or an unconvinced criminal prisoner shall be permitted to maintain himself and to purchase or receive from private source at proper hours foods, clothing, bedding or other necessaries but subject to examination and to such rules as may be approved by the Inspector General\textsuperscript{21}.

Civil Prisoners may, with the Superintendent’s permission, work and follow any trade or profession. These prisoners find their own implements and not maintained at the expenses of the prison, shall be allowed to receive the whole of their earnings, but the earnings of such as are furnished with implements or are maintained at the expenses of the prison shall be subject to a deduction, to be determined by the superintendent for the use of implements and the cost of maintenance\textsuperscript{22}.

Provisions shall be made by the Superintendent for the employment (as long as they so desire) of all Criminal prisoners sentenced to simple imprisonment; but no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work excepting by such alteration in the scale of diet as may be established by the rules of the prison in the case of neglect of work by such a prisoner\textsuperscript{23}.

Whoever, introduces or removes or attempts by any means whatever to introduce or remove into or from any prison or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner or to be supplied to any prisoner outside the limits of a prison and whoever, contrary to any such rule, communicates or attempts to communicate with any prisoner and whoever abets any offence made punishable, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months or to fine not exceeding two hundred rupees or to both\textsuperscript{24}.

\textsuperscript{20} See, Ibid, Sec.30
\textsuperscript{21} See, Ibid, Sec. 31
\textsuperscript{22} See, Ibid, Sec. 34(2)
\textsuperscript{23} See, Ibid, Sec. 36
\textsuperscript{24} See, Ibid, Sec. 42
When any person in the presence of any officer of a prison, commits any offence specified in the last foregoing section and refuses on demand of such officer to state his name and residence or gives a name or residence which such officer knows or has reason to believe to be false such officer may arrest him, and shall without unnecessary delay make him over to a Police-Officer and thereupon such Police-officer shall proceed as if the offence has been committed in his presence

Willful disobedience to any regulation of the prison shall have been declared a prison-offence; any assault or use of criminal force; the use the insulting or threatening language; immoral or indecent or disorderly behaviour; willfully disabling himself from labour; continuously refusing to work; filing cutting altering or removing handcuffs, fetters or bars without due authority, willful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment, willful mismanagement of work by any prisoner sentenced to rigorous imprisonment; willful damage to prison-property, tampering with or defacing history-tickets, records or documents; receiving, possessing or transferring any prohibited article; feigning illness; willfully bringing a false accusation against any officer or prisoner; omitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape and any attack or preparation for attack upon any prisoner or prison-official and conspiring to escape or to assist in escaping, to commit any other of the offences aforesaid.

The Superintendent may examine any person touching any such offence and determine thereupon and punish such offence by a formal warning; change of labour to some more irksome or severe form for such period as may be prescribed by rules made by the State Government; hard labour for a period not exceeding seven days in the case of convicted criminal prisoners not sentenced to rigorous imprisonment; such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the State Government; the substitution of gunny or other coarse fabric for clothing of other material not being woolen for a period which shall not exceed three months; imposition of handcuffs of such pattern and weight in such manner and for such period, as may be

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25 See, Ibid, Sec. 43
26 See, Ibid, Sec.45
prescribed by rules made by the State Government; imposition of fetters of such
pattern and weight, in such manner and for such period, as may be prescribed by
rules made by the State Government; separate confinement for any period not
exceeding three months; penal diet, that is, restriction of diet in such manner and
subject to such conditions regarding labour as may be prescribed by the State
Government. Provided that such restriction of diet shall in no case been applied to a
prisoner for more than ninety-six consecutive hours and shall not be repeated except
for a fresh offence nor until after an interval of one week; cellular confinement for
any period not exceeding fourteen days.

“Cellular confinement means such confinement with or without labour as entirely
means such from communication with, but not from sight of other prisoners”.

Whipping provided that the number of stripes shall not be exceeding thirty
and no female or civil prisoner liable to the imposition of any form of handcuffs feet
or to whipping.

No punishment of penal diet, either singly or in combination or of
whipping or of change of labour, shall be executed until the prisoner to whom such
punishment has been awarded has been examined by the Medical Officer who, if he
considers the prisoner fit to undergo the punishment, shall certify accordingly in the
appropriate column of the punishment-book.

If he considers the prisoner unfit to undergo the punishment, he shall in
like manner record his opinion in writing and shall state whether the prisoner is
absolutely unfit for punishment of the kind awarded or whether he considers any
necessary modification.

If any prisoner is guilty of any offence against prison-discipline which, by
reason of his having frequently committed such offences or otherwise, in the
opinion of the Superintendent, is not adequately punishable by the infliction of any
punishment which he has power, the Superintendent may forward such prisoner to
the Court of the District Magistrate or of any Magistrate of the first class or
Presidency Magistrate having jurisdiction, together with a statement of the
circumstances and such Magistrate shall thereupon enquire into and try the charge so
brought against the prisoner and upon conviction, may sentence him to

27 See, Ibid, Sec.46
28 See, Ibid, Sec. 50(2)
imprisonment which may extend to one year, such term to be in addition to any terms for which such prisoner was undergoing imprisonment when he committed such offence or may sentence him to any of the punishments provided also that no person shall be punished twice for the same offence. The State Government may make rules din consistent with the Act for regulating the transmission of appeal, send petitions from prisoners and their communications with their friends; for the appointment and guidance of visitors of prisons and in regard to the admission, custody, employment, dieting, treatment and release of prisoners.

D) **Parole and Criminal Justice System**

Parole is known as a pre-mature release of offences after a strict scrutiny of long term prisoners, under the rules laid down by various governments. Premature release from prison is conditional subject to his behaviour in society and accepting to live under the guidance and supervision of Parole officer. The word ‘parole’ means “a term to designate conditional release granted in a penal institution.” So in the parole, part of the sentence is served and it is then that convict is released on parole on conditions of good behaviour and if he is found to have improved and abstained from criminal conduct, he gets remission of the rest of the sentence and for sometime at least a part of the sentence.

Thus, what is now called parole was from its start tied to the concepts of offender reformation and indeterminacy in sentencing. Walter Clifton in 1870, (in-charge of Irish Prison) advocated reform of the individual as purpose of imprisonment and moreover, urged that “tickets of leave” be given to those who showed a change in attitude. Those released by a ticket for leave were supervised either by police or by an Inspector of released prisoners. Finally, the paroling function may be important as ‘safety valve’ to help control the levels of prison population in relation to capacities and thus to avert the dangers and costs of overcrowding. In some jurisdictions, boards have been directed by courts to speed up parole for some offenders so as to relieve prison crowding. In others,

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29 See, Ibid, Sec. 52
30 See, Ibid, Sec. 59 (24-27)
programmes of early parole for selected offender have been designed with the explicit aim of avoiding additional prison construction\textsuperscript{32}.

Parole is the procedure through which prisoners are selected for release and the service through which they are furnished guidance, control and assistance in serving the last part of their sentence within the free community. Society has a real interest in the release of prisoners, since these individuals have been committed for definite terms by the criminal justice system and release on parole sometimes seems to fly in the face of the sentence that was meted out\textsuperscript{33}. It is therefore, important that the parole system include both a careful selection process for those to be released, as well as a workable system for supervision after the selection is made.

In India prison life did not emerge out of the social movements but they were the outcomes of the worst conditions of treatment in prisons which our political suffers faced during the prison life. They repeatedly launched protests with the prison authorities and made all possible efforts to see that the rigors of prison life are mitigated and the prisoners are humanly treated. In the meantime, the reformatory movement which was gaining strength in the field of penology all over the world also gave impetus to the cause of corrective methods of treatment of the offenders rather than keeping confined into the small prison cells.

Parole involves supervision, as compared with other types of releases from prison such as discharge, conditional release, expiration of sentence and mandatory release. Release by court order, pardon or escape, of course do not involve parole supervisions\textsuperscript{34}. It is a function of the executive branch of Government. It is based on the Chief Executive’s right to commute or suspend sentences imposed by courts. The authority to release offenders for cause and good conduct is usually delegated to a parole Board. Release on Parole is generally based on inmate readiness, past conduct and a prognosis for success. The prisoner signs a parole agreement. If the agreement is violated or a new crime committed, the parolee may be returned to prison following a revocation hearing\textsuperscript{35}.

The Parole Board consists of parole administrators, who are from among the respectable members of society. The members of the parole board are assigned the function of discharging convicted prisoners on parole after careful scrutiny. The parole board takes administrative decision on paroling out prisoners while acting as such they are performing a quasi-judicial function. Another important function assigned to the parole personnel is to prepare a case history of parolees and help and advise them in the process of their rehabilitation. There is also a set of field workers functioning outside the prisons. These filled personnel keep a close supervision over parolees and report the cases of parole violations to the parole authorities. Thus the parole organization consists of three agencies, viz. the Parole board, the case investigation and the Parole supervisors; all of them work in close liaison with each other.

The system of Parole serve to met the ends of justice in two ways. Firstly, it serves as an effective punishment by itself in as much as a parolee is deterred from repeating crimes due to the threat of his return to prison or a similar institution if they violated parole conditions. Secondly, it serves as an efficient measure of safety and treatment reaction to crime by affording a series of opportunities for the parolee to prepare himself for the normal life in society.

The parole system as a corrective measure and rehabilitative process has now been expanded in the form of open jails and open air camps in recent years. Open air-institutions are essentially a twentieth century device for rehabilitating offenders to normal life in the society through an intensive after-care programme.

E) Probation and Criminal Justice System

In criminal justice system ‘probation’ means the conditional suspension of imposition of a sentence by the court, in selected cases, especially of young offenders, who are not sent to prison but are released on probation, on agreeing to abide by certain conditions. Word ‘probation’ is derived from the Latin word, ‘Probera’, which means ‘to test’ or prove’. Homer S. Cunings has observed that probation is a matter of discipline and treatment. If the probationers are carefully

36 See, N.V. Pranjape, Criminology and Penology, 2001, p.332
37 See, Ibid
38 See, N.V. Pranjape, Criminology and Administration of Criminal Justice, 1970, p.185
chosen and supervision work is performed with intelligence and understanding one can work as miracles in rehabilitation of the offenders.

Probation is a form of criminal sanction imposed by a court upon an offender, nearly always after a verdict or a plea of guilty but without the prior imposition of a term of imprisonment. Probation may be linked to a jail term, known as a split sentence, whereby the judge sentences the offender to a specified jail term to be followed by a specified period on release on probation.

An international definition of probation is that it consists of the conditional suspension of punishment while the offender is placed under personal supervision and is given individual guidance or treatment. The object of probation is the protection of society by preventing the crime through rehabilitation of the offender in the society as its useful member without curbing his freedom, subjecting him to unsavory prison life and depriving him of his social and economic obligations.

Probation system is not the outcome of any deliberate legislative or judicial action but grew gradually as a result of some kind of hearted ordinary citizen’s concern for young offender in custody. The history of probation can be traced back to the medieval concept of ‘benefit of clergy’ permitted clergy and other literates to escape the severity of the criminal law. It meant suspension of the execution of sentence for an indefinite period as long as the delinquent behaved well.

In India probation is used as an institutional method of treatment which is a necessary appendage of the concept of crime. Probation developed as an alternative to imprisonment especially of short term, has now taken within its wings all the offences except those punishable with death or imprisonment for life. The current compelling constraints of section 361 of the Code of Criminal Procedure, 1973, have made probation as a more viable method of dealing with offenders than imprisonment, because judge is required to record special reasons for not granting probation to all the eligible offenders irrespective of their age.

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41 See, J.C. Mclean, Criminal Justice and Treatment of Offenders, 1960, p.158
43 See, J.P.S Sirohi, Criminology and Criminal Administration, 1992, p. 231
The first legislative effort appears in India when probation received statutory recognition for the first time in 1898 through section 562 of the Code of Criminal Procedure, 1898. Under the provision of this section, the first offender convicted of theft, dishonest misappropriation or any other offence under the Indian Penal Code punishable with not more than two years imprisonment could be released on probation of good conduct at the discretion of the court. Later, the Children Act, 1908 also empowered the court to release certain offenders on probation of good conduct.

The scope of probation law was extended further by the legislation in 1923. Consequent upon the Indian Jail Reforms Committees Report (1919-1920), the first offenders were to be treated more liberally and could ever be released unconditionally after admonition. Then the Government of India in 1931 prepared a draft of Probation of Offender Bill and circulates it to the provincial governments for their views. The Bill could not, however, be proceeded further due to pre-occupation of the provincial Governments. In 1934, Government of India, informed the local governments that there were no prospects of the central legislation being enacted on probation and they were free to enact suitable laws on the lines of the draft Bill.

After independence, a Probation Conference was held in Bombay in 1952. This conference was milestone in progress of probation law in India. Consequently, All India Jail Manual Committee was formed to review the working of Indian Jail and suggest measures for reform in the system. The Committee also highlighted the need for a central law on probation with greater emphasis on release of offenders on probation of good conduct so that they are reclaimed as self-reliant members of society. Thus, with a reformative bias and to insure this concept in the arena of administration of criminal justice, the Probation of Offenders Act was enacted in 1958 in India to provide correctional services to the offenders. In other words, it is a curative jurisprudence in dealing with the offenders and more particularly it relates to first offenders, where no previous conviction is proved against them. The whole object of the Act is to prevent conversion of youthful offenders into obdurate criminals of matured age, in case they are sentenced to undergo substantive

45 See, The Code of Criminal Procedure, 1973, Sec.360
47 See, All India Jail Manuel Committee Report, 1957, para. 135.
imprisonment in jail\textsuperscript{48}. The provisions of Probation of Offenders Act, which bring about reform of the offenders and for their disciplined conduct and rehabilitation and normal life in society.

When any person is found guilty of having committed an offence punishable under section 379 or section 380 or Section 381 or Section 404 or Section 420 of the Indian Penal Code (45 of 1860) or any offence punishable with imprisonment for not more than two years or with fine or with both, under the Indian penal Code or any other law and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment releasing him on probation of good conduct\textsuperscript{49}.

The court making a supervision order shall require the offender, before he is release, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such addition conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or commission of other offences by the offender\textsuperscript{50}.

The court making a supervision order shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any and the probation officer concerned.

The court directing the release of an offender may, if it thinks fit, make at the same time a further order directing him to pay such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence and such costs of the proceedings as the court thinks reasonable\textsuperscript{51}.

When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for


\textsuperscript{49} See, The Probation of Offenders Act, 1958, Sec.3

\textsuperscript{50} See, Ibid, Sec. 4(4)

\textsuperscript{51} See, Ibid, Sec.5
life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that having regard to the circumstances of the case including the nature of the offence and the character of the offender.

For the purpose of satisfying itself whether it would not be desirable to deal with an offender the court shall call for a report from the probation officer and consider the report if any and any other information available to it relating to the character and physical and mental condition of the offender.\(^{52}\)

The report of a probation officer shall be treated as confidential; provided that the court may, if it so thinks fit, communicate the substance thereof to the offender and may give him an opportunity of producing such evidence as may be relevant to the matter stated in the report.\(^{53}\)

If, on the application of probation officer, any court which passes an order in respect of an offender is of opinion that in the interest of the offender and the public it is expedient or necessary to vary the conditions of any bond entered into by the offender, it may, at any time during the period when the bond is effective, vary the bond by extending or diminishing the duration thereof, so, however that it shall not exceed—three years from the date of the original order or by altering the conditions thereof or by inserting additional conditions therein. Provided that no such variation shall be made without giving notice to the offender and the surety or sureties mentioned in the bond an opportunity of being heard.\(^{54}\)

If any surety refuses to consent to any variation proposed to be made, the court may require the offender to enter into a fresh bond and if the offender refused or fails to do so, the court may sentence him for the offence.

Notwithstanding anything hereinbefore contained, the court which passes an order in respect of an offender may, if it is satisfied on an application made by the probation officer that the conduct of the offender has been such as to make it unnecessary that he should be kept any longer under supervisions, discharge the bond or bonds entered into by him.\(^{55}\)

If the court which passes an order in respect of an offender or any court which could have dealt with the offender in respect of his original offence has

\(^{52}\) See, Ibid, Sec. 6  
\(^{53}\) See, Ibid, Sec. 7  
\(^{54}\) See, Ibid, Sec. 8(1)  
\(^{55}\) See, Ibid, Sec. 8(3)
reason to believe on the report of a probation officer or otherwise, that the offender has failed to obey any of the conditions of the bond or bonds entered into by him, it may issue a warrant for his arrest or may, if it thinks fit, issue a summon to him and his sureties, if any, requiring him or them to attend before it at such time as may be specified in the summons.

The court before which an offender is so brought or appears may either remand him to custody until the case is concluded or it may grant him bail, with or without surety, to appear on the date, which it may fix or hearing.\(^{56}\)

If the court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of the bond or bonds noted into by him, it may forthwith sentence him for the original offence or where the failure is for the first time, then without prejudice to the continuance in force of the bond, impose upon him a penalty not exceeding fifty rupees.\(^{57}\)

In any case where any person under twenty-one years of age is found guilty of having committed an offence and the court by which he is found guilty declines to deal with him and passes against him any sentence of imprisonment with or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the court to which appeals ordinarily lie from the sentences of the former court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for and examine the record of the case and pass such order thereon as it thinks fit. When an order has been made in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law. Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment that might have been inflicted by the court by which the offender was found guilty.\(^{58}\)

A probation officer under the Probation of Offender Act, 1958 shall be a person appointed to be a probation officer by the State Government or recognized as such by the State Government or a person provided for this purpose by a society recognized in this behalf by the State Government or in any exceptional case, any

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\(^{56}\) See, Ibid, Sec.9(2)

\(^{57}\) See, Ibid, Sec. 9(3)

\(^{58}\) See, Ibid, Sec. 11
other person whom in the opinion of the court, is fit to act as a probation officer in
the special circumstances of the case\textsuperscript{59}.

A court which passes an order or the District Magistrate of the district in
which the offender for the time being resides may, at any time, appoint any-
probation officer in the place of the person named in the supervision order.

“A presidency town shall be deemed to be a district and Chief
Presidency Magistrate shall be deemed to be the District Magistrate
of that district.”

A probation officer, in the exercise of his duties under this Act, shall be
subject to the control of the District Magistrate of the district, in which the offender
for the time being resides\textsuperscript{60}.

A probation officer shall, subject to such conditions and restrictions, as may
be prescribed—enquire in accordance with any direction of a court, into the
circumstances or home surroundings of any person accused of an offence with a
view to assist the court in determining the most suitable method of dealing with him
and submit reports to the court; supervise probationers and other persons placed
under his supervision and where necessary, endeavor to find them suitable
employment; advise and assist offenders in the payment of compensation or costs
ordered by the court; advise and assist in such cases and in such manner as may be
prescribed, persons who have been released and perform such other duties as may be
prescribed \textsuperscript{61}.

Every probation officer and every other officer appointed shall be deemed to be
public servant within the meaning of Section 21 of the Indian Penal Code\textsuperscript{62}.

No suit or other legal proceeding shall lie against the State Government or
any probation officer or any other officer appointed in respect of anything which is
in good faith done or intended to be done in pursuance of any rule or order\textsuperscript{63}.

The State Government may, with the approval of the Central Government, by
notification in the official Gazette make rules to carry out the purpose of the
Probation of Offenders Act.

\textsuperscript{59} See, Ibid, Sec. 13(1)
\textsuperscript{60} See, Ibid, Sec.13(3)
\textsuperscript{61} See, Ibid, Sec. 14
\textsuperscript{62} See, Ibid, Sec. 15
\textsuperscript{63} See, Ibid, Sec. 16
In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:

- Appointment of probation officers, the terms and conditions of their service and the area within which they are to exercise jurisdiction;
- Duties of probation officers under this Act and the submission of report by them;
- The payment of remuneration and expenses to probation officers or of a subsidy to any society which provides probation officers and
- Any other matter which is to be or may be prescribed.

All rules made shall be subject to the conditions of previous publication and shall, as soon as may be after they are made, be laid before the State Legislature.

F) **Juvenile and Criminal Justice system**

The child of today is the citizen of tomorrow, the criminal trials of the youngsters must be suppressed in tie so as to prevent them from becoming hardened criminals in future. It is with this aim in view that most of the countries of the world are engage in handling the problem of juvenile delinquents on priority basis.

Early penology did not recognize any discrimination between adult and the juvenile offenders as far punishment to them were concerned. Therefore, the problem of juvenile delinquency is essentially a recent origin. The movement for special treatment to juvenile offenders started by the end of 18th century. Prior to that, even young boys were equally punished to death like adults under the law.

The great majorities of historians have celebrated the court’s mission as savior of unfortunate youth and portrayed it as the greatest achievement of a generation whose solicitous concern for children marked a revolution in human sensibility.

Juvenile delinquency refers to conduct of children or youths that is either violative of the prohibitions of the criminal law or is otherwise regarded as deviant and inappropriate. The juvenile justice system is an alternative to the criminal justice system.

The term ‘delinquency’ has been derived from the Latin word ‘delinquer’ which means ‘to omit’. The Romans used the term to refer to the failure of a person

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64 See, Ibid, Sec. 17(2)
to perform the assigned task or duty. In simpler words it may be said that
delinquency is a form of behaviour or rather misbehavior or deviation from the
general accepted norms of conduct of the society.\(^\text{68}\)

Juvenile delinquency is a gateway to adult crime, since a large percentage of
criminal careers had their roots in childhood. It is a problem that has been causing a
serious concern all over the world. In recent years, children and their problem have
been receiving attention both of the Government as also of the society. Like other
countries of the world, India have also envisaged to tackle the problem of juvenile
delinquency on two fundamental principles that the young offenders should not be
‘tried’ but they should rather be ‘corrected’ and they should not be ‘punished’ but
‘reformed’.\(^\text{69}\) To attain these objective adequate provisions under Sections 82 and 83
of the Indian Penal Code, 1860 have been made. Again, Section 360 of the Code of
Criminal procedure, 1973 provides that, “when any person who is below twenty-one
years of age is convicted of an offence punishable with fine only or with
imprisonment for a term of seven years or less or when any person under twenty-one
years of age or any woman is convicted of any offence not punishable with death or
imprisonment for life and no previous conviction is proved against the offender.”
Section 27 of the Code of Criminal Procedure also suggests that a lenient treatment
to juveniles has already received statutory recognition in the Indian criminal law.
The Section provides that a person below sixteen years of age commits an offence
other that the one punishable with death or imprisonment for life, he should be
awarded a lenient punishment depending on his previous history, character and
circumstances which led him to commit the crime. His sentence can further be
commuted for good behaviour during the term of his imprisonment.\(^\text{70}\)

To provide for the care, protection, treatment, development and rehabilitation
of neglected or delinquent juveniles and for the adjudication of certain matters
relating to and disposition of delinquent juvenile, the Juvenile Justice Act, 1986 was
enacted by Parliament. Several Provisions of the Constitution including Clause (3)
of Article 15, Clause (e) and (f) of Article 39, Article 45 and Article 47 also impose
on the State a primary responsibility of ensuring that all the needs of children are
met and that their basic human rights are fully protected. On 20th November 1989

\(^{68}\) See, N.V Paranjape, *Criminology and Penology*, 2005, p.486

\(^{69}\) See, N.V Pranjape, *Criminology and Administration of Criminal Justice*, 1970, p.196

\(^{70}\) See, Ahmad Siddique, *Criminology*, 2005, p.574
General Assembly of the United Nations adopted the Convention on the Rights of the Child wherein a set of standards to be adhered to by all State parties in securing the best interests of the child has been prescribed. The Convention emphasizes social re-integration of child victims, to the extent possible without restoring to judicial proceedings. The Government of India, having ratified the Convention, has found it expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention of the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 and all other relevant international instruments. To achieve this object the Juvenile Justice (Care and Protection of Children) Bill was introduced in Parliament and it came on the statute book as the Juvenile Justice (Care and Protection of Children) Act, 2000.

Where an enquiry has been initiated against a juvenile in conflict with law or a child in need of care and protection and during the course of such enquiry the juvenile or the child cases to be such, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the enquiry may be continued and orders may be made in respect of such person as if such person had continued to be a juvenile or a child\(^\text{71}\).

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the state Government may, by notification in the Official Gazette, constitute for a district or a group of districts specified in the notification, one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law\(^\text{72}\).

A 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 and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973, on a Metropolitan Magistrate or as the case may be, judicial magistrate of the first class and the Magistrate on the Board shall be designated as the principal Magistrate\(^\text{73}\).

\(^{71}\) See, The Juvenile Justice (Care and Protection of Children) Act, 2000, Sec.3

\(^{72}\) See, Ibid, Sec.4(1)

\(^{73}\) See, Ibid, Sec.4(2)
No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health education or welfare activities pertaining to children for at least seven years.

The term of office of the members of the Board and the manner in which such member may resign shall be such as may be prescribed. The appointment of any members of the Board may be terminated after holding inquiry, by the State Government, if:

a) He has been found guilty of misuse of power vested;
b) He has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;
c) He fails to attend the proceedings of the Board for consecutive three months without any valid reason or he fails to attend than three-fourth of the sittings in a year.

The Board shall meet at such times and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed. A child in conflict with law may be produced before an individual member of the Board, when the Board is not sitting.

A Board may act notwithstanding the absence of any member of the Board and no order made by the Board shall be invalid by reason only of the absence of any member during any stage of proceedings. Provided that there shall be at least two members including the principal Magistrate present at the time of final disposal of the case.

In the event of any difference of opinion among the members of the Board in the interim or final disposition, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the principal Magistrate shall prevail.

Where a Board has been constituted for any district or a group of districts, such Board shall, notwithstanding anything contained in any other law for the time being

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74 See, Ibid, Sec. 4(4)
75 See, Ibid, Sec. 4(5)
76 See, Ibid, Sec. 5
in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings relating to juvenile in conflict with law.

The powers conferred on the Board by or may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.\(^77\) When any Magistrate not empowered to exercise the powers of a Board is of the opinion that a person brought before him is a juvenile or the child, he shall without any delay record such opinion and forward the juvenile or the child and the record of the proceedings to the competent authority having jurisdiction over the proceeding.

The competent authority to which the proceeding is forwarded shall hold the enquiry as if the juvenile or the child had originally been brought before it.\(^78\)

Any State Government may establish and maintain either by itself or under an agreement with voluntary organizations, observation homes in every district or a group of districts, as may be required for the temporary reception of any juvenile in conflict with law during the pendency of any enquiry regarding them.

Where the State Government is of opinion that any institution other than a home established or maintained, is fit for the temporary reception of juvenile in conflict with law during the pendency of any enquiry regarding them under this Act, it may certify such institution as an observation home.

The State Government may provide for the management of observation homes, including the standards and various types of services to be provided by them for rehabilitation and social integration of a juvenile and the circumstances under which and the manner in which, the certification of an observation home may be granted or withdrawn.\(^79\)

Every juvenile who is not placed under the charge of parent or guardian and is sent to an observation home shall be initially kept in a reception unit of the observation home for preliminary inquiries, care and classification for juvenile according to his age group, such as seven to twelve years, twelve to sixteen years and sixteen to eighteen years, giving due considerations to physical and mental

\(^{77}\) See, Ibid, Sec.6
\(^{78}\) See, Ibid, Sec.7
\(^{79}\) See, Ibid, Sec.8(3)
status and degree of the offence committed, for further induction into observation home\textsuperscript{80}.

Any State Government may establish and maintain either by itself or under an agreement with voluntary organizations, special homes in every district or a group of districts, as may be required for reception and rehabilitation of juvenile in conflict with law.

Where the State Government is of opinion that any institution other than a home established or maintained, is fit for the reception of juvenile in conflict with law to be sent there, it may certify such institution as a special home.

The State Government may, provide for the management of special homes including the standards and various types of services to be provided by them which are necessary for re-socialization of a juvenile and the circumstances under which and the manner in which, the certification of a special home may be granted or withdrawn.

The rules may also provide for the classification and separation of juvenile in conflict with law on the basis of age and the nature of offences committed by them and his mental and physical status\textsuperscript{81}.

Any person in whose charge a juvenile is placed in pursuance of the juvenile Justice Act shall, while the order is in force have the control over the juvenile as he would have if he were his parents and shall be responsible for his maintenance and the juvenile shall continue in his charge for the period stated by competent authority, notwithstanding that he is claimed by his parents or any other person\textsuperscript{82}.

When any person accused of a bail-able or non-bail-able offence and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

\textsuperscript{80} See, Ibid, Sec. 8(3)
\textsuperscript{81} See, Ibid, Sec. 9
\textsuperscript{82} See, Ibid, Sec.11
When such person having been arrested is not released on bail by the officer in charge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

When such person is not released on bail by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.\(^{83}\)

Where a juvenile is arrested, the officer in charge of the police station or the special juvenile police unit to which the juvenile is brought shall, as soon as may be after the arrest, inform\(^{84}\) (1) The parent or guardian of the juvenile, if he can be found of such arrest and direct him to be present at the Board before which the juvenile will appear and (2) The probation officer of such arrest to enable him to obtain information regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry.

Where a juvenile having been charged with the offence is produced before a Board, the Board shall hold the enquiry in accordance with the provisions of this Act and may make such order in relation to the juvenile it deems fit; Provided that an enquiry shall be completed within a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.\(^{85}\)

Where a Board is satisfied on enquiry 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 it thinks so fit\(^{86}\).

- Allow the juvenile to go home after advice or admonition following appropriate inquiry against and counseling to the parent or guardian and the juvenile;
- Direct the juvenile to participate in group counseling and similar activities;
- Order the juvenile to perform community service;

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\(^{83}\) See, Ibid, Sec .12
\(^{84}\) See, Ibid, Sec. 13
\(^{85}\) See, Ibid, Sec. 14
\(^{86}\) See, Ibid, Sec. 15(1)
• Order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;
• Direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;
• Direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;
• Make an order directing the juvenile to be sent to a special home:
  a) In the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;
  b) In case of any other juvenile for the period until he ceases to be a juvenile.
  Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognized voluntary organization or otherwise and shall take into consideration the findings of such report before passing an order.

Where an order is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law. Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the Juvenile was placed is not longer able or willing to ensure the good behaviour and well-being of the juvenile, it may, after making such
enquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.\(^{87}\)

The board shall while making a supervision order, explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any the probation officer.\(^{88}\)

Notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge without warrant of a juvenile in conflict with law who has escaped from a special home or an observation home or from the care of a person under whom he was placed and shall be sent back to the special home or the observation home or that person, as the case may be and no proceeding shall be instituted in respect of the juvenile by reason of such escape, but the special home or the observation home or the person may, after giving the information to the Board which passed the order in respect of the juvenile, take such steps in respect of the juvenile as may be seemed necessary.\(^{89}\)

Whoever, having the actual charge of or control over a juvenile or the child, assaults, abandons, exposes or willfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months or fine or with both.\(^{90}\)

Whoever, employs or uses any juvenile or the child for the purpose or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

Whoever, having the actual charge of or control over a juvenile or the child abets the commission of the offence punishable, shall be punishable with

\(^{87}\)See, Ibid, Sec. 15(3)

\(^{88}\)See, Ibid, Sec. 15(4)

\(^{89}\)See, Ibid, Sec. 22

\(^{90}\)See, Ibid, Sec. 23
imprisonment for a term which may extend to one year and shall also be liable to fine\textsuperscript{91}.

The State Government may, by notification in official Gazette, constitute for every district or group of districts specified in the notification, one or more child welfare committees for exercising the powers and discharge the duties conferred on such committees in relation to child in need of care and protection\textsuperscript{92}.

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 qualification of the Chairperson and the members and the tenure for which they may be appointed shall be such as may be prescribed\textsuperscript{93}.

The Committee shall function as a Bench of Magistrate and shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or as the case may be, a Judicial Magistrate of the first class.

The Committee shall make at such time and shall observe such rules of procedure in regard to the transition of business at its meetings, as may be prescribed.

A child in need of care and protection may be produced before an individual member for being placed in safe custody or otherwise when the Committee is not in session.

In the event of any difference of opinion among the members of the Committee at the time of any interim decision, the opinion of the majority shall prevail but where there is no such majority the opinion of the Chairperson shall prevail.

The Committee may act, notwithstanding the absence of any member of the Committee and no order made by the Committee shall be invalid by reason only of the absence of any member during any stage of the proceeding\textsuperscript{94}.

The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.

\textsuperscript{91} See, Ibid, Sec. 24
\textsuperscript{92} See, Ibid, Sec. 29(1)
\textsuperscript{93} See, Ibid, Sec. 29(3)
\textsuperscript{94} See, Ibid, Sec. 30
Where a Committee has been constituted for any area, such Committee shall, notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided have the power to deal exclusively with all proceedings relating to children in need of care and protection.  

Any child in need of care and protection may be produced before the Committee by one of the following persons:

a) Any police officer or special juvenile police unit or a designated police officer;

b) Any public servant;

c) Child line, a registered voluntary organization or by such other voluntary organization or any agency as may be recognized by the State Government;

d) Any social worker or a public spirited citizen authorized by State Government or

e) By the child himself.

The State Government may make rules provided for the manner of making the report to the police and to the Committee and the manner of sending and entrusting the child to children’s home pending the enquiry.

The Committee or any police officer or special juvenile police unit or the designated police officer shall hold an enquiry, may pass an order to send the child to the children’s home for speedy enquiry by a social worker or child welfare officer, on its own or on the report from any person.

The enquiry shall be completed within four months of the receipt of the order or within such shorter period as may be fixed by the Committee. Provided that the time for the submission of the enquiry report may be extended by such period as the Committee may, having regarded to the circumstances and for the reasons recorded in writing determine.

After the completion of the enquiry if the Committee is of the opinion that, said child has no family or ostensible support, it may allow the child to remain in the

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95 See, Ibid, Sec. 31  
96 See, Ibid, Sec.32
children’s home or shelter home till suitable rehabilitation is found for him or till he attains the age of eighteen years.\footnote{97}{See, Ibid, sec.33}

The State Government may establish and maintain either by itself or in association with the voluntary organizations children’s homes in every district or group of districts, as the case may be, for the reception of child in need of care and protection during the pendency of any enquiry and subsequently for their care, treatment, education, training, development and rehabilitation.

The State Government may, by rules made under this Act, provide for the management of children’s homes including the standards and the nature of services to be provided by them and the circumstances under which and the manner in which, the certification of a children’s home or recognition to a voluntary organization may be granted or withdrawn.\footnote{98}{See, Ibid, Sec. 34}

The State Government may appoint inspection committees for the children’s homes (hereinafter referred to as the inspection committees) for the State, a district and city, as the case may be, for such period and for such purposes as may be prescribed.

The inspection committee of a State, district or of a city shall consist of such number of representatives from the State Government, local authority, Committee, voluntary organizations and such other medical experts and social workers as may be prescribed.\footnote{99}{See, Ibid, Sec. 35}

The re-habilitation and social re-integration of a child shall begin during the stay of the child in children’s home or special home and the rehabilitation and social reintegration of children shall be carried out alternatively by:\footnote{100}{See, Ibid, Sec.40}

\begin{itemize}
  \item [a)] Adoption,
  \item [b)] Foster care,
  \item [c)] Sponsorship, and
  \item [d)] Sending the child to an after-care organization.
\end{itemize}

The primary responsibility for providing care and protection to children shall be that of his family.
Adoption shall be resorted for the rehabilitation of such children as are orphaned, abandoned, neglected and abused through institutional and non-institutional methods.

Keeping in view the provisions of the various guidelines for adoption issued from time to time by the State Government, the Board shall be empowered to give children in adoption and carry out such investigations as are required for giving children in adoption in accordance with the guidelines issued by the State Government from time to time in this regard.

The children’s homes or the State Government run institutions for orphans shall be recognized as an adoption agencies both the scrutiny and placement of such children for adoption in accordance with the guidelines101.

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 child102.

G) **Sum-up**

The modern criminal jurisprudence has recognized that no one is a born criminal and many crimes are the product of socio-economic conditions and compulsions. Although, not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of younger offenders, not guilty of very serious offences and of preventing their association with habitual and incorrigible offenders, who have taken to crime as a profession for their existence, on whom reformative theory of punishment has absolutely no impact. The modern reformative theory of criminal justice system makes a psycho-analytical study of the social background and economic status of the criminal and takes punishment as a means to a social end and the emphasis is that punishment is not an end in itself, but as a means to an end. Reform the criminal and not punish him is the consensus of the opinion of the modern criminologists all over the world.

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101 See, Ibid, Sec.41(4)
102 See, Ibid, Sec. 45