

**ENFORCING CHILD LAWS AND JUVENILE JUSTICE
IN GOA**

A Thesis

**Submitted to Goa University
for the Award of the Degree of**

**DOCTOR OF PHILOSOPHY
IN
LAW**

By

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Research Guide

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**Goa University,
Taleigao, Goa
May 2013**

DECLARATION

I hereby declare that this thesis titled, **“ENFORCING CHILD LAWS AND JUVENILE JUSTICE IN GOA”** submitted for the award of the **Degree of Doctor of Philosophy in Law**, to Goa University, Panaji, is an original research work done by me.

I also hereby declare that this thesis or any part of it has not been submitted to any other University for the award of any Degree or Diploma or Fellowship.

Date:

Ranjana Beverly Ferrão

Place: Panaji

CERTIFICATE

This is to certify that the thesis titled, “**ENFORCING CHILD LAWS AND JUVENILE JUSTICE IN GOA**” submitted for the award of the Degree of Doctor of Philosophy in Law, is a record of the research work done by Ms. Ranjana Beverly Ferrão under my guidance and supervision during 2011 - 2013.

I certify that this is a *bonafide* work of **Ms. Ranjana Beverly Ferrão**.

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ABBREVIATIONS

- | | | |
|-----|---|---|
| 1. | AIHC | All India High Court Cases |
| 2. | ALLMR | All Maharashtra Law Reporter |
| 3. | BomCR | Bombay Cases Reporter |
| 4. | BomCR(Cri) | Bombay Cases Reporter (Criminal) |
| 5. | BomCRSupp | Bombay Cases Reporter(Supp) |
| 6. | BOMLR | Bombay Law Reporter |
| 7. | CriLJ | Criminal Law Journal |
| 8. | ILR | Indian Law Reports |
| 9. | SCC | Supreme Court Cases |
| 10. | SCC (Supp) | Supreme Court Cases (Supp) |
| 11. | Asian Am. L.J | Asian American Law Journal |
| 12. | Barry L. Rev | Barry Law Review |
| 13. | Campbell L. Rev. | Campbell Law Review |
| 14. | Elder L.J | Elder Law Journal |
| 15. | Emory L.J. | Emory Law Journal |
| 16. | Hum. Rts. &
Globalization L.
Rev. | Human Rights & Globalization Law Review |
| 17. | Hum. Rts. Q | Human Rights Quarterly |
| 18. | How. L.J | Howard Law Journal |
| 19. | J. Crim. L. &
Criminology | Journal of Criminal Law and Criminology |

- | | | |
|-----|--------------------------|---------------------------------------|
| 20. | J. Transnat'l L. & Pol'y | Journal of Transnational Law & Policy |
| 21. | J.L. Soc'y | Journal of Law in Society |
| 22. | La. L. Rev | Louisiana Law Review |
| 23. | Mich. St. L. Rev | Michigan State Law Review |
| 24. | Mont. L. Rev. | Montana Law Review |
| 25. | Nev. L.J. | Nevada Law Journal |
| 26. | New Crim. L. Rev | New Criminal Law Review |
| 27. | NYU J.L. & Liberty | NYU Journal of Law & Liberty |
| 28. | Tul. L. Rev | Tulane Law Review |
| 29. | U. Pa. L. Rev | University of Pennsylvania Law Review |
| 30. | Vand. L. Rev. | Vanderbilt Law Review |
| 31. | Wash. U. L.Q | Washington University Law Quarterly |
| 32. | Yale L.J. | Yale Law Journal |

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15. Milap Singh v. State of U.P, (2000) Cri LJ 3059 (All)
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30. State of Punjab v. Gurmit Singh AIR 1996 SC 1393(1399)
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The Arms Act, 1959 Act no Act No. 54 OF 1959

The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 Act No.
32 Of 1966

The Bombay Children Act, 1948 Bom LXXI of 1948

The Borstal School Act, 1928 Act No. I of 1928

The Central Children's Act, 1960 Act No. 60 of 1960

The Children (Pledging Of Labour) Act, 1933 Act No. 2 of 1933

The Code of Criminal Procedure 1973 Act No. 2 of 1974

The Employment of Children Act, 1938 Act No 26 of 1938

The Factories Act, 1948 Act No 63 of 1948

The Goa Children's (Amendment) Act, 2004 Goa Act No. 12 of 2004

The Goa Children's (Court) Rules, 2004

The Goa Children's Act, 2003 Act 18 of 2003

The Goa Children's Act, 2005 Goa Act No. 20 of 2005

The Goa, Daman and Diu Shops and Establishments Act, 1973 Act No. 13 of
1974

The Indian Evidence Act, 1872 Act No. 1 of 1872

The Juveniles Justice (Care and Protection of Children) Act 2000 Act No 56 of
2000

The Merchant Shipping Act, 1958 Act No. 44 of 1958

The Mines Act, 1952 Act No. 35 of 1952

The Motor Transport Workers Act, 1961 Act No. 27 of 1961

The Narcotic Drugs and Psychotropic Substances Act, 1985 Act No. 61 of 1985

The Oaths Act, 1969 Act No. 44 of 1969

The Plantation Labour Act, 1951 Act No. LXIX of 1951

The Police Act, 1861 Act No 5 of 1861

The Prisons Act, 1894 Act No. 9 of 1894

The Probation of Offenders Act, 1958 Act No. 20 of 1958

The Reformatory Schools Act, 1897 Act VIII of 1897

The Schedule Caste and Schedule Tribes prevention of Atrocities Act, 1989 Act No 33 of 1989

The Vagrancy Act, 1943 Act No 3 of 1943

The Vagrancy Act, 1943 Act No 7 of 1943

The Whipping Act, 1864 Act No. VI of 1864

1. Introduction

“We owe our children the most vulnerable citizens in any society a life free from violence and fear.”¹”

Children are a supremely important national asset. The future and the well being of a nation depend on how its children grow and develop.² The importance of the child lies in the fact that the child is the universe. If there was no child there would be no humanity and there cannot be a universe without humanity.³ The French Delegate⁴ to the Commission on Human Rights believed that ‘the child was not in a position to exercise his own rights. Adults exercised them for the child and in doing so were subject to certain obligations. Thus it could be said that the child has a special status resulting from its inability to exercise his right.’⁵

Social justice must begin with children.⁶ Just like young plants a child which takes root in the environment where it is placed. However good the breed, if the seedling is placed in the wrong setting or an unwarranted place there would not be desired growth. Such is the position with the human child.⁷ Hence the first priority in the scale of justice is welfare of children.

¹Nelson Mandela

²153rd Law Commission of India on “Inter-Country Adoption Ministry of Law, Justice and Company Affairs,” Government of India, (1994), p.1

³Sud, K.K. *Child Rights*, Indian Society of International Law, New Delhi p.2

⁴In 1959

⁵Veerman, P. *The Rights of the Child and the Changing Image of Childhood*, Dordrecht : Martinus Nijhoff, p.465

⁶Justice K. Subba Rao

⁷Rao S. K., *Social Justice and Law*, National publishing House, Delhi, 1974 p.4

Children are a human resource, invaluable but vulnerable yet developing with a potentiality to bloom with joy in an atmosphere of a caring society.⁸ The economic and social systems existing in the modern world have been largely responsible for the utter neglect and the callous indifference of families. Societies and the government itself have further aggravated the problem of protecting the child. Abandoning the child and excluding it a good foundation of life is a crime against humanity.⁹ Every disadvantaged child bears witness to a moral offense the failure to secure her or his right to survive, thrive and participate in society.¹⁰

1.1 Defining a Child

The primary definition of child is the immediate progeny of human parents.¹¹ The commonly understood meaning of a child refers to parentage and embraces only the first generation offspring.¹² Black's law dictionary defines the term 'child' as progeny, offspring of parentage. Commonly it implies one who has not attained fourteen years though this meaning varies in various statutes. The Shorter Oxford Dictionary defines 'person' in two ways an individual human being or a man, woman and child.

According to the United Nations Convention on the Rights of the Child, 1989 a child means every human being below the age of eighteen years unless under

⁸Rabindranath Tagore cited in Swapan Kumar. See Sinha, *Child Labour in Calcutta: A Sociological study*, Naya Prakash, Calcutta 1991 at p.40

⁹As per Ramaswamy, J. in *Gaurav Jain .V. Union of India* (1997)8SCC 114: AI 1997 SC 3021

¹⁰Bhat P. I. *Law and Social Transformation* Eastern Book Company, Lucknow, 1st edition, 2012 p.606

¹¹In re Bryants Will, 110 N.Y.S Ed. 485, 487 (1952) See Child/ Children, West Words and phrases, Vol. 7 (1952) p.4

¹²*New York Life Insurance co. vs. Beebe*, D.C. Md. 57 F p. 754, 757 (1944)

the law applicable to the child, majority is attained earlier.¹³ Most countries have ratified the Convention of the Rights of the Child. The term 'child' is therefore understood with reference to the age of the person. Under Indian laws the definition of 'child' varies with the purpose.¹⁴

1.2. Categorization of Child

Children are known by various terms. Terms like 'runaway child', 'neglected child', 'street child', 'surrendered child', 'working child', 'slum child', 'destitute child', are some terms used in reference to a child particularly those that are thought of as likely to offend.¹⁵ Children land on the streets either due to poverty or abuse or neglect by parents or due to other reasons. Such children are exposed to future forms of victimization or eventually turn into delinquents.¹⁶ Such conceptual distinction is a result of the interactions of the child in contextual, individual and situational factors.¹⁷

1.2. 1. Runaway Child

A 'runaway child' is a minor who is reported missing because his\her whereabouts are unknown to the child's legal custodian. The circumstances of whose absence indicate that the child voluntarily left the care and control of his legal custodian without the custodian's consent and without intent to return.¹⁸ In

¹³See Article 1 of the Convention on the Rights of the Child

¹⁴Chapter 2 deals comprehensively on age and ideology relating to age on child in India

¹⁵Franklin, B. *The New Handbook of Children's Rights Comparative policy and practice*, Routledge Group, England p.55

¹⁶Chockalingam, K. and Gupta, M.C. and Roy, J.G. *Child Victims of Crime Problems and Perspectives*, Gyan Publishing House, New Delhi, 2001, p.16

¹⁷Rolf, L. and Farrington, D. *Serious and Violent Juvenile Offenders*, Sage Publication Inc, 1998

¹⁸<http://definitions.uslegal.com/r/runaway/> accessed on 25/1/2013

India National Human Rights Commission in its report¹⁹ on missing children identified such a missing child as a category that encompasses a runaway child who has left home and gave no notice about its whereabouts. It could be lost and separated child; kidnapped child or child abducted or lured away by an acquaintance, stranger or organized gang of criminals; trafficked child who is sold for various exploitative purposes; child who is sold, abandoned or who had its life ended by a parent or lawful custodian unknown to the other parent, who considers it missing.²⁰

1.2.2. Neglected Child

Child neglect²¹ "is the presence of certain deficiencies in caretaker obligations²² that harm the child's psychological and/or physical health."²³ A neglected child is one who does not get the required attention from the parents for the proper development. However, the above definition has to be understood in a given social and cultural context because of the cultural variations in standards of care.²⁴

¹⁹ NHRC, Report of the NHRC committee on Missing Children] available at <http://nhrc.nic.in/2007>, accessed on 22/7/2012

²⁰ Nayak, N. *Justice For Children A Handbook on Implementing The Juvenile Justice(Care and Protection of Children) Act, 2000*, Puliani and Puliani, 2nd ed, 2009 p.74-75

²¹ According to National Research Council (1993)

²² Usually on the part of the parents, although neglect can also be found in residential centers or foster care homes

²³ Levinson D. *Encyclopaedia of Crime and Punishment*, Volume 1, Sage Publications Inc, California, 1947, p.187

²⁴ A study done on the National Incidence and Prevalence of Child Abuse and Neglect identified four different dimensions of neglect namely physical neglect, inadequate supervision, emotional neglect and educational neglect (National Clearinghouse on Child Abuse and Neglect Information, 2001). Available at <http://www.childlineindia.org.in/pdf/Missing-Children.pdf> accessed on 12/7 /2012

1.2.3. Street Child

The term 'street child' is actually a rubic term that covers different kind of children in different circumstances. According to the U.N High Commissioner for Human Rights, India has the highest number of street children in the world.²⁵ Street child is a boy or girl under the age of 18 for whom 'the street'²⁶ has become a home and its source of livelihood, and who is inadequately protected or supervised.²⁷

U.S AID has divided a Street Child into four categories. 'Child of the Streets' is a child who has no home but the streets, and no family support. It moves from place to place, living in shelters and abandoned buildings. A 'Child on the street' is a child who visits its family regularly and might even return every night to sleep at home, but spends most days and some nights on the street because of poverty, overcrowding, sexual or physical abuse at home.²⁸ 'Part of a Street family' is a child who lives on sidewalks or city squares with the rest of its family.²⁹ It could be displaced due to poverty, wars, or natural disasters. 'Child in Institutionalized Care', a child enters an institution when it is without a home and is at a risk of returning to a life on the street.³⁰

²⁵ <http://gvnet.com/streetchildren/India.htm> accessed on 25/2/2013

²⁶ including unoccupied dwellings and wasteland

²⁷ Aggarwal, H. *Social Deviance among street children in metropolitan city of Delhi*, The Indian Journal of Criminology and Criminalistics Volume XXX Issue No, 2 & 3 May to Dec 2009.

²⁸ Kumar, A. *Fundamentals of Child Rights Concepts, Issues and Challenges* Volume 1, Laxmi Shikshan Sansthan, Lucknow and Anmol Publications Pvt. Ltd, New Delhi, 2002 p.58

²⁹ Dr.Rao,L.G. *Street Children –The problems and Causes* Journal of the Institute of human Rights Vol.VII, June 2004 No.1 p.84-85

³⁰ Aimpoor, J. *Street Children Of Madras: A Situational Analysis*. Noida; National Labour Institute (Child Labour Cell).The Indian Journal Of Criminology & Criminalistics Volume Xxx. Issue No. 2 & 3 May To Dec.-2009 p 136- 139 p.11

UNICEF has defined three types of street children as Street Living, Street Working, and Street Family. ‘Street Living Child’ is a child who has run away from its family and lives alone on the streets. ‘Street Working Child’ is a child who spends most of its time on the streets, fending for itself, but returning home on a regular basis. ‘Child from Street Family’ is a child who lives on the streets with its family.³¹

1.2.4. Surrendered Child

A surrendered Child is a child who is “given up or given away” on account of physical, emotional and social factors beyond the control of the biological parent or guardian.³² A surrendered child is a child who has been declared as such after due process of inquiry by the Child Welfare Committee. A surrendered child could be any child born as a consequence of non-consensual relationship; born of an unwed mother or out of wedlock; a child in whose case one of the biological parents is dead and the living parent is incapacitated to take care; a child where the parents or guardians are compelled to relinquish him due to physical, emotional and social factors beyond their control.³³

³¹See Supra 28; Kumar, A. *Fundamentals of Child Rights Concepts, Issues and Challenges* Volume 1, Laxmi Shikshan Sansthan, Lucknow and Anmol Publications Pvt. Ltd, New Delhi, 2002 p.58
also See http://www.unicef.org/india/child_protection_833.htm

³² Kant, R. *Standard Operating Procedures of Child Welfare Committees*, Women and Child Development, Government of Odisha, 2012 p.35

³³ Chatteraj B.N., *Juvenile Delinquency in India: Children in difficult circumstances*, Social Work Research Institute, Tokyo, Japan, 1986 p.65

1.2.5. Working Child

There are two components to the term child labour they are 'child' and 'labour'.³⁴ Child is a term referring to chronological age and labour refers to nature, quantum and income generating activity.³⁵ A working child is one who falls within 5-14 years of age who are at remunerative work maybe paid or unpaid and is busy any hours of the day within and outside the family.³⁶

1.2.6. Slum Child

Slum child is one who is living in a place of poor housing, overcrowded and unhygienic atmosphere. In slum areas no basic amenities are provided and majority of the people belong to lower socio-economic strata.³⁷

1.2.7. Destitute Child

Destitute child is an orphan who neither has parents nor any near relative. Such a child is deprived of family life, schooling and community life. An abandoned child means unaccompanied and deserted child who is declared abandoned after due inquiry.³⁸ An orphan means a child who is without parents or willing and capable legal or natural guardian.³⁹

³⁴ Child labour is synonym with the term 'working child' or 'employed child'.

³⁵ Kumar, D. *Child Labour A Social Threat*, Intellectual Book Bureau, Bhopal, 2006

³⁶ Dr. Padhi, P.K. *Child Labour :Retrospect & Prospect*, Laxmi Offset, Cuttack, p.3

³⁷ *Standard Operating Procedures (SOPs)for Child Welfare Committee (CWC)*, Department of Women and Child, Government of Maharashtra, 2009 p.45

³⁸ See Section 2(a) The Juvenile Justice (Care and protection of Children) Rules, 2007

³⁹ See Section 2(k) *ibid*

1.3. Actors in a Child's Life

'Children are the citizens of the future era,'⁴⁰ the proper bringing up of children and giving them proper training ensures that they turn out to be good citizens.⁴¹ Environment plays an important role in developing their personality which could also lead to causation of crime among children. The term 'environment' includes home, school and all associates that a child meets during its life.⁴² The two important actors in the child's life are its parents and the state. The family exercises a huge influence on the child and crime. Secondly the society as a whole has a huge impact on youth crime.⁴³ The neglect of child by its parents, family and society can create detrimental effect on the physical, mental growth and over all development.⁴⁴

1.3.1. Role of Parents

Childcare is basically the responsibility of the parents. The family nurtures the child and makes him/her what he/she ought to be.⁴⁵ During the formative years a child does not have the concept of right and wrong unless the parents train it in that direction.⁴⁶ Every child is not fortunate to have a happy family due to

⁴⁰Justice Bhagati and Chowdhary R, *Judicial Reflections Justice Bhagwati*, Eastern Book Company, 2002.

⁴¹*Sheela Barse V The Secretary Children's Aid Society* (1987)3 SCC 8

⁴²Justice Chakrabarti, N.K. *Juvenile Justice In the Administration of Criminal Justice*, Deep & Deep Publications, New Delhi, 1999 p.37

⁴³Grewal, R.S. Affluence and Youth Crime, *Indian Journal of Criminology and Criminalistics*, Jan –Jun , 1995, 16 p.19

⁴⁴Haque, N. *Juvenile Justice System and Extent of Juvenile Delinquency in India*, National Capital Law Journal, Vol.XII-XIII, 2007 -2008 p.202

⁴⁵Dr. Ashok, *Child and the Law*, Sudha Publications, Mysore , 2006 p.2

⁴⁶Supra 27 p.3-5

various reasons. They may be dead, or alcoholic, or violent and abusive, or in jail, or lost, or have abandoned their child.

1.3.2. Parental Obligation

Parental support is a moral obligation and not legally enforceable.⁴⁷ This can be interpreted broadly to include the provisions of physical care and proper upbringing.⁴⁸ The mother is legally obliged to maintain her legitimate and illegitimate children.⁴⁹ Step parents also have duty to maintain step children. Determining paternity is an integral part of enforcing father's duty to support the child.

Parents have to provide food, clothing, shelter and necessary medical care and education. Parents who fail to provide essential care may be removed from the home. This obligation is enforceable by a court order, those parents without permission have a limited right to visit their children.⁵⁰ Courts have power to appoint guardians whenever there is a dispute and the endeavour is to see that the child is brought up in the same manner as its natural parents.⁵¹ A guardian stands in a fiduciary relation to his ward.⁵² In appointing a guardian for the

⁴⁷The rights of parents have not been set out in any statute

⁴⁸Matrimonial Clauses Act 1973, Chapter 18 S. 41 (5)

⁴⁹ Diwan, P. *Law of Adoption, Minority Guaridanship and Custody* Allahabad Law Agency Lucknow, 1993 p.65

⁵⁰Henry Maine, *Ancient Law*, Cambridge University Press(1930) p. 208-10 (1930) p 208-10

⁵¹Hastings, C.G. *Letting Down their Guard : What Guardians Ad Litem should knoe about Domestic Violence in Child Custody Disputes*, Boston College of Third World Law Journal, Vol. XXIV, Spring 2004. No. 2

⁵²See Section 20 *The Guardians And Wards Act, 1890* Act No. 8 of Year 1890, dated 21st. March, 1890

minor the courts are guided by the principle of welfare of the minor. If a parent is denied of the right to custody they can file a writ of habeas corpus.⁵³

Parents have a right to correct their children.⁵⁴ Parents may consent to medical or dental treatment of their children. But a child younger than sixteen can give effective consent to the carrying out of medical treatment if it is capable of understanding the nature of the treatment.⁵⁵ Parents have the right to veto the issue of a passport to a child under eighteen and to give consent to emigration. Parents have the power to appoint guardians to act upon their death. Parents have the right and duty to represent the child in legal proceedings.⁵⁶

In India the Supreme Court observed in Rosy Jacob's case 'children neither are mere chattels nor are they playthings for their parents. Absolute rights of parents over the destinies and the lives of their children has in modern times changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the supra society.'⁵⁷

1.3.3. Role of State

When the child is not a member of any family the king was the supreme guardian who protected all such children.⁵⁸ This principle of recognizing the

⁵³Supra 52

⁵⁴Pappas, A.M, *Law and the Status of the Child*, United Nations Institute for Training and Research, New York, 1983 p.19

⁵⁵*T.M.A Pai .V. State of Karnataka* AIR 2003 SC 355; Also See Dr. Pandey, J.N. *The Constitutional Law of India*, Central Law Agency, Allahabad, 47th e.d 2010. P.268

⁵⁶Supra 33

⁵⁷*Rosy Jacob .v. Jacob A. Chakramakkal* (1973) 1 SCC 840: AIR 1973 SC 2090

⁵⁸D. Laxmi, *Encyclopedia of Child and Family Welfare*, Vol.3 Anmol Publications p.139

king was known as '*parens patriae*' or as father of the country who exercised his powers of guardianship where family failed. This doctrine of '*parens patriae*' has been responsible for the child's upbringing. Today the basis of juvenile justice courts is the concept of *parens patriae*.⁵⁹

This principle is also recognized by the Indian Constitution. Hence the state is liable for the welfare of the citizens which includes children. The state uses the concept of guardian *ad litem* to protect child whose parental rights are questioned.⁶⁰ If a child has committed an offence then the child is placed in the care of a fit institution or a state observation home which is generally run by the State.⁶¹

The cherished Constitutional ideal of equality and justice to the child is the *sine qua non* of creation of a child friendly society. The states can enact laws on local and special subjects. To ensure justice the criminal justice system has four important components in India, namely, the Investigating Agency i.e police, the Judiciary, the Prosecution Wing and the Prison and Correctional Services. In many cases the State exerts force in response to child behaviour contrary to the criminal law. State interference also represses non-criminal behaviour in children like running away, breaking disciplinary rules, breaking curfews and rude behaviour. In the field of Juvenile Justice the State is responsible for violations of children's rights at the hands of state. State has the responsibility of protecting the life, limb and property of the subjects and failure should be

⁵⁹A. Morris and H. Giller , *Understanding Juvenile Justice*, Croom Helm Limited, New York, 1987 p.12

⁶⁰Supra 50

⁶¹ See Section of Juvenile Justice (Care and Protection of Children) Act, 2000

made good by compensatory system.⁶² Rendering justice to victims consists in recognizing and protecting victim's rights. The object of the criminal justice system can be well summed up in the words of Justice Venkatachaliah, 'If imprisonment is intended to reform the person when he comes out the system it is a dismal failure. He goes into the prison as an undergraduate in crime and comes out perhaps as a post-graduate in crime.'⁶³

1.4. Reasons for engendering a child in Conflict and in Contact with the Law

The 'child in conflict with the law' and a child who comes in 'contact with law' is a victim of socio-economic hardship.⁶⁴ 'Delinquency' is a term used for a child who comes in contact with law, is not a disease⁶⁵ but a phenomenon of anti-social behaviour. Some trigger factors could be delinquent gangs in the school, lack of educational facilities, and recreational facilities, unhealthy and uncongenial conditions at the place of work like maybe working at a roadside hotel.⁶⁶ The reasons for engendering conflicts between a child and the law could also be poverty, family breakdown, single parent families, reconstructed families, peer pressure, lack of education, unemployment, or absence of

⁶²Dhirajlal and Ratanlal, *The Code of Criminal Procedure*, 20th ed, 2005, p.133

⁶³Gaur, K.D. *Human Rights of Detainees and Prisoners, Suggestions for Prison Reform* in K.D. Gaur Criminal Law and Criminology Deep and Deep Publications New Delhi 2003 at p.361, 373

⁶⁴http://www.childsrightrights.org/html/documents/themes/juvenile_justice_en.pdf

⁶⁵ Gupta, S. *Juvenile Delinquency Versus Juvenile Justice System*, Social Defense, July, 1992 p.20-21

⁶⁶Dr. Lata, S. and Dr Kant. A., *Child and the Law*, APH publishing Corporation, New Delhi, 2009 p.161- 163

vocational perspectives, flawed guidance from parents and even neglect by parents where the child comes in conflict with the law.⁶⁷

1.4.1. Poverty

The child is dependent on others it enters or avoids poverty by virtue of their family's economic circumstances. A Child who lives in extreme poverty or who lives below the poverty line for multiple years may suffer the worst outcomes.⁶⁸ Such a child could end up being a street child.⁶⁹ Poverty exercises an adverse influence on the health and nutrition status of the child. Poverty deprives them of the right to education, health, shelter, care and protection.⁷⁰ Such a child could miss education or may be educated for only a few years. Many of them have to start working at an early age. Some are forced to take to the streets and make them their living place, in the hope to survive.⁷¹ Such an abandoned, neglected or poverty-stricken child becomes the targets of criminal organisations, which expose them to sexual exploitation, child trafficking, and involvement in the drug trade. The extent of poverty varies considerably between the states in India. Data from the Planning Commission with regard to the number and percentage of population below poverty line in states shows that in the year 2004- 2005, among the bigger States, Orissa had

⁶⁷ Pinto, J. & Billimoria, J. *National Initiative for Child Protection (NICP) A Resource Book*, JAK Printers p.59

⁶⁸ The Future of Children, Children and Poverty Vol.7 No.2 Fall – Winter available at http://www.princeton.edu/futureofchildren/publications/docs/07_02_03.pdf

⁶⁹ Pinheiro, P.S. *World Report on Violence Against Children*, United Nations Secretariat, October 2006, p.228

⁷⁰ Naikar, L.D. *The Law Relating to Human Rights, Global, Regional and National*, Puliani and Puliani, 2004 p.573

⁷¹ Jaamdar, S.M. *Poverty alleviation programmes: A Case for their extension to juvenile justice institute*, Social Defence, 1995, January, p.24-36

the largest percentage of population below the poverty line which was 57.2%, followed by Bihar which was 54.4%.⁷² While the All India percentage of population below poverty line is 37.2%. The greater the degrees of poverty the higher the risk of falling prey to offences such as trafficking among others.

1.4.2. Sexual Discrimination

The birth of the daughter was dreaded in the Hindu tradition. The daughter was regarded as the root cause of all misery and the source of unending trouble.⁷³

The society has been indifferent, if not overtly hostile, to the developmental fate of girls. Indian tradition conferred inferior status to girl child. The son was preferred and most of the hereditary rights like right to property were passed on to the son. Besides the son was capable of performing religious ceremonies, while girls were denied rights to perform these religious ceremonies.⁷⁴

The low status accorded to the girl child was perhaps one of the reasons for the prevalence of female infanticide in traditional India which continues to exist even today.⁷⁵ Though this is a barbarous practise but for some people it is a cherished tradition.⁷⁶ This heinous practice followed in districts like North Arcot, Madurai and Salem, of Tamil Naidu⁷⁷ and in Rajasthan. The practise here is paddy (rice with its husk) is soaked in milk or the poisonous sap of the

⁷² http://planningcommission.nic.in/data/datatable/0904/comp_data0904.pdf accessed on 7/1/2012

⁷³ Sreenivasa, H.V. M. *History of India Part I* for Law Students National Law School of India, Bar Council of India Trust Eastern Book Company, 1997, p.250

⁷⁴ Mehta, J.L. *Advanced Study in the History of Medieval India and Culture*, Sterling Publishers Pvt Ltd, 1999, p. 271

⁷⁵ Srinivas, M.N. *Marriage and Family in Mysore*, New Book Co, Bombay, 1942, p.195

⁷⁶ Pande, B.B. *Children, Violence and Human Rights* Journal of the National Human Rights Commission 7(2008) , p.71-74

⁷⁷ Aravamudan, G. *The Killing fields: female infanticide*, Kottavam, Week 3 April 1994,

calotropis plant is used to feed the baby to suppress the baby's cries of hunger immediately after birth. Most of the killings of infant girls are committed by a senior woman in the family, usually the paternal grandmother, and in a few areas by traditional birth attendants. In some places the infant is fed with oleander shrub, mixed with castor oil to make a poisonous portion.⁷⁸ Some are fed dry, unhulled rice that punctured the child's windpipes, or the child is made to swallow poisonous powdered fertilizer. Some children are smothered with a wet towel, strangled or allowed to starve to death. Sometimes the mother is made to consume foods which create heat at the time of pregnancy like papaya and brinjal which could cause or induce an abortion. Further the practice of giving dowry to girls increased this evil to alarming heights.⁷⁹

India is also the heartland of sex-selective abortion. Amniocentesis was introduced in 1974 to ascertain birth defects. A spate of sex-selective abortions followed.⁸⁰ Women were either forced or voluntarily underwent sex determination tests to ascertain the sex of the child. Selectively girl child was aborted. The major cause of the decrease of the female birth ratio in India is considered to be the violent treatments meted out to the girl child at the time of the birth. The child sex ratio between the age group of 0–6 years has come down to 914 in the 2011 census.⁸¹ Use of amniocentesis and sex-selection

⁷⁸ Chunkath S.R. and Athreya, *Female infanticide in Tamil Nadu: Some Evidence* Economic and Political Weekly, 26 April. 1997, WS p.21

⁷⁹ George, S. M., Abel R., Miller B.D., 1992. Female infanticide in South Indian Villages, Economic and Political Weekly. p. 27, 115

⁸⁰ Karlekar, *The girl child in India Where killing baby girls is no big sin* Dahlburg The Week, March 2011

⁸¹ <http://www.census2011.co.in/sexratio.php> accessed on 21/2/2012

techniques causes violence to an unborn female child even before its birth. This technique is equivalent to murder of the unborn child.

1.4.3. Evil practice of Child marriage

Child marriage contributes virtually to every social problem that keeps India behind in enforcing child rights. The problems include soaring birth rates, high malnutrition, illiteracy, infant mortality, and low life expectancy especially among rural children. In India the role of early marriage in maintaining high fertility and high growth rate of population is recognized. The practice of child marriage is rampant in many parts of the country and the incidence of it is highest in the States of Rajasthan, Bihar, Uttar Pradesh, Chattisgarh and Madhya Pradesh. Child marriage often remains a guise for trafficking children for sex work.⁸² Girls in tribal societies are given in marriage before puberty.⁸³ Some states follow the tradition of gauna where girls are married before reaching menarche and are not physically mature enough to consummate the marriage. Customary gauna is performed some time after the girl reaches menarche.⁸⁴

1.4.4. Exploitation of Girls under Religious Faith

The lower caste parents are made to believe that if they give their children to the village goddess there would be no floods or contagious diseases or drought in the village. It is also common for some families of these castes to dedicate

⁸²Supra 20

⁸³Bhat, A. Sen, A. Pradhan, U. *Child Marriages and the Law in India*, Human Rights Law Network, New Delhi, 2005p.14

⁸⁴Bhat, A. and Sen, A., *Child Marriages and the Law in India*, Human Rights Law Network (Ed.), 2005

their daughters in pursuance for some vow taken at the time of family distress or calamity or serious illness to obtain relief or cure for themselves or their children. Sometimes parents desiring male issues promise a daughter to the familial or village deity. Those who are unable to spare money required for the daughter's marriage bethrothal too support this social evil.⁸⁵ The superstition is so strong that some parents themselves offer their young girls as joginis. If the parents were reluctant to do so, the village headman would see that someone in the village preferably woman would go and convince the parents to offer the girl as a jogini. This type of social and religious pressure forces the parents to bilge the order of the day. Devdasi is believed to be immune from widowhood and is called 'akhanda saubhagyavati.' Since she is wedded to a divine deity she is a welcome guest at weddings and is regarded as a bearer of good fortune.⁸⁶ This kind of practise is a forced child marriage and results in trafficking of young girls.

1.4.5. Violence in the Family

The pressure to succeed, hectic lifestyle and frustration stemming from the inability to deal with failures compel parents and guardians to vent it out on children. Parents relentlessly push their children to achieve greater heights in academics, sports, cultural and co-curricular fields and groom them into super kids or wiz kids. Often emotional blackmail, beatings and verbal lashings have become the most obvious recourse for parents to put across their points. Child

⁸⁵Human Rights Law Network *Trafficking and the Law* , Human Rights Law Network, New Delhi 2006 p.26

⁸⁶Jha, A.K. *Child Abuse and Human Rights*, Volume 2 Institute for Sustainable Development, Lucknow Anmol Publication, New Delhi, 2006 p.114

abuse is often an accepted way of life for communities and it is ironic that parents, caregivers and those who have custody of children are responsible for grave forms of abuse.⁸⁷ Children crave love and affection and with their unflinching innocence and trust in elders. Their vulnerability and susceptibility to abuse and exploitation is tremendous. Children could become victims of incest and sexual abuse within the four walls of the family.⁸⁸ The family hushes up instances of sexual abuse of children within the family, resulting in underreporting of the issue and a gross underestimation of the gravity of the problem.⁸⁹ A feeling of shame and silence characterizes cases of sexual violence against children and this often comes in the way of bringing offenders to justice.⁹⁰

1.4.6. Drug Addiction and Trafficking of Child for Drugs

The use, sale, and production of illegal drugs have become a major issue in India. In India abuse of alcohol, opium and cannabis has been known for a long time but with growing tourism the consumption of drugs like heroin, hashish, LSD⁹¹ are increasing and has acquired alarming dimensions. India is no more a transit country for illicit drug trafficking from the 'golden triangle' or 'golden crescent' but is becoming a significant consumer in the global scenario.⁹² A

⁸⁷Supra 36

⁸⁸NALSA Sex Tourism violates Child Rights Combat Sex Tourism Protect Children , New Delhi 2006 p.32

⁸⁹ Supra 36

⁹⁰Nautiyal, P. And Mal, A. *Towards Protection Of Children Against Sexual Abuse: No Child's Play* Journal Of National University Of Juridical Sciences Kolkatta January - March, 2010

⁹¹ Lysergic Acid Diethylamide

⁹² Aston, J.N. Narco-Terrorism – A Critical Study, January 29, 2013 available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2221590 accessed 2/2/ 2013

significant number of children have been found to be engaged in illicit drug use, sale, and trafficking in the Asia-Pacific region.⁹³ A Child is used in illicit activities, such as production, sales, and trafficking of drugs, which amounts to the worst forms of child labour.⁹⁴ Dangers and risks faced by a child engaged in the drug trade go beyond the physical, psychological and mental disorders prevalent among such a drug-addicted child. A Child in the drug trade/trafficking is exposed and initiated to the world of illegal activities and criminality. Once involved, they are inextricably linked to situations of tensions, fear, suspicion and conflicts and are quite vulnerable to harassment and exploitation by both drug dealers and the police. A Child involved in drug sales and trafficking is difficult to trace and identify, thus pushing them towards higher risks and in potential difficult situations.⁹⁵ A Child of addicted parents is considered in a high risk group. Such a child could become alcoholic and drug abusers due to both genetic and family or environment factors. A Child may engage in drugs for setting an example and enjoying the feeling of being grown up. Some children use drugs and alcohol to show that they are cool to others. It is a method used to overcome fear associated with peer group demands. The media television and music often fuel this with pervasive negative messages and have an influence on children taking up such practices. Drug abuse seems to have become a fashion for fun and a way to escape from

⁹³United Nations Office on Drugs and Crime, *Criminal Justice Assessment Toolkit*, New York, 2007, Part III Alternatives to Incarceration, p. 12

⁹⁴Porio,E. *The Use of Children in production, sale and trafficking of drugs*, Mainla University, Phillipines available el at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_24_en.pdf

⁹⁵*Horilal Vs Commissioner Of Police Delhi Police* Judgment date 14/11/2002

family tensions at home and to forget the disgust and desperation which has made their life miserable.⁹⁶

1.4.7. Commoditizing Child

Commoditizing a child means a child is being bought and sold, for the use of others. The two most common forms are for sex trafficking and human trafficking.⁹⁷ Today Sex Trafficking has no boundaries and takes place via the medium of internet. Such acts constitute an act of child slavery.

1.4.7.i. Child Pornography

The digital age has facilitated the production and dissemination of child pornography.⁹⁸ Advances in computer technology have made the creation and distribution of child pornography easier, cheaper and more difficult to detect.⁹⁹ It has developed into a multimillion-dollar industry that can be run from within the exploiter's home.¹⁰⁰ The Internet is used by paedophiles to exchange information and to contact potential victims through chat rooms.¹⁰¹ It is virtually impossible to ensure the physical destruction of the child's pictures once it has been posted on the Internet. Digital technology also has led to a new phenomenon sometimes called 'pseudo-child pornography', which consists of

⁹⁶Kohli,H.D, and Nalwa,S. *Commentary on The Juvenile Justice Act*, Universal Law Publishing House, Delhi 2011 p.15-16

⁹⁷ Available at <http://www.burgessct.com/2012/04/children-commodity-human-trafficking-sex-trafficking/> accessed on 2/ 1/ 2013

⁹⁸Naikar, L.D. *The Law Relating to Human Rights, Global, Regional and National*, Puliani and Puliani, 2004 p.572

⁹⁹Shastri, T.S.N. *Is there an end to Child Pornography?* Dr. Pandey P.K In *Children's rights , Laws, Polices and Practise*, Regal Publications, New Delhi, 2013 p.2

¹⁰⁰Sridhar, L.*Cyber Crimes and the Real World Society* Andhra Pradesh Police, CID Journal, October 2004 p.112

¹⁰¹Kopelev, S. D. *Cyber Sex Offenders: How to Proactively Investigate Internet Crimes against Children*, Law Enforcement Technology, Vol. 26, No. 11, November 1999, pp. 46-50.

creating or manipulating images to produce depictions of sexual activity involving children, without the participation of a real child in any sexual activity.¹⁰²

1.4.7. ii. Trafficking

Trafficking in children is one of the worst and most brazen abuses of human rights of the child.¹⁰³ It is a gross commercialization of innocent human lives perpetrated by organized criminals. Trafficking does not require transnational movement of persons anyone can be a victim of human trafficking. Trafficking, is a growing problem in India. It can be most aptly defined as the recruitment, transportation, transfer, harbouring or reception of persons, by means of threat, force, coercion, abduction, fraud, abuse of power, deception or payment for the purposes of exploitation.¹⁰⁴ A child sold into one form of trafficking is not freed, but is sold into another form of trafficking upon entering into adulthood.¹⁰⁵ Statistics show that 60 to 70 percent of females who are trafficked into the sex trade are raped and that 70 to 95 percent are physically assaulted.¹⁰⁶ It violates the right of a child to grow up in a protective environment and to be free from all forms of abuse and exploitation. One of the main reasons for human trafficking is for commercial sexual exploitation of these children. This

¹⁰²Chatterjee C. and Nayan J. *Child Pornography and Law in India* in Dr. Pandey P.K In *Children's rights , Laws, Polices and Practise*, Regal Publications, New Delhi, 2013 p.346 -359

¹⁰³Dr. Pandey P.K In *Children's Rights , Laws, Polices and Practise*, Regal Publications, New Delhi, 2013 p.72- 82

¹⁰⁴See Section 5A of Immoral Traffic Prevention Act, 1956. Full Text of the Act available at <http://www.childlineindia.org.in/CP-CRDownloads/Immoral%20Traffic%20Prevention%20act%201956.pdf> accessed on 25/2/ 2013

¹⁰⁵Abraham, S. *Going Nowhere Trafficking of Women & Children in International Sex Trade*, Dominant Publishers and Distributors, New Delhi, 2001 p.11

¹⁰⁶Supra 102

view has been reaffirmed by the Supreme Court in the decision of *Bachpan Bachao Andolan v. Union of India*.¹⁰⁷

1.5. Prevalence of Child in Conflict and Contact with Law in Goa

Goa though otherwise a peaceful state the child is not left in peace. There are various factors which contribute to making the child an offender and a victim.

1.5.1. Entry of Migrant Labourers

Due to the spurt in tourism, the hotel industry and construction industry migrant laborers from neighbouring states have arrived in Goa. These migrant laborers come to Goa to escape poverty in their home states. But with no roof over their heads, meagre wages and large families the children are often lead to fend for themselves. In Goa the problem of the street child is serious because migrant population is increasing.¹⁰⁸ It is forced to roam on streets selling plastic bags in the market, fruits and other items on the beach or work in hotels and shacks as bonded labour. Illiterate and unable to read and write it becomes easy targets of adults wishing to exploit them.¹⁰⁹

1.5.2 Child Sex Tourism

A foreign tourist is protected by anonymity in foreign land and feels free to gratify all socially unaccepted desires and fantasies. The WTO has defined sex tourism as ‘trips organized with primary purpose of effecting commercial

¹⁰⁷(2011)5SCC 1

¹⁰⁸Tapankar, P. *Shadows in the Dark -The status of the migrant working community in Goa, A study supported by south Asian Regional Initiative Equity (SARQ)*, Vikas Adhyayan Kendra, Mumbai ,2006, p.35-40

¹⁰⁹Desai, N, *See the Evil, Tourism related Paedophilia in Goa*, Vikas Adhyayan, Mumbai, 2004 p.20 - 25

sexual relationships by the tourists with the residents at the destination.’ Sexual exploitation of the child may have existed prior to tourism in Goa.¹¹⁰ The number of sexual exploiters has increased due to the rise in the number of domestic and foreign tourists.¹¹¹ An unfortunate manifestation of this change is increase in violence against children in Goa.¹¹² A critical area of concern is the proliferation of organised sexual abuse of minor boys and girls. The poor child of such parents who are migrant people take up jobs in hotels, shacks, supermarkets, and other commercial establishments.¹¹³ The late nights take a toll on its health and it finally drops out from school. Many of the tourist amenities are fronts for commercial sex trade.¹¹⁴ Many of the so-called beauty parlours, yoga centres and ayurvedic massage parlours are spurious and centres of commercial sex. Both foreign and Indian girls are involved in prostitution. They operate through hotels, massage parlours, shacks, privately rented accommodations, parlours and even boats which have turned into places of commercial sexual exploitation. Foreigners are seen roaming around with Indian companions. Local pimps carry photos of Indian girls who are available for sex. The migrant child is the worst victim of sexual exploitation.¹¹⁵ A

¹¹⁰Dr. Julia O’Connell Davidson and Jacqueline Sanchez Taylor in their Research paper on *Child Prostitution and Sex Tourism in Goa* prepared for preparation for the World Congress against the Commercial Sexual Exploitation of Children.

Partial funding for these studies came from UNICEF available at <http://media.elnuevoherald.com/smedia/2013/03/08/18/11/65hAf.So.84.pdf> accessed on 15 /7/ 2012

¹¹¹Davidson, Julia O’Connell and Jacqueline Sanchez Taylor , *Child Prostitution and Sex Tourism in Goa*, ECPAT, Bangkok, 1996

¹¹²Situational Analysis Report On Male Child Sexual Abuse In Pilgrim Tourism Sites In India: Andhra Pradesh, Kerala, And Orissa Part 1 Equations available at Http://Www.Equitabletourism.Org/Files/Filepresentations290_Uid10.Pdf accessed on 20/6/2012

¹¹³Supra 109

¹¹⁴*ibid*

¹¹⁵WCC / CCA South Asia Consultation on Overcoming Violence Against Children, The Violence of Paedophilia in Goa, 2004

significant number of local children are also lured by paedophiles who often procure the children under the guise of providing foster care and better opportunities.¹¹⁶ Most of the drug traffickers and paedophiles chose Western Indian states like Goa over Bangkok. The larger question one needs to ask, is Goa turning a heaven for sex tourism? Goa has even been compared with Pattaya. The famous Thai destination where sex tourism, boasts the hotel revenues.¹¹⁷

The phenomenon of sex tourism is growing in different parts of the world. While this phenomenon has been acknowledged in Goa in various parts of India tourism related paedophilia is an unrecognized reality. In 1991 the world first woke to the problem of tourism related paedophilia with the arrest of Freddy Peats¹¹⁸ in Goa. Peats was 71 years old at the time. Under the guise of running a shelter home for children in difficult circumstances he engaged in trafficking children which went undetected for 14 years and was part of an international ring of paedophiles. Tourism related paedophilia is associated with Goa because Peats went on to become the first foreign paedophile in India to be convicted in 1996.¹¹⁹

1.5.3. Drug Trafficking and the Child

Goa is being given the image of a place of Sun Sea and Sand and seedy drug joints. Goa is not just an epicentre, where drugs are sold at rave and trance

¹¹⁶ INSAF – *Sexual Abuse and the Growth of Paedophilia: A Regional Profile Of Goa*

¹¹⁷ Nair, P.M. and Sen, S. *Trafficking Women and Children in India*, Orient Longman, Pvt. Ltd, 2005
New Delhi p. 154

¹¹⁸ *State of Goa .V. Freddy Albert Peats and Others*, Sessions Case No. 24 of 1992

¹¹⁹ Desai, N. *Tourism Related Paedophilia in Goa*, Vikas Adhyayan, Mumbai, 2004 p.10

parties, but now Goa has become a transit point for drugs, from where it is shipped out to European countries and even to neighbouring states. The children of the rich especially those who run shacks and guest houses or hotels are simply distracted or bored with studies. As a result such a child gets exposed to lifestyles adopted by adults at a young age. A Child who is used for drug peddling sometimes fall prey to the habit of taking drugs.¹²⁰ Foreigners who reside in Goan guest houses may have been traffickers of drugs and have made such an innocent child to fall prey to this menace.¹²¹

1.5.4. Impact of exposure to Western lifestyle and urge to earn quick money

Goans living along the beach belt and those who own large houses have converted part of their houses into shacks and guests houses. These shacks and guest houses are let out to foreigners during tourist season for a hefty sum of money. The Goan child who comes in contact with foreigners could fall prey to the lifestyles adopted by foreigners. In areas in Pernem, Bardez and Salcette families rent off entire house to tourists and live in semi pucca houses outside. The child may be used for cooking food, washing clothes etc. Sometimes if such a child is alone at home such a child could be at a risk of abuse.¹²²

¹²⁰Supra 109

¹²¹ *ibid*

¹²² Supra 118

1.5.5. High Dropout Rate from Schools

According to Sangath a local NGO working in Goa the dropout rate of children from primary to high School in Goa is 40%. The child who does not go to school goes unsupervised by its parents and is very vulnerable. In many instances such a child could become a victim of crime and could be kidnapped and taken abroad for other immoral and illegal purposes.¹²³

1.6. Availability of Child Victim in Goa

A number of impoverished families from the nomadic Lamani tribe as well as from villages in northern Karnataka are engaged in vending wares on the beach. Their children inevitably interact with foreign tourists lounging on the beach, providing an easy and regular avenue for exploitation.¹²⁴ The tourists provide the child with gifts and material benefits to them, their family and friends. Most people believe that the child of Goa origin is not involved in tourism related paedophilia but the fact remains that the Goan child has been a victim of this racket.¹²⁵ In cases of paedophiles reported in Goa the child has been picked from other parts of India. The Child could also be brought to Goa from Maharashtra, Karnataka and even Nepal.¹²⁶

The problem of Street Children exists all over India but in Goa it is more serious. In Goa the 'street child' is not only found in the cities but it is more vulnerable on the beaches. Such a child originally comes to Goa to find work

¹²³ Desai, N and Pinho, E. *Child Sexual Abuse in Goa – A Case Analysis*, Children Rights in Goa, 2006

¹²⁴ *ibid*

¹²⁵ Almeida, A *Tug and Tear: Dealing with Child Sexual Abuse*, A Jan Ugahi Trust, 2008 p.11

¹²⁶ Supra 109

but when it is unable to do so. It spends most of its time engaging in all kinds of activities from vending to begging.¹²⁷ The parents have no time for their child. They do not know where they are and even if it is brought to their notice they are not concerned because they are poor and they overlook the problems of the children. When such a child is moved to the Apna Ghar by the police their parents come and take them back to the same situation.¹²⁸

There are various reasons why a child comes to Goa to find work. The reason could be a fight at home, sheer desperation or misconceptions about Goa. Disillusionment with the education system because of corporal punishment, discrimination, fear of teachers and difficulty to cope up with the educational system are also other reasons. A Child abandoned in other parts of the country also makes its way to Goa.¹²⁹ A child who is lost may find its way to Goa. A Child who may be trafficked for domestic work or employed for begging could also find its way to Goa. With the operation of Konkan Railway many more trains come to Goa Bringing more children to Goa each day.¹³⁰

1.7. Child in the Criminal Justice System

Crime is commonly understood as a behaviour that is prohibited by criminal law.¹³¹ Every crime has simultaneously an offender and victim. The Child may

¹²⁷ Supra 109

¹²⁸ Gaonkar, U. *Issues related to the police system in relation to street children published in Street Children Changing Scenario and New Strategies*, A Report on the Workshop Organized by Terre Des Hommes, Germany – India Programme, October, 2007

¹²⁹ *ibid*

¹³⁰ *Street Children Changing Scenario and New Strategies*, A Report on the Workshop Organized by Terre Des Hommes, Germany – India Programme, October, 2007

¹³¹ In other words no act is a crime irrespective of how immoral or dangerous or damaging unless it is made such by a state legislation.

enter the criminal justice system either as an offender or as a victim. The child who comes in contact with the criminal justice system has to deal with the law enforcement agencies i.e police, the prosecution, the courts and correction institutions. Ensuring justice to the child at each of this stage is an herculean task. Balance of justice cannot afford ignore either the offender or a victim. If any is ignored justice will die.

1.7.1. Child as Offender

A Child who comes in conflict with law attracts critical attention due to a number of behavior problems as it has no idea of what is happening around.¹³²

The child who is an offender is known as a ‘child in conflict with law’. The play of nomenclature has resulted in several synonyms terms like ‘juvenile delinquency’, ‘child criminals’, ‘child offenders’, ‘maladjusted children’, ‘errant children’, ‘deviant children’, ‘young offenders’ and so forth. In brief, children who do not conform to prescribed and ingrained legal and societal standards are labelled as children in conflict with law.¹³³ Such a child needs special treatment since the child could not form the requisite intent to be found guilty of a crime.¹³⁴

A juvenile is a child or person who has not completed eighteenth year of age.¹³⁵

¹³² Muncie, J. *Youth and Crime*, Sage Publications, New Delhi, 1999 p.39

¹³³ George, W.B. ,Howard, E.F. & Tim Smith, *Adults Perspectives on Children's Autonomy The Public Opinion Quarterly* , Vol.45, No.4 (1981) p.1

¹³⁴ Supra 132

¹³⁵ See Section 2 (k) of Juvenile Justice (Care and Protection of Children) Act, 2000

A child in conflict with law¹³⁶ is someone who is alleged to have committed an offence and has not yet completed eighteenth year of age as on the date of commission of offence. In the age of lost innocence, the term 'criminal children' is being used more often.¹³⁷

The 16th December, 2012 Delhi gangrape case took the entire nation with rage. In this case a 23-year-old physiotherapist was raped by six men. One of them was a juvenile. According to the chargesheet, the juvenile had subjected the victim to sexual abuse twice, including once when she was unconscious. He extracted her intestine with his bare hands and suggested that she be thrown off the moving vehicle devoid of her clothes. The juvenile was the most brutal. The boy, who was seventeen-and-a-half-year-old and would not face the trial under the Criminal Procedure Code like his companions. The five men arrested for the gangrape-cum-murder of the girl face the possibility of a death sentence, if proved guilty, the juvenile accused could even escape a jail term.¹³⁸

In another case a 16-year-old boy from Delhi allegedly murdered a 4-year-old boy after the victim's mother spurned his advances. He stabbed the child more than 30 times with a pair of scissors. In another case a 14-year-old boy, who held a grudge against his neighbour for Rs. 50, allegedly stabbed her to death in Delhi. He allegedly also killed the two other women who tried to save

¹³⁶Section 2(l) of Juvenile Justice (Care and Protection of Children) Act, 2000 has defined a a juvenile in conflict with law

¹³⁷Bhatnagar, R.R. *Crimes in India: Problems and Policy*, Ashish Publishing House, New Delhi p.59

¹³⁸<http://in.news.yahoo.com/delhi-rape--juvenile-rapist-could-walk-free-in-months-142736088.html> accessed on 18/12/2012

her.¹³⁹ Juveniles have been accused of crimes like theft, murder, rioting and molestation, and under the special and local laws which deal with offences such as gambling, carrying arms and possession of narcotic substances. Other offences include loitering in public places like railway stations to picking pockets.¹⁴⁰

1.7.2. Child as Victim

'One child goes missing every eight minutes in our country or seven children every hour. 331 children went missing in India's capital between 1st June and 18th July 2011 according to the Zonal Integrated Peace Network.'¹⁴¹ Victim is the unfortunate recipient of harm, loss or injury and even death especially when the crime arises from deep seated economic dissatisfaction and social maladjustment. It is he or she who has suffered the most. His family is ruined particularly in case of death and other bodily injury. An honour which is lost or life which is snuffed cannot be compensated.¹⁴²

A child in contact with law is a child who has become a victim due to various situations that have occurred in the child's life. Victim is a person harmed or

¹³⁹October 27, 2012 <http://www.hindustantimes.com/India-news/NewDelhi/Crimes-committed-by-Delhi-youth-on-the-rise/Article1-951153.aspx> accessed on 28/10/2012

¹⁴⁰ http://articles.timesofindia.indiatimes.com/2012-10-11/chennai/34386500_1_local-laws-offences-children-in-india-2012

¹⁴¹Missing Children Of India: A Pioneering Study By Bachpan Bachao Andolan , Vitasta, 2012, preface. This is a conservative figure because the figures are dependent on reporting and recording of the FIR which is often avoided.

¹⁴² Hon'ble Supreme Court in *State of Gujarat v. Hon'ble High Court of Gujarat* (1998) 7 SCC 392: AIR 1998 SC 3164

killed as a result of an accident.¹⁴³ Indian Laws define situations in which a child may become a victim of crime such as trafficking or child abuse. None of the Indian Laws define the term ‘child victim’.

The most shocking case of multiple child victims came from Nithari in Noida also known as the Nithari killings case. In this case innocent children were kidnapped, sexually assaulted and murdered.¹⁴⁴ This case proves that India is not able to provide a conducive and enabling environment for its children.

Another horrific case was the murder of Arushi Talwar and her male maid servant. The police have not been able to nail her culprits even today. The police have charge sheeted both her parents for the murder while the parents are in denial to the same.¹⁴⁵ In yet another case a two-year-old baby girl nicknamed Falak was admitted to the trauma ward of All India Institute of Medical Sciences in a battered condition. Falak, after battling for life, died after two months. Subsequent investigations revealed a sordid tale of human trafficking spanning across three states Bihar, Delhi and Rajasthan.¹⁴⁶ It was found that the girl was Sangeeta, a three-year-old girl who was stolen from

¹⁴³See Oxford Dictionary. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 in Rule 1 defines victims . Also U.N. Guidelines on Justice Matters involving Child victims and Witnesses of Crime 2005 defines Child victims and witnesses. For the definition of victim under the International documents see Chapter 3

¹⁴⁴Surender Kohli sentenced to death while Mohinder Singh Pandher was acquitted. The case began in December 2006. Available at www.indianexpress.com/news/nithari-koli...to...in...case/1049972/ accessed on 11/2/2012

¹⁴⁵A case reported on 16th May, 2008 available at www.indianexpress.com/news/-found-aarushi-phone...-/1030574/ accessed on 25/2/2012

¹⁴⁶ January 2012 New Delhi http://articles.timesofindia.indiatimes.com/2012-10-05/india/34279086_1_crime accessed on 10/2/2012

Chhatrapati Shivaji Terminus on 10 June. Sangeeta along with her abductor were traced in Haridwar (Uttarakhand) on 7 July.¹⁴⁷

In a shocking case in Goa a 7 year old girl was raped in the school premises by some unknown person who entered the school premises. The headmistress and the clerk of the school were arrested and later released by the Children's court. However the police are yet to nab the accused as he is absconding.¹⁴⁸

Goa had been in news globally for the famous Scarlett Keeling case. Scarlett Keeling was a girl from London living with her mother in Goa. Her mother had gone to the neighbouring state of Karwar leaving her with the male friend. Scarleet was drugged and she died of a drug over dose. Two accused have also been charged for rape.¹⁴⁹

1.8. Problems of the Child in the Criminal Justice System

The criminal justice system is not attuned to the needs of the child. The actual offence which has been committed on the child is just one of the series of traumas that a child faces. The interest of the child is never the concern of the police and prosecution including the courts.

1.8.1. Child Offender

The child may find his or her way to jail after committing a comprehensive range of crimes including murder, kidnapping, stabbing, drug-peddling,

¹⁴⁷ June 2012 Mumbai (Maharashtra) http://articles.timesofindia.indiatimes.com/2012-10-05/india/34279086_1_crime accessed on 10/6/2012

¹⁴⁸ www.goaexpress.net/newsDetails.php?id=295 accessed on 5/2/2012

¹⁴⁹ British Teenager drugged, raped and murdered, Navhind Times, February 20, 2008

burglary, street thefts, household thefts and even rape. Delinquency increases the risk of drug use and dependency, school drop-out, incarceration, injury, early pregnancy, and maybe even influenced by adult criminality.¹⁵⁰ The child may get involved in minor crimes like ticketless travel. A child could be shoved into jail for vagrancy or insolent behavior towards the police. It may be a mere accomplice while real criminals manage to get away or are able to elude the long arm of the law. A child could be hauled in with others for paying a price for keeping bad company. Sometimes a child has a one-point programme of making a fortune.¹⁵¹ Such youngsters want to earn without doing any work they want life to be an unalloyed entertainment without any labour or responsibility. The lush fields of adolescence provide fertile breeding grounds not only for one time crime but also repeated offences because of pliable youngsters being brainwashed into believing that life's only motto was to make money by any means fair or foul. Since most adult criminals begin their criminal careers as juveniles, preventing delinquency prevents the onset of adult criminal careers and thus reduces the financial and emotional burden of crime on victims and on society. A large majority of minors deprived of liberty have not been found guilty and/or are still waiting for a trial. Abusive and inadequate use of confinement and the lack of alternative methods may expose many boys and girls to violence. Detaining a child for minor offenses jeopardizes its future and social integration.¹⁵² Hence juveniles are not viewed

¹⁵⁰ Supra 66

¹⁵¹ Bedi K., *It's Always Possible: One Woman's Transformation of India's Prison System*, Sterling Publishers Pvt Ltd, New Delhi

¹⁵² Prakash, S.B.N. *Juvenile in Conflict with law and Police*, Karnataka Law Journal, 2009, 6(24);p.57-61

as criminals to be punished, but as unfortunate or misguided youngsters requiring advice, counseling, education, treatment and reformation.¹⁵³

The inherent dilemma in juvenile justice system is twofold should the act committed be classified as being less than a 'crime' or should the offender be regarded as not being a 'child'. The interface between child/adolescence and criminality poses the greater challenge.¹⁵⁴ Therefore 'Juvenile Delinquency' has two factors namely 'offence factor' and an 'age factor'.¹⁵⁵

1.8.2. Child Victim

The Child victim encounters many problems within the criminal justice system. Firstly, the child's has difficulty in describing the experience to the criminal justice agencies.¹⁵⁶ Secondly the criminal justice system's attempts to determine whether those descriptions are reliable and can be admitted as evidence in the courts.

1.8.3. At the Police Station

The police are the first agency the child has to come in contact with. Complaints are handled roughly and are not given much attention as is warranted by the police. The victim is often humiliated while taking

¹⁵³ *ibid*

¹⁵⁴ Lawrence Steinberg, Today, *Should Juvenile Offenders be Tried as Adults?* Society for Advancement of Education, USA p.1

¹⁵⁵ Justice Chakrabarti, N.K. *Juvenile Justice In the Administration of Criminal Justice*, Deep and Deep Publications Pvt. Ltd, New Delhi, 1999, p.7

¹⁵⁶ See Davies G. and Noon, E. *An Evaluation of the Live Link for Child Witnesses*, London, Home Office, 1991

statements.¹⁵⁷ Standard police procedure involves taking a statement detailing the specifics of the allegation being made, and the circumstances in which the alleged incident took place.¹⁵⁸ The initial police statement forms the bedrock of the evidence that the witness will personally give to the court at a later date. Although the statement itself is not normally admitted as evidence, any deviations from it will almost certainly be used in court as possible indicators of mistake or mendacity. Recording the child's evidence is a severe problem area. A little child has to relate the horror in front of many officials by recounting the tale again and again.¹⁵⁹ Reporting information about stressful, embarrassing, and painfully intense events may be very difficult for the child.¹⁶⁰ Girls face depression when this happens in front of male officials.¹⁶¹ The process and surroundings may well be intimidating for the child.¹⁶² Fear and anxiety do not make for a good interviewing environment and children anyway are naturally reticent to talk to strangers. Moreover, many children will construe a police interview as an indication of their own wrongdoing. For some, previous contact with the police may generate a negative experience. In many cases the abusers compel the victim to maintain

¹⁵⁷ (1995) 1 SCC 14(19-20)

¹⁵⁸ *Speaking Up for Justice*. The Report of the Home Office Interdepartmental Working Group on the Treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System London: Home Office, 1998

¹⁵⁹ *Supra* 66

¹⁶⁰ Pattenden, R. *The Proof Rules of Pre-Verdict Judicial Fact-Finding in Criminal Trials by Jury*, 125 LQR, 2009 p. 79, 89.

¹⁶¹ *Supra* 91

¹⁶² Jackson, J. *Justice for All: Putting Victims at the Heart of Criminal Justice* 30 *Journal of Law and Society*, (2003), p.309.

secrecy. The plain truth about the prosecution of offenses against children is if there is no victim no case can be filed against the accused.¹⁶³

1.8.4. In the Courtroom

Children, by dint of their youth and immaturity, struggle with the procedural requirements of giving evidence in criminal trials. The child faces anticipation of the criminal proceedings.¹⁶⁴ The next hurdle is lack of legal and procedural knowledge of a criminal trial. The intimidating effects of the courtroom environment, confrontation with the accused and questioning and cross-examination¹⁶⁵ can be traumatic for the child. In cases of child abuse the complainants are repeated interviewed by the child-protection professionals which occurs pre-trial, can have devastating effects on the child.¹⁶⁶ In cases of sexual offences there is delay in the lodging of the First Information Report due to a variety of reasons particularly the reluctance of the prosecutrix or the family members to go to the police station and complain about the incident¹⁶⁷.

Waiting for the case to come to trial and then, when it does it makes the child anxious and apprehensive.¹⁶⁸ This strain is compounded for children with limited knowledge of what it will face in court. Furthermore, the dictates of due process mean that some delay between the report of a potentially criminal

¹⁶³ Information obtained from interviews from officials during the course of the study.

¹⁶⁴ Bottoms, B. and Goodman, G. *International Perspective on Child abuse and Children's Testimony : Psychological Research and Law*, Thousand Oaks, California, 1996

¹⁶⁵ Spencer, J. R. and Flin, R. *The Evidence of Children: The Law and The Psychology*, Blackstone Press, 2nd edn, London, 1993.

¹⁶⁶ Ellison, L. *The Adversarial Process and the Vulnerable Witness* Oxford: Oxford University Press, 2001.

¹⁶⁷ *State of Punjab V. Gurmit Singh* AIR 1996 SC 1393(1399)

¹⁶⁸ Ellison, L. *Closing the Credibility Gap: The Prosecutorial Use of Expert Witness Testimony in Sexual Assault Cases* *International Journal of Evidence and Proof* (2005) 9 p.239

incident and any resulting trial is inevitable.¹⁶⁹ Standing alone without support in the witness box is an isolating experience for the child.¹⁷⁰ The child may be intimidated by the formal attire of the judge and counsel. The Child may not be able to speak loudly and confidently in front of the accused, of whom they may be afraid.¹⁷¹

The Child could be more easily influenced by adult questioners and sometimes respond positively to leading questions.¹⁷² A young child may blend fantasy and reality and this may benefit the accused. Judges are less inclined to believe a child if it is very young in age.¹⁷³ If a child is examined after a great delay he would be less reliable than an adult. However some experts are of the opinion that when a ghastly crime is committed on the child the same is registered on its mind effectively.¹⁷⁴ The dilemma faced by the courts when a child steps in is on one hand the court wants to trust the child and on the other the court wants to honour the rights of those accused of crimes.¹⁷⁵

The main goal of the police is to prove the offence and punish if guilt is proved. There have been only a few prosecutions that have resulted in convictions and the imposition of appropriate sentences reflecting the gravity of the crime in question. Considerable amount of evidentiary hurdles are to be

¹⁶⁹Hoyano, L. 'The Child Witness Review: Much Ado About Too Little' [2007] Crim LR 849

¹⁷⁰McBarnet, D. 'Victim in the Witness Box: Confronting Victimology's Stereotype', *Contemporary Crises*, (1983) 7, p.293.

¹⁷¹Plotnikoff J. and Woolfson R., *Making the Best Use of the Intermediary Special Measure at Trial* [2008] Crim LR 91.

¹⁷²*Ratansingh Dalsukhbahi Nayak .V. State of Gujarat* (2004)1SCC 64

¹⁷³*Caetano Piedade Fernandes .V. Union Territory of Goa Daman and Diu*, (1977) 1SCC 707

¹⁷⁴Text of Speech delivered by Hon'ble Justice Mr. S.B. Sinha, Judge Supreme Court of India at National Judicial Academy, Bhopal.

¹⁷⁵Walker, N.S, *The Child Witness, Legal Issues* available at: <http://www.sagepub.com/book.aspx?pid=2154>

overcome while proving crimes committed. The burden of proof being on the prosecution the latter finds it difficult to establish the guilt of the perpetrator in the absence of independent witnesses and compelling factual evidence.¹⁷⁶ There are delays and gaps in the timeline of various procedures for each of the cases and this again has a negative impact on child victims.

Victims of crime have only a limited range of rights under the Indian Criminal Procedural law and there is no express right to protection of victims from alleged perpetrator and others. While courts may issue interim orders for protection in case of intimidation or threats the system of protection falls short of institutionalized measures of protection.

1.9. The Law for the Child in the Criminal Justice System in Goa

Goa was under the Portuguese rule from the 25th November 1510 till 18th December 1961. By the 12th Amendment of the Constitution of India, Goa became a part of the Union of India with effect from 20th December, 1961.¹⁷⁷

During the Portuguese rule administration of law was based on the Portuguese system.¹⁷⁸ Hence the law for the juveniles is analyzed from two dimensions. The Law prevalent for juveniles during the Portuguese Legal Regime in Goa and the Laws passed by the Indian Parliament after Goa became a part of the Union of India.

¹⁷⁶ Law Commission of India, 185th Report on the Review of Indian Evidence Act 1872, By Judge M.J. Rao, Chairman, 2003 The Indian Evidence Act (Amendment) Bill 2003, inserted new Section 114B para 65.

¹⁷⁷ D'Souza Carmo, *Legal System in Goa, Vol. I – Judicial Institutions 1510-1982*, Calangute, p.5

¹⁷⁸ *ibid*

1.9.1. Laws during the Portuguese Legal Regime in Goa for Child Offender

Portugal was one of the first European countries, which instituted the criminal law for minors, by forming tribunals. Since Goa was ruled by the Portuguese the Portuguese Legal System in Goa was the first to introduce law on Juvenile Justice in the State of Goa even before the rest of India had a specialized law for juveniles. By *Decree No.10:767, of 15* of May of 1925 Portugal introduced this new Criminal Law for Minors in Goa.¹⁷⁹ This law was to be an authentic Code for children. The Decree of 27th May 1925 created special courts called *Tutorias da Infancia* to try offences committed by children.¹⁸⁰

1.9.2. Laws in Post Liberation Era in Goa for Child Offender

Fulfilling the Constitutional mandate of Article 15(3), Article 21, Article 21 A and Clause (e) and (f) of Article 39 and in Article 45 and Article 47 the Government of India passed *The Juvenile Justice (Care and Protection of Children) Act, 2000*.¹⁸¹ The Act was a human rights legislation meant for the promotion and well-being of the juvenile.¹⁸² The Government in Goa adopted this Central Legislation. The Central Government in pursuance of Section 68 clause (1) of *The Juvenile Justice (Care and Protection of Children) Act 2000*,

¹⁷⁹ Diploma Legislative No 1389; Boletim Official Do Estado Da India, , 19 de Julho de 1951, I Series No. 29, 136 (Legislative Diploma No. 1389, Official Gazette of the State of India dated July 19, 1951 I Series No 29, 136)

¹⁸⁰ *ibid*

¹⁸¹ Act No.56 of 2000 Dated 30th December, 2000 Full text of the Act is available at <http://wcd.nic.in/childprot/jjact2000.pdf> accessed on 7/2/2011

¹⁸² Basu P. *Law Relating to Protection of Human Rights under the Indian Constitution and Allied Laws*, Modern Law Publishers 2002 p.170

has framed *The Juvenile Justice (Care and Protection of Children) Rules, 2007*. While many states framed their own Model Rules Goa adopted the Central Rules *The Juvenile Justice (Care and Protection of Children) Rules, 2007*.

1.9.3. Law for Child Victim in Goa

The State of Goa has responded to the needs of Child victim by enacting the *The Goa Children's Act, 2003*¹⁸³ and set up the Children's Court for child victims in India.

1.10. Importance for Study

Criminal justice systems have a moral and legal responsibility to make efforts to prevent crime, victimization and provide relief to the victims while ensuring rehabilitation of the offenders. The Criminal Justice System consists of legal provisions defining offences and providing punishments for such offences and outlining the trial procedures for the offences. The objective of this study has been to study the enactments for the trial mechanism for the 'juvenile offender' and the 'child victim'.

The Researcher has studied the efforts made by the Portuguese Legal System in Goa which have been reflected in the Decree No.10:767, of 15 of May of 1925. A detailed study of this Decree has been done to find out whether this

¹⁸³ Goa Act 18 of 2003 dated 8/7/2003 In Official Gazette Government of Goa Series I No.15 dated 14th July, 2003

pioneering effort was able to bring positive changes to the juveniles in conflict with law in Goa.

After Liberation Goa became a part of the Union of India and adopted the Central Juvenile Justice (Care and Protection of Children) Act, 2000. The Juvenile Justice (Care and Protection of Children) Act 2000 reinforces the role of the state as the guardian of any child in custody. The study focuses on the interpretations, procedures and perceptions of the juvenile justice system adopted in India. It accesses statutory bodies set up under the juvenile justice legislations particularly the investigation agency the police and the courts and investigates whether they adopt 'child friendly' procedures and are tuned to promote the needs of the child. The study lays emphasis on the interventions adopted by the Juvenile Justice Board. The Juvenile Justice Board requires its judges to be professional and experienced. The study would try to gauge whether this important endeavour has been achieved. The child in conflict with law is a person who has been adjudicated as such by the Juvenile Justice Board. The endeavour of this study would be to study the human rights of the juvenile in conflict with law always remembering that finally a juvenile is nothing but a poor child struggling for survival.

A Child victim is one who requires immediate assistance. The aim of this study will be to understand how beneficial the Goa Children's Act, 2003 and the Children's Court have been to those children who have bravely confronted their abusers to seek justice. The Goa Children's Act, 2003 provides for

procedures for investigation of offences against children their prosecution and trial. Its focus is on the child victim.

The present study aims to identify the parameters and constraints of the Child Offender and the Child Victim in the Criminal Justice System in India. It will bring to light the vision and commitment of the policy makers while framing laws for the child in Goa. The Study will also focus on the strength and weakness of these existing legislations for the child in the criminal justice system in Goa.

1.11. Objectives of the Study

1. To develop child rights jurisprudence to ensure speedy and effective justice to children.
2. To ensure that Juvenile offender and victims are suitably distinguished and treated differently by law and in the process ensuring due process of law and legal assistance.
3. To revisit the minimum age criteria of Juvenile Offenders.
4. To evaluate the functioning of the Children's Court established under the Goa Children's Act 2003.
5. To assess the 'Child Friendly' aspects of the Goa Children's Court and suggest alternatives.

6. To explore and suggest better procedural requirements for making the Goa Children's Act, 2003 efficient and effective.

1.12. Methodology

The present research is both doctrinal and empirical. The Doctrinal research includes historical, case studies as well as survey methods. The data for study was collected through primary and secondary sources. The Researcher has used the Historical Research, as the researcher has applied reflective thinking to find out the social problems of children by discovering past trends, events, facts and attitudes and traced the Law prevalent in Goa during the Portuguese era. The Survey Research was used to study interrelationships between the children and incidence of crime. Survey research was approached through the methods of personal interviews and questionnaire.

The primary data was obtained from the records room of the Children's Court, Police Stations, NGO's, Juvenile Justice Board, Apna Ghar, Child protection homes. The secondary data was obtained from published statistics, reports of Directorate of Women and Child and Ministry of Women and Child, Law Departments, National Crime Record Bureau, Ministry of Home Affairs, journals, internet websites, offices of different officials, Acts and published articles and opinions of legal experts.

For the survey method a random sample was used. A large number of Adult respondents and child respondents, Hotels owners, photo studios and cyber café owners and accused were interviewed. Areas for the random sample included

coastal belts of North Goa and the Coastal belt of South Goa, main cities, interior towns in North and South Goa. The Researcher adopted sociometric techniques for the analysis of data. For the Reader's convenience the data will be divided into three parts. The first part will graphically illustrate data collected about the juveniles in conflict with law from Juvenile Justice Boards, and Police stations. The second part will represent data obtained about the child victim from the Children's Court and all the Police Stations in Goa. The third part will represent data analyzed through questionnaire.

1.13. Hypothesis

Children enter the criminal justice system either as an offender of crime or as a victim of crime. The aim of the study is to understand role of the Child in the Criminal Justice System; both as an offender and victim of crime. The Researcher will study the following:

1. Juvenile Delinquency under Special Law Crimes and under the Indian Penal Code has increased steadily in the last 5 years.
2. Most of the juvenile offenders who commit crimes under the Indian Penal Code are in the age group of 16 -18 years.
3. Most of juvenile crimes are related to offences of Theft and Hurt.
4. Most juvenile offenders are male.
5. The pendency rate before the Juvenile Justice Board is above the desirable limits.

6. Percentage of crimes against children in Goa is high. In Goa most of the crimes against children relate of child sexual abuse.
8. The disposal rate of cases before the Children's Court is much lower than expected.
9. The perpetrators of child sexual abuse are mostly persons previously known to the child.
10. Most of child abuse perpetrators are of Goan Origin.
11. The procedure and methodology of the atmosphere of the Children's Court is not conducive in reducing the victim's trauma.

The Researcher proposes to carry out independent study based on the above hypothesis and make suitable suggestions for making Goa a 'Child Friendly State'.

1.14. Limitations of the Study

The aim of this study is to study the child in the criminal justice system in Goa. Hence the study of the present Research will be limited to two enactments namely The Goa Children's Act, 2003¹⁸⁴ and the Juvenile Justice (Care and Protection of Children) Act, 2000¹⁸⁵ and the Juvenile Justice (Care and Protection of Children) Rules, 2007. Under the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Juvenile Justice (Care and Protection

¹⁸⁴ (Goa Act 18 of 2003) (8-7-2003) (Dept. of Women and Child Development, Goa)

¹⁸⁵ No 33 of 2006 (22nd August, 2006)

of Children) Rules, 2007 the researcher will study only the relevant provisions of the Act¹⁸⁶ and Rules which deal with the 'child in conflict with law.' The Researcher will study the role of the juvenile justice boards. This study is not concerned with the procedure adopted in dealing with children who are in need of care and protection. The study does not deal with the reformation methods adopted for of juveniles in conflict with law and the efforts made during its stay in the observation home or any other measures adopted by the State for the same. It is concerned with only with the trial mechanisms of the juveniles and the child victims.

1.15. Scheme of the Thesis

The ambit of the study is the Child in the Criminal Justice System. The division of the chapters is in keeping with the objective of the study. The current chapter focuses on the problems faced by the child in the criminal justice system. The chapter discusses the role of law enforcement agencies in dealing with the child in the criminal justice system. Their role is most crucial and they are expected to act in the 'best interest of the child' as well as to protect the child from further victimization.

Chapter 2 deals with Age and Ideology of Protection. Historically children have being construed as inconspicuous part of the larger human populace not deserving any special attention. The child was regarded as nothing more than chattel or property and possession of parents; children have been denied status of rights

¹⁸⁶See Chapter II –Juvenile in Conflict with Law of The Juvenile Justice (Care and Protection of Children) Act, 2000. Act No. 56 of 2000

holders. The autonomy of children as human beings has traditionally hailed from over bearing institutions like family, state and community as a whole. This chapter analyzes the genesis of the contemporary underpinnings of juvenile justice which can be traced back to historical debates surrounding juvenile crimes and wrong doings. It also focuses on the definition of the term 'child.' Child is a term referring to chronological age in most statutes across the globe which has been chronologically depicted in this chapter.

Chapter 3 describes the Child and the International Legal Regime. It dwells on the developments at the International Level. From being viewed as mere passive and mute beneficiaries and recipients of services and facilities children today have transcended the boundaries of welfare and charity and have become distinct individuals in their own rights. The chapter focuses on the Convention on the Rights of the Child 1989 which achieved universal status and has drawn unparalleled support in the international arena. The study in this chapter is based on the theme of providing a fair, human and effective administration for the juvenile and the child victim as formulated in the various principles of the International Documents.

Chapter 4 has one focus point which is evolution of juvenile law in India. The term 'juvenile delinquency' has two factors namely the offence factor and an 'age factor'. This chapter deals with the offence factor of the juvenile. This has been determined through the development of various enactments in India which finally led to the passing of a near ideal human rights legislation for Juvenile.

In Chapter 5 explores Juvenile Justice Law in Goa. The chapter is analysed on the past and present juvenile justice system in Goa. The Portuguese had established juvenile justice system as prevailing in Portugal. Later the Parliament of India enacted The Juvenile Justice (Care and Protection of Children) Act, 2000 which was made applicable to Goa. Keeping within the limits of the study only those provisions dealing with the trial mechanism of a 'child in conflict with law' have been discussed.

Chapter 6 dwells on the Child Law in Goa, The Goa Children's Act, 2003. This Act is a 'special law' and Goa the first Act in India which is enacted for the child victim. The procedures adopted by the Law Enforcement agencies in handling complaints and dealing with offences against children have been analyzed. Procedure plays an important role and while dealing with children it is necessary to abide with rules, regulations and provisions of the Act.

Chapter 7 is the heart of the study on enforcing child laws and juvenile justice in Goa. The importance use and purpose of the study have been kept in mind while collecting data from various sources. This data is further analyzed. It assesses the role of the statutory bodies the Juvenile Justice Boards and the Children's Court in assessing rights of the child and delivering justice to the child.

Chapter 8 presents the conclusions of the study. Effective guidelines and safeguards for ensuring 'child friendly' have been outlined. These measures are quintessential for ensuring rights and assessing the needs of the child.

2. Age and Ideology of Protection

The Test and morality of society is what it does for its children. The concept of children's rights and justice for children are as old as civilization. The way in which rights were expressed in diverse cultures differed. Human societies have considered legal prohibitions aimed at regulating the human behaviour of children. The currently practised probation services in the juvenile system originally started as part of religious missionary services. Gradually the attention during probation shifted from religious missionaries to professional probation officers. The minimum age for criminal responsibility differs widely owing to history and culture.¹ If the age of criminal responsibility is too low or if there is no age limit at all, the notion of responsibility would become meaningless.

This chapter examines how past cultures have valued and cared for their children. The chapter traces the paradigm shift from child 'welfare' to child 'rights'. The tracing of the conceptual and social histories of criminal law was essential to study the development of the juvenile justice system. The study also analyses biological age as an indicator of childhood as enshrined in various enactments in India.

¹Dusuki, F.N, *The UN Convention on the Rights of the Child and The Administration of Juvenile Justice: An Examination of the Legal Framework in Malaysia*, Asia Law Quarterly Vol.1, No.1:123-140, 2009, p.146

2.1. Childhood in Ancient Texts in India

In India we believe that life begins with conception rather than at birth. Biologically childhood is the stage between infancy and adulthood hence Dharma² prescribed different important ages for a child which were from 1, 8, 11, 12 and 16. The *Dharmashastras* identified childhood right from birth. The Koran also identified childhood from birth.³ *Manusmriti* made a distinction between conception, birth and the tonsure.⁴ The *Dharmashastras* believed a child had three births. First one is from its mother, the second when the girdle was tied on⁵ and third when it is initiated to Vedic sacrifice. Naturally its mother was considered the care taker of the child. In Indian tradition the period between conception and birth is divided in five stages of childhood. These are *Garbha*, or the foetal period, during this period a special ceremony called *puma savana* was done.⁶ This was a ceremony to secure the birth of the male child.⁷ Thus indicating that the society always preferred a male child compared to a female child. *Ksheerda*⁸, was a time when the infant lives entirely on milk, *Ksheerannada*,⁹ is the period of early childhood in which weaning takes place, and was referred to as Bala (2-5 years) and Kumara (5-16years).

²Dharma means faith or religion according to the Hindus. In Sanskrit Dharma means social ethics covering law abiding conduct. See Kane , P.V. *History of Dharmashastras*, Poona 1930

³Koran Verse 399 Recommended supplications for a righteous child have been covered in more depth in Chapter 6: Pregnancy, Recommended Supplications; See Abdullah Yusuf Ali, *The Holy Qur'an*, Wordsworth Editions, 1997

⁴See Chapter II - Discusses Sources of Law and Laws on Birth and Celibacy which prescribes laws which are to be observed right from the time of pregnancy. See Olivelle Patrick, *Manu's Code of Law A Critical Edition with Translation of the Manava Dharmasastra*, Oxford University Press See 8.224

⁵(Upanayana)

⁶R.N. Sharma *Indian Society* Media Promoters Pvt. Ltd, Bombay 1997 p.17 -19

⁷Kane , P.V. *History of Dharmashastras*, Poona 1930

⁸(0-6 months), *ibid*

⁹(6 months-2 years), *ibid*

Each of these divisions of childhood was associated with major rites and rituals, which marked its transition from one period to another. This also recognized that the child was given an identity in the form of religious practices, right from its conception.

Among Hindus and Muslims birth did not qualify the individual's membership into the family. Initiation ceremony was necessary¹⁰ for making the child a member of the family. The child acquired an individual identity with the conferring of name. The naming ceremony was called *namadheya* among Hindus. The Muslims call the naming ceremony *Chathi*. The Muslims celebrate the birth of a male child by cutting two goats and one goat if a girl is born and this ceremony is called *akikah*.¹¹ The first meal to the child signified the child was accepted into the family for sharing food in common. This ceremony was called as *annaprashana*. The first outing of the child where the child was first introduced to the world beyond its birth place generally the first visit to the temple. This ceremony is called *nishikramana*.¹² The beginning of learning of the child meant the child was introduced to socialization. This is called *vidyaramba*, which meant the child learnt its first alphabet.¹³ Hence the law of dharma was one of the most progressive laws which recognized western rights enshrined in the Convention of the Rights of the Child like right to name of the child, development and education.

¹⁰Mehta, J.L. *Advanced Study in the History of Medieval Indian Society and Culture*, Sterling Publishers Pvt Ltd, 1999 p.21

¹¹ *ibid*

¹² *ibid*

¹³Supra 7

Provisions were made for ceremonies in every month on the day of the birth of the child for one year and on every anniversary of the day of birth of the child throughout its life. In case of boys *Upanayana*¹⁴ is the most important Sanskara. It means taking near the Archarya for instruction. In some cases Upanayana is performed in the 5th year. In Brahma the boys are taken in the 8th year and in Kshatriyas in the 12th year and in Vaishyas in the 11th year. From the third year of its birth the child has to study alphabet and arithmetic and after Upanayana he has to study Vedas. Dandaniti,¹⁵ Aviksiki,¹⁶ Varta,¹⁷ the science of wealth are some of the other subjects a child studied. In the 16th year Godana ceremony is performed after which he would marry. For a boy the duration of student hood (Brahmacharya) was 12 years and he had to master Vedas by the age of 24 years.¹⁸ These *samskaras*, in a way, emphasised the critical period both in biological as well as social development thus paving the way for the gradual integration of the child into society. Ironically, girls and children belonging to the lower castes were largely excluded from these *samskaras*.¹⁹ Muslim law makes it compulsory for a person who finds a child to take it in its charge if he has reason to believe that it may otherwise perish.²⁰

¹⁴Upanayana means leading or taking near, *ibid*

¹⁵Art of Government , *ibid*

¹⁶Metaphysics , *ibid*

¹⁷Agriculture, *ibid*

¹⁸Supra 7

¹⁹Kakar, Sudhir. *The Inner World – A Psycho-Analytic Study of Childhood and Society in India*, Delhi : Oxford University Press, 1982 p.204, 207

²⁰The Hedaya at 206ff, Abdullah Yusuf Ali, *The Holy Qur'an*, Wordsworth Editions, 1997

2.2. Age of the Child in conflict and in Contact with Law in Ancient Codes

According to Sankha²¹ he prescribed complete exoneration upto the age of five. Kautilya²² prescribed complete exoneration for a female child upto the age of 12 and 16 for a male child. Narada²³ followed the principle of complete exoneration upto the age of 16 and Mahavarata upto the age of 14. Narada, Yajnavalkya,²⁴ Brihaspati and Matsya Purana mentioned a boy upto 8 years and described the child like a 'sisu', which means like an embryo and 'Bala' or *poganda* which is prescribed upto the age of 16. This indicates that there was no fixed prescribed age which was followed for children.

Manu²⁵ prescribed corrective corporal punishment to juvenile and child offender. One distinguishing feature of this time was that no distinction was made between child offender and a juvenile offender for the purpose of punishments on criminal actions. *Smritis* are of the opinion that a boy over 5 years of age and less than 11 years is guilty of patakas such as drinking sura but he will not do penance personally. His brother, father or other relative or friend has to undergo it for him. A Child less than 5 years whatever act he may do it is not deemed to be a crime and it is not a sin.²⁶ Hence he is not liable for any legal penalty or prayascitta. Some authors say for boys the punishment is 1/4 if committed before upanayana.

²¹Supra 12 , p.395

²²Kautilya, *Arthashastra*, Part III, sloka3, part IV, Sloka 8 and 13; See Supra 7

²³Narada, *NaradaSmriti*, part IV , Sloka 85; *ibid*

²⁴YajnavalkyaSmriti Ch.II, Sloka 213 -214; *ibid*

²⁵Manusamhita Ch.IX, Sloka 101.26, p.462; See also Justice Chakrabarti, N.K. *Juvenile Justice In the Administration of Criminal Justice*, Deep & Deep Publications, New Delhi, 1999 p.15

²⁶Supra 7

2.3. Child under International Ancient Codes

Laws and legal procedures relating to juvenile offenders have a long history, dating back thousands of years. The *Hammurabi Code*²⁷ addresses parent-child relationships. Children owed a duty of respect to their parents, and if children fulfilled this duty, they were entitled to receive minimum care and treatment from their parents. If the child's duty was violated, the parent owed the child nothing, and the child's status reverted to that of a slave.²⁸ *Hamurabi Code* had severe punishments. Rule 195 of the *Hamurabi Code* was designed for those children who disobeyed their parents. If the son strikes his father his hands could be cut off. If an adopted son said to his parents that you are not my parents its tongue could be cut off.²⁹ If an adopted son was returned to its biological parents then its eyes could be plucked off.³⁰ A child was virtually its father's chattel.³¹ Without inherent rights and protections; children could suffer abuse without state interference. Infanticide of unwanted children or children with birth defects, and punishment of children by dismemberment were accepted practices during these times.³² Thus historically, children have been under the control of their parents.

²⁷The Hammurabi Code is one of the earliest records of a society's standards regarding children. Babylonian and Assyrian Laws, Contracts and Letters, by C. H. W. Johns, in 1904, one of a series called the Library of Ancient Inscriptions, from a facsimile produced by The Legal Classics Library, Division of Gryphon Editions, and New York in 1987. Available at <http://www.commonlaw.com/Hammurabi.html> accessed on 12/2/2011

²⁸The code defined the parent-child relationship as proprietary interest. The child was viewed as an economic unit and could be sold or exchanged at the discretion of the parent.

²⁹Rule 192 Hammurabi Code

³⁰Rule 193 Hammurabi Code

³¹Classen A, *Childhood in the Middle Ages and Renaissance*, Library of Congress, Germany

³²Robert R, Hewitt, J. and Delisi, M. *Delinquency in Society* Jones and Bartlett 8th e.d, 2009 , p.10 -14

The *Mosaic Code*³³ fully supported the concepts of the Hammurabi Code, including the parent's proprietary interest in children and children's absolute duty to respect their parents.

In the third and sixth centuries juvenile misbehaviour was considered a serious problem. Greeks responded to 'delinquency' by creating laws and holding parents responsible for the behaviour of their children. Greek children were unruly hence a law was passed to specifically prohibit them from beating their parents.³⁴ Another law evolved in Greece which restricted the father from having the right to take his child's life. Instead, he was given the right to physically chastise the child.³⁵

Among the Romans the father had the privilege to sell, abandon, offer in sacrifice, devour, kill, or otherwise dispose of his offspring. Roman civil law and canon law 2,000 years ago distinguished between 'juveniles' and 'adults' based upon the idea of age of responsibility. For the Romans childhood barely lasted beyond the age of five and seven. In ancient Rome brutal forms of child abuse were common.³⁶ In Roman law children before they reached the age of majority had no legal rights. In the fifth-century Roman law, children under the age of 7 were classified as 'infants' and not held criminally responsible. The 'legal age of puberty'³⁷ was the age at which youth were assumed to know the difference between right and wrong and were held criminally accountable.

³³ A part of Hebrew life before 1000 B.C.,

³⁴ *Supra* 32

³⁵ *ibid*

³⁶ Dr. Bhakhry, S. *Children In India And Their Rights*, National Human Rights Commission, New Delhi, 2006, p.19-43

³⁷ 14 for boys and 12 for girls

Justification for maltreatment was based on religious beliefs and practices. Boys were flogged by their parents before the altars of Diana.³⁸

The early Jewish law, the *Talmud* set forth conditions under which immaturity was to be considered in imposing punishment. Moslem law also called for leniency in punishing youthful offenders, and children under the age of 17 were to be exempt from the death penalty.³⁹

In the sixth century the age of majority was 10 and by the seventh century it was 12. From the seventh century the law allowed the parents in circumstances of dire necessity, to sell a child under the age of seven, and to veto the marriage of a daughter under 17, although he could not in law enforce a marriage upon an unwilling child. At this early period the law concerned itself with the rights of children only when they inherited property.⁴⁰

*Visigothic Code*⁴¹ stressed the duties rather than the power of the parent. Children could be punished or disinherited, but they could not be put to death or mutilated and the sale of children was forbidden. Parents were given authority to use reasonable physical discipline, but were not permitted to exceed what was considered reasonable.⁴²

³⁸Ryan, W. B. *Infanticide: Its Law, prevalence, prevention and History*, London J. Churchill 1862 p.195

³⁹Lawrence History and Development of Juvenile Court and Justice Process, Sage Publications p.20,21

⁴⁰*ibid*

⁴¹The Visigothic Kingdom existed in Europe between about 476 and 711 A.D. Formed with Roman, Germanic, and newly emerging Christian influences, this society was unusual in its humane treatment of children.

⁴²*Child Welfare Values and Principles put into practice, From Ancient Egypt to the 21st Century*, Institute of Human Services Ohio Department of Job and Family Services and Ohio Child Welfare Training Program available at <http://www.ocwtp.net/PDFs/Trainee%20Resources/Skill-Building%20Resources/CW%201%20Pre.pdf> accessed on 2/5/2012

It was common for mothers to suffocate their children and leave their bodies on streets. Despite their poor treatment children in the Middle Ages were viewed as miniature adults.⁴³ Children were permitted to curse, openly engage in sex, drink and wear firearms. Laws regulating problematic behaviour of children began to emerge in the tenth century when King Aethel pronounced that any thief older than age of twelve should receive death penalty if she or he stole more than eight pence. This declaration was later modified to provide a person younger than age of 16 could not be put to death unless he or she resisted arrest or ran away.⁴⁴ These laws recognize that a child younger than a minimum age which was twelve years was exempted from prosecution and punishment. They provide little distinction between older juveniles and adults.⁴⁵

2.4. Child in the Medieval Society

In Medieval society children were not forsaken, neglected or despised. During childhood parents had affection for their children. Medieval civilization failed to perceive a transitory period between infancy and adulthood.⁴⁶ In the 12th and 13th century there was no distinction between ‘adult’ and ‘child offender.’ In the 13th and 14th century the Chancery Court emerged as a tool for saving children from severest penalties of the criminal laws. The Chancellor of the Court would depart from due process of law and like a benevolent parent exempt children from the penalties set out in various criminal offences. He

⁴³Flekkoy, M. and Kaufman, N. H. *Rights and Responsibilities in Family and Society*, Jessica Kinsley Publishers London, 1997, p.15

⁴⁴Supra 39

⁴⁵See <http://books.google.co.in/books?id=hDwK--> accessed on 12/2.2011

⁴⁶Supra 43

would also take control over children who had not committed such offences and were involved in matters of vagrancy, idleness, incorrigibility or association with undesired persons. This was the beginning of sociological responsibility of the state towards children.⁴⁷

Infants under seven were recognized as fragile and vulnerable creatures. Their parents were indifferent to them and treated their death with casualness. The reasons for absence of any idea of 'childhood' before the 15th century was the high fertility and high infant mortality rate which were responsible for counting children as "being" before they crossed the age of infancy. This was because in ancient times infancy was a dangerous time of life. The child was not considered human until certain ceremonies were performed. The Egyptian midwife had to pray for the soul to join the newborn infant, and the Babylonian father had to impart his spirit into the child by blowing into its face and then giving it his name or the name of one of his ancestors, thus bestowing upon it a soul.⁴⁸ In this manner a child was assured of life. The Frisian father could destroy or otherwise dispose of his infant only before it had taken food, to give food was life giving. In Athens the *amphidroma* ceremony was performed as a rule on the fifth day of life, when the new baby was carried by its nurse around the ancestral hearth to receive consecration and a name.⁴⁹

⁴⁷Dean J. Champion, *The Juvenile Justice System: Delinquency, Processing, And The Law*, Macmillan Publishing Company, 1992 (1992) p.18

⁴⁸King, M. *Childhood, Welfare and Justice*, Batsford, London., 1981, pp. 6–25.

⁴⁹Brill , *Encyclopedia Criminal Law*, Brill Publishing, 1922 pp.107-8, 210-11

The Medieval period adopted the Hippocratic Tradition of dividing childhood into three stages. *Infantia* from birth till age of seven, *Pueritia* from 7 to 12 for girls and 7 to 14 for boys and *Adolescentia* from 12 or 14 till 21. In Common law children under the age of seven were presumed as ‘*doli incapax*’ or incapable of entertaining criminal intent.⁵⁰ Children between seven and fourteen are presumed incapable of entertaining a criminal intent but the presumption is conclusive for children who are under the age of seven.⁵¹ Children over fourteen years of age were in the same position with regard to criminal responsibility of the adult. This principle is adopted by the Common law and was enunciated in *Morgan .V. Thorne*⁵² which evolved over the years in various countries. Most common law countries followed above 14 years as a uniform age of a child.⁵³

Early common law did not provide any special treatment for children who committed crimes thus they were liable for their actions in the same way as adults. The minimum age for criminal responsibility was set as young as seven and children guilty of crimes were imprisoned. The harshness of the laws of these times were illustrated by the *Stubborn Child Statute* enacted by the State of Massachusetts in 1646, which provided that a stubborn or a rebellious child could be put to death pursuant to a complaint made by the parents.⁵⁴

⁵⁰*ibid*

⁵¹Supra 43

⁵²*M v. T* (1981), Parke, B7 M and W, pp. 400-08

⁵³See ‘Child’, Black’s *Law Dictionary* St. Paul, M.N:West Publishing Co., 6th ed, 1990

⁵⁴Bueren, V.G, *The International Law on the Rights of the Child*, The Hague Martinus Nijhoff Publishers for Save the Children, 1995, p.72

Childhood did not exist before the seventeenth century.⁵⁵ There was no categorical distinction between child and the adult.⁵⁶ The discovery of the ‘child’ as a category of persons distinct from the adult can be viewed as the discovery of the child’s incapacity. The juristically constructed conception of child’s incapacity fitted perfectly into this socially constructed concept of inability. The child was not a competent witness and was incapable of autonomous action.⁵⁷ In 1889 cruelty to children by parents and others became for the first time a specific criminal offence, the child was given no independent right to initiate action against the offender; this right was taken up by the court to intervene, in the interests of the child. This was for the first time the court’s assuming the right to protect the child against adult exploitation.⁵⁸

2.5. Age of Child in the Modern Age

In the nineteenth century a new right, ‘the right of the minor’ helped to synthesize and consolidate as well as protect and control the child’s incapacity which was seen as natural.⁵⁹ The First Children’s Court was established in Chicago in 1899 was founded on the principle of the best interest of the child.⁶⁰

⁵⁵Aries, P. *Centuries of Childhood: A Social History of Family Life*, Jonathan Cape Limited, London 1962

⁵⁶*ibid*

⁵⁷UNICEF *Protecting the World’s Children*, Cambridge University Press, New York 2007 p.105-106

⁵⁸Encyclopedia Britannica, ‘*Human Rights*’, www.britannica.com/eb/articles-9106289/human-rights

⁵⁹Turner, S. & Matthews, G. *The Philosopher’s Child: Critical Essays in the Western Tradition* Rochester, University of Rochester Press, 1998. p.25

⁶⁰Kumari, V. *The Juvenile Justice System in India From welfare to Rights*, Oxford University Press, 2nd e.d, New Delhi, 2004 p

2.5.1. Recognition of the Principle of Innocence of the Child

Families saw children as an investment for the future. Childhood became a separate part of life and people began to recognize that children have their own inner lives. It became common for children to go to school and prepare for a career. During this period there was an attitude change of believing and viewing them as innocent.⁶¹

Child rearing began to be portrayed as a safeguard of the child's innocence. John Locke, Jean Jacques Rosseau placed emphasis on the importance of early child rearing and child learning. Locke developed the environmental learning with a view of child development. He envisaged the child's mind at birth as a 'white paper' or blank slate that provides form but not content to the child as an individual. The knowledge that a child attains is learned through contact with the environment.⁶² Locke saw experience and observation as a source of all ideas. He believed that children have personalities at birth that guide their responses. He also believed that parents should encourage the child's natural curiosity. He advocated the use of reinforcement rather than punishment in rearing and educating the child.⁶³

Jean Jacques Rosseau believed in the inherent goodness of the young but believed this goodness was corrupted by influences of society. His general message was that parents and teachers should fit education to the child not

⁶¹Goldson B. And Lavalette, M. and Mackechnie, J. *Children Welfare and State*, Sage Publication, New Delhi, 2002

⁶²Coleman, J. *Youth Transitions to adulthood* Chicago Univeristy of Chicago Press 1974 p.193

⁶³Devi. L, *Encyclopaedia of Child and Family Welfare*, Vol. I Anmol Publications Pvt. Ltd New Delhi 1998 p.129

force the child to learn what was beyond his or her natural grasp.⁶⁴ If adults shield children from negative aspects of society their natural goodness would ensure that they make right choices. Rousseau did not believe in the perfectibility of human beings but he suggested that education could enhance a Child's desire to learn and develop.⁶⁵

2.6. Ideology of Rights of the Child

A legal right is an expression of the individual's possibility to control the expression of other persons, also to waive the possibility.⁶⁶ Such a possibility can be very weak as in liberty right or in a power right.⁶⁷ A liberty is a right to do something since there is no obligation to abstain, such as take a walk in the park. A power right describes a position which may force a person to perform some act. For example the parents right to represent their children.⁶⁸

The jurisprudence of whether children can be described as right holders is linked with relevance to their choice. A person cannot be described as right holder unless they are able to exercise a choice over the exercise of that right. The function of legal right cannot be an expression of the individual's possibility to control the expression of other person, also this does not include the right to waive the possibility. Children do not have the possibility of

⁶⁴Freeman, M.D.A. *Lloyd's Introduction to Jurisprudence*, Sweet and Maxwell Ltd, London, 2001 7th e.d. p.150-154

⁶⁵ *ibid*

⁶⁶Hart, H.L.A, *Concept of Law*, Clarendon Law Series, 1st e.d 1961, p.35

⁶⁷According to Hohfeld a legal right can be divided into liberty rights and power rights ; See Supra 62

⁶⁸Supra 60

making choices.⁶⁹ They are dependent on parents, guardians, or custodians. The function of legal rights is to express various degrees in liberty, claim and power rights for the protection of the interest of an individual.⁷⁰

2.7. Classification of Child Rights

Child's protective rights arise from their innate dependence and vulnerability and an obvious need to nurture, love and care both physical and psychological needs.⁷¹ These rights might include right to be protected from ill treatment, and the right to state intervention to achieve such protection. Assertive rights are broad enough to include claims of adult human rights. Such rights include the right to bodily integrity and freedom of expression and thought, conscience and religion, and certain decision making rights.

Campbell classifies rights according to the minor status of child, juvenile and future adult. Bevan proposes a simpler scheme of children's rights based on a grading to being protective and self assertive.⁷²

2.7.1. Eekelaar's framework of children's Interests

According to Eekelaar interests are divided into three groups. Basic, autonomic and developmental interest. This theory is based on the concept of dynamic self-determination and relies on the argument that the best interest principle should be properly understood to accommodate an opportunity for the child to

⁶⁹Supra 60

⁷⁰*ibid*

⁷¹See, Archard ,D.W. *Children's Rights* (Stanford Encyclopaedia of Philosophy), available at www.plato.stanford.edu/entries/rights-children/ accessed on 2/3/2012

⁷²*ibid*

determine what those best interests are. The child's decision should determine the outcome of the issue in question.⁷³

2.7.1.1. Basic Interest

Basic interest arises from the child's claim regarding its immediate physical, emotional, intellectual care and well being. Basic interests actuate at two levels in the home where parents have a duty to provide care within their social capabilities; and at a national level where the state has a role to enforce the prevention of neglect. These are "basic" interests; as they require compliance with minimally acceptable standards of upbringing.⁷⁴ Parents have the duty to refrain from the actual prevention or neglect of proper development or natural health rather than the maximum promotion of these qualities. In this respect basic interests differ from developmental interests.⁷⁵

2.7.1.2. Development Interest

All children should have equal opportunity to maximise the resources available to them during their childhood. The responsibility lies within the family to do this, but the wider socio-economic and political environment directly impacts this. Societies may choose to actualize it in harmony with their overall social goals, which may involve creating equality of opportunity and reducing socially determined inequalities. All developmental interests may not be legitimately classified as legal rights. Apart from the right to education, the law

⁷³Supra 62

⁷⁴*ibid*

⁷⁵ *ibid*

imposes no duty on parents to fulfil children's developmental interests. Developmental interests depend, rather, on the natural workings of the economies of families which are themselves dependent on the wider social and economic mechanisms of the community.⁷⁶

2.7.1.3. Autonomy Interest

Autonomy interests relate to the freedom to choose his own lifestyle and to enter into social relations according to own inclinations uncontrolled by authority of the adult world whether parents or institutions. In an event of the child's autonomy interest conflict with the development or basic interest the latter interest should prevail. Children will now have, in wider measure than ever before, the most precious of rights the right to make their own mistakes. For example the removal of age restrictions on drinking or driving would further the autonomy interests of children. But it would also result in more deaths or injury among children from road accidents, thereby infringing their developmental and basic interests.⁷⁷

2.7.2. Wald's framework of Claims

Wald refers to the claims like the nurturance approach and the protections due to children rather than rights of, children. These categories raise fundamental issues regarding the role children play in our society.⁷⁸ He lists two categories of protections, namely rights against the world and protection against inadequate

⁷⁶Supra 62

⁷⁷Colen, H. *History of childhood*, Blackwell Publishers Ltd. 2001

⁷⁸Vaughan M. *Rights of Children*, National Council of Civil Liberties, London, 1972 London

care. As far as the “self-determination approach” is concerned, two categories of rights that can be classified under this approach, namely adult legal status and rights versus parents.

2.7.2.1. Rights against the world

This category deals with claims for equal access to adequate nutrition, housing medical care and schooling. These rights recognise that children cannot provide for themselves and need the care and guidance of adults. The claims listed here are not traditionally recognised as legal rights.⁷⁹

2.7.2.2. Protection against inadequate care

The state should actively protect children from harm by adults, especially their parents. These claims can more easily be enforced by the courts and the legislature, since they are more specific and focus on the question of whether the parents are harming the child. It focuses on the appropriate role of parents and the state in child rearing.⁸⁰

2.7.2.3. Right to an adult legal status

Historically, age has been accepted as the only basis for withholding certain privileges⁸¹ from children. This distinction between adults and children is based on the assumption that children are incapable of acting in an adult manner. People mature at different times hence restriction based on age will be arbitrary.

⁷⁹entitlements enforceable by court order

⁸⁰Supra 77

⁸¹E.g the right to vote, marry, drive and work

It is for the courts to determine the age restriction which is necessary and valid in order to achieve a legitimate state interest and whether specific classification is reasonable.

Courts have already struck down many restrictions, for example provisions regulating school hair and dress codes. Other decisions provide children with the right to counsel when the state is seeking to deprive them of liberty, and the right of access to contraceptive devices and to abortions. The rationality of the present age limits on the exercise of other rights such as the right to contract, marry or vote, these do not need judicial scrutiny.⁸²

2.7.2.4. Rights versus parents

The rights of children prior to the age of majority like the right to act independently of their parents. These rights relate to the issues where consent of the parent may be needed in cases such as consent to medical care, consent to abortion, decisions on the school the child should attend, and where the child will live. Historically, all such decisions were made by the parents. The right to act independently in some cases can be given to the child alone. The child may be required to seek approval for his or her action, or challenge the parental decision, in a court or other agency. For example, in some states the child may petition a court to order the abortion in cases of parent-child dispute.⁸³

The decision-making authority can be removed from the parent, when the child can make such decisions adequately. If there are other decision-makers are

⁸²Supra 78

⁸³Supra 77

likely to arrive at better decisions than parents. Wald is of the opinion that giving adolescents the autonomy to make decisions may have a risk of the disruption of the family system. He thus recommends the decision-making authority to parents as courts or other agencies may not be in a position to help, guide and support the child.⁸⁴

2.7.3. Hafen's framework for children's rights

Children need a protective environment in which to develop their capacities. Children rights prematurely will damage individual liberty because children are incapable of making meaningful and rational choices. Children are excluded from the individual tradition mainly because of their lack of capacity for rational decision-making, an important requirement for individual freedom. However, children are part of the family tradition, where it is the duty of parents to develop the minimal capacities of their children with the intention of preparing them for the individual tradition.⁸⁵

2.7.3.1. Right of protection

Right of protection include the right not to be imprisoned without due process, rights to property and the right to physical protection. These rights are aimed at protecting children not only against their parents and other adults, but also against the long-term implications of their own decisions, made at a time when they lack sufficient capacity and experience to be held as responsible as an adult

⁸⁴Supra77

⁸⁵Supra 78

would be for the same decision.⁸⁶

2.7.3.2. Rights of choice

Rights of choice include the right to make affirmative choices of binding consequence such as voting, marrying, exercising religious preferences, and choosing whether to seek education. These rights are based on the assumption that the capacity for making rational decisions exists. To restrict the child's right of choice is in fact an important form of protection rights. Parents have a critical role to play in guiding the development of their children's rational capacities towards maturity.⁸⁷

2.7.4. An emerging theory of children's rights - Worsfold's

Worsfold identifies⁸⁸ three essential features which are necessary in any scheme justifying children's rights.⁸⁹ Firstly, children's rights must be practicable, which means that they must be theoretically possible, or acceptable within some larger conception of the good society. Secondly, they must be genuinely universal and must be appropriate for all children everywhere. However, there may be misunderstandings about the implications of this characteristic for different age groups. It may be argued, for instance, that preschoolers should not have rights while adolescents should, or that in any event the rights of the two groups should not be the same. The concern with including this criterion is more

⁸⁶*ibid*

⁸⁷ Archard, D. *Children Rights and Childhood*, Routledge Taylor and Francis Group, 1993, New York, 2nd e.d, p.30-35

⁸⁸ These features were first proposed by Maurice Cranston in justifying individual rights in general

⁸⁹ Maurice Cranston *Human Rights, Real And Supposed* in Raphael *Political Theory And The Rights Of Man* (ed), (1967), as analysed by Worsfold, *Harvard ER*, 1974p. 149-151

a concern with establishing a generally applicable philosophical doctrine of capacity, than it is a concern with the particular practical domain in which these rights are exercised by children themselves. This distinction is analogous to the distinction between capacity and the exercising of specific rights which is made in the broader context of the legal system. All persons do not enjoy the same legal rights, but all are presumed to have the same capacity for rights.⁹⁰

Thirdly, children's rights must be of paramount importance. When fair treatment is accorded to children as a right, it must override all other considerations in society's conduct towards children, for example, the consideration that children should have fun. This feature serves to override the utilitarian objection that when we act in children's best interests we should be concerned less with their protection and more with their pleasure or satisfaction.⁹¹

2.7.5. Children's Capacity for Autonomy and the Role of Paternalism

Children have right to autonomy this right is needed to promote individuals freedom to make rational autonomous decisions. Children as human beings like adults should be free to lead their own lives according to their own conception of good or worthwhile life. Provided this does not illegitimately restrict the liberty of others to do the same. Mature children are able to take much more responsibility than adults who give credit.

⁹⁰ Supra 77

⁹¹ Supra 87

Paternalistic restrictions are imposed on children's freedom.⁹² The parents' right to exercise paternalistic power over their children entails an obligation on the part of the children to their parents, and children's rights seem to entail an obligation on the part of the parents to their children. But do children really owe obligations to their parents? Shapiro notes that parental benefits to children cannot be the foundation for children's obligations, since children cannot be said to have consented to accepting these benefits, nor even to being born.⁹³ Children have no duty to obey immoral commands, and parents may indeed lose the right to raise their children if they frequently issue such commands. Children owe some pragmatic obligation to obey parents' commands.⁹⁴

2.8. Age under the International Conventions

The Convention on the Rights of the Child 1989 is silent on what should be the appropriate minimum age; it has a saving provision⁹⁵ that says a person below the age of 18 is a child unless the age of majority is attained earlier under the domestic law as applicable to the child. State parties are required⁹⁶ to give recognition to the rights of every child who has allegedly acted contrary to the penal law of the land and to take account of his age.⁹⁷

⁹²Fortin, J. *Children's Rights and Developing Law*, Cambridge University Press, U.K. 2005, 2nd e.d, p.19-25

⁹³Sorens,J. *Libertarian Theory And Children's Rights, The Fiduciary Model, Rationality, Interests, And The Challenge Of Abortion*, Libertarian Alliance, London, 2001, p.3

⁹⁴Supra 87

⁹⁵See Article 1

⁹⁶See Article 40; Also See Choudhry, R.N. *Law Relating to Juvenile Justice in India*, 3rd e.d Orient Publishing Company, New Delhi, 2009, 1246 -1263

⁹⁷ The Rights Of The Child In The Administration Of Justice available at www.essex.ac.uk/.../story.../therightsofthechildintheadminofjustice.pdf accessed on 15/8/2012

U.N Standard Minimum Rules for the Administration of Juvenile Justice, 1985 i.e The Beijing Rules emphasize on the age of criminal responsibility. Age limits will depend on, and are explicitly made dependent on, each respective legal system. This makes for a wide variety of ages coming under the definition of “juvenile”, ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems.⁹⁸The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities. Efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally.⁹⁹

2.9. Age thresholds in criminal justice system in Different Jurisdictions

Children should not be treated as adults by the criminal justice system. In law, the term minor (also infant or infancy) is used to refer to a person who is under the age in which one legally assumes adulthood and is legally granted rights

⁹⁸See Rule 3 and 4

⁹⁹See Rule 4; Supra 97 p.1203-1213

afforded to adults in society. Depending on the jurisdiction and application, this age may vary, but is usually marked at 18, 20, or 21.

Different jurisdictions in different countries refer to a minor under various terms such as child, adolescent, teen, youth, juvenile and young person. The Minor status carries with it special restrictions, penalties and protections that do not apply to adults. Specifically, the status of minor is defined by the age of majority. In countries, like Canada, India, New Zealand, Brazil and Croatia, a minor is presently defined as a person under the age of 18.¹⁰⁰ In Japan, Taiwan and South Korea, a minor is a person under 20 years of age.¹⁰¹

2.10. Age of criminal responsibility

Children are not held criminally responsible for their actions until they have reached a certain age.¹⁰² The age of criminal responsibility is 10 under federal law¹⁰³ and in all jurisdictions except Tasmania and the ACT where the threshold is seven and eight respectively.¹⁰⁴

The age of criminal responsibility under the Crimes Act is generally consistent with standards in common law countries. In England, for example, there is a

¹⁰⁰Pappas, A.M, *Law and the Status of the Child*, United Nations Institute for Training and Research, New York, Volume 1,1983

¹⁰¹ *ibid*

¹⁰²Article 40(3) (a) of CROC requires States Parties to establish a minimum age below which children shall be presumed not to have the capacity to infringe the criminal law. It does not propose a particular age for this presumption.

¹⁰³Crimes Act S.4M. This provision was introduced by the *Crimes Amendment Act 1995*, S.4 to overcome the anomaly of children being liable for prosecution for federal offences at different ages in different jurisdictions.

¹⁰⁴Criminal Code (Qld) S.29(1); *Children (Criminal Proceedings) Act 1987* (NSW) S. 5; *Young Offenders Act 1993* (SA) S. 5; *Children and Young Persons Act 1989* (Vic) s 127; Criminal Code (WA) S 29; Criminal Code (NT) S.38(1); *Children's Services Act 1986* (ACT) s 27(1); Criminal Code (Tas) s 18(1). The Government has announced its intention to raise the age of criminal responsibility to 10 as part of the reforms in the Youth Justice Bill 1997 cl 3

conclusive presumption that a child under 10 years of age cannot be guilty of a criminal offence.¹⁰⁵ In Scotland the age of criminal responsibility is eight and in Ireland it is seven.¹⁰⁶ In Canada, the age of criminal responsibility is 12.¹⁰⁷ In New Zealand the age of criminal responsibility is 10.¹⁰⁸

The age of criminal responsibility is generally higher in civil law countries.¹⁰⁹ For example, in France the age of criminal responsibility is 13.¹¹⁰ In Norway and Denmark it is 15.¹¹¹

In the United States, where the age of majority is set by the individual states, minor usually refers to someone under the age of 18, but can be used in certain areas to define someone under the age of 21. For the sale of alcohol, people under the age of 21 may be referred to as minors.¹¹² However, not all minors are considered juvenile in terms of criminal responsibility. As is frequently the case in the United States, the laws vary widely by state. In eleven states, including Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, South Carolina, and Texas, a juvenile is legally defined as a person under seventeen. In three states, Connecticut, New York, and North Carolina, juvenile refers to a person under sixteen. In other states a juvenile is legally defined as a

¹⁰⁵ *Children and Young Persons Act 1933* (UK) s 50.

¹⁰⁶ *Criminal Procedure (Scotland) Act 1975* (UK) S.170. In Ireland the age of criminal responsibility is governed by the common law. The Children Bill 1996 which proposed raising the age of criminal responsibility in Ireland to 10 years has lapsed.

¹⁰⁷ Criminal Code (Can) S 13.

¹⁰⁸ Criminal Code (Can) S 13.

¹⁰⁹ However, civil law countries do not recognise the *doli incapax* principle

¹¹⁰ C Dadomo & S Farran *The French Legal System* Sweet & Maxwell London 1996, p.76.

¹¹¹ General Civil Code (Norway) s 46; Criminal Code (Denmark) S. 15. For a list of the age of criminal responsibility in Council of Europe countries. See Cavadino, P 'Goodbye *doli, must we leave you?*' (1997) 9 Child and Family Law Quarterly p. 165, 171.

¹¹² Bajpai, A. *Child Rights in India*, Law Policy and Practise, Oxford University Press, 2nd ed, 2006

person under eighteen.¹¹³ Under this distinction, those considered juveniles are usually tried in juvenile court, and they may be afforded other special protections. For example, in some states a parent or guardian must be present during police questioning, or their names may be kept confidential when they are accused of a crime. For many crimes (especially more violent crimes), the age at which a minor may be tried as an adult is variable below the age of 18 or (less often) below.¹¹⁴

In Australia, those under ten years of age are free of all criminal responsibility under the *doli incapax* doctrine of UK legal tradition. Those under the age of fourteen are presumed incapable of responsibility, but this can be disputed in court. The age of full legal responsibilities is 18 except Queensland where it is 17. The age of majority in all states and territories is 18.¹¹⁵ The age of majority is 18 for most purposes including sitting on a jury, voting, standing as a candidate, marriage, hiring R-rated films or seeing them in a theatre. Some of the prohibited acts include buying/viewing pornography and purchasing alcohol and tobacco products. A person under 18 is defined as a minor or a child.¹¹⁶

¹¹³Pappas, A.M, *Law and the Status of the Child*, United Nations Institute for Training and Research, New York, Volume 2, 1983

¹¹⁴Sherman, T. Francine and Jacobs, Francine, *Juvenile Justice Advancing Research, Policy and Practice*, John Wiley and Sons, Inc, 2011 p.33-35

¹¹⁵Supra 113

¹¹⁶See Appendix 1 for Age of Criminal Responsibility of the Child in Different Countries

2.11. Age Thresholds under Indian Laws

The word 'child' has therefore been used in law as a term denoting relationship; as a term indicating capacity; and as a term of special protection. The age of the child also varied from 12, 14, 15, 18 and 21 as the important stages in the child's life. According to Article 24 of the Constitution a person cannot work if he or she is below fourteen years of age. Different standards have been prescribed for different trade.

*The Apprentices Act, 1850*¹¹⁷ was the earliest piece of juvenile legislation covering the children in the age group of 10-18. The Apprentices Act, 1850 was the first legislation dealing with the 'child in conflict with law', which was binding for children under the age of 15 years who committed petty offences. The child who committed 'petty offences' was known as an apprentices. The Act was not concerned with delinquent behaviour of children but contained provisions relating to the relationship between employers and young person's learning a trade from them as apprentices. Under this Act the Magistrates were empowered to commit children between the ages of ten and eighteen years as apprentices to employers and provisions were made for controlling the relations between such children and the employers. The Act provided that the father or the guardian could bind a child between the ages of 10 and 18 years upto the age of 21 years.¹¹⁸

¹¹⁷Act No. 19 of 1850 Repealed. Also See Dr. Padhi, P.K. *Child Labour :Retrospect & Prospect*, Laxmi Offset, Cuttack, p.3

¹¹⁸Dr.Saharay, H.K. *Textbook on Labour & Industrial Law*, 5th e.d Universal Law Publishing Company, New Delhi India p.864

*The Whipping Act of 1864*¹¹⁹ explicitly defined a ‘child’ as a person under eighteen years of age.¹²⁰

*The Indian Penal Code, 1860*¹²¹, declared children below 7 years of age as *doli incapax*. No infant can be held guilty of a crime under the age of seven.¹²²

When the child is above seven years of age and under twelve the incapacity to commit an offence only arises when the child has not attained sufficient maturity of understanding to judge the nature and consequence of his or her conduct.¹²³ However such non-attainment would have to be specially pleaded and proved.

It also has age limits for prescribing offences against girls. Procurement of a minor girl below 18 years of age is an offence.¹²⁴ Importation of girls less than 21 years of age from the State of Jammu and Kashmir to any other state, or from a foreign country to anywhere in India, is an offence.¹²⁵ The Indian Penal Code, 1860, states that sexual intercourse with a girl-child under 16 years of age, even with her consent, constitutes an offence of rape.¹²⁶ The offence is graver in nature if rape is committed on a child under twelve years.¹²⁷ Under

¹¹⁹ Act No. VI Of 1864 modified on 1st August, 1905

¹²⁰ Sen, S. Colonial Childhoods: The Juvenile Periphery of India 1850-1945, Anthem South Asian Studies, London, 2005, p.104

¹²¹ Act No. 45 Of 1860 dated 6th October, 1860

¹²² See Section 82; Also See Dhirajlal & Ratanlal, *The Indian Penal Code* 30th edition, 2004 Wadha and Company Nagpur p. 678- 680

¹²³ See Section 83; Supra 123

¹²⁴ See Section 366 (A), *ibid*

¹²⁵ See Section 366 (B), *ibid*

¹²⁶ See Section 375(6) of the IPC, *ibid*

¹²⁷ See Section 376(2)(f), *ibid* p.680

Section 372 and 373 of the IPC, selling/buying of minor girls below 18 years of age for purposes of prostitution, etc, is an offence.¹²⁸

*The Indian Evidence Act, 1872*¹²⁹ prohibits children of tender age from testifying before a Court.¹³⁰ While the law recognises the child as a competent witness, a child who is around 6 years old, who is unable to form a proper opinion about the nature of the incident because of immaturity of understanding, is not, considered by the court as a witness whose sole testimony can be relied¹³¹ on without other corroborative evidence.¹³²

*The Reformatory Schools Act, 1897*¹³³ defined youthful offender as a boy who has been convicted of any offence punishable with transportation or imprisonment and who, at the time of such conviction, was under the age of fifteen years.¹³⁴ Such boys were sent to Reformatory Schools the spirit of the act proclaimed that young people require treatment not punishment. Under this Act no boy over 18 years of age was to be detained in such an institution. It also provided that a boy over 14 would be released on license if suitable employment was found for him and the Head of the institution was able to indicate certain conditions in regard to licensing if they were fulfilled.¹³⁵ The

¹²⁸ *ibid*

¹²⁹ Act No. 1 of 1872 dated 15th March, 1872.

¹³⁰ See Section 118

¹³¹ Dhirajlal and Ratanlal, *The Law of Evidence*, Wadhwa and Company Nagpur, twentieth edition, 2002, p.966

¹³² Prem Shankar Sachhan .v. State 1981 Cri LJ NOC (Del)

¹³³ Act (Act VIII of 1897) dated 11th March 1897

¹³⁴ See Section 4(a)

¹³⁵ Full text of the Act available at <http://theindianlawyer.in/statutesnbareacts/acts/r18.html> accessed on 14/2/2011

Act provided children up to the age of 15 years sentenced to imprisonment may be sent to reformatory schools rather than prison.¹³⁶

*The Prisons Act, 1894*¹³⁷ requires separation of prisoners.¹³⁸ In a prison where male prisoners under the age of twenty one are confined, they have to be provided with means for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not.¹³⁹ This Act was amended and the age was reduced from twenty one to eighteen.¹⁴⁰

The Madras Children Act, 1920 made provisions for the custody, trial, and punishment of youthful offenders and for the protection of children and young persons. The law created three categories of children; firstly it defined a “child” as anyone younger than 14. A “young person” as anyone between the ages of 14 and 18, and a “youthful offender” as anyone younger than 18 and guilty of an offence.¹⁴¹

In Goa By *Decree No.10:767*, of 15 of May of 1925¹⁴² which introduced Criminal Law for Minors in Goa. The law defined a ‘minor delinquent’ as the one who has been judged author of a violation, or author, concealer or

¹³⁶Supra 121

¹³⁷The Prisons Act, 1894 Act No. 9 Of 1894 dated 22nd March, 1894

¹³⁸See Section 27

¹³⁹Full text of the Act available at http://mha.nic.in/pdfs/Prisons_act1894.pdf accessed on 12/2/2012

¹⁴⁰Subs. by Act of 1930, S. 2 for "eighteen".

¹⁴¹Sharma, S.D. *Administration of Justice in Ancient India*, Harman Publishing House, New Delhi, 1988 p.24

¹⁴²Diploma Legislative No 1389; Boletim Oficial Do Estado Da India, , 19 de Julho de 1951, I Series No. 29, 136 (Legislative Diploma No. 1389, Official Gazette of the State of India dated July 19, 1951 I Series No 29, 136)

accomplice of a crime punished respectively by regulations, ordinance or penal law.¹⁴³

The Borstal School Act, 1928,¹⁴⁴ defined adolescent offender¹⁴⁵ as any person who has been convicted of any offence punishable with imprisonment or who having been ordered to give security under Section 106 or Section 118 of the Criminal Procedure Code and had failed to do so.

*The Children (Pledging Of Labour) Act, 1933*¹⁴⁶ prohibits parents or guardian from pledging the services of a child who is below fifteen years.¹⁴⁷

*The Employment of Children Act, 1938*¹⁴⁸ prevents employment of children in hazardous employment and certain categories of unhealthy occupations. The Act prohibits the employment of children below fifteen years of age in any occupation connected with transport of passengers, goods or mail by railway or a port authority within the limits of the port.¹⁴⁹ The Act also prohibits the employment of children in less hazardous occupations such as beedi making, carpet weaving, cement manufacture, cloth printing, dyeing and weaving explosives and fireworks, mica cutting and soap manufacture.¹⁵⁰

¹⁴³See Article 7

¹⁴⁴Act No I of 1928

¹⁴⁵See Section 2 (1)

¹⁴⁶Act No. 2 of 1933 dated 24th February, 1933

¹⁴⁷See Section 2,4,5,6 available at

[http://labour.nic.in/upload/uploadfiles/files/ActsandRules/SectionoftheSociety/The%20Children%20\(Pledging%20of%20Labour\)%20Act,%201933.pdf](http://labour.nic.in/upload/uploadfiles/files/ActsandRules/SectionoftheSociety/The%20Children%20(Pledging%20of%20Labour)%20Act,%201933.pdf) accessed on 19/2/2011

¹⁴⁸Act No 26 of 1938 available at http://www.childsrights.org/html/site_es/law_download.php?id=181

¹⁴⁹See Section 3 (3)

¹⁵⁰Kumar, D. *Child Labour A Social Threat*, Intellectual Book Bureau, Bhopal, 2006 p. 199-203. See Section 3 (a). The Children's Act has been replaced by the Child Labour (Prohibition and Regulation) Act, 1986

*The Vagrancy Act 1943*¹⁵¹ came into operation. It provided for the care and training of children below 14 years.¹⁵²

*The Factories Act, 1948*¹⁵³ distinguishes between ‘child,’ ‘adolescent,’ and ‘adult.’¹⁵⁴ Child is a person who has not completed the age of fifteen. Adolescent is a person who has completed the age of fifteen,¹⁵⁵ but is below eighteen years of age.¹⁵⁶ The Act defines a young person who is either a child or an adolescent.¹⁵⁷ A child below fourteen years is not allowed to work in a factory.¹⁵⁸ A child above the age of fifteen and below the age of eighteen cannot be employed to work for more than four and half hours and cannot be employed during the night.¹⁵⁹

*The Bombay Children Act, 1948*¹⁶⁰ defines child as a boy or girl who has not attained the age of sixteen years.¹⁶¹

The Madhya Pradesh and Uttar Pradesh Children Acts prescribe the upper age limit of sixteen years.¹⁶²

¹⁵¹ Act No 3 of 1943

¹⁵² Full text of the Act available at

<http://www.msw.gov.bd/images/stories/act/vagrancy%20act%201943.pdf> accessed on 12/ 5/ 2012

¹⁵³ Act No 63 of 1948 Dated 23rd September, 1948 available at http://labour.nic.in/upload/uploadfiles/files/ActsandRules/Service_and_Employment/The%20Factories%20Act,%201948.pdf

¹⁵⁴ See Section 2

¹⁵⁵ See Section 2 (c)

¹⁵⁶ See Section 2 (b)

¹⁵⁷ See Section 2 (d)

¹⁵⁸ See Section 67

¹⁵⁹ See Section 71(i)(c) and See Section 71(i) (a)

¹⁶⁰ Bom LXXI of 1948

¹⁶¹ Malhotra, S. *Juvenile Justice System :An Overview*, Central Law India Quarterly, Vol.XIV, 2001 p.233-235

¹⁶² Supra 60

*The Plantation Labour Act, 1951*¹⁶³ the Act lays down that children who have not completed twelve years of age¹⁶⁴ shall not be employed in tea, coffee, rubber and cinchona which measure 10.117 hectares or more and employing thirty or more persons. Every child above twelve years of age is required to obtain certificate of fitness which is valid for one year.¹⁶⁵

*The Mines Act, 1952*¹⁶⁶ the minimum age for employment is fifteen years of age.¹⁶⁷ The Act prohibits the presence of children in any part of the mine which is below the ground or in any part of the mine in which mining operation is carried on.¹⁶⁸ Even an adolescent is not allowed to work in any part of the mine which is below the ground unless he has completed his sixteenth year and has a medical certificate of fitness of work.¹⁶⁹ The certificate is valid for twelve months only.¹⁷⁰

*The Merchant Shipping Act, 1958*¹⁷¹ and *The Apprentices Act, 1961*¹⁷² don't define a child, but in provisions of the act state that a child below fourteen is not permitted to work in occupations of the act.

¹⁶³Act No. LXIX OF 1951. Dated 2nd November, 1951 available at http://labour.nic.in/upload/uploadfiles/files/ActsandRules/Service_and_Employment/The%20Plantation%20Labour%20Act,%201951.pdf accessed on 7/4/2012

¹⁶⁴See Section 4 (a)

¹⁶⁵See Section 26; See Supra 151

¹⁶⁶Act No. 35 of 1952 dated 15 March, 1952, As modified upto 1983 http://coal.nic.in/weboflife-minesafety/ma_1952.pdf accessed on 7/4/2012

¹⁶⁷See Section 2 (e)

¹⁶⁸See Section 45(i)

¹⁶⁹See Section 40 (i)

¹⁷⁰See Section 41 (i); See Supra 151

¹⁷¹Act No. 44 Of 1958 Dated 30th October, 1958

¹⁷²Act No. 52 Of 1961 Dated 12th December, 1961

*The Probation of Offenders Act, 1958*¹⁷³ Section 6(1) imposes restrictions on imprisonment of offenders under twenty- one years of age. It states that when any person under twenty- one years of age is found guilty of having committed an offence punishable with imprisonment the court by which the person is found guilty shall not sentence him to imprisonment.¹⁷⁴

*The Central Children's Act, 1960*¹⁷⁵ Child means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years. The Central Act made a meaningful distinction between boys and girls regarding the upper age limit.¹⁷⁶

*The Motor Transport Workers Act, 1961*¹⁷⁷ prescribes minimum age for employment in every transport undertaking employing five or more workers¹⁷⁸ is fifteen years.¹⁷⁹ The adolescents are prohibited to work unless a certificate of fitness is granted¹⁸⁰ which is valid for one year. An adolescent can work for only six hours a day including rest interval of half an hour and between 10a.m and 6 p.m only.¹⁸¹

*The Beedi and Cigar Workers (Conditions of Employment) Act, 1966*¹⁸² prescribes that a child who has not completed its fourteenth year cannot be

¹⁷³Act No. 20 Of 1958 an Act To Provide For The Release Of Offenders On Probation Or After due Admonition [16th May, 1958] Available At [Http://Indiankanoon.Org/Doc/167447/](http://Indiankanoon.Org/Doc/167447/)

¹⁷⁴ Full text of the A Act available at <http://www.legalindia.in/the-probation-of-offenders-act-1958> accessed on 12/5/ 2012

¹⁷⁵ Act No. 60 Of 1960 Dated 26th December, 1960.

¹⁷⁶ Full text of the Act available at <http://wcd.nic.in/childrenact1960.htm> accessed on 12/ 2/ 2002

¹⁷⁷ Act No. 27 of 1961

¹⁷⁸ See Section 1(4)

¹⁷⁹ See Section 21

¹⁸⁰ See Section 22

¹⁸¹ Supra 151

¹⁸² Act No. 32 Of 1966 Dated 30th November, 1966

allowed to work in industrial premises.¹⁸³ Where any manufacturing premises connected with the making of Beedi or Cigar is carried out irrespective of the number of the persons employed. The employment of young person's between fourteen and eighteen years¹⁸⁴ is prohibited between 7p.m and 6a.m.¹⁸⁵

*The Oaths Act, 1969*¹⁸⁶ prohibits taking oath of a child. A Child can be given an affirmation.¹⁸⁷

*The Goa, Daman and Diu Shops and Establishments Act, 1973*¹⁸⁸ defines a child as a person who has not completed his fourteenth year of age.¹⁸⁹ It also defines a young person as a person who is not a child but has not completed eighteen years of age.¹⁹⁰ This Act allows employment of young person's only between 6 a.m and 7 p.m.¹⁹¹

*The Child Labour (Prohibition and Regulation) Act, 1986*¹⁹² defines a child as a person who has not completed fourteen years of age.¹⁹³ It prohibits the employment of children in certain occupations and processes.¹⁹⁴

¹⁸³See Section 24 (b)

¹⁸⁴Supra 142

¹⁸⁵See Section 25

¹⁸⁶Act No. 44 of 1969

¹⁸⁷See Section 5 Full text of the Act available at <http://www.vakilno1.com/bareacts/Laws/The-Oaths-Act-1969.htm>. Accessed on 10/2/2012

¹⁸⁸Act No. 13 of 1974 Dated 7th October, 1974

¹⁸⁹ See Section 2(2)

¹⁹⁰See Section 2(26)

¹⁹¹See Section 16; Full text of the Act available at

http://sunshineconsultants.co.in/yahoo_site_admin/assets/docs/Goa_Daman__Diu_Shops_and_Establishment_Act_1973.111110628.pdf accessed on 10/2/ 2012

¹⁹²Act No. 61 Of 1986 dated 23rd December, 1986

¹⁹³See Section 2 (ii)

¹⁹⁴Full text of the Act aavailable at <http://indiacode.nic.in/fullact1.asp?tfnm=198661> accessed on 12/2/ 2002 accessed on 7/4/2012

The first *Juvenile Justice Act, 1986* defined a boy child as below sixteen years of age and a girl child as below eighteen years of age.

*The Juvenile Justice (Care and Protection of Children) Act, 2000*¹⁹⁵ defines a 'juvenile' or 'child' in Section 2 (k) as a person who has not completed eighteenth year of age.

*The Goa Children's Act, 2003*¹⁹⁶ defines a child as a person below eighteen years. If the child is a victim in an offence of rape a child is a person who has not completed sixteen years of age.¹⁹⁷ Child in case of child labour is a person who has not completed fourteen years.¹⁹⁸

All cultures share the view that the younger the children, the more vulnerable they are physically and psychologically and are less they are able to fend for themselves. Age limits are a formal reflection of society's judgment about the child capacities and responsibilities.¹⁹⁹ Almost everywhere age limits formally regulate the child's activities. The main being when they can be treated as adults in the criminal justice system.²⁰⁰

¹⁹⁵ Act No. 56 of 2000 dated 30th December 2000. Full text of the Act is available at <http://wcd.nic.in/childprot/jjact2000.pdf> accessed on 7/4/2012

¹⁹⁶ Act 18 of 2003

¹⁹⁷ See Section 2 (d)

¹⁹⁸ See Section 2(j). Full text of the Act available at http://sunshineconsultants.co.in/yahoo_site_admin/assets/docs/Goa_Daman__Diu_Shops_and_Establishment_Act_1973.111110628.pdf accessed 12/2/ 2012

¹⁹⁹ Bajpai, A. *Child Rights in India*, Law, Policy and Practise, , Oxford University Press, 2nd ed p.2-6

²⁰⁰ See Appendix 2 which shows various legislations in India defining the minimum legal age of a child.

2.12. Indian Constitutional Ideology for the Child

The framers of the Indian Constitution incorporated various important provisions in the protection and betterment of children in view of the dictum ‘Children are the wealth of the Nation.’ Such provisions are related with the protection of childhood, child education and elimination of Child Labour in India. The Constitution recognizes the need for granting special protection to children. Children are entitled to justice in India. Therefore special provisions for ensuring justice to children are embodied in Part III the Fundamental Rights. The Indian Constitution does not make any distinction between a ‘minor’ and a major’ as far as fundamental rights are concerned.²⁰¹ Part IV the Directive Principles of State Policy. Besides the Constitution have provisions for child welfare.²⁰²

The Constitution has, in several provisions, including of article 15 clause (3) article 21, article 21A, clauses (1) and (2) of article 22, articles 23 and 24, clauses (e) and (f) of article 39, article 39 A, articles 45, 47 and 51 A (k), impose on the State a primary responsibility of ensuring that all the needs of children are met and that their basic rights are fully protected.²⁰³

The Constitution of India guarantees the child its citizenship. The right to citizenship in Article 5-8 of the Constitution of India speaks of persons who shall be citizens i.e by birth, descent, registration, naturalization and

²⁰¹Dr. Pandey, J.N. *The Constitutional Law of India*, Central Law Agency, Allahabad, 47th e.d 2010. p.268

²⁰²Dr. Basu, D.D. *Shorter Constitution of India*, Wadhwa and Company, New Delhi, 12th e.d June 1999 p. 76,77

²⁰³Supra 201

incorporation of territory²⁰⁴.The Constitution of India has special provisions are for children.²⁰⁵

2.12.1. Fundamental Rights

The Indian Constitution has a framework within which ample provisions exist for the protection, development and welfare of children. There are a wide range of laws that guarantee children their rights and entitlements as provided in the Constitution which are reflected in the Fundamental Rights and Directive Principles of State Policy.

2.12.1.1. Equality before Law (Article 14)

Article 14 of the Constitution guarantees all persons equality before law and equal protection of laws to all persons in India.

2.12.1.2. Prohibition on Discrimination (Article 15)

Article 15 prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them

2.12.1.3. State to make Special Legislations for Children (Article 15 (3))

Article 15 (3) enables the state to make provisions give special treatment to children. This provision is meant to achieve social justice and for social purpose.²⁰⁶ The object is to prevent vagrancy and destitution of children. Such special provision may be made either by the legislation or by executive

²⁰⁴*The Citizenship Act, 1955* provides for five ways of acquiring citizenship.

²⁰⁵Supra 202

²⁰⁶Supra 202 p. 76,77

order.²⁰⁷ Special provisions can be made in the Criminal Procedure Code for giving special treatment to children in granting bail and such provisions have been held valid by the courts.²⁰⁸ Article 15(3) is an exception to Article 15(1) and Article 15(2) of the Constitution. To fulfil this constitutional mandate The State of Goa has passed the Goa Children's Act 2003 and has set up the Children's Court to try offences against children.²⁰⁹

2.12.1.4. Child's Right to Freedom of Speech and Expression Article 19

Article 19(1) says that citizens have freedom of speech and expression subject to limitations under Article 19(2) which empower the State to put reasonable restrictions on the citizens.²¹⁰

2.12.1.5. Child's Right to Life and Personal Liberty (Article 21)

Article 21 guarantees the right to life and personal liberty to all. This is the most important right that any individual requires. It cannot be taken away except by the procedure established by the law. This right is also available to children, in the same manner as it is available to adults. It includes the right to health, nutrition, proper care and nurturing, generally. The most important aspect of the child's right to life is life with Human Dignity. It has been recognized that even a child of a tender age has dignity which has to be respected. This would deal with the prohibition of inhuman and degrading

²⁰⁷*Balaja M.R Vs State of Mysore* AIR 1963 SC 649 : 1963 Supp(1) SCR 439 Casebook, pp.124 -125, 130

²⁰⁸*Thamsi Goudan Vs. Kanni Ammal* AIR 1952 Mad. 529

²⁰⁹ Supra 202

²¹⁰ *ibid*

treatment or punishment in case of children. It is a commendable interpretation, which accords a protective cover to a child's right to live a dignified life. Article 21(1)(b) guarantees all citizens to assemble peacefully which also ensures a right to privacy. It also imposes a State obligation to provide for education which is not absolute but relative.²¹¹ The most vital right is the right to speedy trial for any accused,²¹² the right to human dignity²¹³ and the right to know.²¹⁴ It also ensures rights of journalist to interview a prisoner.²¹⁵

2.12.1.6. Free and Compulsory Education (Article 21 A)

Education is the most important tool in the development of the human personality. Children, being the future of the nation, need to be educated in order to help them become better and productive citizens of the nation. This fact has been recognized and given expression to, in the form of Art. 21A.²¹⁶ Every child is now entitled to free and compulsory education between the age of 6 to 14 years,²¹⁷ and the State is bound to make provision for the

²¹¹ See Art 21(1)(c) *Mohini Jain .V. State of Karnataka*, A. 1992 S.C. 1858

²¹² See Article 21(1)(e)

²¹³ See Article 21(1) (d)

²¹⁴ Supra 202 p.468

²¹⁵ See Article

19(1)(g)

²¹⁶ Constitution of India, Art. 21 A: The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. (Inserted by Constitution (Eighty-Sixth Amendment) Act, 2002, See Section 2.)

²¹⁷ Chapter II, See Section 3(1), The Right of Children to Free and Compulsory Education Act No.35 of 2009

same. It would cover primary as well as secondary education.²¹⁸ This right being a fundamental right is justifiable before the Court of Law.²¹⁹

2.12.1.7. Prohibition on Human Trafficking (Article 23)

It is a sad fact, that children are subjected to exploitation due to widespread poverty in India. This takes form of trafficking, as well as employing children for wages which are minimal, below the minimum wages. As a preventive step in this direction, Art. 23 of the Constitution, prohibits trafficking in human beings, begar and other similar forms of forced labour. Traffic in human beings includes Devdasi.²²⁰

This article does not exclusively deal with children, but has a general application. However it is most important to protect children, as they are the victims of such evils on a large scale. Involving children into flesh trade is prohibited by this article. It being a fundamental right is enforceable in the court of law.²²¹

2.12.1.8. Prohibition on child labour in hazardous employment (Article 24)

Hazardous employment is wide enough to include construction industry.²²² The Supreme Court has directed that children should not be employed in hazardous jobs in factories and positive steps to be taken for the welfare of such children

²¹⁸Justice Singh, R.M. *The Rights of the Child in India*, Akansha Publishing House, New Delhi, 2009,p.13

²¹⁹Supra 202

²²⁰*Vishal Jeet .V. Union of India*, AIR 1990 SC 1412; Also See Naikar, L.D. *The Law Relating to Human Rights*, Global, Regional and National, Puliani and Puliani, 2004 p.572

²²¹Supra 202

²²²*Peoples Union for Democratic Rights Vs. Union of India* AIR 1982 SC 1437 (para 6,11,15,16) : (1982) 3 SCC 235

as well as improving their quality of life.²²³ Employers of children of fourteen years must comply with provisions of Child Labour Prohibition Act, 1986.²²⁴ This right of a child is enforceable even in the absence of implementing legislation and in ‘public interest’ proceeding.²²⁵

2.12.2. Directive Principles of State Policy

The Constitution of India aims to recognize not only political democracy but also socio economic justice to the people to establish a welfare state. It has specifically recognized how crucial children’s well-being is to the functioning of India’s democracy, when it stated “that the State shall direct its policy towards ensuring that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”²²⁶ The implementation of Directive Principles is a means of bringing about a social revolution. It is through such a social revolution that the Constitution seeks to promote the idea of child welfare.²²⁷

Though the Directive Principles are non-justifiable, they are fundamental in the governance of the country. They have to be given due consideration by the

²²³*Bandhua Mukti Morcha Vs. Union of India* (1997) 10 SCC 549 para 11 :AIR 1997 SC 2218

²²⁴*M.S Mehta Vs State of Tamil Nadu* (1991) 1 SCC 283 (para 5,7,8,9,11)

²²⁵*People’s Union .V. Union of India*, A. 1982 S.C 1473

²²⁶Speech of Smt. Shantha Sinha, Chairperson, NCPCR in the Conference on the Rights of Children under 6 years towards Legal Framework organized by National Commission for Protection of Child Rights (NCPCR) at New Delhi, on October 8-9, 2007

²²⁷Shukla, V.N. and Singh, M. *Constitution of India*, Eastern Book company, Lucknow, 11th e.d, 2010 p.349

government while making decisions and formulating policies.²²⁸ There are certain provisions in the Directive Principles which have no bearing on the rights of the child directly, yet children can become the beneficiaries. The Constitution also provides for certain specific directives which are meant for the betterment of children in different spheres of their life.²²⁹

2.12.2.1. Free Legal Aid

Article 39A of the Constitution of India provides for free legal aid to the poor and weaker sections of the society and ensures justice for all. Article 14 and 22(1) of the constitution also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on the basis of equal opportunity to all. In 1987, the Legal Services Authorities Act²³⁰ Act No. 39 Of 1987) dated 1th October 1987 was enacted by the Parliament which came into force on 9th November, 1995 with an object to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society on the basis of equal opportunity.²³¹

²²⁸Dr. Lata, S and Dr. Kant , A. *Child and the Law*, APH Publishing Corporation, New Delhi, 2009 p.95-105

²²⁹Supra 202

²³⁰See Section 12 of the Legal Services Authorities Act, 1987 prescribes the criteria for giving legal services to the eligible persons. Women and children have been identified as a vulnerable group who are entitled to free legal aid²³⁰. According to See Section 2(1) (a) of the Act, legal aid can be provided to a person for a 'case' which includes a suit or any proceeding before a court. See Section 2(1) (aaa) defines the 'court' as a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions. As per See Section 2(1)(c) 'legal service' includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter. Legal Services Authorities after examining the eligibility criteria of an applicant and the existence of a prima facie case in his favour provide him counsel at State expense, pay the required Court Fee in the matter and bear all incidental expenses in connection with the case. The person whose income is less than Rs.1,20,000 is eligible for free legal aid and is supported by a Legal Services Authority. The Legal Services Authority celebrates 2012 as the year of the child.

²³¹De, D. J *The Constitution of India*, Volume 1 Asia Law House, Hyderabad, 2nd e.d 2005, p. 599

The Legal Services Authorities Act, 1987 has formulated legal-aid schemes for juveniles. This provision has been complied with by inserting Rule 14 under the Central Juvenile Justice (Care and Protection of Children) Rules, 2007. In the case of *Sheela Barse & Anr (1) v. Union of India & Ors*²³² the Hon'ble Supreme Court issued direction to the State Legal Aid Boards and other legal aid organizations to arrange for the visit of two advocates to custodial institutions once every week for the purpose of providing legal assistance to children below the age of sixteen years who are confined in the observation homes. In *Sampurna Behrua v. Union of India & Ors*²³³ The National Legal Services Authority has directed the State District Legal Services Authority to put in place Legal Aid Centres attached to the Juvenile Justice Board (s) in the State capitals where there is a high pendency. The State Legal Services Authority is requested to establish Legal Aid Centre (s) attached to the Juvenile Justice Board (s) in the State/Union Territory. A panel of young lawyers is to be set up at such centers. The District Legal Services Authority has to arrange for a Training camp for these young Layers. The panel lawyers may be directed to attend the Juvenile Justice Board proceedings throughout the day on the days when the Juvenile Justice Boards sit, depending on the volume of work.²³⁴

²³²(1986) 3 SCC 596,

²³³W.P.(C) No.473/2005 available at <http://nalsa.gov.in/directions.html>

²³⁴ *ibid*

In the case of *Supreme Court Legal Aid Committee v. Union of India*²³⁵ the Court stressed on the importance of ensuring justice for juvenile, observing that juvenile delinquents are not capable of initiating their claims or protecting their rights. A committee of Advocates was constituted and entrusted with drafting a scheme for the proper implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000.²³⁶

Every state was also directed to appoint an adequate number of Probation Officers and to establish training institutions for imparting child welfare knowledge. Section 12(c) of the Legal Services Authorities Act, 1987, provides that a child shall be entitled to legal services for filing or defending a case. Therefore, it is the duty of various State Legal Service Authorities to provide free legal aid to juvenile in conflict with law and work towards speedy disposal of cases. The term 'free legal aid' includes not only legal assistance but moral, social and learning assistance to juvenile in conflict with the law so that the child can plan for and live a dignified life in future.²³⁷

In *Committee of Legal Aid for Poor v. Union of India and Ors*²³⁸ The Supreme Court directed the States and Union Territories to simplify the procedure for registration of Births and Deaths under the Registration of Births and Death Act, 1969. Since few children have birth certificates this is a huge hurdle in

²³⁵(1989) 2 SCC 325

²³⁶Razdan, U. *Legal Aid to Juveniles : A Sine Qua Non of Correctional Jurisprudence*, Social Defense, 1990, Jan p.29

²³⁷Full text of the Act available at <http://lawmin.nic.in/la/subord/nalsa.htm> last accessed on 12/2/ 2012

²³⁸Writ Petition (Civil) No.37 Of 2009

imparting juvenile justice. The States/ Union Territories are required to appoint full time Chief Registrars.²³⁹

2.12.2.2. State as a guardian of child's health and strength (Article 39 and Article 47)

The Constitution has a very noble objective which is manifested through Art. 39(e) which directs the State particularly to direct its policy towards ensuring that the health and strength of the children of tender age is not abused and that they are not forced or compelled due to economic necessity to enter vocations which are not suited to their capacity in terms of strength as well as their age. Clause (e) and (f) the focus is on Welfare of Children which is interpreted to include the right to live with human dignity free from exploitation. Hence when labour and social welfare laws are enacted by the State to implement these directives, the Courts should strictly enforce such laws against the Governments.²⁴⁰ To protect the children from exploitation, Government of India has framed a National Policy.²⁴¹ The National Policy declares that children are a supremely important asset. In pursuance of Article 39(f) the Supreme Court has directed the release of all children below the age of 16 years from jails. The Supreme Court has exhorted the states to set up remand homes and Juvenile Courts. It is the duty of the State to look after the child with a view of full development of its personality.²⁴² Furthermore, clause (f) requires that the State give opportunities to the children as well as provide for facilities to them to

²³⁹ www.nalsa.gov.in accessed on 12/2/ 2012

²⁴⁰ *Bandhua Morcha .V. Union of India* A. 1984 S.C. 802

²⁴¹ *Lakshmi V. Union of India*, A. 1984 S.C. 469

²⁴² Jain, M.P ,*Indian Constitutional Law*, Wadhwa Nagpur, 5th ed, 2002, p.1316 & p.1615

develop in a healthy manner and in conditions which ensure freedom and dignity, wherein the childhood would be protected from being exploited as also the protection from moral or material abandonment.²⁴³ Provisions of the Juvenile Justice Care and Protection Act 2000 are in consonance with Article 39 (f) of the Constitution.²⁴⁴

Similar concern as far as the health of the child is concerned, is found in Art 47. This Article imposes a duty on the State to raise the level of nutrition and the standard of living of its people, which is very much relevant in case of the health of a child as the subject-matter.²⁴⁵

2.12.2.3. State's duty to provide for education of a child (Article. 41, Article 45 and Article 46)

Since the very inception, the Constitution has incorporated in itself the provision which serves as a directive to the State within the limits of its economic capacity and development, to make effective provisions for securing the right to education to the children. Article 41 mandates the same.

The most significant provision is found in the form of article 45 which requires the State to endeavour to provide free and compulsory education to children until they complete the age of 14 years. Education is the key to the progress of a child if it has to be a worthy citizen of the nation.²⁴⁶ This fact seems to be sufficiently recognized in the article. In addition, article 46 expects the State to

²⁴³Basu, D.D. *Human Rights in Constitutional Law*, Wadhwa and Company, Nagpur, 2nd ed, 2003 p. 221

²⁴⁴*Pratap Singh .V. State of Jharkhand* (2005) 3 SCC 551 : AIR 2005 SC 2731

²⁴⁵Supra 202

²⁴⁶See Article 21 A of the Constitution of India.

promote with special care the educational interest of the weaker sections of the people which sufficiently cover the children. The concern of the Constitution makers with regard to the rights of the child is very well manifested through these provisions.²⁴⁷

The provisions of the Directive Principle in relation to children, though are unenforceable in the Court of Law, are significant in their own way. These principles have been termed as fundamental in the governance of the country and they cannot be simply ignored by the State. They are as good as mandates by the Constitution. These directives can be seen translated in the present laws and policies of the Government. They have even been taken as guiding principles by the courts in various judgments concerning child rights.²⁴⁸

The next chapter presents the numerous international documents and conventions ratified by countries to protect the child who comes in contact and in conflict with law. Analysis of the selected provisions in these documents will help to achieve the intentions of the international efforts towards protecting the Child in the criminal Justice System.

²⁴⁷Supra 202

²⁴⁸*ibid*

3. Child and the International Legal Regime

Children are especially vulnerable in a variety of situations and this necessitates protection at an international level. The special vulnerability of children prompted action at the international level where the movement for children's rights began.¹ The first document was the League of Nations. Though it was an initiative to protect human rights in general it also included children.² The International Labour Organization³ was the first humanist effort to protect children against hazardous employment. The International Labour Convention has played a sheet anchor role in dealing with problems of children. The protection of the child against exploitation in employment is one of the major concerns of this Convention.⁴

The study of this chapter maps out the international conventions and treaties like Geneva Declaration of the Rights of the Child 1924, United Nations Declaration of the Rights of the Child 1959, and United Nations Convention on the Rights of the Child 1989 etc to identify and guarantee protection to the child and ensure that the rights are guaranteed in domestic legislations. India has made positive efforts by enacting legislations after ratifying these conventions. However the true object and spirit of these International

¹ Dr. Wallace, R, *International Human Rights Texts and Materials*, London Sweet and Maxwell, London, 1997 p.212

² The League of Nations adopted the convention prohibiting Traffic in Women and Children 1921, and the Slavery and the Slave Trade in 1926. Pappas, A.M, *Law and the Status of the Child*, UNITAR Vol. 1 , 1983 p.5

³ Since 1919, adopted several conventions and declarations aimed at the abolition of child labour, through the legal network of protection for working of children with regard to conditions and terms of employment. See Report of the Secretary General, The Exploitation of Child Labour, U.N. Doc. E/CN.4 Sub. 2/433 (1979) at p.3-8

⁴ Arnott, S. R. *Family Law: Autonomy, Standing, and Children's Rights*, 33 William Mitchell Law Review 809 (2007). Arnott notes that "the very term 'children's rights' is both broad and loose,"

Conventions remains to be fulfilled in India. This chapter endeavors to define a juvenile offender and child victim as viewed internationally. This chapter also discusses the rights available under the International Conventions for the ‘child in conflict with law’ and the ‘child victims’. Only the relevant provisions of all International conventions dealing with juvenile offenders and child victims have been analyzed herewith.

3.1 International Instruments on Child Rights

International law for the first time recognized the importance of the rights of the child in 1924. Over the years there have been a number of international treaties and documents that outline the rights of a child. Prior to World War II the League of Nations had adopted the Geneva Declaration of the Rights of the Child in 1924.⁵ This was followed by the Declaration of the Rights of the Child, 1959 which ultimately culminated into the universally recognized Convention on the Rights of the Child.

3.2. The Geneva Declaration of the Rights of the Child (1924)

In 1924, the League of Nations⁶ adopted the Geneva Declaration,⁷ a historic document that recognized and affirmed for the first time the existence of rights specific to children and the responsibility of adults towards children.⁸ The Declaration is the first document that directed international attention to child

⁵ Margolin, *Salvation versus Liberation the Movement of Children's rights In a Historical Context, Social problems*, Vol. 25, (1978), p.441

⁶ (LON)

⁷ Adopted on 26 September, 1924, League of Nations available at <http://www.un-documents.net/gdrc1924.htm> accessed on 15/7/2011

⁸ *ibid*

rights.⁹The Declaration of Geneva was premised on the belief that “mankind owes to the child the best it has to give.”¹⁰ This declaration put forward basic principles of child welfare and protection.¹¹The Declaration views children as an investment for the future with dividend of peace and harmony between nations. It is a statement of mankind’s obligation, to accept their duty towards children.

Accordingly the Declaration of Geneva recognized five mandates for care and protection of all children. These mandate protected children’s most basic material needs and recognized the essential conditions for fostering normal child development.¹²These principles are protection of the child from every form of exploitation.¹³ The Declaration did not grant legal rights or impose obligations on the States. It spelt out important principles which imposes a duty to provide for means to enable moral and spiritual development; special help when hungry, sick, disabled or orphaned;¹⁴reclaiming of the delinquent child¹⁵ and finally first call of relief when in distress.¹⁶ The child had to be brought up in the consciousness that its talents must be devoted to the service of its fellow men.¹⁷ The Declaration had several limitations. First the declaration was

⁹ Cohen, P.C, *Introductory Note: United Nations Convention on the Rights of the Child* , 18 Suffolk Transnational Law Review, 1996 p.1148

¹⁰ Without discrimination of nationality, race or creed.

¹¹ Darmouth, A. And Freeman, M. *Children's Rights: A Comparative Perspective*, Ed. Publishing, Hammarberg, Thomas, 1996 p. 12 -25

¹² See Principle 1 in Roger J.R. Levesque, *International Children’s Right Grow Up: Implications for American Jurisprudence and Domestic Policy*, 24 CAL. W. International Law Journal,1994 p.193, 210

¹³ See Principle 4. Supra 12 p.193,210 Supra 12

¹⁴ See Principle 2 *Ibid*

¹⁵ *ibid*

¹⁶ See Principle 3

¹⁷ The 1924 Declaration as based on the philosophy of Eglantyne Jebb, the British founder of the Save the Child Union.

concerned with children's care and protection rights and failed to address civil and political rights. Second the term 'right' did not appear in the text. It focused upon acts which must be done for the child, providing that the child must be fed, nursed, reclaimed, sheltered and succored. The Declaration of Geneva was silent on what the child was allowed to do. The Declaration of Geneva failed to provide an implementation mechanism because it was a document more of a moral and political nature and was not considered legally binding.

3.3. The Declaration on the Rights of the Child, 1959

On 20 November 1959, the Declaration of the Rights of the Child¹⁸ was adopted unanimously by all 78 Member States of the United Nations General Assembly by passing a Resolution.¹⁹ For the first time countries recognized the universal principles and the need to protect the rights of the child.²⁰ "The child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth." These words enshrined in the Declaration of the Rights of the Child 1959 further reinforce the fact that childhood is a special period²¹ which begins even before birth and hence entitled to special protection.²² In circumstances of distress the

¹⁸ The Declaration was adopted unanimously by the General Assembly on November 20, 1959. Proclaimed by General Assembly Resolution 1386(XIV) of 20 November 1959. This was the basis of the Convention of the Rights of the Child adopted by the UN General Assembly 30 years later on 20 November 1989. available at :

http://www.unicef.org/lac/spbarbados/Legal/global/General/declaration_child1959.pdf

¹⁹ Resolution No 1386 (XIV). And was named 1959 Declaration

²⁰ Splitz, L.M, *Implementing the U.N convention on the Rights of the Child: Children's Rights Under the 1996 South African Constitution*, Vanderbilt Journal of Transnational La, vol.38, May2005, No.3

²¹ The words 'childhood is a special period' proclaimed in the Universal Declaration of Human Rights

²² See Article 2

child should be the first to receive relief.²³ It further proceeded on the proposition that the child should have a happy childhood and enjoy for his own good and for the good of the society rights and freedoms.²⁴ This is the first documents to grant rights on the child and outlined duties on the society so that the child should enjoy these rights. The paramount consideration in enacting laws for this purpose is the best interests of the child.²⁵ Among other principles, a child is entitled to a name and nationality; to adequate nutrition, housing, recreation, and medical services; to an education; and, for the handicapped, to special treatment, education and care.²⁶ Principle 9 is particularly important which calls for protection of children from neglect and exploitation.²⁷ Other principles are protection from trafficking, underage labor, and discrimination. The Declaration on the Rights of the Child²⁸ continues to see the child as an object in need of attention and protection.²⁹

²³ See Article 8

²⁴ Proclamation given by the General Assembly available at:

<http://www.un.org/cyberschoolbus/humanrights/resources/child.asp> visited on 12/3/2011

²⁵ Principle 2 The U.N. Declaration of the Rights of the Child comprises a Preamble and ten principles. G.A. Res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc.A/4354. For an online text of the Declaration, *see* the Office of the U.N. High Commissioner for Human Rights (UNHCHR) Web site, <http://www.unhchr.ch/html/menu3/b/25.htm> accessed on 15/5/2011

²⁶ The 1924 Declaration stated children “must be the first to receive relief”; the DRC specifies more pragmatically that they are to be “among the first” to receive protection and relief (principle 8). Van Bueren Geraldine Van Bueren, *The International Law on the Rights of the Child*, Marticleinus Nijhoff Publishers, Dordrecht/Boston/London, 1995. P. 10-11

²⁷ Naikar, L.D. *The Law Relating to Human Rights, Global, Regional and National*, Puliani and Puliani, 2004 p.572

²⁸ (1959)

²⁹ Same principle followed in the Geneva Declaration 1924

3.4. International Covenant on Civil and Political Rights 1966

The International Covenant on Civil and Political Rights (ICCPR)³⁰ contains general provisions and specific provisions on safeguards for children in the administration of justice and as members of a family unit. Criminal proceedings should take into account juveniles according to their age and the desirability of speedy adjudication for them.³¹ The penal system should segregate juvenile offenders from adults and accord them treatment appropriate to their age and legal status.³² The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires. If the court is of opinion that publicity will prejudice the interest of justice or interest of juvenile or the guardianship of children the court may not make such judgment public.³³ The procedure adopted in juvenile proceedings has to be one which facilitates rehabilitation of the juvenile.³⁴ The International Covenant on Civil and Political Rights recognize the family as entitled to societal and state protection.³⁵ States Parties are required to respect the liberty of parents to ensure their children's religious and moral education in conformity with their own convictions.³⁶ If a marriage is dissolved, provision

³⁰ Adopted and opened for signature, Ratification and Accession By General Assembly Resolution 2200A(XXI) of 16 December 1966. Entry into Force 23 March 1976 in Accordance with Article 49 available at [Http://Www2.Ohchr.Org/English/Law/Ccpr.Htm](http://www2.ohchr.org/english/law/ccpr.htm) Visited On 14/1/2011

³¹ See Article 10 (b)

³² See Article 10 (3)

³³ See Article 14 (1)

³⁴ See Article 14(4)

³⁵ See Article 23 (1)

³⁶ See Article 18(4)

must be made for the protection of children.³⁷ Article 24 is specifically devoted to children. It stipulates that every child is entitled to measures of protection without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth.³⁸ This is a right given to the child because of its minority status since it is a part of the family, society and the State.³⁹ It further prescribes that every child must be registered immediately after birth and has a right to a name. Every child has the right to acquire nationality.⁴⁰ It prohibits death penalty for persons found guilty of crime committed when they are under the age of 18.

3.5. International Legal Protection for the ‘Child in Conflict with Law’

It is not necessary to use police and courts for the treatment of juvenile delinquency as these are private matters which can be handled by the families. This issue was first discussed in the Second United Nations Congress⁴¹ on Prevention of Crime and Treatment of Offenders held in August 1960 in London.⁴²

³⁷See Article 23(4)

³⁸Dr.Agarwal, H.O, *International Law and Human Rights*, Central Law Publications Law Publishers and Distributors, Allahabad, 17thed, 2010 p.773

³⁹Dusuki, F.N, *The UN Convention on the Rights of the Child and The Administration of Juvenile Justice: An Examination of the Legal Framework in Malaysia*, Asia Law Quarterly Vol.1, No.1:123-140, 2009, p.143- 149

⁴⁰Brownie, I. and Goodwin G. *Basic Documents on Human Rights*, Oxford University Press, New York, 2007 p.358

⁴¹Manuel Lopez Rey, Advisor on Social Defence UNO (All India Crime Prevention Society, March 1961)

⁴²The Congress adopted the recommendation. “The Congress considered the scope of the problem of Juvenile Delinquency should not be necessarily inflated without attempting to formulate a standard definition what should be considered juvenile delinquency in each country. It recommends: (a)The meaning og the term juvenile delinquency should not be restricted as far as possible to violations in criminal law. (b) Even for protection specific offences which would penalize small irregularities or maladjusted behavior of minors but for which adults would not be prosecuted should be created.

To commemorate the twentieth anniversary of the 1959 Declaration of the Rights of the Child, the United Nations proclaimed 1979 as the Year of the International Child. It was the Government of Poland who first proposed such a Convention, the Convention on the Rights of the Child on the eve of the International Year of the Child.⁴³In 1979 the United Nations Commission on Human Rights began consideration of a Polish proposal for a draft convention on the rights of the child.⁴⁴The Convention on the Rights of the Child is an initiative which provided an opportunity and impetus to define more clearly and harmonize human rights standards for children. It also was concerned with juvenile justice.

The international community was concerned with the interest of the juvenile and her or his family. The endeavor was to develop conditions that will ensure the juvenile has meaningful life in the community, during that period in life when she or he is most susceptible to deviant behavior, which will foster a process of personal development and education that is as free from crime and delinquency. The International organizations used Resolutions to articulate opinions and values. There are four United Nations resolutions relevant to juvenile justice. Rules for the Protection of Juveniles deprived of their Liberty, (1990), Guidelines for prevention of Juvenile Delinquency (Riyadh Guidelines) 1990, Standard Minimum Rules for Non Custodial Measures (Tokyo Rules) and the Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules). These resolutions are not binding on member states but may be

⁴³i.e. in 1978.

⁴⁴Supra 38 p.429- 453

influential in the policy development of a nation. These instruments set minimum standards for handling juveniles in different legal systems.

3.6. Convention on the Rights of the Child 1989

The Convention was adopted by the General Assembly in Resolution no 44/25 without a vote on 20th November 1989.⁴⁵ The Convention on the Rights of the Child is the second most heavily ratified human rights treaty in history.⁴⁶ For the first time the Convention recognizes the child as a subject of rights. It incorporates civil, political, economic, social and cultural rights into one treaty placing equal emphasis on all these rights. It also includes new rights which were never protected in any international human rights treaty.⁴⁷

State parties are required⁴⁸ to give recognition to the rights of every child be it the child victim, a normal child or anyone who has allegedly acted contrary to the penal law of the land and to take into account its age.⁴⁹ The Convention is a moral code on how children should be treated. Its objective is to ensure that

⁴⁵ Hodgkin, R. and Newell, P. *Implementation Handbook for the Convention of the Rights of the Child*, New York, UNICEF, 2002

⁴⁶ The United States (and Somalia) has signed but not ratified the Convention Of The Rights Of The Child ; it insisted that ratification of the two Convention Of The Rights Of The Child Protocols on sex trafficking and on child soldiers not be considered a legal assumption by the United States of Convention Of The Rights Of The Child obligations. Both Protocols permit Convention Of The Rights Of The Child Signatories To Sign And Ratify The Protocols Without Having Ratified The Convention Of The Rights Of The Child , under Article 13(1) in each document. The United States ratified the Protocols on December 23, 2002.

⁴⁷ The Convention on the Rights of the Child, with a Preamble and 54 Articles, was adopted by the U.N. General Assembly on November 20, 1989, and entered into force on September 2, 1990. G.A. Res. 44/25, annex, 44 U.N.

⁴⁸ See Article 40

⁴⁹ The Rights Of The Child In The Administration Of Justice available at www.essex.ac.uk/.../story.../therightsofthechildintheadminofjustice.pdf

appropriate legislative changes are made to ensure the rights of the child in each country are fulfilled.⁵⁰

The Convention on the Rights of the Child has three sections. Firstly the Preamble which lays down the nature of the underlying principles and proclaims that childhood is a special period and is entitled to special care and protection. It also recognized that the child has a right to harmonious development of his or her personality in an atmosphere of love and understanding. It understands that a child should be fully prepared to live an individual life in society. The Articles of the Convention on the Rights of the Child form the second part which lay down the obligations for the States. The third part of the Convention is its implementation provisions which define the procedures and compliance with the convention.

The Convention of the Rights of the Child contains of 54 articles,⁵¹ which can be divided into three groups. They are the protection rights, provision rights, and participation rights.⁵² They are also called the “three Ps”. The right to be protected from violence, abuse and neglect, the right to know one’s ancestry, and the right to life are included in the protection rights.⁵³ The right to be provided with optimal health and social security, the right to education and

⁵⁰ See Article 4

⁵¹ The Children’s Convention includes a Preamble and three Particles: Particle I define the Convention’s substantive scope; Particle II is devoted to the implementation and monitoring procedures. Particle III covers the final clauses.

⁵² The Children’s Convention includes a Preamble and three Particles: Particle I define the Convention’s substantive scope; Particle II is devoted to the implementation and monitoring procedures. Particle III covers the final clauses.

⁵³ See Article 6, 8, 19, 32, 33, 34, etc.;

leisure are the Provision rights.⁵⁴ Rights emphasizing the child's status as a subject, such as the right to contribute, the right to be heard, and the right to participate in all issues affecting the child, are the participation rights.⁵⁵

The Convention makes no mention of the responsibilities of children. When it does refer to responsibilities, it refers to the responsibilities (or duties or obligations) of the state and of parents and adult authorities to respect and provide for the rights of the child. This is the same in regard to other international human rights conventions and instruments.⁵⁶ Children's rights to provision, protection and participation do not depend on children fulfilling their responsibilities. Children's rights are primary.⁵⁷

India became a signatory to the Convention in 1992 by a solemn undertaking to implement various provisions of the Convention.⁵⁸ Till date India has submitted four periodic reports to the Committee on the Rights of the Child and has fulfilled various obligations of the Convention in its national laws and also complied with the suggestions imposed by the Committee on the Rights of the Child.⁵⁹

As set out in its Article 1, the Convention on the Rights of the Child deals with the protections necessary for the child after his or her birth. Decisions as to the form and scope of legal protection of the child before birth have been left to

⁵⁴See Article 24, 25, 26, 27, 28

⁵⁵See Article 12, 13

⁵⁶http://tesla.cc.umanitoba.ca/chrr/images/stories/Miseducating_children_about_their_rights.pdf

⁵⁷See Article 5, 18, 18(2), 18(3), 23 and 24) Freeman, J. (2007) *Why it remains important to take children's rights seriously* . International Journal of Children's Rights, p.15, p. 5 – 23.

⁵⁸http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en

⁵⁹The Full text of India's first periodic can be accessed at wcd.nic.in/crcpdf/CONT.PDF and the third and fourth periodic report can be accessed at wcd.nic.in/crc3n4/crc3n4_1r.pdf

individual States. The Convention provides protection for the rights of the child at a minimum level, below which States should not go. It also provides for a higher level of protection⁶⁰, where those standards already exist, and the spirit of the Convention strongly encourages the further development of such standards.⁶¹

3.6.1. Basic Principles

The principles embodied in the Convention are referred to as the ‘soul of the treaty.’ These four articles are considered as Procedural Rights. They establish the numerous stages that need to be passed to ensure that any decisions undertaken with a view to implementing the Convention fully respect the spirit and wording of the substantive rights of the child.

3.6.1. a. Best Interest Principle

The principle of Best Interest is the essence of the Convention on the Rights of the Child.⁶² In all decisions and actions taken for the administration of juvenile justice, by public or private bodies, welfare institutions, courts of law and legislative bodies the best interests of the child should be a primary, consideration. Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability for children in conflict with the law.

⁶⁰ See Article 41

⁶¹ Supra 11 p.4-7

⁶² See Article 3

The principles of best interest mean that the ultimate goal should be the well being of the child.⁶³ The implementation must start from early childhood.⁶⁴ The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders.⁶⁵

This is the key provision which guides the interpretation of other Articles in the convention itself.⁶⁶ The Convention on the Rights of the Child requires that the best interest of the child should provide a core foundation for legislative reform. In Goa the Goa Children's Act 2003 has been enacted on the basis of the principle of Best Interest.⁶⁷ The Goa Children's Act, 2003 makes the Convention on the Rights of the Child legally enforceable in Goa. It is only the Convention that first introduced the notion of the child as rights holder in its own right who is entitled to participate in the decisions which affect them.⁶⁸ The

⁶³See Preamble and Article 3 of the Convention on the Rights of the Child. Paragraphs 2 and 3. The best interest principle has roots in English common Law in principles of guardianship and custody. "The 1959 Declaration of the Rights of the Child first incorporated this concept in Principle 2 which asserted: "The child shall enjoy special protection, in the enactment of laws for this purpose the best interests of the child shall be the paramount consideration." "The principle is included in two Article s of the 1979 Convention on the Elimination of All Forms of Discrimination against Women: Article 5(b) requires States parties to that Convention to "ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of children is the primordial consideration in all cases." It was debated whether superior should be used instead of the word best.

⁶⁴General Comment No. 7 (2005), implementing child rights in early childhood (CRC/C/GC/7/Rev.1), para. 13.

⁶⁵Goonesekere, S. *Children Law and Justice: A South Asian Perspective* Sage publications, (New Delhi) ,1998 p 117

⁶⁶"Article 3 (1): the best interests of the child as a primary consideration in all actions concerning children." This principle is derived from the Welfare System (or Protective system) that developed at the beginning of the 20th century and has been transformed by the UN Convention.

⁶⁷See Preamble of Goa children's Act, 2003

⁶⁸Philip, A. *The legal framework of the Convention on the Rights of the Child*, Bulletin of Human Rights,91/2, p. 9.

child must be regarded as a person in its own right or “as an active subject of rights.⁶⁹”

The child is now seen as a human being in a stage of development and in need of different degrees and levels of guidance, protection, provisions and participation at different stages of her/his life. The child has a right to direction and guidance from her/his parents, legal guardians, members of the extended family or their community, as provided for by local custom⁷⁰.

3.6.1.b. Right to Non-Discrimination

The principle of non-discrimination is enshrined in Article 2. States parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally. The absence of policy for vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl child, children with disabilities and children who are repeatedly in conflict with the law could lead to de facto discrimination and disparities, this needs to be avoided. To fulfill this mandate, professionals need to be trained in the administration of juvenile justice. Rules need to be established, regulations or protocols passed which will enhance and give equal treatment to child offenders and provide redress, remedies and compensation.⁷¹ This principle would strengthen the protection given under the constitution as it includes other categories of prohibited

⁶⁹ *Manual on Human Rights Reporting* 1997, United Nations Publications

⁷⁰ Article 5

⁷¹ Franklin, B. *The New Handbook of Children's Rights Comparative Policy And Practice*, Routledge Group, England, p.105 -110

discrimination such as discrimination on the basis of disability, property, birth, language, political or other opinion, colour and open the category for any other status. The principle obligates State parties to undertake special measures in order to diminish or eliminate conditions that cause discrimination.⁷² Many children in conflict with law are also victims of discrimination for example when they try to get access to education or obtain a job. It is necessary that measures are taken to prevent such discrimination by providing the child offenders with appropriate support and assistance.⁷³

3.6.1. c. Right to Life, survival and development

Article 6 mandates the inherent right to life⁷⁴ of every child which should guide and inspire States to develop effective national policies and programmes. These are for prevention of juvenile delinquency since delinquency has a very negative impact on the child.

3.6.1. d. The Right to be heard

If child is capable of forming its own views such a child needs to be assured that it can express its views freely in all matters concerning it.⁷⁵ The Convention on the Rights of the Child provides that the child must be provided with an opportunity of being heard⁷⁶ in any judicial and administrative proceedings affecting the child either directly or through a representative or

⁷²Human Rights Committee, General Comment No. 18 (1989), HRI/GEN/1/Rev.6, pp. 147 et seq.

⁷³ See Article 40 (1)

⁷⁴ “Article 6: the child’s inherent right to life and States parties’ obligation to ensure to the maximum extent possible the survival and development of the child.”

⁷⁵ See Article 12(1)

⁷⁶ See Article 12(2)

appropriate body in a manner consistent with the procedural rules of the national law. The right must be observed in all stages of the process.

3.6.2. Special provision for Juvenile Justice

States parties have to apply systematically the general principles contained in Articles 2, 3, 6 and 12 of Convention on the Rights of the Child, as well as the fundamental principles of juvenile justice enshrined in Articles 37 and 40. These principles include the right to dignity and fair trial, presumptions of innocence, right to legal and other assistance, right to appeal, right to interpreter and the right to privacy.

3.6.3. Right to Dignity

The child must be accorded treatment which is consistent with the child's sense of dignity and worth. The dignity of the child must be respected throughout the entire process of the criminal justice system.⁷⁷ In the juvenile justice system the treatment and education of children must be directed towards the development and respect for human rights and freedoms.⁷⁸ While dealing with a child, right from its first contact with the law till the implementation of all measures dealing with the child the officials must take into account the age of the child and promote the child's reintegration so that the child can assume a constructive role in society.⁷⁹ Respect for the dignity of the child requires that

⁷⁷ See Preamble of the Convention of the Rights of the Child. This principle is also enshrined in Article 1 of the Universal Declaration of Human Rights which stipulates that all human beings are born free and equal in dignity and rights.

⁷⁸ See Article 29(1)(b)

⁷⁹ See article 40 (1)

all forms of violence in the treatment of children be it physical violence or mental violence, injury or abuse or neglect or negligent behavior and maltreatment including all forms of exploitation has to be avoided.⁸⁰

The principle of *nullum crimen sine lege* is a fundamental principle guaranteed by Article 40(2)(a) of the Convention on the Rights of the Child. According to which no child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed. This is such an important legal principle that it has been made non-derogable.

3.6.4. Principles for preventing juvenile delinquency

The child should be prepared to live an individual and responsible life in a free society,⁸¹ in which he/she can assume a constructive role with respect for human rights and fundamental freedoms.⁸² Parents have the responsibility to provide the child, in a manner consistent with his evolving capacities, with appropriate direction and guidance in the exercise of her/his rights as recognized in the Convention. Various measures should be taken for the full and equal implementation of the rights to an adequate standard of living,⁸³ to provide the highest attainable standard of health and access to health care,⁸⁴ to

⁸⁰ See Article 191. This Principle also forms the crux of rights for the Child Victim

⁸¹ See Preamble, And Article 29

⁸² See Article 29 and 40

⁸³ See Article 27

⁸⁴ See Article 24

impart right to education,⁸⁵ and to other appropriate services for the care and protection of children.

Emphasis should be placed on prevention policies that facilitate successful social integration of children through family, community, peer group, schools, vocational training and voluntary organizations. Parents are responsible for the child's upbringing.⁸⁶ The measures of assistance should not only focus on the prevention of negative situations but the promotion of social potential of the parents. Every child's standard of living must be respected.⁸⁷

3.6.5. Interventions/diversion

Two kinds of interventions can be used by State authorities for dealing with children. Firstly use measures without resorting to judicial proceedings.⁸⁸ Secondly use measures in the context of judicial proceedings to protect the child's human rights. To develop juvenile justice different measures have to be implemented to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. These should include care, guidance and supervision, counselling, probation, foster care, educational and training programmes, and other alternatives to institutional care.⁸⁹

⁸⁵ See Article s. 28 and 29

⁸⁶ See Article 18. Also See Sinha M.K. *Basic Documents of International Human Rights and Refugee Laws*, Manak Publications Pvt. Td, , New Delhi, 2nd e.d. , 2002p.218-237

⁸⁷ See Article 27

⁸⁸ See Article 40(3)(b)

⁸⁹ See Article 40 (3)(b))

3.6.6. The guarantees for a fair trial

Article 40 (2) of Convention Of The Rights Of The Child contains important rights and guarantees that are all meant to ensure that every child alleged as or accused of having infringed the penal law receives fair treatment and trial.⁹⁰

3.6. 7. The presumption of innocence

The presumption of innocence⁹¹ is fundamental to the protection of the human rights of children in conflict with the law. It means that the burden of proof of the charge(s) brought against the child is on the prosecution. The child alleged as or accused of having infringed the penal law has the benefit of doubt and is only guilty as charged if these charges have been proven beyond reasonable doubt. The child has the right to be treated in accordance with this presumption and it is the duty of all public authorities or others involved to refrain from prejudging the outcome of the trial. States parties should provide information about child development to ensure that this presumption of innocence is respected in practice.⁹² Due to the lack of understanding of the process, immaturity, fear or other reasons, the child may behave in a suspicious manner, but the authorities must not assume that the child is guilty without proof of guilt beyond any reasonable doubt.

⁹⁰Shastri, M. *Child Abuse : An International Perspective*, Journal of Legal Studies, 2006 p.66

⁹¹See Article 40 (2) (b) (i)

⁹²Dusuki, F.N, *The UN Convention on the Rights of the Child and The Administration of Juvenile Justice: An Examination of the Legal Framework in Malaysia*, Asia Law Quarterly Vol.1, No.1:123-140, 2009, p.143- 149

3.6.8. Prompt and direct information of the charge

The child must be informed promptly and directly of the charges on it.⁹³

Prompt and direct means as soon as possible when the prosecutor or judge takes initial procedural steps against the child. Also when authorities decide to deal with the case without resorting to judicial proceedings the child must be informed. These legal safeguards must be protected.⁹⁴

3.6.9. Legal or other appropriate assistance

The child must be guaranteed legal or other appropriate assistance⁹⁵ in the preparation and presentation of his or her defence. The State parties provide as much as possible help to provide adequate trained legal assistance, such as expert lawyers or paralegal professionals. Other appropriate assistance must be provided like the presence of social worker. The social worker must be a person with sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law.⁹⁶ Whenever appropriate and desirable measures for dealing with such children without resorting to judicial proceedings, and providing that human rights and legal safeguards are fully

⁹³ See Article 40(2)(b)(ii)

⁹⁴ See Article 40(3)(b)

⁹⁵ See Article 40 (2) (b) (ii)

⁹⁶ Supra 27 p.553,554

respected.⁹⁷ This provision has a limited application and is applied to judicial proceedings only.⁹⁸

3.6.10. Decisions without delay and with involvement of parents

Convention of the Rights of the Child provides that the child's decisions must be taken without delay⁹⁹ to a competent, independent and impartial authority or judicial body in a fair hearing and according to law. The time between the commission of offence by the child and the final response of this act must be as short as possible. Parents or legal guardians should also be present at the proceedings because they can provide general psychological and emotional assistance to the child. The presence of parents does not mean that parents can act in defense of the child or be involved in the decision-making process. Sometimes, the judge or competent authority may decide, at the request of the child or of his/her legal or other appropriate assistance or because it is not in the best interests of the child,¹⁰⁰ to limit, restrict or exclude the presence of the parents from the proceedings.

3.6.11. Presence and examination of witnesses

Article 40(2)(b)(iv) of the Convention on the Rights of the Child contains two separate rights namely, the right of the child not to be compelled to give testimony or to confess guilt; and, the right to examine or have examined

⁹⁷See Article 40 (3) (b)

⁹⁸Constitution of Juvenile Justice Board with two social workers though it has coequal powers would not comply with the provision.

⁹⁹See Article 40 (2) (b) (iii)

¹⁰⁰See Article 3 of Convention Of The Rights Of The Child

adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality.

3.6.12. The right to appeal

This provision is found in Article 40(2)(b)(v) of the Convention on the Rights of the Child. The child has the right to appeal¹⁰¹ against the decision by which he or she is found guilty of the charge(s) brought against him/her and against the measures imposed as a consequence of this guilty verdict. This appeal should be decided by a higher, competent, independent and impartial authority or judicial body.

3.6.13. Free assistance of an interpreter

If a child cannot understand or speak the language used by the juvenile justice system, he/she has the right to get free assistance of an interpreter.¹⁰² This assistance should not be limited to the court trial but should also be available at all stages of the juvenile justice process. It is also important that the interpreter has been trained to work with children, because the use and understanding of their mother tongue might be different from that of adults.¹⁰³ Lack of knowledge and/or experience in that regard may impede the child's full understanding of the questions raised, and interfere with the right to a fair trial and to effective participation.

¹⁰¹See Article 40 (2) (b) (v)

¹⁰²See Article 40 (2) (vi)

¹⁰³Choudhry, R.N. *Law Relating to Juvenile Justice in India*, 3rded, Orient Publishing company New Delhi

3.6.14. Full respect of privacy

The right of a child to have his/her privacy fully respected during all stages of the proceedings reflects the right to protection of privacy enshrined in Article 16 of Convention of the Rights of the Child. All stages of the proceedings includes right from the initial contact with law enforcement (e.g. a request for information and identification) up until the final decision by a competent authority, or release from supervision, custody or deprivation of liberty. Harm has to be avoided caused by undue publicity or by the process of labelling.¹⁰⁴ No information shall be published that may lead to the identification of a child offender because of its effect of stigmatization, and possible impact on his/her ability to have access to education, work, housing or to be safe. It means that a public authority should be very reluctant with press releases related to offences allegedly committed by children and limit them to very exceptional cases.¹⁰⁵ They must take measures to guarantee that children are not identifiable in press releases. Journalists who violate the right to privacy of a child in conflict with the law should be sanctioned with disciplinary and when necessary (e.g. in case of recidivism) with penal law sanctions.

3.6.15. Deprivation of liberty, including pre-trial detention and post-trial incarceration

Article 37(c) of the Convention of the Rights of the Child provides that every child deprived of liberty shall be separated from adults unless it is considered in

¹⁰⁴ Goodwin B. G. *Basic Documents on Human Rights*, Oxford University Press, 2007 p 100 -113

¹⁰⁵ Supra 27

the child's best interest. According to Article 37(c), of the Convention of the Rights of the Child every child deprived of liberty shall have the right to maintain contact with his or her family through correspondence and visits, except in exceptional circumstances. These exceptional circumstances must be examined in the light of the basic principles underlying the Convention, including, the principle of the best interests of the child.¹⁰⁶

Anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. Article 37(d) of the Convention on the Rights of the Child states that every child deprived of his or her liberty has the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.¹⁰⁷

Every child has the right to make request or complaints without censorship as to the substance to the central administration, the judicial authority or other proper independent authority and to be informed if the response of without delay.¹⁰⁸ Children need to know and have access to mechanisms. Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative

¹⁰⁶ Chauhan, S.R. and Chauhan, N.S. *International Dimension on Human Rights*, Vol.1, Vision Publishing House, New Delhi, p.85-107

¹⁰⁷ Supra 11

¹⁰⁸ Kumar, A. *Fundamentals of Child Rights Concepts, Issues and Challenges* Volume 1, Laxmi Shikshan Sansthan, Lucknow and Anmol Publications Pvt. Ltd, New Delhi, 2002 p.75-89

they should place special emphasis on holding conversations with children in the facilities in a confidential setting.¹⁰⁹

3.6.16. Freedom from Torture cruel, inhuman or degrading treatment arrest or punishment

According to Article 37(a) of the Convention on the Rights of the Child, states no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Capital punishment and imprisonment is prohibited for offences committed by children and the principle that every child deprived of liberty shall be separated from adults.¹¹⁰ No child shall be deprived of his or her liberty unlawfully or arbitrarily.¹¹¹ The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of the last resort and for the shortest appropriate period of time. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of a person or his age.¹¹² The two principles embodied above are extremely important in the light of the nature of the juvenile justice system. The law needs to incorporate the general principles in its rules and mandate how the child is to be treated so as to safeguard his or her dignity and how his or her special needs to be catered to.¹¹³

¹⁰⁹ Supra 106

¹¹⁰These principles are incorporated in the Goa children's Act , 2003 and Juvenile Justice (Care and Protection of Children) Act, 2000

¹¹¹See Article 37(b)

¹¹²See Article 37(c)

¹¹³ Supra 108

The child has a right to maintain contact with his or her family through correspondence and visits save in exceptional circumstances.¹¹⁴ This rule should be made mandatory in the light of the custodial nature of the institution. However this rule has been left to the discretion of the States leaving scope for erroneous violation.

While considering the periodic report of India, the Committee on the Rights of the Child expressed concern about the “numerous reports of routine ill-treatment, corporal punishment, torture and sexual abuse of children in detention facilities, and alleged instances of killings of children living and/or working on the streets by law enforcement officials.”¹¹⁵ The Committee therefore recommended that the registration of each child taken to a police station be mandatory, including time, date and reason for detention, and that such detention be subject to frequent mandatory review by a magistrate. The Committee also encouraged the State party to amend the Code of Criminal Procedure so that medical examination, including age verification, is mandatory at the time of detention and at regular intervals. Lastly, it also recommended that the Juvenile Justice Act, 1986 be amended to provide for complaints and prosecution mechanisms for cases of custodial abuse of children.¹¹⁶ All these provisions have been successfully implemented in the

¹¹⁴See Article 37 (c)

¹¹⁵UN doc. Convention of the Rights of the Child /C/94, *Report on the twenty-third session (2000)*, para. 70.

¹¹⁶Dr. Pandey, P.K. *Human Rights*, APH Publishing Corporation, New Delhi, 2012 p.44-61

Indian Law.¹¹⁷The State is obliged to incorporate basic safeguards of all those who come in contact with the criminal justice system.¹¹⁸

3.6.17. Principles in cases of deprivation of Liberty for Juveniles

Children should be provided with a physical environment and accommodation with a rehabilitative aim of residential placement. Regard must be taken to the need for privacy, sensory stimuli and opportunity to participate in sports with peers, arts and leisure time activities. Every child of compulsory school age has the right to receive education. The child must be taught vocational training which can prepare it for its future employment.

Every child has a right to be examined by a physician upon admission into a detention facility. It should also receive medical care during its stay. Every child can also complain without any kind of censorship about any problem it faces during its stay. Independent and qualified inspectors should be appointed on a regular basis to undertake unannounced inspection on their own initiative.

3.7. U.N Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules)

U.N Standard Minimum Rules for the Administration of Juvenile Justice, 1985 known as the Beijing Rules,¹¹⁹ were adopted by a General Assembly Resolution in 1985. These are minimum standards endorsed by the

¹¹⁷Evans M.D. Blackstone's' *International Law Documents* 4thed Universal Law Publishing Co. Pvt. Ltd, New Delhi,2000, p.359-373

¹¹⁸See Article 40

¹¹⁹A/RES/40/33 Dated 29 November 1985 at the 96th plenary meeting. Full text of the Beijing Rules is available at <http://www.un.org/documents/ga/res/40/a40r033.htm> assessed on 11/3/2011

international community to be replicated at the national level which have been framed for a ‘child in conflict with law’. Beijing Rules aim to promote domestic juvenile justice systems at par with internationally accepted norms. The standard minimum rules consider juvenile justice centrifugal to national development process with an intention to securing social justice to the child in ‘conflict with law’.¹²⁰

3.7.1. Juvenile and Juvenile Justice

The Beijing Rules, 1985 define a “juvenile.”¹²¹ A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult.¹²² An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems.¹²³ A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.¹²⁴

Administration of Juvenile Justice must cover “status offences” prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for adults¹²⁵ (for example, truancy, school and family disobedience, public drunkenness, etc.).¹²⁶ It also includes

¹²⁰Rajesh, A.S, *Children in Conflict with Law or The Law in Conflict with Children: Rehabilitation Rhetoric*, Indian Journal of International Law, Vol.48, 2008 p.620-629

¹²¹ See Rule 2.2

¹²² See Rule 2.2 (a)

¹²³ See Rule 2.2 (b)

¹²⁴ See Rule 2.2 (c)

¹²⁵<http://www.un.org/documents/ga/res/40/a40r033.htm>

¹²⁶ See Rule 3.3 (a)

Juvenile welfare and care proceedings.¹²⁷ Proceedings dealing with young adult offenders, depend on each given age limit.¹²⁸

According to Rule 5.1¹²⁹ of the Beijing Rules, which sets out the aims of juvenile justice, the juvenile justice system should emphasize on the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offender and the offence. This rule refers to two of the most important objectives of juvenile justice.¹³⁰ The first objective is the promotion of the well-being of the juvenile, which should not only be emphasized by those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities, but also in those legal systems that follow the criminal court model in order that they contribute to the avoidance of merely punitive sanctions.¹³¹ The second objective is the principle of proportionality, which means that the response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances such as social status, family situation, the harm caused by the offence or other factors affecting personal circumstances. Such circumstances should influence the proportionality of the reactions. The principle of proportionality must however also be safeguarded in ensuring the welfare of the young offender so that the measures taken do not go beyond what is necessary, failing which the fundamental rights of the young

¹²⁷ See Rule 3.3 (b)

¹²⁸ See Rule 3.3 (c); Also See Compendium of United Nations standards and norms in crime prevention and criminal justice, United Nations, New York, 2006 p.51- 65

¹²⁹ Supra 148

¹³⁰ UN doc. ST/HR/1/Rev.4 (Vol. I/Particle 1) *Human Rights – A Compilation of International Instruments*, Vol. I (First Particle), Universal Instruments, p. 360

¹³¹ <http://www.jjindia.net/1/jjact.aspx> assessed on 14/3/2012

offender may be infringed. In essence, Rule 5 calls for no less and no more than a fair reaction in any given cases of juvenile delinquency and crime. The issues combined in the rule may help to stimulate development in new and innovative types of reactions which are desirable as precautions against any undue widening of the net of formal social control over juveniles.¹³²

3.7.2. Rights of Juveniles

Rule 7.1 emphasizes some basic procedural safeguards such as the presumption of innocence,¹³³ the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses.¹³⁴ These form the essential elements of a fair trial for a juvenile. Thought-out the trial the juvenile is to be provided with legal counsel and free legal aid if needed to assure the juvenile's legal assistance.¹³⁵ The juvenile has a right to appeal to a higher authority and this right has to be guaranteed at all stages of the proceedings. Rule 20.1 states that the speedy conduct of formal procedures in juvenile cases is of paramount concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk. As time passes, the juvenile will find it increasingly difficult, if not impossible, to relate the procedure and disposition to the offence, both intellectually and psychologically.¹³⁶

¹³² Supra 120

¹³³ See Also Article 11 of Universal Declaration of Human Rights General Assembly resolution 217 A (III) and Article 14 paragraph 2 of International Covenant on Civil Political Rights See General Assembly resolution 2200 A (XXI)

¹³⁴ Supra 106

¹³⁵ See Rule 15.1

¹³⁶ Supra 108

3.7.3. The right of the child to remain in contact with his or her family

Rule 7.1 of Beijing Rule provides the right to the presence of a parent or guardian. Rule 15.2 provides that the parents and guardians are entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile.¹³⁷ They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.¹³⁸ The parents or guardians should also have access to the institutionalized juvenile.¹³⁹

3.7.4. Right to privacy

Rule 8 stresses the importance of the protection of the juvenile's right to privacy. Young persons are particularly susceptible to stigmatization.¹⁴⁰ Labelling processes has detrimental effects resulting from the permanent identification of young person's as "delinquent" or "criminal". The importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case for example the names of young offenders, alleged or convicted. The interest of the individual should be protected and upheld.¹⁴¹

¹³⁷Basu P. *Law Relating to Protection of human Rights under the Indian Constitution and Allied Laws*, Modern Law Publishers 2002 p.941

¹³⁸Jaiswal, J. *Human Rights of Accused and Juveniles Delinquent in Conflict with Law*, Kalpaz Publications, New Delhi 2005 p. 193-197

¹³⁹See Rule 26.5

¹⁴⁰Supra 120

¹⁴¹See Commentary to Rule 8

3.7.5. Investigation and Prosecution

Upon the apprehension of a juvenile, the parents or guardian have to be notified immediately about such apprehension. The question of release¹⁴² has to be considered by a judge without delay.¹⁴³ The juvenile can be released in the hands of any person, Institution, community boards or police authorities having power to release an arrested person. Right from the time of initial contact with law enforcement agencies, the behaviour of the police and other law enforcement officials in cases of juvenile crime must be such so as to avoid harm to the juvenile.¹⁴⁴ Since police are the first person who come in contact with the juvenile they need specialized training.¹⁴⁵

3.7.6. Social Inquiry Reports

Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc.¹⁴⁶ For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the

¹⁴²See Rule 10.2

¹⁴³Supra 106 p.1337

¹⁴⁴See Rule 10.3

¹⁴⁵See Rule 12.1

¹⁴⁶*Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* p. 421

same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature.¹⁴⁷

3.7.7. Principles for Adjudication and Disposition

The competent authority shall be guided by principles while disposing juvenile crimes. The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society.¹⁴⁸ Restrictions on the personal liberty of the juvenile have to be imposed as a last resort and to the minimum extend possible.¹⁴⁹ Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.¹⁵⁰ The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.¹⁵¹ Rule 17.2 states that capital punishment should not be imposed for any crime committed by the juvenile.¹⁵² The same principle is used in the Indian Juvenile Justice (Care and Protection Act) 2000. Juveniles are not to be subjected to corporal punishment.¹⁵³ The competent authority has the power to discontinue the proceedings at any time.¹⁵⁴ The placement of juvenile in an

¹⁴⁷ See Rule 16.1

¹⁴⁸ See Rule 17.1 (a) Dr. Chakraborty, T. *An International Comparisons of Juvenile Justice Systems*, The Indian Police Journal Vol.LV, No.3, July – September , 2008 p.23

¹⁴⁹ See Rule 17.1(b)

¹⁵⁰ See Rule 17.1(c)

¹⁵¹ See Rule 17.1(d)

¹⁵² Supra 106

¹⁵³ See Rule 17.3

¹⁵⁴ See Rule 17.4

institution shall always be a disposition of last resort and for minimum necessary period.¹⁵⁵

3.7.8. Various Disposition Methods

The competent authority can give various disposition measures so as to avoid institutionalization. Such measures, some of which may be combined, include Care, guidance and supervision orders;¹⁵⁶ Probation;¹⁵⁷ Community service orders;¹⁵⁸ Financial penalties, compensation and restitution;¹⁵⁹ Intermediate treatment and other treatment orders;¹⁶⁰ Orders to participate in group counseling and similar activities.¹⁶¹ Orders concerning foster care, living communities or other educational settings;¹⁶² and other relevant orders.¹⁶³

3.7.9. Least Possible use of Institutionalization

Rule 19 aims at restricting institutionalization in two regards in quantity¹⁶⁴ and in time.¹⁶⁵ Rule 19 reflects one of the basic principles of the Resolution No 4 of the 6th United Nations Congress that a juvenile offender should not be incarcerated unless there is no other appropriate response. If the juvenile must be institutionalized the loss of liberty should be restricted to the least degree with special institutional arrangement for confinement.

¹⁵⁵ See Rule 19.1

¹⁵⁶ See Rule 18.1 (a)

¹⁵⁷ See Rule 18.1 (b)

¹⁵⁸ See Rule 18.1 (c)

¹⁵⁹ See Rule 18.1 (d); Also See Supra 117

¹⁶⁰ See Rule 18.1 (e)

¹⁶¹ See Rule 18.1 (f)

¹⁶² See Rule 18.1 (g)

¹⁶³ See Rule 18.1 (h)

¹⁶⁴ As a Last Resort

¹⁶⁵ Minimum necessary period

3.7.10. Avoidance of unnecessary Delay

The speedy conduct of formal procedures is of paramount concern.¹⁶⁶ As time passes the juvenile will find it increasingly difficult to relate the procedure and disposition to the offence both intellectually and psychologically.¹⁶⁷

3.7.11. Records

The records of juvenile offenders are to be kept confidential¹⁶⁸ and closed to third parties. Access to records is limited, only to the police, prosecution and other authorities in improving control and interest of the juvenile offender. The records of the juvenile offender cannot be used in adult proceedings in subsequent cases.¹⁶⁹

3.7.12. The right of the child to be separated from adults

The Beijing Rules in Rule 26.3 specifies that juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.¹⁷⁰ Young female offenders placed in an institution deserve special attention as to their personal needs and problems.¹⁷¹ They shall by no means receive less care, protection, assistance,

¹⁶⁶See Rule 20.1

¹⁶⁷Chauhan, S.R. and Chauhan N.S. *International Dimension on Human Rights* Vol.2, Vision Publishing House, New Delhi p.601-625

¹⁶⁸ See Rule 21.1

¹⁶⁹ See Rule 21.2

¹⁷⁰ Supra 106

¹⁷¹See Rule 26.4

treatment and training than young male offenders. Their fair treatment has to be ensured.¹⁷²

3.8. The United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990 (The Riyadh Guidelines)

The United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990 also known as the Riyadh Guidelines were adopted in 1990. This set of rules which aim to nip juvenile delinquency in the bud which is essential for preventing crime in society. Focusing on preventive steps especially for ‘children at social risk’ they address the pre-conflict phase.¹⁷³ The guidelines undertake a series of preventive and protective interventions to minimize contact of children with the legal system. They lay stress on intervention strategies from early childhood to adolescent years with youth having an equal stake in the socialization process instead of merely being viewed as object of social control. It advocates for collectively reintegrating and mainstreaming young people.¹⁷⁴

The Riyadh guidelines were passed,¹⁷⁵ taking into account the benefits of progressive policies for the prevention of delinquency and for the welfare of the community, upon Member States, in their comprehensive crime prevention

¹⁷² See Article I Chapter II Juvenile Justice p.51- 67

¹⁷³ Supra 120

¹⁷⁴ Paranjape, N.V. *Criminology and Penology* 13th Edition, Central Law Publications 2007 p.523

¹⁷⁵ A/RES/45/112, Adopted at the 68th plenary meeting on 14 December 1990

plans Riyadh Guidelines need to be adopted in national laws in policy and in practice.¹⁷⁶

3.8.1. Prevention of Delinquency

Prevention of delinquency is an essential part of crime prevention in society. By changing and adopting a humanistic outlook on life and young person's can develop non criminal attitudes. For successful prevention of delinquency efforts on part of society are required to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.¹⁷⁷ A Child centric orientation must be pursued. The Riyadh Guidelines have comprehensive prevention plans at every level of the government. In-depth analyses of the problem have to be carried out and inventories of programmes, services, facilities and resources to be made available. Setting up of qualified agencies, institutions and personnel involved for preventive efforts. There is need for creating mechanisms for the appropriate co-ordination of prevention efforts between governmental and non-governmental agencies. Policies, programmes and strategies based on prognostic studies to be continuously monitored and carefully evaluated in the course of implementation.¹⁷⁸ Different methods have to be adopted for effectively reducing the opportunity to commit delinquent acts.¹⁷⁹ Community

¹⁷⁶The full text of the Riyadh Guidelines is available at the office of the United Nations at:
<http://www.un.org/documents/ga/res/45/a45r112.htm>

¹⁷⁷See Rule 2

¹⁷⁸Supra 120 p.1225

¹⁷⁹Supra 92

is to be involved through a wide range of services and programmes to reduce delinquency.¹⁸⁰

The Riyadh guidelines emphasizes on the socialization process to facilitate the integration of all children in family, community, peer groups, school, vocational training and the world of work as well as voluntary organizations. Due respect has to be given to the proper personal development of the child.¹⁸¹ A child should be taught basic values and to develop respect for the child's own cultural identity and patterns, to develop love for the social values of the country in which the child is living, for civilizations different from the child's own and for human rights and fundamental freedoms.¹⁸² A child must be allowed to develop its personality, talents and mental and physical abilities of young people to their fullest potential.¹⁸³ The child should be able to undertake activities that foster a sense of identity with and of belonging to the school and the community. Encouragement and respect for diverse views and opinions, as well as cultural and other differences. Positive emotional support to be provided to young person's to avoid psychological maltreatment.¹⁸⁴

3.8.2. Juvenile Legislations

The Riyadh guidelines provide direction to states to enact juvenile legislation. States must establish legislation and juvenile justice administration. These laws must have procedures to promote and protect the rights and well-being of all

¹⁸⁰See Rule 9 (a) to (i)

¹⁸¹See Rule 10

¹⁸²Supra 120

¹⁸³Supra 106

¹⁸⁴See Rule 21 (a) to (g)

young persons. Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young person's should be enacted and enforced.¹⁸⁵ Besides Juveniles legislations the Riyadh guidelines states that legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.¹⁸⁶

3.9. U.N Rules for Juveniles Deprived of their Liberty (1990) - The Havana Rules

Adopted in 1990 by the General Assembly, form an essential part of the norms pertaining to juvenile justice. Also regarded as the 'Havana Guidelines',¹⁸⁷ reiterate that the juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.¹⁸⁸

They throw light on protection during incarceration/detention and also reiterate the crucial need for maintaining privacy and confidentiality while a child is within the system.¹⁸⁹ The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles.¹⁹⁰ The Rules for Juveniles Deprived of their Liberty are intended to establish minimum standards accepted by the United Nations for the protection of

¹⁸⁵See Rue 52 to Rule 57

¹⁸⁶Supra 108

¹⁸⁷General Assembly Resolution 45/113

¹⁸⁸Supra 120

¹⁸⁹See Particle III Juveniles under Arrest or awaiting Trial; a) Juveniles should have the right to legal counsel and be enabled to apply for free legal aid, where such aid is available and to communicate regularly with their legal advisers. Privacy and Confidentiality shall be ensured for such communication.

¹⁹⁰Kohli,H.D. and Nalwa,S. *Commentary on The Juvenile Justice Act* , Universal Law Publishing Co. Pvt Ltd, New Delhi, 2011 p.38

juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.¹⁹¹

3.9.1. Deprivation of liberty

Rule 11(b) of the United Nations Rules, for the protection of juveniles deprived of liberty state the deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority. Consequently, the rules are applicable to all forms of deprivation of liberty in whatever type of institution the deprivation of liberty occurs.

The juvenile justice system should uphold the rights and safety and promote the physical and mental well being of the juvenile. The placement of a juvenile in an institution should always be a disposition of last resort and for the minimum necessary period. The length of the sanction should be determined by the judicial authority without precluding the possibility of release.¹⁹² Further rule 17 of the U.N Rules for the protection of Juveniles deprived of their liberty states that detention before trial has to be avoided to the extent possible and limited in exceptional circumstances.¹⁹³ Therefore, all efforts shall be made to apply alternative measures. When preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most

¹⁹¹ Available at http://www2.ohchr.org/english/law/pdf/res45_113.pdf

¹⁹² See Rule 1 and 2 of the U.N. Rules for protection of juveniles deprived of their liberty

¹⁹³ Supra 120

expeditious processing of such cases to ensure the shortest possible duration of detention.¹⁹⁴

3.9.2. Juveniles under Arrest or Awaiting Trial

Juveniles who are detained under arrest or waiting trial (“untried”) are presumed innocent and shall be treated as such. Detention before trial shall be avoided to the extent possible and limited to exceptional circumstances. Therefore, all efforts shall be made to apply alternative measures. Untried detainees should be separated from convicted juveniles.¹⁹⁵

Juveniles have the right of legal counsel and should be enabled to apply for free legal aid. Privacy and confidentiality shall be ensured for such communications.¹⁹⁶ Juveniles should be provided, with opportunities to pursue work, with remuneration, and continue education or training.¹⁹⁷ Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interests of the administration of justice.¹⁹⁸

3.9.3. Facilities to be given to Juveniles

When a juvenile is admitted records have to be kept of the identity of the juvenile.¹⁹⁹ The reasons for committing offence and the authority the juvenile is referred to.²⁰⁰ In case the juvenile is transferred or released the day and hour of

¹⁹⁴ Supra 108

¹⁹⁵ See Rule 17

¹⁹⁶ See Rule 18(a)

¹⁹⁷ See Rule 18(b)

¹⁹⁸ See Rule 18(c)

¹⁹⁹ See Rule 21(a)

²⁰⁰ See Rule 21(b). Also See Compendium of United Nations standards and norms in crime prevention and criminal justice

admission, transfer and release have to be recorded.²⁰¹The details on admission, place of transfer and release to be given to the parents.²⁰²Details like physical and mental health problems including those related to drug and alcohol abuse are very vital.²⁰³Each juvenile should be interviewed, and a psychological and social report identifying any factors relevant to the specific type and level of care and programme required by the juvenile should be prepared before the juvenile²⁰⁴ is placed in any institution.²⁰⁵Rule 30 states that Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible.²⁰⁶The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and made of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.²⁰⁷

Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.²⁰⁸The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to

²⁰¹See Rule 21(c)

²⁰²See Rule 21(d)

²⁰³See Rule 21(e)

²⁰⁴Supra 106

²⁰⁵See Rule 27

²⁰⁶Supra 108

²⁰⁷See Rule 30 of U.N. Rules for protection of juveniles deprived of their liberty

²⁰⁸See Rule 30

the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. The design and structure of juvenile detention facilities should be such as to minimize the risk of fire and to ensure safe evacuation from the premises.²⁰⁹

Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country.²¹⁰

After release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs.²¹¹ Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education.²¹² Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should be provided.²¹³ Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary

²⁰⁹See Rule 32

²¹⁰Supra 106

²¹¹Supra 108

²¹²See Rule 38

²¹³See Rule 47

books or items of religious observance and instruction of his or her denomination.²¹⁴ Every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, as well as pharmaceutical products and special diets as medically indicated.²¹⁵

The family or guardian of a juvenile and any other person designated by the juvenile shall have the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile.²¹⁶ The director of the detention facility should notify immediately the family or guardian of the juvenile in case of death, illness.²¹⁷ The juvenile can be moved to an outside medical facility, if he is suffering from a condition requiring clinical care within 48 hours.²¹⁸

3.9.4. Contact with Community and outside world

The juveniles should have adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society.²¹⁹ Juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organizations, to leave detention facilities for a visit to their home and family and to receive special permission

²¹⁴ See Rule 48

²¹⁵ See Rule 49

²¹⁶ See Rule 56

²¹⁷ Supra 62

²¹⁸ See Rule 56

²¹⁹ Supra 108

to leave the detention facility for educational, vocational or other important reasons.²²⁰ This is reflected in Rule 59 of the U.N Rules for the protection of juveniles deprived of their liberty. Rule 60 provides that every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defense counsel. Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.²²¹

3.9.5. Prohibition on use of Disciplinary Procedures

All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile is prohibited. The reduction of diet and the restriction or denial of contact with family members is also prohibited. Labour should always be viewed as an educational tool and a means of promoting the self-respect of the juvenile in preparing him or her for return to the community and should not be imposed as a disciplinary sanction.

²²⁰ Supra 106

²²¹ Supra 108

No juvenile should be sanctioned more than once for the same disciplinary infraction. Collective sanctions should be prohibited.²²²

3.10. United Nations Standard Minimum Rules for Non – Custodial Measures, 1990 (The Tokyo Rules)

Adopted by the General Assembly in 1990,²²³ are also known as Tokyo Rules. These promote greater community initiatives through recourse to non custodial measures especially for treatment for the young lawbreakers and to ingrain a sense of social responsibility in offenders including ‘children in conflict with law’. The rules also provide an anvil to rationalize criminal justice policies along the lines of human rights norms, rights of victims and rehabilitation requirement of the offender.²²⁴

3.11 Guidelines for Action on ‘Children in the Criminal Justice Systems, 1997 - (The Vienna Guidelines)

Commonly referred to as the Vienna Guidelines were recommended by the ECOSOC in 1997.²²⁵ The Vienna guidelines recapitulate the importance of national policies. It covers practices of juvenile justice converging with standards and safeguards stipulated in the Convention on the Rights of the

²²²See Rule 67; Also See Supra 120

²²³A full text of the Tokyo Rules is available from the Office of the High Commissioner of the Human Rights at www.unhcr.ch/html/menu3/b/h_comp46.html last accessed on 12th July 2012

²²⁴See II. Pre-Trial Stage, 5 Pre-trial dispositions. Also See III. Trial and Sentencing Stage and Social inquiry reports.

²²⁵ A full text of Vienna Guidelines is available at the Office of the High Commissioner of the Human Rights at www2.ohchr.org/English/law/system.htm last accessed on 12th July 2012

Child²²⁶ and the United Nations Standards and norms in juvenile justice.²²⁷ The guidelines, aim to incorporate in the national and local legislations of all the member states, a child-oriented juvenile justice system.²²⁸

3.11.1. Application of International Standards and Norms in Juvenile Justice

Rule 11 calls for measures relating to policy, decision-making, leadership and reform to ensure that the norms in juvenile justice are fully reflected in national and local legislation policy and practice.²²⁹ Every child has to be provided with the relevant information on his or her rights.²³⁰ Public and the media should always bear an understanding of principles of justice and promote norms of Juvenile Justice.²³¹

Birth registration programmes are to be made effective particularly when a child is involved in the criminal justice system proper efforts to be made to ascertain the age of the child.²³² The age of criminal responsibility, civil

²²⁶Recommended by Economic and Social Council Resolution 1997/30 of 21 July 1997. The Guidelines are addressed to the Secretary General and all the member states and the relevant agencies for implementation of the United Nations Standard Minimum Rules for the administration of Juvenile Justice (The Beijing Rules), The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, together referred as the United Nations Standards and Norms in Juvenile Justice.

²²⁷ It applies United Nations standards and norms in juvenile justice and other related instruments, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;(a) To implement the Convention on the Rights of the Child and to pursue the goals.(b) To facilitate the provision of assistance to States parties for the effective implementation of the Convention on the Rights of the Child and related instruments. Available at <http://www2.ohchr.org/english/law/system.htm>

²²⁸See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations Publication, Sales No. E.86.IV.1), Chapter. I, Section. C.

²²⁹ See Rule 11 (a)

²³⁰ See Rule 11 (b)

²³¹ See Rule 11 (c); Also See Supra 251

²³²See Particle I B.S.12

majority and the age of consent should be defined by national legislation. Care is to be taken to ensure that children benefit from all their rights.²³³ The juvenile justice process needs to be child rights centered.²³⁴ Expert panels need to be set up to review the existing juvenile justice laws and their impact on children. No child who is under the legal age of criminal responsibility should be subject to criminal charges.²³⁵ States are also urged to set up juvenile courts with primary jurisdiction over juveniles who commit criminal acts and special procedures should be designed to take into account the specific needs of children.²³⁶

3.11.2. Rights of the Child during the Trial

Review of existing provisions to be undertaken. Young person's accused of crimes the recourse to the criminal justice system should be avoided and alternative initiatives for diversion should be used.²³⁷ Proactive steps have to be taken for pre-arrest, pre-trial, trial and post-trial stages and social rehabilitation of the offenders. The child must be provided legal and other assistance free of charge.²³⁸ The placement of children in closed institutions must be reduced.²³⁹ A detained child must be helped to maintain link between the family and community.²⁴⁰ All persons responsible for the child in the criminal trial must receive education and training in human rights.²⁴¹

²³³ See Rule 13 ; Also See Supra 225

²³⁴ See I.(14)(a)

²³⁵ See I(14)(c)

²³⁶ See I(14)(d)

²³⁷ See 15

²³⁸ See 16

²³⁹ See 18

²⁴⁰ See 20

²⁴¹ See 24

3.12. Supporting national efforts for child justice reform, in particular through technical assistance and improved United Nations system-wide coordination

A significant ECOSOC Resolution of 2007/23 entitled ‘Supporting national efforts for child justice reform, in particular through technical assistance and improved United Nations system-wide coordination’.²⁴² It explicitly focus on ‘child justice’ to implement United Nations standards and norms for the treatment of children in conflict with the law, particularly those deprived of their liberty, taking into account the gender, social circumstances and development needs of such children.²⁴³ It calls for adopting national plans in areas of advocating diversion, alternatives to imprisonment, restorative justice and reduction in pre-trial detention.²⁴⁴ It urges to carry out relevant institutions to provide or offer specialized training to criminal justice officers involved in the administration of child justice, including correctional officers, police officers, prosecutors, judges and lawyers, as well as to social workers, in order to raise their awareness.²⁴⁵ It calls for collective effort to explore ways in which violence against children can prevented and enables ways for children to respond to violence in the area of children and the justice system.²⁴⁶

²⁴² Singh, M.I. *Human Rights in India (Constitutional and Legal Provisions)*, Vibhav Law Publications, Allahabad, 2001, p.300-302

²⁴³ Supra 7

²⁴⁴ See 2

²⁴⁵ See 3

²⁴⁶ See 7 ; Also See Supra 242

3.13. Child as a Victim - International Law

Before the formal criminal justice system developed in the world, victims of crime received better justice as the offenders was always asked to pay compensation to the victims in proportion to the amount of damage or injury caused. In the course of development of the state and its responsibility to preserve peace and protect the citizens from the onslaught of crime, the victim became the forgotten person and justice was gradually meant to establish the guilt of the accused and punish the offender if the guilt is proved. Victims have to be content with the punishment of the offender which depends on the prosecution if at all the prosecution succeeds in proving the offence.

The child victims were never considered when the criminal justice system was framed. The actual offence which has been committed on the child is just one of the series of traumas that a child victim faces. There are delays and gaps in the timeline of various procedures for each case and this again has a negative impact on child victims. In many cases the abusers compel the victim to maintain secrecy. The plain truth about the prosecution of offenses against children is if there is no victim no case can be filed against the accused. The Justice process encompasses detection of the crime, the making of the complaint, investigation, prosecution and trial and post-trial procedures, regardless of whether the case is handled in a national, international or regional

criminal justice system for adults or juveniles or in customary or informal justice systems.²⁴⁷

During the middle twentieth century the administration of justice laid emphasis of protecting human rights of the accused and the prisoners since the law already punishes the offender by the curtailment of freedom. Hence the offender should be protected from further encroachment on his human rights as he is in captivity and within the clutches of the state.

During this period studies of Benjamin Mendelsohn and Hans von Hentig the pioneers of victimology brought to the forefront a new perspective on the role of the victim in the criminal justice system and the problems faced by victims due to the crime and also the problems caused by the criminal justice system. A significant turning point occurred during the early 1970s because of the genesis of a victim movement in the United States mainly due the efforts of the volunteers, past victims who were survivors.²⁴⁸ Victimologist and victim advocates collectively voiced through the initiatives of the World Society of Victimology in 1979 and spearheaded the cause of victims and their rights in the criminal justice system. Due to the persistent efforts of the world society of victimology the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan in September, 1985 approved the United Nations Declaration on the Basic Principle of Justice for Victims of Crime and Abuse of Power which was adopted by the General Assembly.

²⁴⁷See 9(c)Guidelines on justice for child victims and witnesses of crime, 2005

²⁴⁸Chockalingam. K. and Kumar C. R, *Human Rights, Justice and Constitutional Empowerment*, Oxford University Press p.442 to 455

3.14. Defining Victims

U.N. Guidelines on Justice Matters involving Child victims and Witnesses of Crime 2005 defines Child victims and witnesses²⁴⁹ as children and adolescents, under the age of 18, who are victims of crime or witnesses to crime regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders. The justice process²⁵⁰ is defined as detection of the crime, making of the complaint, investigation, prosecution and trial and post-trial procedures, regardless of whether the case is handled in a national, international or regional criminal justice system for adults or juveniles, or in a customary or informal system of justice.²⁵¹

3.15. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985

Millions of people throughout the world suffer harm as a result of crime and the abuse of power and that the rights of these victims have not been adequately recognized. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985²⁵² were passed to represent the rights of such victims.²⁵³

²⁴⁹See Rule 9(a)

²⁵⁰See Rule 9(c)

²⁵¹Full Text of the guidelines available at:

http://www.un.org/en/pseataaskforce/docs/guidelines_on_justice_in_matters_involving_child_victims_and.pdf, accessed on 11/2/2011

²⁵²Economic and Social Council Resolution 89/57 See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap.I, sect. C.

²⁵³Adopted by General Assembly Resolution 40/34 of 29 November 1985. Available at <http://www.un.org/documents/ga/res/40/a40r034.htm>

3.15.1. Right to Access to justice and fair treatment

Victims should be treated with compassion and respect for their dignity.²⁵⁴ They are entitled to access various mechanisms of justice and to prompt redress, for the harm that they have suffered.²⁵⁵ Judicial and administrative mechanisms should be established and strengthened wherever necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible.²⁵⁶ The victims have to be informed of their role and the scope, timing and progress of the proceedings and of the disposition of their cases.²⁵⁷ A Victim has to be allowed to present their views at all stages of the proceedings.²⁵⁸ The victim is to be provided with proper assistance throughout the legal process.²⁵⁹ Measures need to be adopted to minimize inconvenience to victims and to protect their privacy and safety.²⁶⁰ Unnecessary delays have to be avoided and awards be granted to victims.²⁶¹ Wherever possible informal mechanisms of resolution of disputes can be adopted like mediation, arbitration and customary justice or indigenous practices, can be utilized to redress for victims.²⁶² Victims should receive

²⁵⁴ Though the Declaration applies to all victims the word any person includes even a child. As the principles used in this declaration are followed by various jurisdictions in framing laws for child victims. See A-3

²⁵⁵ See 4

²⁵⁶ See 5

²⁵⁷ See 6a

²⁵⁸ See 6b

²⁵⁹ See 6c

²⁶⁰ See 6d

²⁶¹ See 6e; See Supra 108

²⁶² See 6f

medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.²⁶³

3.15.2. Right to Restitution

Offenders or third parties responsible for their behaviour have to make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.²⁶⁴ Where public officials or other agents acting in an official or quasi-official capacity violate national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted.²⁶⁵

3.15.3. Right to Compensation

When compensation is not fully available from the offender or other sources, States should Endeavour to provide financial compensation to the victims who have sustained significant bodily injury or impairment of physical or mental health²⁶⁶ as a result of serious crimes.²⁶⁷ Family members need to be compensated in case family and dependants have died or become physically or

²⁶³See 14

²⁶⁴See 8

²⁶⁵See 11

²⁶⁶Supra 117

²⁶⁷See 12a; See Supra 106

mentally incapacitated.²⁶⁸ States need to set up national funds for compensation to victims.²⁶⁹

3.16. United Nations Guidelines for Action on Children in the Criminal Justice System, 1997

The guidelines impose a responsibility on states to implement the Convention on the Rights of the Child.²⁷⁰ They also call for a child oriented justice system. Agencies need to be set up to provide legal and other assistance to children²⁷¹ if needed free of charge. Action needs to be taken to alleviate problems of children in need of special protection measures such as children working or living on the streets or children permanently deprived of family and environment, children with disabilities, children of minorities, immigrants and indigenous people and vulnerable groups of children. Placing children in closed institutions should be reduced. An independent body needs to be set up to monitor and report conditions in custodial facilities.²⁷²

3.16.1. Children' Court

Police, lawyers, the judiciary and other court personnel should receive training in dealing with cases where children are victims. States should consider establishing, specialized offices and units to deal with cases involving offences against children. States should establish, code of practice for proper

²⁶⁸See 12b; See Supra 242

²⁶⁹See 13

²⁷⁰See I.(6)

²⁷¹See S.16

²⁷²See S.18 & 21

management of cases involving child victims.²⁷³ Judicial and administrative mechanisms should be established and strengthened to enable child victims to obtain redress through formal or informal procedures that are prompt, fair and accessible.²⁷⁴ States should make amendments of their penal procedural codes to allow for, videotaping of the child's testimony and presentation of the videotaped testimony in court as an official piece of evidence. The Criminal justice system should adopt child-friendly practices while interviewing children.²⁷⁵

3.16.2. Protection for Child Victims and Witnesses

Child Victims and witnesses have to be provided access to justice and fair treatment, restitution, compensation and social assistance.²⁷⁶ When compensation is to be awarded care is to be taken to avoid settling penal matters outside the justice system. Child victims have to be treated with compassion and respect for their dignity.²⁷⁷ Child victims are to have access and assistance that meet their needs such as advocacy, protection, economic assistance, counseling, health and social services, social reintegration and physical and psychological recovery services.²⁷⁸ With due attention to provide children a family and community based rehabilitation. Mechanisms need to be established to inform child victim and /or their legal representative immediately. Compensation is to be provided for violations of human rights,

²⁷³Children's Court ; Supra 242

²⁷⁴See 46

²⁷⁵See 50

²⁷⁶See Particle III 43

²⁷⁷See 45

²⁷⁸See 46; Supra 108

specifically tortured and other cruel, inhuman or degrading treatment or punishment including rape and sexual abuse, unlawful or arbitrary deprivation of liberty, unjustifiable detention and miscarriage of justice.

3.17. Convention on the Rights of the Child, 1989

The Convention on the Rights of the Child reiterates protective rights for the child. The Child must be protected from economic exploitation and work that is hazardous or harmful to the child's health or physical, mental or spiritual or social development.²⁷⁹ Care has to be taken to ensure that the child is not exposed to narcotic drugs and psychotropic substances.²⁸⁰ The child must be protected from all forms of sexual exploitation and sexual abuse.²⁸¹ The child must be prevented from being induced or coerced into unlawful sexual activity.²⁸² Any exploitative use of the child in prostitution or other unlawful sexual practices has to be prohibited.²⁸³ The child should not be exploited or used in any pornographic performance.²⁸⁴ The child also needs protection to ensure that the child is not abducted for sale, traffic or exposed to any other form of abuse.²⁸⁵ The child must also be protected from any form of exploitation.²⁸⁶

²⁷⁹ See Article 32, Also see Article 19

²⁸⁰ See Article 33

²⁸¹ See Article 34

²⁸² See Article 34(a)

²⁸³ See Article 34(b)

²⁸⁴ See Article 34 (c)

²⁸⁵ See Article 35

²⁸⁶ See Article 36

3.17.1. Recovery of the Victim

The victim must be provided help to ensure its physical, psychological recovery and social reintegration of the child victim. Such recovery and reintegration must take place in an environment which will foster the health, self respect and dignity of the child.²⁸⁷ Traditional practices prejudicial to the health of the child must be abolished.²⁸⁸

3.17.2. Optional Protocols

The Convention has promulgated into two optional protocols. Optional Protocol to the Convention on the Rights of the Child on the sale of Children, Child Prostitution and Pornography,²⁸⁹ and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.²⁹⁰ The Optional Protocol on the Involvement Of Children In Armed Conflict, 2000 directs the state parties to take all measures to ensure that those who have not attained the age of 18 years are not compulsorily recruited in the armed forces,²⁹¹ and the members of their armed forces who are below the age of 18 years, do not take part in direct hostilities.²⁹² The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000²⁹³ this protocol protects the children from sale, prostitution and

²⁸⁷ See Article 39

²⁸⁸ See Article 24(3)

²⁸⁹ entered into force on 18.01.2002

²⁹⁰ entered into force on 12.02.2002

²⁹¹ Article 2, *ibid*

²⁹² Article 1, *ibid*

²⁹³ Adopted and opened for signature, ratification and accession by General Assembly Resolution A/RES/54/263 of 25 May 2000

pornography. It directs the state-parties to prohibit the sale of children, child prostitution and child pornography.²⁹⁴

3.18. United Nations Guidelines on Justice Matters involving Child Victims and Witnesses of Crime, 2005

United Nations Guidelines on justice Matters involving Child Victims and Witnesses of Crime 2005²⁹⁵ was adopted by Economic and Social Council on 22 July 2005 at the recommendation of the UN Commission on Crime Prevention and Criminal Justice.²⁹⁶ Children who are victims and witnesses are particularly vulnerable and need special protection, assistance and support appropriate to their age, level of maturity and unique needs in order to prevent further hardship and trauma that may result from their participation in the criminal justice process. Girls are particularly vulnerable and may face discrimination at all stages of the justice system.²⁹⁷ The participation of child victims and witnesses in the criminal justice process is necessary for effective prosecutions, in particular where the child victim may be the only witness.²⁹⁸ These special considerations were placed while framing the Guidelines on Justice in matters involving Child Victims and Witness of Crime.²⁹⁹

²⁹⁴ Article 1, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000

²⁹⁵ Economic and Social Council resolution 2005/20

²⁹⁶ The Guidelines are drawn up by the International Bureau for Children's Rights.

²⁹⁷ Justice Chakraborty, N.K. *Juvenile Justice In the Administration of Criminal Justice*, Deep & Deep Publications, New Delhi, 1999

²⁹⁸ Supra 103

²⁹⁹ Supra 120

The Guidelines are to be implemented in national legislations and judicial procedures taking into account the legal, social, economic, cultural and geographical conditions. The Guidelines provide a practical framework respect for the rights of child victims and witnesses of crime and contribute to the implementation of the Convention on the Rights of the Child.³⁰⁰ To guide professionals in practice in the adult and juvenile justice process at the national, regional and international levels, which are consistent with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.³⁰¹

Children to be provided with free legal aid facilities. Action plans to be introduced to alleviate the problems of children in need of special care and protection. Placing children in a closed institution is to be reduced. Corporal punishment at schools should be prohibited.³⁰² Detained children are to be provided with easy access with family and social integration to be facilitated. Custodial facilities should be monitored by an independent body. All responsible or coming in contact with children involved in the criminal justice system to receive regular training.³⁰³

3.18.1. Principles

The Guidelines have carved out certain principles on the basis of which the State has to design its approach towards child victims and child witnesses. The following principles are expected to be adhered to by the professionals

³⁰⁰ Supra 27

³⁰¹ See 4(a)

³⁰² Supra 117

³⁰³ Supra 103

and others responsible for the well being of children.³⁰⁴

3.18.1.(a) Dignity

Every child is unique and valuable human being and as such his or her individual dignity, special needs, interests and privacy should be respected and protected.³⁰⁵

3.18.1.(b) Non-discrimination

Every child has the right to be treated fairly and equally, regardless of his or her or the parent's or legal guardian's race, ethnicity, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status.³⁰⁶

3.18.1.(c) Best interests of the child

While the rights of accused and convicted offenders should be safeguarded, every child has the right to have his or her best interests given primary consideration. This also includes the right to protection and a chance for harmonious development.³⁰⁷

³⁰⁴These principles are also reflected in the Convention on the Rights of the Child

³⁰⁵See 8(a); Supra 242

³⁰⁶See 8(b); Supra 103

³⁰⁷See 8(c); Also See Supra 117

3.18.1.(c)(i) Protection

Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect.³⁰⁸

3.18.1. (c) (ii) Harmonious development

Every child has the right to a chance for harmonious development and to adequate standards of living for physical, mental, spiritual, moral and social growth. In case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development.

3.18.1. (d) Right to participation

Every child subject to national procedural law, the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, which includes those taken in any judicial process, and to have those views taken into consideration.³⁰⁹

3.18.2. The right to be treated with dignity and compassion

Child victims and witnesses should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully

³⁰⁸See 8(c)i

³⁰⁹See 8(d); Also See Supra 103

respecting their physical, mental and moral integrity.³¹⁰ Every child should be treated as an individual with his or her individual needs, wishes and feelings. Interference in the child's private life should be limited.³¹¹

In order to avoid further hardship to the child, interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful manner.³¹² In all situations the special needs of the child, have to be considered according to his or her abilities, age, intellectual maturity and evolving capacity. They should also take place in a language that the child uses and understand.³¹³

3.18.3. The right to be protected from discrimination

Child victims and witnesses should have access to a justice process that protects them from discrimination based on the child's, parent's or legal guardian's race, colour, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and birth or other status.³¹⁴

The justice process and support services should be sensitive to the child's age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste, socioeconomic condition and immigration or refugee status, as well as the special needs of the child, including health, abilities and capacities. Professionals should be trained and

³¹⁰See A.10

³¹¹See A.11; also See Supra 117

³¹²See A.13

³¹³Supra 161

³¹⁴See B.15

educated about such differences.³¹⁵ Age should not be a barrier to a child's right to participate fully in the justice process. Every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child's age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance.³¹⁶

3.18.4. The right to be informed

Child victims and witnesses, their parents or guardians and legal representatives, have to be informed about their rights, right from their first contact with the justice process.³¹⁷ They have to be informed of the availability of health, psychological, social and other relevant services as well as the means of accessing such services.³¹⁸ The child has to be guided in the progress and disposition of the specific case, including the apprehension, arrest and custodial status of the accused and any pending changes to that status, the prosecutorial decision and relevant post-trial developments and the outcome of the case.³¹⁹ The child must also be informed about support mechanisms available for the child while making a complaint.³²⁰

³¹⁵See B.16

³¹⁶See B.18; Also See Supra 117

³¹⁷See C.19

³¹⁸See C.19(a)

³¹⁹See C.19(c)

³²⁰See C.19(d); Also See Supra 120

3.18.5. The right to be heard and to express views and concerns

Professionals should make every effort to enable child victims and witnesses to express their views and concerns related to their involvement in the justice process.³²¹ Child victims and witness are to be consulted in the justice process.³²² They should be allowed to express their views and concerns freely.³²³ Professionals should give due regard to the child's views and concerns and, if they are unable to accommodate them, should explain the reasons to the child.³²⁴

3.18.6. The right to effective assistance

Child victims and witnesses family members should have access to assistance provided by professionals who have been sufficiently trained.³²⁵ This may include assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child's reintegration. All such assistance should address the child's needs and enable him or her to participate effectively at all stages of the justice process. Professionals should develop and implement measures to make it easier for children to give evidence and to improve communication and understanding at the pre-trial and trial stages.³²⁶ The Child victim and witness specialists have to ensure that they

³²¹See D.20

³²²See D.21(a)

³²³See D.21(a)(b)

³²⁴See D.22

³²⁵See E.23; Supra 117

³²⁶See E.26

address the child's special needs.³²⁷ Support persons, including specialists and family members should accompany the child during testimony.³²⁸ Guardians (*Guardian Ad-Litem*) may be appointed to protect the child's legal interests.

3.18.7. The right to privacy

The privacy of the victim is important and child victims and witnesses their privacy must be protected.³²⁹ Any information relating to a child's involvement in the justice process should be protected.³³⁰ Disclosure of any information which leads to identification of the child must not be prevented and confidentiality of information relating to the child must be maintained in the justice process.³³¹ Public and the media may be excluded from court room during the child's testimony if such measures are permitted by national laws.³³²

3.18.8. The right to be protected from hardship during the justice process

Professionals should take measures to prevent hardship during the detection, investigation and prosecution process in order to ensure that the best interests and dignity of child victims and witnesses are to be respected. Professionals should approach child victims and witnesses with sensitivity.³³³ Useless delays have to be avoided and ensure that speedy trials are carried out.³³⁴ Investigation also needs to be expedited and procedures, laws or court rules that provide for

³²⁷See E.26(a)

³²⁸See E.26(b); Also See supra 103

³²⁹See E.27

³³⁰See F.27

³³¹See F.28; Also see Supra 117

³³²See F.29

³³³See G.30 and 31

³³⁴See G.31 (c)

cases involving child victims and witnesses are to be expedited. During interviews of children child sensitive procedures and rooms specially designed for children are to be built. For this the court room can be modified keeping the child in mind. A child has to be given a recess during its testimony. Care has to be taken to ensure that the child goes to court only when necessary.³³⁵ The number of interviews on the child has to be limited. Special procedures may be used for collection of evidence from the child.³³⁶ Care has to be taken to avoid unnecessary contact with the perpetrator and his defense team.³³⁷

3.18.9. The right to safety

Where the safety of a child victim or witness may be at risk, appropriate measures should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process.³³⁸ To avoid direct contact between child victims and witnesses and the alleged perpetrators professionals should be trained at preventing intimidation, threats and harm to child victims and witnesses. Court orders to restrain can be used.³³⁹ The accused can be ordered for pre-trial detention and a no-contact condition can be imposed in the bail. The Accused can be placed under house arrest. Wherever possible, the child victims and witnesses must be given protection by the police or other relevant agencies.³⁴⁰

³³⁵See G.31 (d); Also See Supra 103

³³⁶See G.32(a)

³³⁷See G.32(b)

³³⁸See H.33; Also See Supra 117

³³⁹See H.35(a)(b)

³⁴⁰See H.35(c)(d) and (e)

3.18.10. The right to reparation

Child victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery.³⁴¹ Procedures for obtaining and enforcing reparation should be readily accessible and made child-sensitive. Reparation may include restitution from the offender ordered in the criminal court, aid from victim compensation programmes administered by the State and damages ordered to be paid in civil proceedings. Where ever possible, costs of social and educational reintegration, medical treatment, and mental health care and legal services should be addressed. Procedures should be instituted to ensure enforcement of reparation orders and payment of reparation before fines.³⁴²

3.18.11. The right to special preventive measures

Preventive measures should be put in place for children, and special strategies are required for child victims and witnesses who are particularly vulnerable to recurring victimization or offending.³⁴³

3.18.12. Implementation

Adequate training, education and information should be made available to professionals, working with child victims and witnesses with a view to improving and sustaining specialized methods, approaches and attitudes in order to protect and deal effectively and sensitively with child victims and

³⁴¹See I36; Also See Supra 103

³⁴²See I38

³⁴³See J39

witnesses. Professionals should be trained to effectively protect and meet the needs of child victims and witnesses, including in specialized units and services. This training should include relevant human rights norms, standards and principles, including the rights of the child.³⁴⁴ They have to be taught principles and ethical duties of their office.³⁴⁵ They need to be provided with skill based training on signs and symptoms that indicate crimes against children.³⁴⁶ They must be guided on crisis assessment skills and techniques, especially for making referrals, with an emphasis placed on the need for confidentiality.³⁴⁷ Assessment has to be done on impact, consequences, including negative physical and psychological effects, and trauma of crimes against children.³⁴⁸ They need to put special measures and techniques to assist child victims and witnesses in the justice process.³⁴⁹ They have to be informed on cross-cultural and age-related linguistic, religious, social and gender issues which need protection.³⁵⁰ They must be taught appropriate adult-child communication skills.³⁵¹ They have to be taught interviewing and assessment techniques that minimize any trauma to the child while maximizing the quality of information received from the child.³⁵² Skills to deal with child victims and witnesses in a sensitive, understanding, constructive and reassuring manner have to be imparted.³⁵³ Methods to protect and present evidence and to question

³⁴⁴See III43(a)

³⁴⁵See 43(b)

³⁴⁶See 43(c); Also see Supra 103

³⁴⁷See 43(d)

³⁴⁸See 43(e)

³⁴⁹See 43(f)

³⁵⁰See 43(g); Also See Supra 117

³⁵¹See 43(h)

³⁵²See 43(i)

³⁵³See 43(j)

child witnesses have to be devised.³⁵⁴ Other roles and methods used by, professionals working with child victims and witnesses need to be discussed and implemented.³⁵⁵

3.19. Law Enforcement Officials in the Criminal Justice System

The responsibility legal professionals are very important in the judicial proceedings concerning children under age, who are in trouble with the law. Such proceedings require special knowledge and skills on the part of judges, prosecutors, lawyers and other professionals concerned. States parties should introduce or strengthen training programmes on relevant international standards for all professionals involved in the juvenile justice system. The International community has imposed duties on the law enforcement agencies through international documents.³⁵⁶ This duty ensures that they serve the community by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

The next chapter deals with the evolution of the Juvenile Justice Laws in India. It discusses the efforts made by the British to segregate children from the jails. It also highlights the role of the early legislations and their contribution in framing the present legislative framework of the juvenile justice laws in India.

³⁵⁴ See 43(k)

³⁵⁵ See 43(j); Also See Supra 103

³⁵⁶ The International documents have not been discussed in the study since these documents do not particularly relate to children. They are guidelines for law enforcement officials for overall administration of criminal justice.

4. Evolution of Juvenile Justice Laws in India

The juvenile justice system developed from the recognition that children were not as mature as adults to understand the nature and the consequence of their criminal acts.¹The appalling prison conditions led to improvement in the living conditions in prisons and segregation in prisons. At that time there was only ten percent of the total population in prison in the age group of 15-20 years who made up almost quarter of the criminal population.²Those under 15 years of age made upto 6.5 per cent of the criminal population.³The failure of prisons and other similar institutions to control crime and the rapid increase in juvenile delinquency necessitated alternative measures for children. The prison reformers did not want children to be processed as adults and sent to penitentiaries but neither did they want the children released. The recognition of the harmful effects of keeping the adult and juvenile offenders together resulted in separate juvenile jails and reformatories. The principle of segregation further led to separate hearings, changes in the criminal procedure which finally led to the creation of juvenile courts. The search for new means for the prevention of crime and delinquency finally moved towards utilization and organization of community resources.

In this chapter the evolution of Juvenile Justice is studied from two phases.

This chapter deals with the development of the legal system on juvenile laws,

¹Bondavalli B.J, *A Socio-Historic Study of Juvenile Justice*, National Crime Records Reference Service Library, 1977 p.32

²Krishnamurthy, V. and Rao,B. *Handling delinquent at Home*, Social Defense 1986, p.36

³Morris, A. and Giller, H. *Understanding Juvenile Justice*, Dorset Russel House,1944 p.8

and the subsequent changes in the jail rules which gave rise to separate treatment to juveniles. It also chronologically traces the growth and development of the juvenile law in India and establishment of juvenile courts.

4.1 Origin of Juvenile Justice System in India

In the 17th century the British through the Regulating Act of 1773 acquired the powers of making laws and enforcing them in India.⁴ The period from 1773 to 1850 saw various committees examining the conditions of jails in India with special focus on children in jails. The first legislation for keeping children out of jails was enacted in 1850.⁵

4.1.1. The Apprentices Act, 1850

The Apprenticeship Act, 1850⁶ is the first legislation for children in India. This Act was concerned with delinquent behavior of the child. Children convicted by courts were intended to be provided with some vocational training which might help their rehabilitation. Children found destitute, or guilty of petty offence by the trying magistrates were also covered by this Act. The Magistrate was authorized to act as guardians in respect of a child committing a petty offence and could bind him as an apprentice to learn a trade, craft or employment.⁷ This legislation sowed the seeds of Juvenile Justice System in

⁴Guide to the Records in the National Archives of India, Part V, 1-7, 1981

⁵Kumari, V. *The Juvenile Justice System in India from Welfare to Rights*, Oxford University Press, 1st e.d 2004, p.57-71

⁶ Act No. 19 Of 1850 Repealed

⁷The Act was repealed by the Apprentices Act, 1961 which does not contain provisions relating to the destitute children.

India.⁸ It was not specifically concerned with Juveniles but it emphasized the need to treat children in a different manner from adults. The Act was repealed by the Apprentices Act, 1961 which did not contain provisions relating to delinquent children.⁹

4.1.2. The Reformatory School Act, 1876¹⁰

The Reformatory School Act, 1876 is the next landmark legislation dealing on juvenile delinquents in India. The Act empowered local governments to establish reformatory schools in accordance with the Indian Penal Code, 1860 and exempt children less than 12 years of age from criminal offences. According to the Act the Court could keep the child for two to seven years in reformatory schools if it was under 18 years of age. Youth placed in reformatories could leave if they found gainful employment.¹¹ Under this Act a beginning was made for incorporating rehabilitative technique in penal philosophy for juvenile offenders.¹²

4.2. Period from 1851- 1920

Many legislations were enacted during this period¹³ covering a wide range of matters concerning the children. *The Female Infanticide Prevention Act, 1870*¹⁴

⁸ Ahmed, S. *Criminology and Penology*, Eastern Book Company, Lucknow, 6th e.d, 2009 p.137

⁹ Mokherjee, A. *An In-dept Study on matters Related to Children*, Sarkar & Sons Pvt Ltd, Calcutta India 1989 p.55

¹⁰ Act V of 1876

¹¹ Winterdyk J., *Juvenile Justice Systems: International Perspectives*, Canadian Scholars' Press Inc.; 2nd ed, July, 2002

¹² Siddique, A. *Criminology and Penology*, Eastern Book Company Lucknow, 6th e.d p.249-307

¹³ The early period is from 1851- 1920 when Acts were enacted during the British rule. Many of these Acts are a British Legacy in India even today.

¹⁴ Act no 14 of 1870

and *The Vaccination Act, 1880*, Act No 13 of 1880 sought to secure life and health of the victim. *The Guardianship and Wards Act, 1890* Act No 8 of 1890 made provisions for the care and protection of children. To combat the evil of child labour special provisions were made by *The Factories Act, 1881*.¹⁵

The Whipping Act, 1864, Act No VI of 1864 whose intent was not to shield the child from the whip, but to keep it from the adult space of the jail by facilitating the use of flogging instead of incarceration. The Whipping Act was seen as an ideal way of dealing with juveniles who were neither fit for reformatory nor jail and thus were neither children nor adults. The violence of beating could be utilized to make graduations in the juvenility and criminality of the individual offender. With time the number of juvenile offenders increased and a few strips did not deter them much.¹⁶

Legislation in criminal justice to deal against forcible abduction of children was proposed in 1848.¹⁷ Under the existing law the forcible taking of girls without their parents' permission for the purpose of sale or prostitution was an offence but this was not covered by the Regulation. The draft legislation was not approved and the cases were covered under illegal trespass.¹⁸

¹⁵Dr.Padhi, P.K. *Child Labour Retrospect and Prospect*, Laxmi Offset, Cuttack p.3

¹⁶ Indian Jail Committee Report, 1864, p.19; Also See Sen, Satadru, *Colonial Childhoods: The Juvenile Periphery of India 1850-1945*, Anthem South Asian Studies, London, 2005, p.104

¹⁷ Following the abduction of a 7 year girl due to personal vengeance

¹⁸ Original Legislative Consultations (Manuscript) Legislative Nos 8, 9, 8 January 1848

4.2.1 The Reformatory Schools Act, 1897

Sir Richard Temple the Lt. Governor of Bengal had observed that juvenile offenders were growing in vice and ignorance.¹⁹ Need was felt to pass the Reformatory School Act, 1876.²⁰ The proposed Bill was intended to apply to delinquent juveniles and non delinquent juveniles. Strong protests were made by the British Indian Association and Bombay Government against the inclusion of non delinquents in the Bill.²¹ It was felt that it posed the risk of injustice. The non delinquents were excluded from the scope of Reformatory Schools Act, 1876. This Act was passed to amend the law relating to Reformatory Schools and to make further provisions for dealing with youthful offenders.²² This Act marks the beginning of incorporating the rehabilitative techniques in the penal philosophy of juvenile offenders. According to the Act children up to the age of 15 years were sentenced to imprisonment or could be sent to reformatory schools rather than prison.²³

4.2.2. The Criminal Procedure Code, 1898

The Criminal Procedure Code of 1898²⁴ contained provisions²⁵ for juvenile delinquents. Section 29(b)²⁶ of the code restricted the jurisdiction of the

¹⁹ Legislative Department, A Proceeding, March 1876, nos 23 – 4 quoted in S.K. Mukherjee, *Administration of Juvenile Correctional Institutions on non-delinquent Children*, Indian Council of Social Welfare, 1973

²⁰ Act No. 8 Of 1897 1 [11th March, 1897] available at <http://www.indiankanoon.org/doc/1551389/>

²¹ Shrinivas, G. *Juvenile Justice System in India*, Central India Law Quarterly, Oct-Dec,1991, p.54-62

²² See Long title

²³ See Section 8, 10 of Reformatory Schools Act 1897. Report of the Indian Jail Committee 1889, April 1889, p.71

²⁴ Act V of 1898

²⁵ See Section 29-b and Section 399

²⁶ Section 29(b) deals with jurisdiction in case of juveniles. This Section was retained in the Code of Criminal Procedure 1973.

ordinary courts in the trial of juvenile delinquents.²⁷ Such offences could be tried by the District Magistrate or a Chief Presidency Magistrate, or Magistrate specially empowered by the Provincial Government to exercise powers.²⁸ Section 399 provided that when any person under the age of fifteen years was sentenced by any criminal court to imprisonment for any offence, the court could direct such a person to a reformatory school established by the State government instead of a jail. Section 562²⁹ made specific provision for persons under certain conditions instead of sentencing such persons to imprisonment.³⁰

4.2.3. Changing Attitudes towards children and efforts of Indian Leaders

During the 19th century the social reform movements began against child marriage. Leaders like Raja Ram Mohan Roy, Mahatma Gandhi and others who awakened the people to overcome their backwardness, in the shape of illiteracy or socio-cultural practices like child marriage or neglect in order to facilitate the upbringing of children.³¹ Raja Ram Mohan Roy prohibited the practice of Sati. Lord William Bentick the Governor General asked the Court of Directors to abolish sati. Regulation No. XVII of September 4, 1829 declared the practice of sati to be illegal and punishable by criminal courts as culpable

²⁷Except for offences which are made punishable with death or transportation for life.

²⁸These powers were granted to Magistrates under Section 8 subsection (I) of the Reformatories Schools Act, 1897.

²⁹Section 562 deals with the Power of the court to release on probation of good conduct instead of sentencing. This provision is also retained in the Code of Criminal Procedure, 1973. See Malhotra, S. *Juvenile Justice system : An Overview*, Central India Law Quarterly, Vol . XIV, 2001. P.232-243

³⁰ Full text of the Criminal Procedure Code available at <http://bombayhighcourt.nic.in/libweb/oldlegislation/CRIPC1898/crpic1898.html> accessed on 15/2/2012

³¹Dr. Lata, S and Dr. Kant , A. *Child and the Law*, APH Publishing Corporation, New Delhi, 2009 p.16-17

homicide. This regulation applied to Bengal Presidency. It was extended to Madras and Bombay in 1830.³²

The Census Report of 1911 of India reported that 2 million wives were less than 15 years of age in the year 1911. This meant that something like half the girls of India were married before the completion of 15 years. The *Age of Consent Bill* raised the age of consent to 14 years. Gandhiji favoured raising the age of girls for consent to 16 years. The *Sri Harbilas Sarda Marriage Act, 1929* was passed to discourage solemnization of marriage between boys and girls between 18 and 14 years. This Act received objection from the Hindus.³³ This period saw a social transformation which made people to come out of their weakness. Consequently, the care of the child came to be viewed as a vital element in the resurrection of the nation. Mahatma Gandhi and later Pt. Jawaharlal Nehru, gave importance to inculcate social concern for the citizens of tomorrow the children.³⁴

The 19th century saw a change in attitude towards children. The resultant effect of all this was that a large number of dedicated visionaries, charitable and voluntary organizations moved by the harrowing tales of children, worked relentlessly to improve the overall position of children in society along with that of women. All of them invested their time, knowledge and resources towards better health, education, and growth of the weaker children. It was

³²Kulkarni, A. *Justice and Troubled children Around the world* , Volume I, New York University Press, New York, 1980, p49-56

³³Srinivasa, H.V.M. *History of India Part II* National Law School of India Bar Council of India Trust Eastern Book Company 1997 p.42

³⁴ *ibid*

during this period that some of the oldest voluntary organizations such as ‘The Children’s Aid Society’ and ‘Balkan Ji Bari’ came into being in 1920s in the service of children belonging to the poor, uneducated and helpless families.³⁵

The entire century of freedom struggle may well be termed as the evanescent dawn of voluntary action when people learnt to pool their common resources to remove social ills, rather than rely upon an alien regime which had no State Policy nor a programme to meet the needs of children.³⁶

4.3. Period of 1919 -1950

From the year 1920 legislations for Juvenile Courts and other institutions in various parts of the country were passed in the form of Children’s Acts. As the country was still under British rule, it could not enact central legislation for the entire country. However, individual provincial governments could choose to enact their own legislation, which prompted the second major effort wherein provincial governments did just that, and enacted separate legislation for juveniles in their respective jurisdictions. The first province to enact its own piece of juvenile legislation was Madras.³⁷

4.3.1. Madras Children Act 1920

The Madras Children Act 1920 made provision for the custody, trial, and punishment of youthful offenders and for the protection of children and young

³⁵Bhakhry, S. *Children in India and their Rights*, National Human Rights Commission, 2006, New Delhi.

³⁶Bose, A.B. *The State of Children in India*, New Delhi, Manohar Publishers, 2003

³⁷Sharma, S.D. *Administration of Justice in Ancient India*, Harman Publishing House, New Delhi, 1988 p.24

persons.³⁸The Madras Act was not enforced properly till 1939. The Madras Act started the era of diversion of all children from the criminal justice system by establishment of a separate juvenile court and residential institutions under it in 1920. This pattern was followed by many other States like Bengal in 1922 and Bombay in 1924.³⁹ The Children's Act's have been implemented in all districts. Apart from these three provinces, other jurisdictions either neglected to create a separate legislation for juveniles, or failed to fully enforce their respective acts even after Independence. Nagaland, Orissa, Sikkim and Tripura did not have legislations on juvenile delinquency. The acts did not have a uniform definition of the term 'child'.⁴⁰

The Children's Acts of the various states in 1920 were enacted to provide for custody, trial, maintenance, welfare, education and punishment of young offenders. They also provided for the protection of children and young offenders who were neglected, destitute or in moral danger and in need of care and protection.⁴¹

The Children Acts passed around this time had certain common features though they laid down different cut-off ages for defining children.⁴² They all included two categories of children, 'delinquent' and 'neglected children.' However, the definition of 'neglected children' differed in these legislations. They all provided for establishment of a separate children's court to deal with all cases

³⁸<http://www.childlineindia.org.in/1098/b15jjact-history.htm> accessed 12/2/ 2012

³⁹ *ibid*

⁴⁰ Mookerjee, A. and De A. *Juvenile Justice- An Indept study on matters relating to Children*, S.C. Sarkar and Sons Pvt. Ltd, Calcutta, 1947 p.54-73

⁴¹ Barooah, P.P, *Handbook of Child with Historical Background*, Concept Publishing Company, 1999

⁴² Sabnis, M.S. *Legislation for the Protection of Children*, Indian Journal of Social Work, 1960, p.50-69

of children covered by the Children Act. These Children Acts also made provisions for the establishment of separate residential institutions to house the children during the pendency of their proceedings or after disposal of their cases by the children's courts, directing such children to be sent to an institution.⁴³ Use of prison was permitted in exceptional circumstances under these legislations.⁴⁴

By 1946 statutes on children were passed in several states in United Province,⁴⁵ Bikaner,⁴⁶ Cochin,⁴⁷ Central Province and Berar,⁴⁸ Mysore⁴⁹ and Travancore.⁵⁰ In the year 1929 *The Child Marriage Restraint Act, 1929* Act No 19 of 1929 came into operation.⁵¹ *The Vagrancy Act 1943* Act No VII of 1943 provided for the care and training of children who lived on begging or were under unfit guardianship or were under the care of parents who had a habit of drinking or criminal habits or frequently visited prostitutes or who were destitute or were subject to bad treatment.⁵²

Madras, Bengal and Bombay amended their Acts between 1948 and 1959. The West Bengal Children Act of 1922 was replaced by the Act of 1959. Other states which passed children Acts were East Punjab 1949, Hyderabad 1950,

⁴³ Sethi, T.D. *The Juvenile Court :Its Genesis, Philosophy and Characteristics*, 70 Social Defence, October 1982, p.33

⁴⁴ Supra 35

⁴⁵ 1928

⁴⁶ 1931

⁴⁷ 1936

⁴⁸ 1938

⁴⁹ 1943

⁵⁰ 1945

⁵¹ Supra 9

⁵² Full text of Child Marriage Restraint Act, 1929 found at: http://wcdhry.gov.in/Child_Acts/ChildRestraintAct.pdf and Full text of the Vagrancy Act, 1943 available at <http://www.msw.gov.bd/images/stories/act/vagrancy%20act%201943.pdf> accessed 2/6/2012

Uttar Pradesh 1951 and Saurashtra 1956. Mysore Children Act 1943 was replaced by a new statute in 1964.⁵³

To avoid mushrooming of bogus women and child institutions and to have effective control on them the *Women's and Children's Institutions (Licensing) Act, 1956* Act No 105 of 1956 was passed. It made provisions for obtaining licenses by such institutions after fulfilling the norms and conditions and provided for penalty for breaches. For having effective control on the Orphanages and homes the *Orphanages and other Charitable Homes (Supervision and Control Act, 1960* Act No 10 of 1960⁵⁴ was passed.⁵⁵

*The Probation of Offenders Act, 1958*⁵⁶ empowered the courts to release certain offenders only on admonition or on probation of good conduct though they are found guilty. It imposed restrictions on imprisonment of offenders under 21 years of age. The Probation Officers were to keep watch on them and act as their friends, philosophers and guide and help to rehabilitate them as useful members of society.⁵⁷

4.3.2. Children Act 1960

The Education Minister, who moved the Children Bill in 1959, stated that the subject matters constituting juvenile justice fell in the State list of the

⁵³Supra 9

⁵⁴ Full text of Women's and Children's Institutions (Licensing) Act, 1956 is found at: http://www.lawyersclubindia.com/bare_acts/Women-s-and-Children-s-Institutions-Licensing-Act-1088.asp Act no (10 of 1960) and full text of the Orphanages and other Charitable Homes (Supervision and Control) Act 1960 found at <http://www.nls.ac.in/cc1/jjdocuments/orphanages.pdf> accessed on 4/5/2012

⁵⁵Kanti, N. and Dr. Chatterjee, S.S. *Law and Child*, R. Camray Pvt. Ltd, 2004 p.97

⁵⁶Act No (20 of 1958)

⁵⁷Supra 9

Constitution of India. Parliament enacted the first central legislation, for Delhi and other Union Territories for the year 1960 namely, the Children Act, 1960⁵⁸ which was a model legislation. The Children's Act 1960 was passed to cater to the needs of the Union Territories.⁵⁹ All the states that enacted their Children Acts after 1960 followed the same pattern.⁶⁰ The Act was made applicable to the Union Territories of Delhi, Dadar and Nagar Haveli, Goa, Daman and Diu, Lakshadweep and Pondicherry.⁶¹ The Central Children Act had not been enforced in Adaman and Nicobar Islands, Arunachal Pradesh, Chandigarh, Dadra and Nagar Haveli, Lakshadweep and Mizoram.⁶²

In India the legal support for 'neglected' children is found in the Central Children's Act 1960. The object of the Children's Act was treatment and rehabilitation of neglected children.⁶³ The basic premise of this Act was the obligation of the state as '*parens patriae*' to provide protection for children.⁶⁴ The preamble of the Central Children's Act, 1960 stated, that the aim of the legislation was to provide for care, protection, maintenance, welfare, training, education and rehabilitation of 'neglected' and 'delinquent' children.

⁵⁸ Act No. 60 of 1960 dated 26th. December, 1960 available at <http://wcd.nic.in/childrenact1960.htm>

⁵⁹ Supra 9

⁶⁰ Malhotra, S. *Juvenile Justice System :An Overview*, Central Law India Quarterly, Vol.XIV, 2001 p.233-235

⁶¹ *ibid*

⁶² Priyamvadh, M. and Thilagaraj, R. *Examining Impact of Official Intervention and Delinquent Persistence Among Released Juveniles from Correctional Institution*, The Indian Police Journal Vol. LV No.3, July September, 2008 p.9-12

⁶³ See long title of the Act

⁶⁴ Statement and Objects and Reasons of the Children's Bill reinforce this: Children are the most vulnerable group in any population and in need of the greatest social care. On account of their vulnerability and dependence they can be exploited, ill-treated and directed into undesirable channels by anti-social elements in the community. The State has the duty of according proper care and protection to children at all times.

The Children's Act dealt with two categories of children namely 'neglected' and 'delinquent' children.⁶⁵

The definition of the term "neglected child" was widened by including the cases where the parents are not able to exercise proper care and control over the child.⁶⁶ Fitness could now be looked into economic factors as well. There were cases when the parents of the child were poor to take care of the child but who were otherwise fit could now be covered by the Act.⁶⁷ 'Neglect' under the Children Acts was defined as, when the child has no 'settled place of abode.'

The Act defines neglect situations in terms of parental conduct or home environment. Neglect situations covered situations like physical abuse, cruelty, inadequate supervision, inadequate parenting, immoral or unconventional parental behavior.⁶⁸ Prosecution of a guilty parent or guardian was to be based on a complaint and no complaint could be made without the prior sanction of the state⁶⁹ or an officer authorized by him on that behalf.⁷⁰

The Children Act, 1960 introduced a sex-discriminatory definition of child⁷¹ and established two separate adjudicatory bodies to deal with children in conflict with laws and children in need of care.⁷² It prohibited imposition of

⁶⁵Supra 9; Also See Full text of the Act available at <http://wcd.nic.in/childrenact1960.htm> accessed on 12/2/2002

⁶⁶Previously the definition referred to those parents only who are unfit to exercise care and control over the child

⁶⁷ There are practical difficulties in implementing this provision

⁶⁸ See Section 2(l)

⁶⁹ Governor, Commissioner or Administrator

⁷⁰ See Section 41(2)

⁷¹ See Section 2(e).

⁷² See Mahmood, T. *Child Abuse in Arabia, India and the west comparative Legal Aspects*, Islamic and Comparative Law Quaterly, Vol. II:3, 1982c p.173 -186

death penalty or sentence of imprisonment or use of jails or police station for keeping children under any circumstance. It did not recognize the right to a lawyer in the proceedings before the children's courts.

There were two kinds of authorities Juvenile Courts and Child Welfare Boards to deal with delinquent and neglected children. Delinquency was recognized as nothing but the consequence of parent's negligence. During pendency or enquiry the child was to be kept in an observation home.⁷³ The observation homes were of institutional kind⁷⁴ quite official and impersonal in their approach and environment. Besides observation homes the child could be sent to any other place of safety⁷⁵ which may be better in terms of individual attention. These homes provided opportunity for closely observing the child and prescribing its treatment and training.⁷⁶

The Act outlined the duties of a Probation officer whose duty was to prepare a social investigation report whenever the police apprehend a child. The Probation Officer has to pay home visit for detailed interviews with the child, his parents and neighbors, teachers and employer which would help in the diagnosis of the treatment programme for the child.

All states enacted their Children's Acts which had provisions similar to the Central Act.⁷⁷ State Acts of Bombay, Uttar Pradesh, East Punjab, Andhra Pradesh, Saurashtra, Karnataka, Kerala, Tamil Nadu, West Bengal and Madhya

⁷³ See Section 11

⁷⁴ See Section 2(m) and *ibid*

⁷⁵ See Section 2(nm)

⁷⁶ *Supra* 72

⁷⁷ *Supra* 5 p.83

Pradesh had Juvenile Courts to deal with neglected children.⁷⁸ The Assam Children Act, 1970 and the Jammu and Kashmir Children Act 1970 also provided for Boards but the Acts in these states have not been implemented.⁷⁹ Orissa introduced Children's Act as late as 1982. The Orissa Children's Act provided for the care, protection, maintenance, welfare, training, education and rehabilitation on neglected and delinquent children and for trial of delinquent children.⁸⁰

4.3.3. Criminal Procedure Code, 1973

The Criminal Procedure Code, of 1889 was replaced by The Criminal Procedure Code of 1973. This code provides for separate courts for Juveniles and empowers magistrates to send juveniles to the magistrate Courts established by the various States Children Laws.⁸¹ The basic purpose was to treat children separately and not punish them.⁸² Section 4 of the Criminal Procedure Code, 1973 provides for any special legislation to try offences.⁸³

⁷⁸Child Welfare Boards have been set up only under the Central Children's Act.

⁷⁹Supra 5

⁸⁰Dr. Das, B.B. and Padhy, S. *A Study of the objectives of the Juvenile Justice Act, 2000*, Amity Law Review, Vol.3 Part 1, 2002 p.89-96

⁸¹*Raghuvir .V. State of Haryana* 1981 Cr.L.J. 1497 Supreme Court directed that the trial of juvenile delinquents be conducted according to the provisions of the Children's Act. It quashed sentence and punishment given by the High Court.

⁸²*Munna Ali and Others .V. State of U.P*1982 Cr.L.J 1000 the Supreme Court observed that no person under 16 years of age should be sent to jail instead he must be sent to a children's home or any other suitable place of safety as the law is very much concerned to see that the juvenile does not come in contact with hardened criminals.

⁸³See Section 4(2) The Criminal procedure Code,1973- All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

The Criminal Procedure Code, 1973 enshrines that whenever there is a special or local law covering the same area the latter law will prevail.⁸⁴ Unless the law has a specific provision to the contrary that will override the special or local law is limited in scope.⁸⁵ All proceedings where a juvenile comes in conflict with law are to be tried by the court under that special law.⁸⁶

In matters of all offences punishable with death or imprisonment for life, the jurisdiction of all courts created under the Code of Criminal Procedure Code, 1973 to try a juvenile is ousted and solely conferred on Juvenile Court to be constituted under the Act and in the absence of the constitution of such a court by concerned Magistrate First Class which could act as a Juvenile Court.⁸⁷

Section 27⁸⁸ of The Criminal Procedure Code, 1973 dealt with the provision of “Jurisdiction in the case of juveniles” which states that no offender will be punishable with death penalty and imprisonment for life, if it is found that the person is less than sixteen years of age.⁸⁹ The Section provides that offences by children should be tried by the Courts mentioned in the Act instead of the Sessions Court. The object was to avoid lengthy trials and detention of juvenile

⁸⁴ See Section 5 of the Criminal Procedure Code, 1973

⁸⁵ Sarkar, S.C. on *The Law of Criminal Procedure*, India Law House, New Delhi, 2002 p.25

⁸⁶ After passing of the Juvenile Justice (Care and Protection of Children) Act, 2000 the same provisions of the Criminal Procedure Code are to be applied as follows: Criminal cases of juvenile in conflict with law are to be dealt with by Juvenile Justice Board (JJB) and not the regular criminal courts. When a child and any person who is not a child are accused of an offence separate trials are to be held. Similarly there may be instances when there will be same area of operation of the Goa Children’s Act, 2003 and the Criminal Procedure Code. Since the Goa Children’s Act, 2003 does not have any specific provision which limits the operation of the Act the Goa Children’s Act, 2003 prevails and ousters the operation of the Criminal procedure code. For e.g All offences on the Child victim after the passing of the Goa Children’s Act, 2003 are tried in the Children’s court established under the provisions of the Act. The court of Sessions will have no jurisdiction to try any such offences.

⁸⁷ *Sarita .V. State* 1990 CrL LJ 351(Bom)

⁸⁸ *Supra* 5

⁸⁹ Ratanlal and Dhirajlal *The Code of Criminal Procedure*, 20th, Lexis Nexis Buttersworth Wadhwa, Nagpur, 2011

offenders. Section 27 is a specific provision within meaning of Section 5 and there is no conflict between these two provisions.⁹⁰

4.3.4. Children (Amendment) Act 1978

Some lacunae were identified in the Act of 1960 and amendment was desirable. The definition of the term “neglected child” was widened to include cases where the parents are not able to exercise proper care and control over the child. Previously the definition referred to only those parents who were unfit to exercise care and control over the children.⁹¹ The Act permitted lawyers in a Children’s Court and permitted the transfer of cases between the Board and the Children’s Court. The community played a wider role like there was a panel of social workers to assist the children’s court, fit person, fit institution and a place of safety.⁹²

4.4. First National Legislation for Juveniles

The Apex Court analytically examined the treatment meted out by courts and juvenile institutions vis-à-vis the National Policy for the Welfare of Children adopted by the Government of India.⁹³ This judgment made it clear that the State will not be able to provide proper care, protection and rehabilitation to the

⁹⁰See Sarkar, p.65. See *Ram Singh v. State of Haryana*, (2000) 6 SCC 759. Furthermore, to avoid any doubt in this respect, Section 1 (4) of Juvenile Justice (Care and Protection of Children) Act, 2000 states “notwithstanding anything contained in any other law for the time being in force the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under such other law.”

⁹¹Fitness could be looked in economic factors as well.

⁹²Supra 72

⁹³*Sheela Barse .V. Union of India* (1986)3SCC 596;1986SCC(Cri)337

juveniles unless the Courts are aware of the responsibilities.⁹⁴ The Court recommended a central statute in the interest of uniform dealing of juvenile delinquents across the country also emphasizing the need for their soft and separate dealing.

The judgment went a long way and with rapid space influenced the Parliament. The first national legislation on juvenile justice, titled “*The Juvenile Justice Act, 1986*” was passed by the Parliament, providing a uniform law for the entire country. A progressive legislation, the 1986 Act provided 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 juveniles.

4.4.1 Juvenile Justice Act 1986

The Juvenile Justice Act, 1986⁹⁵ was enforced throughout the territory of India except the State of Jammu and Kashmir on October 2, 1987, bringing in a uniform system of juvenile justice throughout the country. The Act superseded 25 Children Acts in different States and Union Territories along with the Central Children Act, 1960.⁹⁶ The Act was a virtual verbatim reproduction of

⁹⁴Srivastava, S.P. *Juvenile Justice and its Delivery System an overview of the policy, programme and problems of juvenile justice administration*, Lucknow University Law Journal, Vol.1, 1994, p. 13-23

⁹⁵*Sheela Barse and Another .V. Union of India* and others AIR 1986 SC 1773 “It is an elementary requirement of any civilized society and it has been so provided in various statutes concerning children that children should not be confined in jail because of incarceration in jail has a dehumanizing effect and it is harmful to the growth and development of the child. The survey made by the Home Ministry and the social welfare department show that a large number of children below the age of 16 years are confined in jail in various parts of the country.” This made it clear that the State will not be able to provide proper care, protection and rehabilitation to the juveniles unless the Courts are aware of the responsibilities.

⁹⁶Gupta, S. *Juvenile Delinquency Versus Juvenile Justice System*, Social Defense, July, 1992 p.24-25

the Children's Act introducing only few minor and non vital changes.⁹⁷ It was aimed at giving effect to the guidelines contained in the Standard Minimum Rules for the Administration of Juvenile Justice adopted by the United Nations Countries in November, 1985. The Act consisted of 63 Sections spread over seven chapters.⁹⁸

In the Preamble of the Act the words maintenance, welfare, training and education were substituted by the words treatment and development signifying only symbolic semantic changes. The word "child" was replaced by the word "juvenile" and the word "trial" was dropped and the expression "adjudication relating to and disposition of" was used. It continued the same sex-discriminatory definition of child.⁹⁹ The Statements and objects of the Act indicate that it was intended to pay greater attention to delinquent and neglected children and to set up a uniform juvenile justice system throughout the country.¹⁰⁰

New definitions were provided in Section 2 like "fit person", "fit institution" and "place of safety". The definition of neglected child has been expanded to include a juvenile who is being or is likely to be abused or exploited for illegal or immoral purposes or unconscionable gain. It laid down a uniform framework for juvenile justice in the country so as to ensure that no child under any

⁹⁷Supra 8

⁹⁸Prof. Paranjape N.V. *Criminology and Penology* 13th e.d Central Law Publications , 2007 Allahabad p.527

⁹⁹Ministry of Law and Justice the Juvenile Justice Act, 1986 The Gazette of India Extraordinary Part II- Section I, New Delhi 1986 p.39

¹⁰⁰Singh, H. *Juvenile Justice Act*, 1986, Social Defence Jan, 1987 p.1-5

circumstances is locked in the police lock-up.¹⁰¹ It spelled out the machinery and infra structure required for care, protection, treatment, development and rehabilitation required for various categories of children coming within the purview of juvenile justice system.¹⁰² It set out norms and standards for the administration of justice in terms of investigation, prosecution, adjudication and disposition, care and protection.¹⁰³

The definition of juvenile delinquency¹⁰⁴ given under the Act makes it clear that it is applied to a child offender who has been found to have committed an offence.¹⁰⁵ Delinquency is a legal term for a social problem.¹⁰⁶ The Act provides for inquiry to find out if the child is a juvenile and during the course of inquiry if he ceases to be a juvenile then such person is to be continued to be treated as a juvenile according to Section 3.¹⁰⁷

It sought to develop appropriate linkages in Section 52, 53 and 54 provide for creation of welfare and rehabilitation funds for juveniles, establishment of advisory boards and appointment of visitors to the juvenile institutions.¹⁰⁸ The three new provisions are establishment of Advisory Boards, creation of a Children's Fund and appointment of visitors for each institution.¹⁰⁹

¹⁰¹Tripathi, N.M. *Child and the Law*, Indian Law Institute, Bombay 1979

¹⁰²Kratcoski, L.D and Kratcoski, P. *Juvenile Delinquency* Prentice Hall, New Jersey, p.234-311

¹⁰³Chakrabarti, N.K *Juvenile Justice in the Administration of Criminal Justice*, Deep and Deep Publications Pvt. Ltd, 1999 p.51

¹⁰⁴The word 'delinquent' was first defined in Saurashtra Children Act, 1954

¹⁰⁵See Section 2(e)

¹⁰⁶Mayo, L. W. and Henry W *Concerning Juvenile Delinquency*,. Thurston University Press, 1942, p.195

¹⁰⁷Singh, P., *Juvenile Justice Act – I – Juvenile deviations and protection In the context of the Juvenile Justice Act, 1986*, Civil and Military Journal, Jan –March 1990 , p.35-42

¹⁰⁸Supra 9

¹⁰⁹Supra 5

The Act remained operative for thirteen years when it was repealed and replaced by the *Juvenile (Care and Protection of Children) Act, 2000* which is a Central Act and became operative from December 30, 2000.¹¹⁰

4.5. Prison Reform in India from Jails to Juvenile Institutions in India

Prisons were considered as a 'House of Captives' where prisoners were kept for retributory and deterrent punishment. The East India Company dominated India, during the period of 1773 and 1850.¹¹¹ During this period, the prison reform movement emerging in England also influenced India. The contemporary prison administration in India is a legacy of the British Rule. Lord Macaulay, Lord William Bentick, Lord Auckland, Lord Cornwallis, Sir John Lawrence and Lord Dalhousie added important landmarks in changing the prison policy for juveniles.

4.6. Prison Reforms during British Rule

Lord Macaulay, while presenting a note to the Legislative Council in India on December 21, 1835, for the first time, pointed out the terrible inhumane conditions prevalent in Indian prisons and he termed it as a shocking to humanity. The prisons lacked cleanliness, provision for food and clothing and attention for the sick. The prisoners were employed in extramural labour on public roads which was the worst forms of treatment.¹¹² The process was ruthless, had severe privation, it involved very hard work, solitude, silence and

¹¹⁰Supra 5

¹¹¹ *ibid*

¹¹² *ibid*

separation for correction of criminals. Criminals of all classes, old and young, male and female were mixed and mingled together in Indian prisons. They were treated like brute beasts rather than like human beings. One cell was common to all; there was neglect and disregard to their fate. There were no reformations, no classifications of prisoners and no provisions for moral principles and no education of any kind. No attempts were made to civilize them.¹¹³ Prisons were converted from places for transporting convicts¹¹⁴ to places for keeping convicts. The Prison Discipline Committee¹¹⁵ supported the policy of the then rules.¹¹⁶

4.6.1. Prison Discipline Committee

Lord Macaulay recommended that a committee be appointed to suggest measures to improve discipline in prisons. Consequently, on 2nd January, 1836, a Prison Discipline Committee was constituted by Lord William Bentick for this purpose.¹¹⁷ The Committee submitted their report in 1838 to Lord Auckland, the then Governor General which revealed the prevalence of rampant corruption in the subordinate establishments, the laxity in discipline and the system of employing prisoners to do work.¹¹⁸ The Committee

¹¹³Sr. Khan T.H. *Juvenile Justice System in India: An Appraisal*, Central Law India Quarterly Vol VII, 1994 p.62-65

¹¹⁴Law Index 1801 -1810 p.54, Report on Calcutta Jail Cons no2 and 3 15 December 1809 p. 167

¹¹⁵Legislation on Children in India

¹¹⁶Prisons in India: An overview of reforms and current situation available at www.nimhans.kar.nic.in/prison/chapter_2.pdfShare

¹¹⁷Draft National Policy On Prison Reform And Correctional Administration Part – I Historical Review Of Prison Reforms In India Available At [Http://Bprd.Nic.In/Writereaddata/Linkimages/0534473971-National%20Policy%20on%20Prison%20Reform%20and%20Correctional%20Administration%20Part%201.Pdf](http://Bprd.Nic.In/Writereaddata/Linkimages/0534473971-National%20Policy%20on%20Prison%20Reform%20and%20Correctional%20Administration%20Part%201.Pdf) Accessed On 15/2/ 2012

¹¹⁸ *ibid*

recommended more rigorous treatment of prisoners. Suggestions were sent from the state and internal arrangements were made in Bengal jail.¹¹⁹

At that time West was getting transformed by a reformation movement. India as a British colony did not remain unaffected. The setting up of factories by East India Company forced rural population to migrate to cities as incentives were being provided. It increased destitution and delinquency among children. There was concern for welfare of children. Krishna Chandra Ghoshal and Jai Narain Ghoshal pleaded with Lord Cornwallis to establish a home for destitute children in the vicinity of Calcutta.

4.6.2. Ragged School

The first 'ragged school' for orphans and vagrant children in India was established in 1843 through the efforts of an Englishman Dr. Buist who was instrumental in the establishment of the first Ragged school at Bombay.¹²⁰ The object of the school was reformation of juvenile offenders arrested by the police and the encouragement of apprenticeship among the working classes. The Ragged Schools¹²¹ were charitable schools, dedicated to providing free education of destitute children.¹²²

¹¹⁹The committee of the report was appointed by Lord Bentick pursuant to T.B. Macaulay on the subject of jail discipline

¹²⁰Today known as David Sassoon industrial School

¹²¹Special name given to orphanages

¹²²J.M Sethna, *Society and the Criminal*, Tripathi Private India Limited, Bombay, 1980 p. 417

4.6.3. Second Commission of Enquiry

Sir John Lawrence, a renowned jurist, again examined the conditions of Indian prisons in 1864. Consequently Second Commission of Enquiry was set up to look into prison management and discipline which was appointed by Lord Dalhousie. This Commission made specific recommendations regarding the accommodation, improvement in diet, clothing, bedding, and medical care of the prisoners and for the appointment of Medical officer in jails. The Commission fixed the minimum space for one prisoner which was 54 sq. ft. and 640 cubic ft. The Commission also recommended the separation of male prisoners, from females and children from adults. The number of juvenile offenders in the jails started increasing. The government asked for names of jails having separate provisions for juveniles.¹²³

The Committee felt the need of segregation of juveniles from adult offenders. Hence Prison Codes of Madras, Bombay, North Western provinces and Bengal¹²⁴ were modified. Each of these codes adopted a different age for defining a child. The Committee suggested a classification mode namely attainment of puberty as determined by a Medical Officer.¹²⁵ During this period Reformatory Schools, Borstal Schools, Certified Schools and Juvenile Jails were established in India.

¹²³Bombay government's resolution on the Report on the Jails of that Presidency 1861. Home Department, judl. Con. No. 7- 9 (a), 12 January 1863. See also Report on Criminal Justice in the Bombay Presidency for 1857, Home Department, judl 7 (6 August 1858)

¹²⁴Report of Indian Jail Committee 1889, April 1889, p.20

¹²⁵This practice was prevalent in North Western Provinces; See Supra 95

4.6.4. Reformatory Schools in India

The Reformatory Schools Act 1897 authorizes the establishment of reformatory Schools by the state or use of schools maintained by private organizations. State owned Reformatory Schools were established in India at Madras, Burma, Bihar, Orissa the Central Provinces, Bombay and Delhi but most of them were not considered appropriate. In every case they consisted of centralized buildings without any features of reproducing a home. In Madras, Bihar and Orissa they were located in old jail buildings.¹²⁶ The building had a high wall around them and they were located next door to a jail thus bringing in the jail atmosphere. The number of boys collected was large for a jail superintendent to be able to give attention to a single case. There was no female care taker and they looked more like juvenile jails rather than reformatory schools.¹²⁷

4.6.5. Borstal Institutions in India

Borstals have been established under the Borstal School Act, 1928¹²⁸ and Reformatory Schools Act 1897. These institutions provide for adequate educational and vocational training to young offenders who were convicted by the Juvenile Courts.¹²⁹ These institutions keep the adolescent offenders upto 21 years.¹³⁰ These institutions were run by prison departments of the States.

¹²⁶ Haranath, S and Prasad, B.D. *Juvenile Home inmates :Background characteristics*, Indian Journal of Social Work 1995, July p.285-296

¹²⁷ Sarkar, C. *Juvenile Delinquency*, Daya Publishing House 1987

¹²⁸ Act No. 1 of 1928 Full text of the Act available at http://bdlaws.minlaw.gov.bd/pdf_part.php?id=146 accessed on 17/2/2012

¹²⁹ Nripendra, M.L. , *Juvenile Delinquency and Indian Justice system*, Deep and Deep Publishers, 1988 p.52-54

¹³⁰ Bhattacharya, B.K. *Juvenile Delinquency and Borstals*, S.C. Sarcar & Sons, 1962 p.43

Admission was given to adolescent offenders convicted under the Indian Penal Code, 1860 and the Borstal School Act. If the sentence period of the offender extended beyond 21 years then on completion of 21 years they were sent to an adult jail.¹³¹

4.6.6. Certified Schools in Madras

The Madras Children Act suspended the operation of the Reformatory Schools Act, 1897.¹³² The certified schools were divided into senior and junior. There was power to recognise private schools, which would then be placed under regular inspection. The general trend of the provisions of this Act seems to be in the direction of bringing the institutions certified under it more into line with ordinary schools.¹³³ The David Sassoon Industrial and Reformatory Institution¹³⁴ at Bombay was located in an old jail building.

4.6.7. Juvenile Jails in India

Juveniles who had to serve long sentences were sent to Juvenile Jails in India. Juvenile Jails were located at Tanjore in Madras, Moiktila in Burma, Alipore in Bengal, Monghyr in Bihar and Orissa, Narsinghpur in the Central Provinces, Dharwar in Bombay, Bareilly in the United Provinces, and Lahore in the Punjab.¹³⁵ These jails were for juvenile offenders who had committed grave crimes like murder, dacoity, rape, culpable homicide and those who have

¹³¹Singh, B. *Juvenile Justice System in India : An Appraisal*, Civil and Military Law Journal, Jan March 1995 p.61-73

¹³²The term 'Reformatory School' was replaced by the term 'Certified School'

¹³³Sheth, H. *Juvenile Delinquency*, Popular book Depot, 1961

¹³⁴Licensed under Apprentice Act 1850 (XIX of 1850)

¹³⁵Supra 107

relapsed into crime after undergoing a term in Special adolescent Homes or those who are classed by the court as in correctible criminals. They were to be sent to jail like institutions where labour and education was conducted on jail lines and where remission was earned on jail lines and there was no limit of detention except the sentence of court.¹³⁶

4.6.8. Indian Jail Committee 1889

Indian Jails committee 1889¹³⁷ reiterated the need for segregation and classification of offenders according to their age and duration of sentence.¹³⁸

They emphasized that youngest juveniles should not be punished with curtailment of diet it recommended daily exercise and compulsory education. It emphasized that habitual juvenile offenders should not be sent to reformatories. As this would deprive them of going to school and this was a worse practices for the convict person.¹³⁹

4.6.9. All India Jail Committee Report 1919- 1920

The most significant development in Juvenile history is the Report of Indian Jail Committee 1919-20. It visited numerous jails and reformatory schools. The Jail Committee Report 1919- 20 brought to the fore the vital need for separate trial and treatment of young offenders.¹⁴⁰ All India Jail Committee on Jail Reforms observed in many cases the age of the children was purposely

¹³⁶Vadackumcherr, J. *The Police and Delinquency in India*, APH Publishers , New Delhi 1996 p.181

¹³⁷ Report of the Indian Jail committee,1889, April 1889, p.71

¹³⁸ Indian Central Bureau of Correctional Services, *Juvenile Delinquency*, 1970

¹³⁹ Supra 107

¹⁴⁰ *ibid*

shown on the higher side by the police so as to bring these children under the category of young offenders i.e. between 16, 18 years and 23 years.¹⁴¹ If the number of these children is added to the total turnover of children in prison it is observed that the problem on incarcerated children was much more serious than what is seen in official statistics in the year 1919-1920.¹⁴²

The Committee recommended that the Juvenile probation was nonexistent in India at that time. Releasing children on probation and treating them in the community under supervision through the probation organization will be a practical solution was the Committee's opinion.

4.6.10. Lal Mohan Patnaik Committee Report

Lal Mohan Patnaik Committee Report 1938 suggested that trial of Juveniles should take place in Children's Court presided by a Magistrate with special training in child psychology and social science.¹⁴³ The prosecuting officer should place before the court a report dealing with the antecedent that led to commission of offence.¹⁴⁴ The Committee also recommended that legal provisions should be made in lines of the Bombay Children's Act to Deal with Juveniles and Vagrants.¹⁴⁵ Juvenile offenders on conviction should never be sent to prison but be admitted to an institution which should be more of a residential school than a prison, for training. The institution should have

¹⁴¹Ahuja, R. *Social Problems In India*, Rawat Publications, 1992

¹⁴²Narayan, M. A, *Indian Police Systems*, APH Publishing, 1990 p.232

¹⁴³Report of Juvenile Delinquency in India, 1956 Bureau of Delinquency Statistics and Research, Bombay

¹⁴⁴Nanda, C.P. *Vocalizing Silence, Political Protests in Orissa: 1930- 1942*, Sage Publications India Pvt.

Ltd, New Delhi, 2008 p.240

¹⁴⁵*ibid*

separate enclosures for children of the following age groups 7 -12 years, 12 -18 years and 18 -21 years.¹⁴⁶ Their training program should be chalked out in consultation with the psychiatrists. During this period special adolescent institutions and special institutions were established.

4.6.11 Special Adolescent Institution

A reformatory school for adolescent was established at Bombay. In Bombay adolescent offenders were sent to homes opened by the Salvation Army. The prisoners to be sent to this home were selected by the Superintendent of jail and a conditional order passed by the local government under Section 401 of the Criminal Procedure Code.¹⁴⁷ The adolescent was transferred to the home during the period of the sentence and a conditional order of release was made to the local government allowing him to be released from the prison on the condition that he shall remain in prison till the sentence expires. It was used for boys under sixteen sent by a conditional release by the Magistrate. The boys went to night school and were employed in the day on handloom weaving.¹⁴⁸

4.6.12 Special Institutions

The Children's Act, 1920 provided for short term and long term institutions for care and rehabilitation of neglected children. The short- term institution is known as 'observation home' or 'remand home' where children are kept pending enquiry before the Board. During the period of enquiry the children

¹⁴⁶Bhattacharya, S.K. *Treatment of Adolescent Offenders*, Social Defence , Vol.XVIII, No.71 January, 1983

¹⁴⁷Mahalar, K.P.S. *Juvenile Delinquency, prisons and role of police*, Lawyer 1987, July, p.40-45

¹⁴⁸ Singh, K.R.S. *Juvenile Delinquency in India*, Universal Publishers, 1948

could also be kept with parents or guardians. They were not to be kept with their Parents or guardians if the Board feels there is parental or guardian 'unfitness' or 'inadequacy.' The 'observation home 'remand home' is envisaged as a venue for temporary care and custody of neglected children pending enquiry. Psychiatrists and case workers conduct the social investigation of neglected children and submit reports to the Board for its guidance as well as future treatment and rehabilitation of the children.¹⁴⁹

On the completion of neglect proceeding if the Board is satisfied that a child is 'neglected.' Or if a child commits an act it is sent to long term institutions known as 'Children's Homes.' Under Bombay Act there were called Certified School and under West Bengal Act they were called Industrial School and they were kept there, till it ceases to be a child. There were 90 Children Homes and 45 Certified Schools in the country at that time. In special situations the period of stay could be extended, but not beyond the age of eighteen years in case of a boy or twenty years in case of a girl. The period could also be reduced by the Board but in both the situations the Board had to record reasons in writing. The Act facilitated the establishment of 'Voluntary Homes' and 'Fit person Institutions' which are maintained wholly or partly by voluntary contributions.¹⁵⁰ Such voluntary contributions are under the general monitoring control of the government appointed inspecting staff. The government is empowered to suspend monitoring control of government appointing inspecting

¹⁴⁹Gus, M. *Juvenile Justice : Process and Systems*, Sage Publications, 2005 U.K. p.238

¹⁵⁰Bedi, M.S. *Problems of Juvenile Correctional Institutions in India*, Social Defence, 1985, 20(80) p.30-38

staff. The government is empowered to suspend or withdraw the certificate granted to private institutions if their performance is not satisfactory. The Acts provided for an after care organization designed to meet the special needs of children leaving institutions.

4.7 Changes in Prison Administration after Independence

The Constitution of India which came into force in 1950 retained the position of the Government of India Act, 1935 in the matter of prisons and kept 'Prisons' as a State subject by including it in List II the State List, of the Seventh Schedule. The first decade after independence was marked by strenuous efforts for improvements in living conditions in prisons. A number of Jail Reforms Committees were appointed by the State Governments, to achieve measures of humanization of prison conditions.¹⁵¹

4.7.1. Dr. W.C. Reckless Report

While local Committees were being appointed by State Governments to suggest prison reforms, the Government of India invited technical assistance in this field from the United Nations. Dr. W. C. Reckless, a United Nations Expert on Correctional Work, visited India during the years 1951-52 to study prison administration in the country and to suggest ways and means of improving it. His report 'Jail Administration in India' is another landmark document in the

¹⁵¹Some of the notable Committees set up were (i) The East Punjab Jail Reforms Committee, 1948-49;(ii) The Madras Jail Reforms Committee, 1950-51;(iii) The Jail Reforms Committee of Orissa, 1952-55;(iv) The Jail Reforms Committee of Travancore and Cochin, 1953-55;(v) The U.P. Jail Industries Inquiry Committee, 1955-56;

history of prison reforms. Dr. W. C. Reckless recommended that Juvenile delinquents should not be handed over by the courts to the prisons which are meant for adult offenders. A cadre of properly trained personnel was essential to man such services.

4.8. The National Policy on Prisons

The National Policy on Prisons suggested that prisons were not the places for confinement of children. Children¹⁵² could not be sent to prisons. All children confined in prisons at present had to be transferred to appropriate institutions, meant exclusively for children with facilities for their care, education, training and rehabilitation.¹⁵³ Benefit of non-institutional facilities also had to be extended to such children.

Young offenders¹⁵⁴ could not be confined in prisons meant for adult offenders. There had to be kept in separate institutions, keeping in mind their young and impressionable age, they had to be treated and given training suited to their special needs with aim of rehabilitation.¹⁵⁵

The Government of India convened a Conference of Chief Secretaries of all the States and Union Territories on April 9, 1979, in order to assess the gaps in the existing prison management system and to lay down guidelines for standardization of prison conditions throughout the country. Government of India requested the State Governments and Union Territory Administrations.

¹⁵²Under 18 years of age

¹⁵³See xvi

¹⁵⁴Between 18 and 21 years

¹⁵⁵Xvii

This was to ensure that to ensure that no child in conflict with law was to be sent to the prison for want of specialized services under the Central Children Act, 1960. It was also necessary to have at least one Borstal School set up under the Borstal Schools Act, 1929 for youthful offenders in each State.

4.8.1. Institutional Services

The Juvenile Justice Act, 1986 provided for establishment of Observation Home, Juvenile Home and Special Home which were intended to keep children during the period of trial or inquiry pending trial or inquiry before a competent authority. Juvenile Homes and Special Homes were intended to provide not only for care and protection to delinquent and neglected children but were to facilitate their development of character and personality by providing educational and vocational training. There were 13 Observation Homes, 6 Juvenile Homes and 2 Special Homes.¹⁵⁶

4.9. Development of Special Courts for Juveniles in Conflict With Law

With the disappearance of imprisonment as a method of dealing with child offender the question before the courts was how to dispose of criminal charges against children and young offenders. In 1889 the Government of the United Province passed a resolution for the appointment of a special magistrate in every district to try children in order to secure a more intelligent treatment to them.¹⁵⁷ These magistrates were to have expertise and were required to select

¹⁵⁶Criminal Justice India Series Volume 6, Kerala, 2001

¹⁵⁷Resolution no.2985 dated 2nd August 1913, cited in Report of the Indian Jail Co Committee, 1919 -20, 30 Cmnd, 1303, 1921, p.197

appropriate cases for sending the child to reformatory schools. Certain changes were introduced in the judicial procedure. In the Provinces an attempt was made to give intelligent treatment to children by the appointment in each district a special magistrate to try children's cases.¹⁵⁸ This rule created more harm as children had to be taken over long distances from their homes to appear before a special magistrate. Outside big cities the cases against children were to be tried by a special magistrate having ordinary jurisdiction in the locality. He had to sit at a special hour and if possible in a special purpose. The first such Court was set up at Calcutta.

4.9.1. Special Courts

Reformatory Schools Act provided for special courts which could order three to seven years detention and training instead of imprisonment. Section 10 empowered the police officer incharge of a prison in which a youthful offender was confined to bring him before the District Magistrate if he had not attained fifteen years. The Magistrate could then direct the child to be sent to Reformatory School instead of completing the residue sentence. Before making any directions the Court had to make preliminary inquiries as to the age of the child. The first juvenile court was set up in 1939 in the premises of Madras children's Aid society¹⁵⁹ under the Madras Children Act, 1920.

¹⁵⁸Resolution No. 2985, dated 2 August 1913 cited in the Report of the Indian Jail Committee, 1919 -20, 30 Cmnd, 1303, 1921, p.197

¹⁵⁹ Supra 9

4.9.2. Children's Courts

The Children's Act, 1960 constituted a Children's Court which had power to deal with delinquent children. The Children's Court comprised of a Principal Magistrate who was a judge of Metropolitan Magistrates or Judicial Magistrates of the First Class, and he was assisted by a panel of two honorary social workers.¹⁶⁰ The qualifications of the social workers were prescribed and they were appointed by the Administrator. Out of the two social workers one had to be a woman.¹⁶¹

Chapter IV of the Act dealt with delinquent children. This Act barred any proceeding against a child with an adult and called for special procedure where the child was involved. It bared the application of Criminal Procedure Code to children. When a child was accused of a bailable or non-bailable offence and was arrested and detained and brought before the Children's Court such a child had to be released on bail. If the child was not released he was to be sent to the observation home.¹⁶² Immediately after arrest of the child the parent or guardian or probation officer had to be informed. The probation officer had to obtain information regarding the antecedents and family history of the child and other material circumstances likely to be of assistance to the children's court for making the inquiry.

¹⁶⁰Dr. Das, B.B. and Padhy S. *A Study of Juvenile Justice Act, 2000*, Amity Law Review, Vol.3, Part 1, 2002 p.90

¹⁶¹ Section 5 (1),(2)(3); Full Text of the Children's Act, 1960 available at <http://wcd.nic.in/childrenact1960.htm> accessed on 2/5/2012

¹⁶²Government of India, *Operation Manual for Children Act, Preface*, National Institute for Social Defence, Ministry of Social Welfare, Government of India 1982.

The Court could make orders like allow the child to go home after advice or admonition. Direct the child to be released on probation of good conduct and place the child under the care of any parent, guardian or other fit person. Such parent, guardian or other fit person had to execute a bond, with or without surety as that court may require, for the good behaviour and well-being of the child for any period not exceeding three years.¹⁶³ The Court could make an order directing the child to be sent to a special school for a period of not less than three years.¹⁶⁴ In the case of a child of other than the specified age then for the period until he ceases to be a child.¹⁶⁵

In case the Children's Court on inquiry is satisfied that the child had committed an offence then it could order the child to pay a fine if he is over fourteen years of age and earned money. The court could also make an order that the child should be placed under the supervision of the probation officer. In determining the special school or any person to whose custody a child is to be committed or entrusted under this Act. The court could pay due regard to the religious denomination of the child to ensure that religious instruction contrary to the religious persuasion of the child is not imparted to him.¹⁶⁶ The Court could not sentence a delinquent child to death or imprisonment or send the child to prison in default in payment of fine as surety to prison.

¹⁶³Rampal, S.K. *Juvenile Offenders*, Social Defence, Oct, 1987 p.5-14

¹⁶⁴ In case of a boy over fourteen years of age or of a girl over sixteen years of age

¹⁶⁵Supra 9

¹⁶⁶Supra 40

4.9.3. Juvenile Courts

The Juvenile Justice Act, 1986 provided for setting up Juvenile Welfare Board which will consist of a Chairman to be appointed by the State Government and atleast one member to be a woman. They shall have powers of a Metropolitan Magistrate as specified in Criminal Procedure Code, 1973. The Board deals with neglected juveniles.¹⁶⁷

Section 5 of the Act requires that Juvenile Courts be established for dealing with delinquent juvenile. Juvenile Court shall consist of such number of Metropolitan Magistrates or Judicial Magistrates of the first class, as the case may be, forming a Bench as the State Government thinks fit to appoint, of whom one shall be designated as the Principal Magistrate.¹⁶⁸ Every Juvenile Court shall be assisted by a panel of two honorary social workers possessing such qualifications as may be prescribed, of whom at least one shall be a woman.

In the event of any difference of opinion among the members of a Board or among the Magistrates of a Juvenile Court, the opinion of the majority shall prevail. No order made by the Board or Juvenile Court shall be invalid by

¹⁶⁷Supra 161

¹⁶⁸Srivastava, S.P. *Juvenile Justice And Its Justice Delivery System, An Overview of the Policy, Programmes and Problems of Juvenile Justice Administration*, Lucknow University Law Journal Vol.1, 1994 p.13 -23

reason only of the absence of any member or Magistrate, as the case may be, during any stage of the proceeding.¹⁶⁹

A juvenile once found to be delinquent may be released after looking into the circumstances under which he has committed the offence.¹⁷⁰ The juvenile may be allowed to go home after advice and admonition.¹⁷¹ The Juvenile may be released on probation of good conduct under the supervision of parents, guardians or fit person for a period not exceeding three years. The Juvenile courts may make an order that the juvenile be sent to special homes in case the boy is over fourteen years or in case the girl is over sixteen years for a period not less than three years or until he ceases to be a juvenile. The juvenile may be ordered to pay fine if it earns money. When the juvenile is released on probation of good conduct or under the supervisions of parent, guardian or fit person the juvenile shall remain under the supervision of the probation officer for a period not exceeding three years.¹⁷²

In making any order with regard to the juvenile a competent authority shall take into consideration the age of the juvenile, the state of physical and mental health of the juvenile, and the circumstances in which the juvenile was living.

¹⁶⁹ Mukherjee, S.K. *Administration of Juvenile correctional Institutions*, Sterling Publishers Private Limited, New Delhi p.4-29

¹⁷⁰ See Section 21 The Juvenile Justice Act, 1986

¹⁷¹ See Section 360(3) of Criminal Procedure Code

¹⁷² Singh, P.J. *Juvenile Deviations and Protection in the Context of the Juvenile Justice Act, 1986*, Criminal Law Journal 1994 June, p.46

The reports made by the Probation Officer.¹⁷³ The religious beliefs of the juvenile and any other circumstances were also considered.¹⁷⁴

The next chapter provides a preview to the first Juvenile Law in the country and the Decree passed by the Portuguese in Goa for juveniles in conflict with law. It further enumerates the positive aspects of the special law for juveniles the Juvenile Justice (Care and Protection of Children) Act 2000. The Chapter maps out the trial mechanism followed by the Juvenile Justice Board in dealing with the juveniles in conflict with law and their rights.

¹⁷³Bedi, M.S, *Coordination among Juvenile Justice Functionaries*, Indian Journal of Criminology and Criminalistics, Jan –Jun , 1995, 16 p.8-14

¹⁷⁴See Section 33 of the Juvenile Justice Act, 1986

5. Juvenile Justice Law In Goa

Goa came under the Portuguese Rule in 1510 when Alfonso de Albuquerque conquered Goa from the Adil Shaha of Bijapur.¹ On conquest of this island in the next three decades, the Portuguese added the territories of Bardez and Salcette including Marmugao then designated as the capital of *Estado da India*. *Estado da India* was a term designated for the Portuguese floating empire from Mozambique on the West Coast of Africa to Timor and Macau in the China Seas.² To the Old Portuguese possession in Goa, then known as Old conquests, the Portuguese added new territories known as New Conquests.³ From around the third quarter of eighteenth century, the term Goa was applied to the territories found in the present boundaries.⁴

The Portuguese took years to apply the laws prevailing in Portugal with several alterations depending upon the circumstances and situation in this part of the world to the local population. The Portuguese ruled Goa until 19th December, 1961 when Goa was liberated by the Indian Army.

This Chapter discusses the efforts made by the Portuguese Legal System in Goa to prevent juvenile delinquency. It includes the efforts made after Liberation of Goa by the Government of India and the enactments passed to protect rights of juveniles have also been studied. The Researcher has clearly outlined the juvenile justice machinery as enforced by the State to ensure the

¹ <http://northgoacourts.nic.in/tcourts.htm>

² D'Souza Carmo, *Legal System in Goa, Vol. I – Judicial Institutions 1510-1982*, Calangute ,pg.2.

³ Shirodkar, P.P, *Researches in Indo-Portuguese History*, Publication Scheme – Jaipur, , 1998,pg.72.

⁴ Instituto De Cooperaçao Da Faculdade De Direito da Universidad de Lisboa, *Family and Succession Law in Portuguese Civil Code of 1867 A 21st century approach* ,Lisboa 2009

rights of the child in conflict with law. The study involves an intricate analysis of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 which deal with the juveniles in conflict with law.

5.1. Efforts made by the Portuguese Legal System to prevent Delinquency

In the XIX century the legislators and the criminologists were surprised by the increase in the number of crimes. These crimes had not only increased in gravity, but also in precocity. It was during this time that the positive school of crime and punishment proclaimed that it was important to look, at not only the crime but the personality of the criminal.⁵ The modern criminal law has accepted this inclination towards morality.⁶

The delinquency of minors created an alarm in the public conscience, which deeply moved the society of that time. At the end of the XIX century and beginning of the current, the United States of America instituted the first tribunals for minors, whose experience gave the best of results.⁷ This new law was essentially preventive, tutelary, educative, protective and individualistic. Portugal, England, France, Belgium, Denmark and other countries followed the example of America, by creating tribunals for minors, and enacted a new criminal law for children. Portugal was one of the first European countries, which instituted the criminal law for minors, by forming tribunals.⁸ By Decree No.10:767, of 15 of May of 1925 Portugal introduced this new Criminal Law

⁵ Ferri, E. *The Positive School of Criminology*, Afra Ullah, Charles H. Kerr & Company, Chicago, 2004

⁶ *Supra* 5

⁷ Pinheiro Jorge Duarte *Family Laws in Portuguese Colonies*, Instituto De Cooperacao Da Faculdade De Direito da Universidad de Lisboa, 2005

⁸ *Supra* 7

for Minors in Goa. This law was to be an authentic code for children. The Decree of 27th May 1925 created special courts called *Tutorias da Infancia* to try offences committed by children.⁹ This beneficial treatment was available to a child who was in the age group of 9 to 16 years of age with an aim to educate them.¹⁰ This Law applied to minors in moral danger, abandoned minors and undisciplined minors.¹¹

5.1.1. Minor in Moral Danger

‘Minors in moral danger’ were those that did not have a fixed domicile in which they live or means of subsistence, on account of their parents being dead, unknown or missing, or they did not have a guardians to take care of them.¹² It could include those who did not have a residence to live.¹³ Or their parents were unable to perform their parental duties.¹⁴ It could include those children who lived in the company of the father, mother¹⁵ or guardian but the parents or guardians neglected their duties to keep watch and educate their children or wards.¹⁶ The parental neglect was due to their bad behaviour, or they themselves were notorious or scandalous.¹⁷ Some parents were known to be habitual idlers, beggars, loafers, alcoholic, pilferers, ruffians, prostitutes, or

⁹Diploma Legislative No 1389; Boletim Official Do Estado Da India, , 19 de Julho de 1951, I Series No. 29, 136 (Legislative Diploma No. 1389, Official Gazette of the State of India dated July 19, 1951 I Series No 29, 136)

¹⁰ See Article 1

¹¹ See Article 2

¹² See Article 3 (1)

¹³ See Article 3(2)

¹⁴ See Article 3 (3)

¹⁵ See Article 4

¹⁶ See Article 4 (a)

¹⁷ See Article 4 (b)

other immoral human beings.¹⁸ Those parents who were wicked could even exploit their children.¹⁹ Such parents could be sent to jail for six months of correctional imprisonment.²⁰ Hence there was a need for separating such children from their parents.

5.1.2. Abandoned Minor

The 'abandoned minor' is the one, who lives in isolation or in the company of known idlers, loafers, vagabond, beggars, alcoholics, thieves, ruffians, prostitutes or other beings of immoral or criminal behaviour. He lives in this state due to failure of supervision by its parents.²¹ He lives habitually in the state of idlers, and is influenced by their virtues.²² It has immoral or criminal tendencies²³ or has developed an aversion to studies.²⁴ The definition of abandoned minor has 3 exceptions. It includes the 'idler minor' one who lives in the house of the parents or guardian but shows rebellion/ revolt to all the ideas on studies and serious and useful work, habitually loafing around on roads and public places. The 'loafer minor' is the one that runs away from the house of the parents or guardian for habitually committing wrongs from place to place, or for loafing on the roads or public places, living by begging or stealing. The 'minor beggar' is the one who habitually asks alms for himself or

¹⁸ See Article 4(c)

¹⁹ See Article 5

²⁰ See Article 4

²¹ See Article 5 (a)

²² See Article 5

²³ See Article 5 (c)

²⁴ See Article 5 (d)

for others, or on the pretext of selling or offering the objects, asks any alms or donation.²⁵

Some acts committed by minors are also equated to abandoned minors. These acts are enumerated in Article 6 enumerates a minor who frequents or lives, in a house of prostitutes or places of gambling.²⁶ Or those who frequent a house of prohibited gaming, or where acts of notorious nature are carried out.²⁷ Or who frequents house of pornographic shows, or where such shows or scenes are presented which can hurt the modesty or the morality of the minors, or provoke their bad or unhealthy instincts.²⁸

The definition also includes a ‘dissolute minor’.²⁹ The ‘dissolute minor’ is the one who lives of prostitution of others,³⁰ or who persecutes or invites the companions of passerby for acts of obscene nature.³¹ Or who frequents or lives in the house of prostitutes or of gambling to commit acts of obscenity³² or who is found in any house or place, not meant for prostitution, but practicing obscene acts with others.³³ ‘Indiscipline minors’ are those who have been sent for correction to beneficial homes.³⁴

²⁵ See Article 5(3)

²⁶ See Article 6 (a)

²⁷ See Article 6 (b)

²⁸ Supra 9

²⁹ See Article 5(4)

³⁰ See Article 5 (4)(a)

³¹ See Article 5 (4) (b)

³² See Article 5 (4) (c)

³³ See Article 5(4) (d)

³⁴ See Article 8 (b)

5.1.3. Tribunal of minors (*Tutoria da Infancia*)

Article 12 calls for the establishment of a Tribunal of minors³⁵, denominated as *Guardiania da Infancia*³⁶ in the Union of India. The *Tutoria da Infancia* was to be a Tribunal, which was governed by principles of equity and the best interest of minors. It was to guard, defend and protect the minors in moral danger, abandoned or delinquent children.³⁷

The District Judge was the principal judge of *Tutoria da Infancia*.³⁸ He was assisted by two other judges who were called assistant judges. The first assistant judge was a health officer and the second one a teacher.³⁹ The second assistant judge was to be appointed annually by the Governor General on the proposal of the president of the High Court.⁴⁰ If the Presiding judge was absent he was to be substituted by three nominated substitutes.⁴¹ The assistant judges could be appointed by the Governor General through a proposal of the presiding judge.⁴² The people preferred for appointment as judge were honest men, preference being given to doctors, priests, advocates, or teachers. They had to serve for one year as per the order of appointment.⁴³ The guardians of minors could intervene in the sessions without a vote.⁴⁴

³⁵ *Tutoria Da Infancia* which meant Children's Courts

³⁶ Custodian Of Children

³⁷ See Article 13

³⁸ D'Souza Carmo *Legal System in Goa Volume II, Laws and Legal Trends (1510- 1969)* Calangute

³⁹ See Article 14

⁴⁰ See Article 14 (2)

⁴¹ See Article 15

⁴² See Article 16

⁴³ Supra 9

⁴⁴ See Article 19

5.1.4. Orders of the Court

Article 9 specifies the orders which this court could pass. The purpose was for the prevention, reformation or correction of minors. The Court could pass orders for reprimanding the minors.⁴⁵ The court had liberty to place the minor under supervision.⁴⁶ They could also send the minor to an adoptive family or an institution for education.⁴⁷ It could be a public or private institution. If the minor was not accused of concealment of a crime or was not an accomplice in a crime then a fine of Rs.30 was imposed.⁴⁸ This fine could be paid by the parents or guardians. As a last resort the minor could be placed in provisional confinement for six months.⁴⁹ Separate sections were kept in district prisons for minor in exceptional situations.⁵⁰ The minor could be sent to definite confinements in separate sections of prison or in reformatory institution for three years.⁵¹

If a minor was more than thirteen years and of less than sixteen years depending on the crime committed a higher punishment according to what is prescribed in the Penal Code could be imposed after considering its age, nature of crime, circumstances and moral and economic conditions of the parents.⁵²

⁴⁵ See Article 9 (1)

⁴⁶ See Article 9 (2)

⁴⁷ See Article 9 (3)

⁴⁸ See Article 9(4)

⁴⁹ See Article 9(5)

⁵⁰ Supra 9

⁵¹ *ibid*

⁵² See Article 10

For such minors complementary measures⁵³ were imposed like conditional liberty⁵⁴ or enlisting in the Police of the Estado da India.⁵⁵

5.1.5. Protective Home

Section II of the Act in Article 9 prescribes the setting up of Protective homes and outlines the procedure for them. This home was to be established to know the criminal cases of minors who were in moral danger, helpless delinquents and undisciplined minors.⁵⁶ It could prescribe measures for final confinement, custody, vigilance, treatment, education or guardianship, relating to those minors.⁵⁷ The home had to attend to the cases which have been informed to them and coordinate with the minors and look after their education.⁵⁸ The homes could also give consent for the marriage of minors⁵⁹ in case the parents have been barred of this right.⁶⁰ Those minors, who were given in guardianship to different institutions the protective home had to collect, examine and register the information given by respective institutions for assistance.⁶¹

5.1.6. Form of Law Suit

Section IV in Article 33 prescribes the form of the lawsuit. Article 36 prescribed the procedure for minors, accused of committing crimes who were

⁵³ See Article 11

⁵⁴ See Article 11 (a)

⁵⁵ See Article 11 (b)

⁵⁶ See Article 20(2)

⁵⁷ See Article 20 (3)

⁵⁸ See Article 20 (5) and (6)

⁵⁹ See Article 20 (7)

⁶⁰ Supra 9

⁶¹ See Article 20 (7)

less than 16 years of age.⁶² The charge was explained verbally or in writing and after taking the declarations, the minor was produced in the Court and questioned immediately. After hearing the minor he/she was sent to the parents or the guardian or the employer or the person under whose care the minor was.⁶³ The president could set the minor free, without further proceedings by merely recording the facts.⁶⁴ They could also try him summarily,⁶⁵ when the minor has committed some contravention. In case proceedings were initiated against the minor regards must be held to his antecedents, age and nature of crime, the social status, moral and economic situation of the father or guardian accordingly the judge must make a final decision.⁶⁶ The judge may hand him under the care of his parents or guardian, who are honest persons, with the duty of producing him at all times when necessary.⁶⁷ Or Hand him to the same individuals, on surety. The surety amount could go upto 200 rupees, when it is felt necessary.⁶⁸ Or the minor could be confined in institutions of detention.⁶⁹ After finishing the inquiry and after the anthropological and medico-pedagogical examination, a copy of the statement had to be enclosed of the proceedings, this was to be sent to the guardian.⁷⁰

In case proceedings had started against the minor a preliminary inquiry was to be conducted. The minor's birth certificate was required and the witnesses had

⁶² See Article 36

⁶³ Supra 9

⁶⁴ See Article 37(1)

⁶⁵ See Article 37(2)

⁶⁶ See Article 37(3)

⁶⁷ See Article 37(3)(a)

⁶⁸ See Article 37 (3) (b)

⁶⁹ See Article 37 (3) (c)

⁷⁰ Supra 9

to depose.⁷¹ Article 39 prescribes that the trial of the minors in the Protective Home will always have to be preceded by a preparatory session. The minors, by rule will not be required to attend the trial, and will have to be heard separately, without the formalities of the public judicial hearing.⁷²

5.1.7. Limitations

This law was one of the most progressive legislations of that time which covered most of the rights; the juveniles have today, like right to speedy trial, and an informal system for the trial of juveniles. It established of a special court, to try children. It also called for setting up protective home, appointment of probations officer and placing the child in the hands of a fit person be it parent/ guardian or an institution. It also focused on reformation of the juvenile. Though the Decree was passed the necessary mechanism for enforcing it like setting up of the Courts denominated as *Tutoria da Infancia* was not done. Hence judges could not be appointed to give justice to children. Protective homes were also not set up.

According to Dotor George Duarte Pinheiro⁷³ at the time the Decree was passed the world had just become aware of term ‘juvenile delinquency’. The objective of the law was to defend society and adults from minors who were dangerous. The Decree failed to clearly make a distinction between a ‘child at risk’ and a ‘child in conflict with law’. The draftsman’s only worry was to protect the society. The passing of the Decree was able to create awareness

⁷¹ *ibid*

⁷² Article 40 (exception)

⁷³ Interview with him revealed the above data. He is a scholar from Portugal.

among the people about the problem of ‘delinquency’ in children. Thus fulfilling part of the objective of envisaged by the draftsman. From an academic angle had the Decree been enforced it would have been interesting to know the kind of litigation which would have come up and how the Courts dealt with offences committed by children. This Law was repealed when the Government of India passed the Children’s Act 1960 and the same was made applicable to Goa.

5.2. Post Liberation Laws in Goa

The year 2000 is a landmark year, for the first time juveniles were treated like children and guaranteed rights under the Juveniles Justice (Care and Protection of Children) Act 2000.⁷⁴ The Act was a human rights legislation meant for the promotion and well-being of the juvenile. It enshrined the principle of proportionality, where the interest of both the offender and the offence including the victim should be safeguarded. The Juvenile Justice (Care and Protection of Children) Act, 2000⁷⁵ which has replaced the earlier The Juvenile Justice Act, 1986, has been enforced in the entire country except in the State of Jammu and Kashmir with effect from 1st April 2001. The Juvenile Justice (Care and Protection of Children) Act, 2000 uses the term ‘child’ by deleting the word ‘juvenile’.

⁷⁴ Taking cognizance of the Constitutional provisions Art.15(3), Article 39(e)(f), Article 45 and Article 47. The ratification of Convention on the Rights of the Child and the United Nations Standards Minimum Rules for Administration of Juvenile Justice (Beijing Rules), The United Nations Rules for Protection of Juveniles Deprived of Liberty (The Beijing Rules) and the United Nations Rules for Protection of Juveniles Deprived of Liberty(1990) and other relevant documents the Juveniles Justice (Care and Protection of Children) Act 2000 was enacted.

⁷⁵ Act No.56 of 2000 Dated 30th December, 2000 Full text of the Act is available at <http://wcd.nic.in/childprot/jjact2000.pdf>

The Government of India amended the Act in the year 2006. The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 was passed which made some important changes in the law for ‘juveniles in conflict with law’.⁷⁶ The Act was again amended in the year 2011 and was known as the Juvenile Justice (Care and Protection of Children) Amendment Act, 2011.⁷⁷

The Central Government of India in pursuance of Section 68 clause (1) of The Juvenile Justice (Care and Protection of Children) Act 2000, framed the Model Rules. This was done to ensure speedy implementation of the law on Juvenile Justice and provide for guidelines for the State Government and Union Territories. These Rules were published in the Gazette India (Extra Ordinary) dated 22nd June, 2001 and were also circulated to all State and governments and Union Territories with the request to adopt the Model Rules or to frame their own Rules on the basis of these Model Rules. While many states framed their own Model Rules Goa, adopted the Central Juvenile Justice (Care and Protection of Children) Rules, 2007 known as Model Rules 2007.⁷⁸ The Juvenile Justice (Care and Protection of Children) Rules, 2007 are an attempt to create a rights based approach within the legal framework. These rules have to a large extent incorporated child rights, juvenile jurisprudence and restorative justice.

⁷⁶ Act No 33 of 2006 Dated 22nd August, 2006

⁷⁷ Act No. 12 of 2011 dated 7th September, 2011 Full text of the Act available at http://meghpnl.nic.in/acts/central/juvenile_justice_care-protection_children_amendment_act_2011.pdf

⁷⁸ The old Model Rules of 2001 were amended to make way for the Model Rules of 2007

5.3. Aim of Juvenile Justice Law

Section 1(4) of Juvenile Justice (Care and Protection of Children) Act, 2000 states “notwithstanding anything contained in any other law for the time being in force the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law or under such other law.” Hence this Law is a special law and bars the operation of Criminal Procedure Code and the jurisdiction of Sessions Courts or any other law whenever a juvenile comes in conflict with law.⁷⁹

The Supreme Court in *Raj Singh v. State of Haryana*⁸⁰ held that Juvenile Justice (Care and Protection of Children) Act, 2000 has overriding effect and all offences under The Narcotic Drugs and Psychotropic Substances Act⁸¹, 1985,⁸² The Arms Act, 1959,⁸³ The Schedule Caste and Schedule Tribes Prevention of Atrocities Act, 1989.⁸⁴ All such acts allegedly committed by the juvenile have to be tried under the Juvenile Justice (Care and Protection of Children) Act, 2000.⁸⁵

The Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted to provide for the care, protection, treatment, development and rehabilitation of

⁷⁹See Chapter 4 –Evolution of Juvenile Laws in India where provisions of the Criminal Procedure Code which enable the operation of a special law and ouster the jurisdiction of Criminal Courts is discussed.

⁸⁰ (2000) 6 SCC 759.

⁸¹Justice Basu Palok, *Law Relating to Human Rights Under the Indian Constitution and Allied Laws*, 2002, Modern Law Publications p170

⁸²Act No. 61 of 1985

⁸³Act No. 54 of 1959 Dated 23rd December, 1959

⁸⁴Act No 33 of 1989

⁸⁵ *Mohd Irshad V. State(Delhi)*, 2006 (134) DLT 507:2006(3) JCC 129:MANU/DE/9099/2006; *Ratan Lal V. State of Rajasthan*, 2004 Cr.L.J 3994:MANU/RH/0530/2003; *Manish Tyagi .V. State of Uttar Pradesh* , 2007 Cr.L.J 3165:MANU/UP/0597/2007

delinquent juveniles.⁸⁶ ‘The objective of this Act is curative instead of punitive. In the past offenders were subjected to punitive measures such as compensatory, retributive or deterrent character with no or very little attention to their personal and social circumstances. But gradually, science dealing with the social circumstances and behaviour, punitive and deterrent criminal justice has been replaced by a predominantly reformatory approach to offenders, giving consideration to their personal social characteristics. The Juvenile Justice (Care and Protection of Children) Act, 2000 has been enacted with this end in mind.’⁸⁷

5.3.1. Juvenile Justice

The term ‘juvenile justice’ was used for the first time in the State of Illinois United States of America, in 1899 under the Juvenile Courts Act. The approach was that juvenile offenders should not be meted out the same punitive and retaliatory treatment as adults but rather be given individual attention for their own protection and that of the society.⁸⁸ *Juvenile*⁸⁹ justice system emphasizes on the well being of the juvenile and ensures that any reaction to the juvenile offender is always in proportion to the circumstances of both the offender and the offence.⁹⁰ The term ‘juvenile justice’ before the onset of delinquency may refer to social justice; after the onset of delinquency, it refers to justice in its

⁸⁶ See Preamble of the Act

⁸⁷ Patna High Court in *Krishna Bhagan .V. State of Bihar* AIR 1989 Pat 217

⁸⁸ Chinte, C.I. *Fifty Years of Juvenile Court in M.Bell*, *Current Approaches to delinquency*, National Probation and Parole Association, New York, 1949

⁸⁹ The word ‘juvenile’ has been derived from the Latin term ‘*juvenis*’ means Young.

⁹⁰ Sahewalla, G.N. *Juvenile Justice*, Gauhati Law Times, 2003(3), P.9-16

normal juridical sense.⁹¹ The Juvenile Justice (Care and Protection of Children) Act, 2000 provides for justice after the onset of delinquency. His or her treatment and trial at the hands of justice delivery system is taken care in the provisions of the Act.⁹²

5.4. Fundamental Principles of Juvenile Justice

The Fundamental principle of Juvenile Justice are laid down in Rule 3 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. The State Government, the Juvenile Justice Board, the Child Welfare Committee and other competent authorities or agencies while performing their duties shall abide and be guided by these principles.

5.4.1. Principle of presumption of innocence

A juvenile in conflict with law is presumed to be innocent of any malafide or criminal intent up to the age of seven years. The basic components of presumption of innocence are reflected in the provisions of determination of Age of innocence of juvenile. The procedure of The Juvenile Justice (Care and Protection of Children) Act, 2000 is a special law keeping in mind the innocence and the age of the child.⁹³

⁹¹ Kumari, Ved *Juvenile Justice : Before and after the onset of delinquency*, working paper prepared by the Secretariat for 6th U.N. Congress on the Prevention of Crime and the Treatment of Offenders, The Treatise, p.4

⁹² See Preamble of the Act which makes provision for post delinquency.

⁹³ Konin, L.M. *Role of Social Work in Juvenile Justice*, Indian Socio-Legal Journal, 2011, 37(1&2) p.87-94

5.4. 2. Principle of dignity and worth

Treatment that is consistent with the child's sense of dignity and worth is a fundamental principle of juvenile justice. The juvenile's right to dignity and worth has to be respected and protected throughout the entire process of dealing with the child from the first contact with law enforcement agencies to the implementation of all measures for dealing with the child.⁹⁴

5.4. 3.Principle of Right to be heard

Every child's right to express his views freely in all matters affecting his interest shall be fully respected through every stage in the process of juvenile justice.⁹⁵

5.4. 4. Principle of Best Interest

In all decisions taken within the context of administration of juvenile justice, the principle of best interest of the juvenile in conflict with law shall be the primary consideration.⁹⁶

5.4. 5. Principle of family responsibility

The primary responsibility of bringing up children, providing care, support and protection shall be with the biological parents. However, in exceptional

⁹⁴ Hansaria, V. *Juvenile Justice System, Working Manual for Stake Holders*, Universal Law Publishing Co. Pvt. Ltd, New Delhi, 2010, p.10-15

⁹⁵ K.S.Bhati, Legal Assistance Forum *Juvenile Justice System – Working Manual Fundamental Principles* Universal Law Publishing Company p.6

⁹⁶ Supra 94

situations, this responsibility may be bestowed on willing adoptive or foster parents.⁹⁷

5.4. 6. Principle of Safety

At all stages, from the initial contact till such time he remains in contact with the care and protection system, and thereafter, the juvenile shall not be subjected to any harm, abuse, neglect, maltreatment, corporal punishment or solitary or any confinement in jails and extreme care has to be taken to avoid any harm to the protection.⁹⁸

5.4. 7. Principle of non-stigmatizing semantics, decisions and actions

The non-stigmatizing semantics of the Act must be strictly adhered to and the use of adversarial or accusatory words, such as, arrest, remand, accused, charge sheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody or jail is prohibited in the processes pertaining to justice for the juvenile.⁹⁹

5.4. 8. Principle of non-waiver of rights

No waiver of rights of the juvenile, whether by himself or the competent authority or anyone acting or claiming to act on behalf of the juvenile, is either permissible or valid. Non-exercise of a fundamental right does not amount to waiver.

⁹⁷ Shanmugavelayutham, K. *Juvenile Justice (Care and Protection of Children) Act, 2000: A Critical Analysis*, Indian Journal of Social Work, July 63(3), 2002, p.422 -435

⁹⁸ Kumari, V. *The Juvenile Justice System in India From welfare to Rights*, 2nd e.d Oxford University Press, Ne Delhi, 2004 p. 362- 365

⁹⁹ *ibid*

5.5. Age of the Child

The first step is to ascertain the age of the child once the child comes in contact with the criminal justice system. The Supreme Court of India has pronounced this principle on various occasions. “A preliminary inquiry¹⁰⁰ in this behalf has to be undertaken of all these young persons whose age is stated to be up to 21 years.¹⁰¹”

The following guidelines emerge in relation to determination of age. The findings of age are to be recorded on the basis of adequate and proper evidence. Oral evidence can be utilized to explain contradictory evidence. Authentic documentary evidence is preferred over radiological examination and physical features. School certificate should be treated as reliable and genuine if there was is material on record to throw doubt about the authenticity of the entry. All possible efforts must be made to ascertain the age most accurately.¹⁰²

In *Gopinath v. West Bengal*¹⁰³ the appellant had been convicted by the Trial Court along with two other accused under Section 302 read with Section 34 IPC and all were awarded imprisonment of life. The three accused preferred an Appeal in the Calcutta High Court. The Division Bench dismissed the appeal of the appellant holding him guilty. The conviction of the other two was set aside. The appellant Appealed by Special Leave to the Supreme Court and for the first

¹⁰⁰See Section 3 the word ‘inquiry’ refers to the stage when the proceedings before the Magistrate commence.

¹⁰¹ *Gopinath v. State of West Bengal* AIR 1984 SC 237

¹⁰² Kumar, P. *Juvenile by Act or Appearance: Avertable Controversy Settled*, M.U.Law Journal, Vol.X, Part II,2005

¹⁰³ 1984 Cri LJ 168

time it was argued that on the date of the offence, the appellant was below 18 years and therefore was a 'child'. The Supreme Court framed Rules with regard to age of appellant, since on the date of offence the appellant was a juvenile. Hence they remitted the issue for determination of age to the Sessions Court and to certify the findings. The Additional Sessions Judge certified that after taking evidence that appellant was aged 16-17 years on the date of commission of offence.¹⁰⁴

To protect the young against their immature action the Juvenile Justice (Care and Protection of Children) Act, 2000 is a retrospective piece of legislation and applies to a person who had committed an offence prior to 1st April 2001.¹⁰⁵ Explanation to Section 20 makes it abundantly clear that the question of juvenility is to be determined by reference to the age of the person on the date of offence.¹⁰⁶

5.5.1. Claim of Juvenility

Section 7-A of Juvenile Justice (Care and Protection of Children) Act, 2000 allows a person to raise the plea of juvenility even after final disposal of the case, and obligates the court to conduct an inquiry to ascertain such persons age as on the date of offence and if found to be below 18 years. In such a situation

¹⁰⁴ Bhat, Aparna, *Supreme Court on Children*, Human Rights Law Network, 2006 p.171-199

¹⁰⁵The Supreme Court scrutinized this issue in *Pratap Singh v. State of Jharkhand* and held that the 2000 Act will apply only if the person was below 18 years of age on 1st April 2001 only then provisions of Section 20 and Section 64 applied to them. The same test was applied in *Bijender Singh v. State of Haryana*.

¹⁰⁶In *Jayasingh v. State by Inspector of Police* the accused was sentenced to life imprisonment for murder as he was above the age of sixteen years. As he was below the age of 18 years on the date of commission of offence, he was ordered to be released forthwith having already spent seven years in prison while he could not have been kept in custody for more than three years in view of Section 15(1)(g) read with Section 20 and 64.

the juvenile's case is to be transferred to the Juvenile Justice Board for appropriate orders. Section 64 extends the ambit of the Act to those persons who were undergoing a sentence and were under 18 years of age at the time of imprisonment and at the time of commencement of the Act.¹⁰⁷ It is imperative for State Governments to establish a mechanism to identify such persons below 18 years of age on the date of the offence and have been convicted and are undergoing their respective sentences in different jails.¹⁰⁸

5.5.2. Determination of Age

Determination of age is essential for two reasons; firstly age determination is essential to find out whether the person claiming to be a child is below the cut off age prescribed for application under the Juvenile Justice (Care and Protection of Children) Act, 2000. Secondly recording of age as near and as accurately as possible is essential for deciding the duration of institutionalization. In the present Act there is no distinction drawn between a male and female juvenile.¹⁰⁹ Ascertaining age plays a very important role as it ensures the child enjoys the protection he or she is entitled under the law.¹¹⁰

¹⁰⁷ Kumari, V. *Quagmire of Age Issue Under the Juvenile The Juvenile Justice (Care and Protection of Children) Act 2000 : From Inclusion to Exclusion*, Journal of the Indian Law Institute, April – June 2009, Vol 51 No.2 p. 163 -171; 51JILI(2009)

¹⁰⁸ Rai, S. *Treatment methods for juveniles in conflict with law: A need for reappraisal*, Indian Journal of Criminology and Criminalistics, Jan – April 2003,24(1), p.19-24

¹⁰⁹ Choudhary, D.P. *Promoting Co-ordination within the juvenile justice system for effective implementation of the Juvenile Justice Act*, Indian Journal of Criminology and Criminalistics, May-Aug 2003, 24(2), p19-27

¹¹⁰ Rathi, B.K. *Juvenile Justice (Care and Protection of Children) Act, 2000 : Does it require a fresh look*, Criminal Law Journal, Aug,2003 P.229-231

The Supreme Court held in Rasul's case¹¹¹ where they relied on the age given by the accused in his Section 313 Criminal Procedure Code statement in preference to the estimation of age given by the Sessions Court and High Court. There have been cases when the criminal justice system has not recognized the accused to be a juvenile, and the claim of juvenility is raised for the first time in the Supreme Court. This practise resulted in the Apex Court in the year 1984¹¹² instructing Magistrates to conduct inquiry about age when it appeared that the accused was under the age of 21 years. The onus is upon the Court to take measures to determine the age of the accused.¹¹³ The Criminal Manual in chapter VIII which deals with Child and Young offenders obligates the Magistrates to ascertain the age of the accused and produce evidence in support of the same.¹¹⁴ A definite finding regarding the age has to be recorded in every case. If the accused is found to be a juvenile he must be produced before the Juvenile Justice Board with the papers. In *Bhola Bhagat v. State of Bihar* the Supreme Court instructs the Courts before whom a plea of juvenility is raised to hold an inquiry for ascertaining the age.¹¹⁵

¹¹¹ *Raisul .v. State of U.P* (1976) 4SCC 301 ; 1976 SCc (Cri) 613 ; AIR 1977 SC 1822

¹¹² *Gopinath Ghosh .v. State of West Bengal* 1984 Supp SCC 228; 1984(Cri) 478

¹¹³ A.K. Gupta & S.D. Dingha, *The Criminal Manual* issued by the High Court of Judicature (appellate side) Bombay , Hind Law House , chapter VI, 5th e.d, p. 149

¹¹⁴ Kumari, V. *Juvenile Justice Act –II : Age determination hurdle*, Civil and Military Law Journal 1990 Jan-March; 26 p.42

¹¹⁵ Supreme Court held 'Keeping in view the beneficial nature of the socially oriented legislation, it is an obligation of the court where such plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny its benefits of the provisions to an accused. The Court must hold an inquiry to return a finding regarding the age, one way or the other.

5.5.3. Proof of Age

Burden of proof is another question which is raised in relation to the age of the child. On whom does the onus lie to prove that the person before the Magistrate is a child? The Courts have imposed the burden to prove the age on the child or the Prosecutor or the Magistrate depending on the circumstances of the case. The Bombay High Court held that ‘it is the duty of the court to see that it does not exercise jurisdiction which it does not possess.’¹¹⁶ Therefore the Court has to make a thorough inquiry as to the age of the accused.¹¹⁷ The Andhra Pradesh¹¹⁸, Rajasthan¹¹⁹, and Allahabad¹²⁰ High Courts have reiterated that the burden to prove age is not on the accused. It is for the court to hold inquiry and determine the age by medical or other evidence.

The Calcutta High Court¹²¹ is of the opinion that the provision for age determination casts an obligation on the person who is producing the accused before the court to ask for due inquiry as to his age. Thereafter it is the duty of the court to determine the age and record its finding. If the officer producing the offender to the court failed to perform this duty the right of the child to be treated as delinquent cannot be taken away.

¹¹⁶ Supra 104

¹¹⁷ *State v Dungaria Mahala* (1961) Cri LJ 815

¹¹⁸ *Bandella Allaiah v. State of Andhra Pradesh* (1995) Cri LJ 1083 (A.P)

¹¹⁹ *Arjun Ram v. State of Rajasthan* (1998) Cri LJ 4375(Raj)

¹²⁰ *Milap Singh v. State of U.P.*, (2000) Cri LJ 3059 (All)

¹²¹ *Dilip Saha v. State of W.B* (1979) Cri LJ 88 (WB)

The Supreme Court has imposed the duty on the Magistrate to secure evidence of age. In *Gopinath Ghosh v. State of West Bengal*¹²² it was held that ‘if necessary, the magistrate may refer the accused to Medical Board or a Civil Surgeon, as the case may be after obtaining creditworthy evidence about the age. The Magistrate may as well call upon the accused to lead evidence about his age.’¹²³

The Supreme Court in *Arnit Das v. State of Bihar*¹²⁴ clarified that court should not take a hyper-technical approach while appreciating evidence of age of the accused. If two views are possible the court should lean in favour of holding the accused to be a juvenile in borderline cases. Approving this approach the Supreme Court in *Rajinder Chandra v. State of Chhatisgarh*¹²⁵ further laid down that the standard of proof for age determination is the degree of probability and not proof beyond reasonable doubt.¹²⁶

Courts have held time and again that an inquiry must be made to determine the age and mere adducing of evidence is not sufficient.¹²⁷ The Rajasthan High Court in *Balbir Singh v. State of Rajasthan*,¹²⁸ laid down that the age determination inquiry must be made by a competent authority by giving an opportunity to the parties to adduce oral and documentary evidence.¹²⁹ It must

¹²² (1984) Cri LJ168

¹²³ Kumari, V. *Relevant Date for applying the Juvenile Justice*, Supreme Court Cases, 2000(6) p.9-16

¹²⁴ AIR 2000 SC 2264

¹²⁵ (2002) 2 SCC 287

¹²⁶ Supra 104; also See Pande, B.B. *Rethinking Juvenile Justice :Arnit Das Style*, Supreme Court Cases 2000(6), p.1-8

¹²⁷ *Devendra Singh v. State of MP*, (1998) Cri LJ 3654 (M.P); *Mohandas v. State of Rajasthan*, (1996) Cri LJ 1412 (Raj)

¹²⁸ (1994) Cri LJ 1412 (Raj)

¹²⁹Supra 104

also give right to cross-examination to the opposite party following the procedure of summons case. Inquiry may be made by the magistrate if empowered to do so. Otherwise case must be forwarded to a competent authority.

The best proof of age is Birth Certificate. The next best proof is School Leaving certificate. Even if a child is merely enrolled in school and never attended he will be able to obtain documents that will record his date of birth, such as admission form and entry in school register and such date will also be reflected in the school leaving certificate. Birth certificate and School Leaving certificate is the only best document that will be considered for the purpose of determining the age.¹³⁰ However, regarding the date of birth in the secondary school leaving certificate is not to be taken correct unless corroborated by parents who got the same entries made.¹³¹ These documents can be verified by the courts in the event the court doubts its veracity. Verification is done by police scrutiny in the original registers from where such extracts have been issued or by the Court examining the documents or the representative of the authority that issued the document to the child's parents or relatives. Even otherwise recording of parents or relatives evidence is important to assist the court in determining the age of the accused. Age mentioned in Ration Cards,

¹³⁰ *Bhoop Ram v. State of U.P* AIR 1989 SC 1329

¹³¹ *Biradmal Singhvi v. Anand Purohit* AIR 1988 Sc 1796

Family Cards, Identity Cards issued by the election Commission are not proof of age. All possible efforts are to be made to treat a juvenile like a juvenile.¹³²

In *Raju and Anr vs. State of Haryana*,¹³³ the Supreme Court had admitted "mark sheet" as one of the proof in determining the age of the accused person. The Supreme Court again in *Hari Ram vs. State of Rajasthan & Anr*,¹³⁴ has accepted mark sheet as one of the proof for determining the age of an accused person. In *Rajinder Chandra vs. State of Chhattisgarh and Anr*¹³⁵, the Court once again considered the entry relating to date of birth in the mark sheet. In *Ravinder Singh Gorkhi vs. State of U.P*¹³⁶ age was adduced from entries made in School Leaving Certificate.¹³⁷

In the absence of documentary evidence the opinion of the medical practitioner may be called for. The juvenile can be sent to a public hospital for medical examination to determine his age. Medical examination enables one to form a fairly accurate opinion about the age of the individual; especially in the early years and this is adduced from the teeth, height and weight, ossification of bones and other minor signs of age development.¹³⁸ Ossification test is done by radiological examination is not conclusive proof of age and judicial notice has to be taken that it is a mere opinion of the doctor and margin of error could be

¹³² Supra 94

¹³³ (2010) 3 SCC 235

¹³⁴ (2009) 13 SCC 211,

¹³⁵ (2002) 2 SCC 287

¹³⁶ (2006) 5 SCC 584

¹³⁷ Supra 94

¹³⁸ Modi's *Medical Jurisprudence & Toxicology*, Buttersworth India, New Delhi 22nd ed p. 49

of two years on either side.¹³⁹ In *State of Bihar v. Nand Kishore Singh*¹⁴⁰ the appellant in appeal was examined by the Medical Board and in its report showed him as a juvenile on the date of occurrence, his sentence was set aside by the Court.¹⁴¹

Evidence¹⁴² that can be taken into consideration in determining age¹⁴³ are

¹³⁹ *Jaya Mala .v. Home Secretary, Govt of J & K* (1982) 2 SCC 538; AIR 1982 SC 1297

¹⁴⁰ 2008 (68) AIC 573 (Pat)

¹⁴¹ In *Jyoti Prakash Rai .v. State of Bihar*¹⁴¹ the appellant produced a number of documents, but they were found to be forged and fake. Two Medical Boards constituted on different dates had opined the age of the accused as between 18 years and 19 years. The Courts considered the average age opined by the Medical Boards. In *Vicky Sao v. State of Jharkand*¹⁴¹ the Court had erred in relying upon the medical opinion in preference to the birth certificate issued by the Municipal authority. The impugned order of the Court was set aside and case remitted back to the court.

In *Ramdeo @ Rajnath Chauhan v. State of Assam*¹⁴¹, neither the school register nor the medical evidence was relied upon. The trial court was more influenced by the nature of offence committed by the accused rather than the entry in the school register supported by medical opinion indicating him to be a child on the date of the offence.

¹⁴² See Rule 12 of the Model Rules 2007

¹⁴³ See Rule 12, Procedure to be followed in determination of age.

- (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.
- (2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.
- (3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –
 - (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;
 - (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
 - (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;
- (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.
- (4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

matriculation certificate, age certificate from the school first attended and medical evidence as conclusive proof of age. In case of medical evidence, it further declares that in case the age cannot be determined accurately, the age determining body may give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year. These rules apply even to those disposed off cases¹⁴⁴ in which the age was not determined according to the rules laid down in Rule 12.¹⁴⁵ It further provides that the sentences passed in such cases need to be dispensed with for passing appropriate order in the interest of the juvenile in conflict with law.”Determination of age and the sentence passed in may be reopened as per this Rule.¹⁴⁶

The Supreme Court, in *Rajendra Chandra v. State of Chhattisgarh*¹⁴⁷ has evolved one more principle in relation to age determination, namely, the benefit of doubt in age determination. Rule 12(3)(b) of the Model Rules 2007 provides for giving benefit to the child or juvenile by considering his/her age on lower side within the margin of one year. The foundation of Indian Criminal justice system is that when there is doubt or ambiguity this doubt should support the accused. Hence in borderline cases the accused should be treated as a juvenile. Supreme Court has held that the approach of the courts should not be hyper-technical while determining juvenility.¹⁴⁸ In case of conflict between documentary evidence and medical examination report, the age shown in the authentic document will be treated as the correct age of the accused.

¹⁴⁴ See sub-rule 6 of Rule 12, Model Rules, 2007

¹⁴⁵ *Supra* 98

¹⁴⁶ See *Ram Deo Chauhan v. State of Assam* (2001) 5 SCC 714.

¹⁴⁷ (2002) 2 SCC 287

¹⁴⁸ *Rajendra Chandra .v. State of Chandigarh* (2002) 2 SCC 287; AIR 2002 SC 748

¹⁴⁹Circumspection is required when the police escort the juvenile in conflict with law to a medical practitioner. In event of a medical examination report indicating a person apparently a juvenile and is over 18 years of age.¹⁵⁰ An application should be made before the court for conducting through another hospital a second medical examination and in case of conflicting results the doctors testimony should be recorded by the court to make certain which of the two medical examination report depict correct estimate of the accused's age.

5.5.4. Presumption and determination of age

Section 49 (1) states that a competent authority is of the opinion that the person brought before it is a juvenile or the child, the competent authority shall make due inquiry so as to find the age of that person and take evidence (but not an affidavit) and shall record a finding whether the person is a juvenile or not. His age has to be stated as nearly as may be. Subsection (2) to Section 49 states that once the Juvenile Justice Board has treated the person as a juvenile and has disposed the case no subsequent proof showing the person to be an adult can be considered to set aside the order passed by the Juvenile Justice Board.¹⁵¹ There is no need for the Juvenile Justice Board to conduct inquiry about age when the juvenile is produced before it under orders of the Court, and that the Court has reached a finding of juvenility.¹⁵²

¹⁴⁹ *Bhoop Ram .v. State of U.P* (1989)3SCC 1; AIR 1989 SC 1329

¹⁵⁰ *Supra* 98

¹⁵¹ Kumari, V. *Juvenile at Eighty*, Journal of the Indian Law Institute , Vol.48:2, 2006

¹⁵² Manohar, A, *Critique and Recommendations related to Delegated legislation under the Juvenile Justice (Care and Protection) of Children Amendment Act 2006 and JJ Model Rules 2007*, available at ww.nls.ac.in accessed on 12/3/2013

5.5.5. Procedure to be followed

Section 7¹⁵³ provides for measures to be taken by Magistrates when a juvenile is wrongly produced before him. The Magistrate if it is of the opinion that the person produced is a juvenile the Magistrate should forward the juvenile and its proceedings before the Juvenile Justice Board. Section 7-A categorically states that the court before whom the claim of juvenility is made should conduct an inquiry to determine the age of the accused. Hence the Magistrate is obliged to conduct an age determination inquiry and arrive at a finding of juvenility before transferring the accused to the Observation home and the Juvenile Justice Board. Section 7-A was inserted to ensure that courts should entertain at any stage even after the final disposition of the case a plea that the accused was below 18 years of age at the time of occurrence of the crime. Courts have to conduct an inquiry to determine the age of the claimant to ascertain whether the

¹⁵³ Section 7-A outlines the procedure to be followed when the claim of juvenility has been raised before any Court.

Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made there under, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

- (2) If the court finds a person to be juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.

claimant was a juvenile on the date of offence.¹⁵⁴

5.6. Rights of the Child in Conflict with Law

Rights of the juvenile conform to the general rights of the accused under the Indian Criminal Procedure. There are basic procedural safeguards which have been adopted from the International documents like presumption of innocence, the right to be notified of charges, the right to remain silent and the right to be present of a parent or guardian, the right to confront and cross examine witnesses and the right to appeal to higher authority.¹⁵⁵ Juvenile proceedings have to be conducted in a child friendly manner.¹⁵⁶

5.6. 1. Right of juvenile at the time of Arrest

The right to be produced before the Magistrate within 24 hours of arrest is a right available under the Constitution of India. Juveniles who have been placed under the charge of special juvenile police unit¹⁵⁷ have to be produced before the Juvenile Justice Board as soon as possible. No juvenile can be placed in a police station or a jail. Police have to provide food, safety and basic amenities

¹⁵⁴ *Saheb Sopam Kale .v. State of Maharashtra*, 2008 Cri L J 2115 at 2116 (Bom) ; In *Mohamad Zakir Mohamad Muktar Shaikh v. State of Maharashtra*¹⁵⁴ The inquiry report should that the accused was below 18 years of age on the date of the offence. He would be entitled to benefits under Section 7-A. Accused was already in custody for three years, the longest period a juvenile can be in a special home and is entitled to be released. In *Saheb Sopam Kale v. State of Maharashtra*¹⁵⁴ the accused was below 17 years on the date of commission of offence and had already undergone a sentence of more than three years, he was given benefit of Section 7-A.

¹⁵⁵ Beijing Rules Rule 7.1

¹⁵⁶ Mitra N.L *Juvenile Delinquency and Indian Justice System* Deep ad Deep publication 1988

¹⁵⁷ See Section 10 of Juvenile Justice Care and Protection Amended Act, 2006 Act 33 of 2006, Sec. 9 for sub-section(1).

to the juvenile¹⁵⁸. The police authorities have to issue an Age Memo on the line of “Arrest Memo.”¹⁵⁹

5.6. 2.Right to Bail

Bail and not jail is the standard principle of juvenile justice and all children have to be released on bail irrespective of the offence beingailable or non-ailable.¹⁶⁰In case of petty offences¹⁶¹ the police can dispose of the cases at the police station itself.¹⁶²

5.6. 3.Right of Speedy inquiry

All inquires should be disposed within a period of four months from the date of commencement.¹⁶³The Chief Judicial Magistrate has to review the pendency of the cases of the Board every six months and can direct the Board to increase the frequency of its sittings.¹⁶⁴

5.6. 4.Right to Fair hearing

Every juvenile brought before the Board must be give an opportunity to be heard and participate in the inquiry.¹⁶⁵Board has to follow procedure laid in

¹⁵⁸ See Rule 11(13)

¹⁵⁹The concept of Age memo was evolved which was evolved by the Supreme Court in the case of *D.K. Basu v. State of West Bengal* 1996(9) SCALE 298.

¹⁶⁰ Schedule 1 of the Code of Criminal Procedure Code

¹⁶¹ Offences punishable with fine upto Rs.1000

¹⁶² Kadri, H.A. *Juvenile Justice (Care and Protection of Children) Act 2000: An Overview*, Criminal Law Journal, July 2004 p.110

¹⁶³ See Section 14 Clause (1)

¹⁶⁴ See Section 14 Clause (2)

¹⁶⁵ See Rule 13(2)(c) The Juvenile Justice (Care and Protection of Children) Rules 2007

summons cases for all offences.¹⁶⁶ Board should examine the juvenile in a child friendly manner.¹⁶⁷ No joint proceedings can be held for a juvenile and an adult charged for committing a similar offence. Separate trials have to be conducted for juvenile.¹⁶⁸ Juveniles cannot be sentenced with a death sentence or imprisonment for life sentence.¹⁶⁹

5.6.5. Right to Life

Juveniles have right to life this means a right to live a life free from exploitation or neglect.¹⁷⁰ Juveniles are prohibited from being used for begging or other similar offences like employment in hazardous conditions.¹⁷¹ If a juvenile is institutionalized special care has to be taken to see that the juvenile is provided with proper clothing and bedding.¹⁷² Sanitation should be clean and juvenile to be provided necessary items for personal hygiene.¹⁷³ Juvenile are to be provided four meals a day including breakfast.¹⁷⁴ The institution has to maintain medical record of the juvenile and provide necessary medical facilities.¹⁷⁵

¹⁶⁶ Raha, S. *Treatment of juveniles in conflict with law :Legal Framework and judicial Response*, Criminal Law Journal, May 2004 p.110

¹⁶⁷ See Rule 13(4) The Juvenile Justice (Care and Protection of Children) Rules 2007

¹⁶⁸ See Section 18 (1) and (2)

¹⁶⁹ See Section 16(1)112`

¹⁷⁰ See Section 23

¹⁷¹ See Section 25 , 26

¹⁷² See Rule 41 The Juvenile Justice (Care and Protection of Children) Rules 2007

¹⁷³ See Rule 42 The Juvenile Justice (Care and Protection of Children) Rules 2007

¹⁷⁴ Supra 94

¹⁷⁵ See Rule 45 The Juvenile Justice (Care and Protection of Children) Rules 2007

5.6.6. Right to personal liberty

Liberty encompasses these rights and privileges which have long been recognized as being essential to the orderly pursuit of happiness by a free man and not merely freedom from bodily restraint. If at the time of arrest there is no proper age verification done on the juveniles the personal liberty of the juvenile could be restrained.¹⁷⁶

5.6. 7.Right to Privacy

Details of the child like its name, address, school cannot be made public.¹⁷⁷The law imposes a prohibition against publishing any information leading to the identity of the child being disclosed.¹⁷⁸

5.6. 8. Right to Legal Aid

Constitution of India guarantees to every person the right to consult and to be defended by a legal practitioner of his choice.¹⁷⁹Every juvenile who has to file or defend a case is entitled to legal aid under Legal Services Authority Act, 1987.¹⁸⁰The Juvenile Justice Board has to ensure that free legal aid is provided to all juveniles¹⁸¹ through the State Legal Aid Services Authority or recognized voluntary legal services organization or the University legal services

¹⁷⁶ Supra 98

¹⁷⁷ See Section 21 (a) and (2)

¹⁷⁸ See Section 21; Also See Manohar, S. *Human Rights of the child implementing the juvenile justice (Care and Protection of Children) Act, 2000*, Supreme Court Cases, Feb.2 008; 2(1), p.1-14

¹⁷⁹ See Article 22 read with Rule 3–I(d)(ii)

¹⁸⁰ See Section 12 (1) (c) of legal Services Authority Act 1987 read with Rule 14(2)

¹⁸¹ Razdan,U. *Apex Court towards humanizing the administration of juvenile justice*, *Journal of Indian Law Institute*, 1991, p.366-389

clinics.¹⁸² The Officer-in-charge has to coordinate with the legal officer to ensure that every juvenile is legally represented and provided free legal aid at all stages of the trial till final disposition.¹⁸³

5.6. 9. Right to Fresh Start

The records of Juvenile Justice Board proceedings are to be destroyed after a period of seven years after the trial is completed. This prevents the child from being labelled as a criminal. This procedure is followed regardless of what offence the child commits.¹⁸⁴ This right helps the juvenile to start a fresh life.

5.7. Trial Mechanism of a Juvenile

To ensure that the rights of the child in conflict with law are protected the procedures for investigation and inquiry of crimes have to be carried out in a child friendly manner. Investigation of crimes involving minors in conflict with law is to be undertaken by police officers designated as Juvenile Welfare Officers and police units called the Special Juvenile Police Units. Cases involving minors in conflict with law are to be heard and disposed off by the Juvenile Justice Boards regardless of the offence they are accused of.¹⁸⁵ The accused child's right to a fair trial and due process have to be followed both in principle and practice.¹⁸⁶ This reduces the risk of children being unduly

¹⁸² See Rule 3-I(d)(ii) read with 14(2) The Juvenile Justice (Care and Protection of Children) Rules 2007 Also see Rule 14(3) The Juvenile Justice (Care and Protection of Children) Rules 2007

¹⁸³ See Rule 86(2)(y) The Juvenile Justice (Care and Protection of Children) Rules 2007

¹⁸⁴ Law relating to Juvenile Justice – Green book p.10

¹⁸⁵ There is no plea-bargaining for juveniles in the Indian system, and diversion is not contingent upon admitting the offence with which the juvenile is charged.

¹⁸⁶ Mishra B.N *Juvenile Delinquency and Justice System*, Ashish Publication House 1991

influenced into accepting responsibility for an offence.¹⁸⁷ The maximum sentence that can be given to a juvenile is three years, regardless of the offence in question.¹⁸⁸

The State Government of Goa has set up the following mechanisms for recording offences committed by the juveniles.

1. Special Juvenile police Unit
2. Probation Officer
3. Juvenile Justice Board
4. Observation Homes and Special Homes

5.8. Police

It is the police who arrest the juvenile and produce him before the Juvenile Justice Board. A juvenile's first contact with the juvenile justice system is through the police. A private party or voluntary organization producing a juvenile before the Juvenile Justice Board should preferably inform the police about such production.¹⁸⁹

The Act contemplates constitution of a special unit of the police force called 'Special Juvenile Police Unit'¹⁹⁰ (SJPU) to deal with juvenile in conflict with law. In every police station at least one officer, specially instructed and trained,

¹⁸⁷ *Court on its own motion v. Govt. of NCT of Delhi* W.P.(C) 9767/2009 makes it clear that no child can be asked to sign his/her statement given to the police and the police or the Board cannot use any signed statement of crime, or so called confession by a child, in the judicial proceedings as evidence against him/her. No child can be allowed to plead guilty in order to achieve a result which otherwise cannot be obtained for want of sufficient evidence to prosecute a matter.

¹⁸⁸ See Section 15(g)

¹⁸⁹ *Supra* 94

¹⁹⁰ See Section 2(w)

is required to be designated as 'Juvenile or Child Welfare Officer' (JCWO) to deal with juvenile.¹⁹¹ Police is required to have a child friendly approach. Special care is to be taken not to treat the juvenile as a criminal.¹⁹²

5.8.1. Organisation of Police

The Inspector General of Police (IGP) is to act as Nodal Officer to coordinate and upgrade role of Police in issues pertaining to Juvenile.¹⁹³ In every district and city there should be a 'Special Juvenile Police Unit' (SJPU) to handle juveniles.¹⁹⁴ The Superintendent of Police of the district must head the Special Juvenile Police Unit and oversee its functioning.¹⁹⁵ A Special Juvenile Police Unit must consist of Juvenile or Child Welfare Officer (JCWO) of the rank of Police Inspector and two paid social workers one of whom shall be a woman.¹⁹⁶ The list of designated Juvenile Child Welfare Officers and members of Special Juvenile Police Unit with their contact details are to be prominently displayed in every police station.¹⁹⁷ Special Juvenile Police Unit may seek assistance from NGOs, Panchayat & Gramshabhas and Residents Welfare Associations¹⁹⁸ in investigating crimes committed by juveniles. The Central and State

¹⁹¹ See Section 62(2)(3) Read with Rule 84(3)

¹⁹² Dr. Lata, S and Dr. Kant , A. *Child and the Law*, APH Publishing Corporation, New Delhi, 2009 p.56-57

¹⁹³ See Rule 84 (10) The Juvenile Justice (Care and Protection of Children) Rules 2007

¹⁹⁴ See Section 63(3) r/w Rule 84(1)

¹⁹⁵ See Rule 84 (9) The Juvenile Justice (Care and Protection of Children) Rules 2007

¹⁹⁶ See Rule 84 (1) The Juvenile Justice (Care and Protection of Children) Rules 2007 See Prakash, S.B.N. *Juvenile in Conflict with law and Police*, Karnataka Law Journal, 2009, 6(24);p.57-61

¹⁹⁷ See Rule 11 (4) The Juvenile Justice (Care and Protection of Children) Rules 2007

¹⁹⁸ See Rule 84 (7) (8) The Juvenile Justice (Care and Protection of Children) Rules 2007

Government must monitor establishment and functioning of Special Juvenile Police Unit.¹⁹⁹

In Goa there is North Goa Women and Child Protection Unit and South Goa Women and Child Protection Unit. Government of Goa had passed a notification²⁰⁰ to appoint an officer with aptitude and appropriate training and orientation who is designated as a Juvenile or the 'Child Welfare Officer' at every police station, in Goa who will handle the juvenile. In Goa the Special Juvenile Police Unit²⁰¹ consists of Police officers only.²⁰² The State Special Juvenile Police Unit will supervise and coordinate with the police officers selected and designated as Juvenile or Child/Welfare Officers at every Police Station.

Once the juvenile is brought to the police station the juvenile cannot be handcuffed or chained.²⁰³ Section 160 of the Criminal Procedure Code prohibits the detention of males under the age of 15 years of age for the purpose of investigation or questioning by the police.²⁰⁴ Courts have even awarded monetary compensation where juvenile has been kept in jail or police lock up.²⁰⁵ The Bombay High Court in *Baban Khandu Rajput .vs. State of*

¹⁹⁹ See Rule 64(1) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁰⁰ See Notification No. 2-167(18)-2002/DW7Cd/2021 dated 13th November, 2002

²⁰¹ Members of 3 one police officer and two police constables

²⁰² It's a team of 3 members and does not have social workers on its panel. The team includes One Police sub inspector and two constables.

²⁰³ See Rule 76 The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁰⁴ See also Section 10(1) proviso r/w Rule 11 (3)]

²⁰⁵ *Master Salim Ikramuddin Ansari Vs. Officer-in-charge* 2005 CriLJ 799, 2004 (4) Mh.L.J 725 MANU/MH/0517/2004 (Bombay); *Master Rajeev Shankarlal Vs. Officer-in-charge* 2003 Cri.L.J 4522 MANU/MH/0471/2003 (Bombay)

*Maharashtra*²⁰⁶ imposed compensation of Rs.10, 000 on the state for keeping the petitioner in detention for a period of two and a half days without producing him before appropriate authority with malafide intention and without giving any explanation justifying the said detention.²⁰⁷

No confessions can be taken from a juvenile in the form of a statement signed by a child in front of the police under Section 161 of Cr.PC and such statements cannot be used in evidence against the juvenile. No child below 15 years can be called to police station for investigation. Such investigation has to be done by the police at the place where the child resides. In case of non-serious offence, no FIR or charge-sheet can be filed. Police may record the information regarding the alleged incident in General Diary. A social background report, i.e circumstances of apprehension and offence shall be submitted to the Board before the first hearing.

5.8.2. Role of Police

It is the police who apprehend that the juvenile is suspected of having committed an offence. Immediately upon apprehension, the juvenile is to be placed under the charge of Special Juvenile Police Unit or Juvenile Welfare Officer.²⁰⁸ Within 24 hours of apprehension, the Special Juvenile Police Unit or the Juvenile Welfare Officer must produce the juvenile before

²⁰⁶ 2002 All MR(Cri) 1973

²⁰⁷ Choudhry, R.N. *Law Relating to Juvenile Justice in India*, Orient Publishing Company, 3rd e.d., 2008 p.49-215

²⁰⁸ See Section 10(1) of The Juvenile Justice (Care and Protection of Children) Act 2000 r/w Rule 11(1)(a)

the Juvenile Justice Board.²⁰⁹This excludes the time taken for the journey to the Board. Production before the Board should be immediate and in no case be later than 24 hours. If the full Board is not sitting, a juvenile can be produced before an individual member of the Board.²¹⁰ When the police apprehend the juvenile, it is duty of the police to inform the parents or guardian or a person of the juveniles choice about the facts leading to the juvenile's apprehension.²¹¹The police must explain to the parents/guardian about the possible need of personal bond/surety to the juvenile's family.²¹²The police must give a copy of the police report to the parents/guardian free of cost.²¹³This will help the parents to understand the grounds under which the police have arrested their child. The police must ask the parents/guardian to bring documents regarding age of juvenile.²¹⁴

In case of petty offences punishable with fine of Rs. 1000 the police can dispose the case at the police station itself.²¹⁵ However the police in Goa opined that they had never released any juvenile on bail for fear of complaints being filed on them by the victim's family.²¹⁶ In case of non-serious offences punishable with imprisonment for seven years the juvenile can be apprehended

²⁰⁹ See Section 10 r/w Rule 11 (2)

²¹⁰ Ali, B and Ganguly, T.E. *Children's Rights to be Heard in Judicial Processes: Submission to the Committee on the Rights of the Child*, New Delhi :HAQ Center for Child Rights, 2006

²¹¹ See Section 13(a) of The Juvenile Justice (Care and Protection of Children) Act 2000

²¹² See Section 50 (2) Criminal Procedure Code

²¹³ See Section 50 (1) r/w section 50A (1) & 207 Criminal Procedure Code

²¹⁴ Nayak,N. *Justice For Children A Handbook on Implementing The Juvenile Justice(Care and Protection of Children) Act, 2000*, Puliani and Puliani, 2nd ed, 2009 p.74-75

²¹⁵ See Rule 13(2)(d) The Juvenile Justice (Care and Protection of Children) Rules 2007

²¹⁶ S.Nalwa and Kohli, H.D. *Commentary on the Juvenile Justice Act*, Universal Law Publishing House, New Delhi, 3rd e.d, Allahabad 2009 p.29- 256

if it is in the interest of the juvenile.²¹⁷ In all serious offences of punishment of more than seven years the juvenile must be apprehended.²¹⁸

In case of apprehension the police have to inform the Probation Officer²¹⁹ about the arrest and the need to place the juvenile in the observation home. The police must record the social background of the juvenile and circumstances of apprehension in the case diary and forward this information to the Board.²²⁰ This report has to be produced before the Board before the first hearing. A social background report (SBR) is a report prepared by the designated police officer about the social and economic condition of the juvenile apprehended by the police, and his family. For every juvenile, irrespective of whether the alleged offence is committed by the juvenile is punishable with a sentence of less than seven years or more a social background report has to be prepared. It is the duty of the police to provide for the safety, food and basic amenities of the child during the period of apprehension.²²¹

Where juvenile is not released on bail, he shall be sent to Observation Home.²²²

In case of apprehension apparently in the interest of juvenile, the police shall make a report to the Board for transferring the child to the Child Welfare Committee.²²³

²¹⁷ See Rule 11(7)(9) The Juvenile Justice (Care and Protection of Children) Rules 2007

²¹⁸ See Rule 11(7) The Juvenile Justice (Care and Protection of Children) Rules 2007

²¹⁹ See Section 13 (b) r/w Rule 11 (1)(c)

²²⁰ See Rule 11 (6) The Juvenile Justice (Care and Protection of Children) Rules 2007

²²¹ See Rule 11 (13) The Juvenile Justice (Care and Protection of Children) Rules 2007

²²² See Section 12(2) The Juvenile Justice (Care and Protection of Children) Act 2000

²²³ See Rule 11 (8) r/w Rule 13 (1)(b) The Juvenile Justice (Care and Protection of Children) Rules 2007

Police have to record the child's version of the incident and circumstances which led to commission of the crime. Next they have to investigate the child's version. If it comes to notice that the child has come into the conflict situation due to an adult, action has to be initiated against such adult person.²²⁴ If found appropriate and necessary, the child may be apprehended and in that case an Apprehension Memo will have to be duly filled. If apprehension does not seem to be necessary, the child may be released on an undertaking signed by his/her parent/guardian.²²⁵ The police need to send the child for medical examination.

If the police recover stolen property from a juvenile the juvenile's version of the incident can be recorded and investigated and the recovery can thus be made. The procedure prescribed in the Criminal Procedure Code is followed on recording the goods of recovery.²²⁶ As far as possible, recovery should be recorded in the presence of the Juvenile Welfare Officer and the parent/guardian of the child or a registered NGO member of the Special Juvenile Police Unit. The parent/guardian of the juvenile may be asked to sign on the recovery document along with the Juvenile Welfare Officer. This will ensure presence of a third non police person in the process. The stolen goods recovered will be kept in the 'malkhana' as is the police procedure in other cases of theft recovery.²²⁷ In case a juvenile escapes from the Observation home no proceedings can be initiated against such a juvenile.²²⁸ Special

²²⁴ Jones A.E, *Juvenile Delinquency the Law* Penguin Books, 1945

²²⁵ Supra 94

²²⁶ Supra 210

²²⁷ Dr. Das, B.B. and Padhy S. *A Study of JuvenThe Juvenile Justice (Care and Protection of Children) Act 2000, 2000*, Amity Law Review, Vol.3, Part 1, 2002 p.93-95

²²⁸ Section 22 r/w Rule 18(2)(a)

Juvenile Police Unit must act as a watch dog against any cruelty, abuse and exploitation of the juvenile.²²⁹ If any Police Officer is found guilty of torturing a child, it can he can be removed from service, he can also be prosecuted under Section 23 of the Act.²³⁰

Once the juvenile is produced before the Juvenile Justice Board the police lose control over the juvenile. If the police require the juvenile for interrogation or Test Identification Parade they have to seek the permission of the Juvenile Justice Board.²³¹ Granting of such permission is at the discretion of the Juvenile Justice Board and if permission is given, the Juvenile Justice Board will ensure that the interrogation or the Test Identification Parade is done in the presence of the Probation Officer or any other functionary attached to the Observation Home.

The police have to complete the investigation at the earliest to enable the Board to complete inquiry within 4 months.²³² The police need to attend the Board proceedings in plain clothes.²³³ The Police Investigation report should be filed within sixty days in cases where the alleged offence is liable for a punishment of less than seven years, and within ninety days in cases involving a punishment of seven or more years. The maximum period for investigation is a period of six months from the filing of charge sheet which is reasonable period

²²⁹ See Rule 84(5) The Juvenile Justice (Care and Protection of Children) Rules 2007

²³⁰ See Rule 84 (11) The Juvenile Justice (Care and Protection of Children) Rules 2007

²³¹ Supra 94

²³² Proviso to section 14 (1) The Juvenile Justice (Care and Protection of Children) Act 2000

²³³ See Rule 75 The Juvenile Justice (Care and Protection of Children) Rules 2007

within which the trial of the child must be completed. If not the prosecution against the child shall be quashed.²³⁴

The Supreme Court In *Court in its own Motion v. Department of Women and Child Development*²³⁵ had asked the District Legal Services Authority to start orientation programme for the police officers. The Court also framed importance guidelines for Juvenile Justice. In each case of lapse, Deputy Commissioner of Police to conduct inquiry and action shall also be taken against the erring police officials. The State District Legal services authority in pursuance of the Supreme Court judgment is conducting training program of every six months to the police officers in Goa.²³⁶

5.9. Role of Probation Officers

Probation Officer plays an important role in juvenile justice system. Right from the time the juvenile is apprehended by the police the probation officer continues to supervise the juvenile till his rehabilitation and social re-integration. He acts as the friend, philosopher and guide of the juvenile.²³⁷ A Probation Officer is appointed by the State government as a Probation Officer under the Probation of Offenders Act, 1958.²³⁸ Probation Officer may be recognized by the State government, or in any exceptional case, any other person, who, in the opinion of the court, is fit to act as a

²³⁴ *Master Rajeev Shankarlal Parmar Alias Pintya and Maharukh Adenwalla Vs. Officer –in-Charge of police Station, The Superintendent Mumbai Central Prison and State of Maharashtra through secretary, Home Department And The State of Maharashtra Vs. Master Rajeev Shankarlal Parmar @ Pintya and Marukh Adenwalla* MANU/MH/0471/2003 ; 2003 CriLJ4522

²³⁵ W.P.(C) 8889/2011 Dated 21st March, 2012

²³⁶ <http://nalsa.gov.in/> last assessed on 15/5/2012

²³⁷ *Supra* 98

²³⁸ See Section 2(s) The Juvenile Justice (Care and Protection of Children) Act 2000

Probation Officer in the special circumstances of the case.²³⁹To augment the probation service honorary or voluntary probation officers may be appointed from voluntary organizations and social workers if found fit.²⁴⁰ Probation Officer is a whole time staff of the Observation Home.²⁴¹The Juvenile Justice (Care and Protection of Children) Rules²⁴²authorise the competent authority to coordinate with Probation Officers, voluntary organisations and social workers found fit to render probation services.²⁴³

When any juvenile is arrested and detained or appears or brought before the Juvenile Justice Board in connection with an offence, the Juvenile Justice Board may direct that such juvenile be released on bail or placed under the supervision of a Probation Officer.²⁴⁴When a juvenile is arrested, the concerned Police have to inform the Probation Officer about the arrest, to enable him to obtain the 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.²⁴⁵ Before passing a final order as to whether the juvenile has committed an offence, the Board is required to obtain the social investigation report on the juvenile through a Probation Officer or a recognized voluntary organization and take into consideration the findings of such report.²⁴⁶ When the Board finds that the juvenile has committed an offence, it

²³⁹ See Section 13 of Probation of Offenders Act 1958

²⁴⁰ See Section 2(g) Read with Rule 85

²⁴¹ See Rule 68 The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁴² See Rule 85 The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁴³ Supra 210

²⁴⁴ See Section 12(1) The Juvenile Justice (Care and Protection of Children) Act 2000

²⁴⁵ See Section 13(b) The Juvenile Justice (Care and Protection of Children) Act 2000

²⁴⁶ See Section 15(1) and (2) The Juvenile Justice (Care and Protection of Children) Act 2000

may, while passing the final order, make an order that the juvenile in conflict with law, shall remain under the supervision of a Probation Officer during a period not exceeding three years.²⁴⁷ The Act also enables the state government to make rules providing for the preparation of a report by the Probation Officer in respect of each juvenile prior to his discharge from a special home regarding the necessity and nature of after-care, the period of such after-care, supervision thereof, and for the submission of report on the progress of such juvenile.²⁴⁸

The Juvenile Justice Board while passing any order may direct that the juvenile shall remain under the supervision of the Probation Officer. A Supervision Order may be passed by the Juvenile Justice Board at the time of granting bail²⁴⁹ or at the time of final disposal of the juvenile's case.²⁵⁰ If during the period of supervision, the Probation Officer reports that the juvenile has not been of good behaviour, the Juvenile Justice Board may after making inquiry order the juvenile's placement in a Special Home.

Supervision, means supervising a juvenile, either pending inquiry by the Board, or on a final order being passed by the Board on finding that the juvenile has committed an offence or after the juvenile is discharged from the Special Home. Supervision includes assisting the juvenile to develop contacts with family and also providing assistance to family members.²⁵¹ The probation officer has to help to establish linkages with voluntary workers and

²⁴⁷ See Section 15(1) (d, e, f) and (3) The Juvenile Justice (Care and Protection of Children) Act 2000

²⁴⁸ Supra 94

²⁴⁹ Section 12(1) of The Juvenile Justice (Care and Protection of Children) Act 2000

²⁵⁰ Section 15(3) of The Juvenile Justice (Care and Protection of Children) Act 2000

²⁵¹ See Rule 87(1)(f) The Juvenile Justice (Care and Protection of Children) Rules 2007

organizations to facilitate rehabilitation and social reintegration of juveniles and to ensure the necessary follow-up.²⁵² Once a juvenile is released the follow up process is important to extend help to them and guide them in their life.²⁵³ The probation Officer should conduct regular visits to the residence of the juvenile who is placed under their supervision and also places of employment or school attended by such juvenile and submit fortnightly reports.²⁵⁴ Probation Officer must maintain case file and registers.²⁵⁵ If the Juvenile has not been of good behaviour, the Probation Officer has to report to the Board for appropriate orders.²⁵⁶

The role of a Probation Officer that of a friend to the juvenile, and to assist and advise him during the probation period so that he fulfils his promise not to re-offend during this period, and, hopefully, ever again. He has to assist the institutionalized juvenile. As soon as a Probation Officer is allotted a juvenile on his admission to an institution, he has to assist the juvenile in communicating with family/guardian of juvenile and also provide assistance to family members.²⁵⁷ Probation officer has to attend Board proceedings and submit reports,²⁵⁸ as and when required.²⁵⁹ He has to clarify problems of Juvenile and deal with their difficulties in institutional life.²⁶⁰ He has to participate in the orientation, monitoring, education, vocational and

²⁵² See Rule 87(1)(i) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁵³ See Rule 87(1)(j) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁵⁴ See Rule 87(1)(k) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁵⁵ See Rule 87(1)(m) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁵⁶ See Section 15(3) The Juvenile Justice (Care and Protection of Children) Act 2000

²⁵⁷ See Rule 87 (1) (f) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁵⁸ Supra 94; See Also Supra 210

²⁵⁹ See Rule 87 (1) (b) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁶⁰ See Rule 87 (1) (c) The Juvenile Justice (Care and Protection of Children) Rules 2007

rehabilitation programmes of the juvenile.²⁶¹ He has to establish co-operation and understanding between the juvenile and the Officer- in-charge.²⁶² The Probation Officer must accompany juveniles, where-ever possible, from the office of the Board to Observation/Special Home.²⁶³

Contact with the Probation Officer is essential for the well-being of a juvenile. Even if a juvenile is released on bail, pending inquiry his contact with the Probation Officer should continue. The test of a proficient Probation Officer is that the juveniles whom he has worked with continue to remain in touch, and seek his guidance, especially when faced with a difficult situation.²⁶⁴

5.10. Juvenile Justice Board

The aim of the juvenile court is always the juvenile and its welfare, and not the act and its consequences which might have resulted in his or her being brought before the Court.²⁶⁵ The Juvenile courts follow a socio-legal approach as reformation and rehabilitation is its ultimate goal.

5.10.1. Principal Magistrate

The Juvenile Justice Board must consist of a Principal Magistrate. The Principal Magistrate must be a Metropolitan Magistrate or a Judicial Magistrate

²⁶¹ See Rule 87 (1) (d) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁶² See Rule 87 (1) (e) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁶³ See Rule 87 (1) (l) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁶⁴ Pinto, J. *National Initiative for Child Protection (NICP)*, Child line India Foundation and UNICEF, 2000, p.31 -35

²⁶⁵ M.S Sabnis, *Juvenile Justice and Juvenile Correction: Pride and Prudence*, Somaiya Publications Pvt. Ltd, Bombay and New Delhi; 1996 p.81

of the first class and two social workers one of them atleast must be a woman. The Magistrate must have special training in child psychology or child welfare.²⁶⁶ The social workers must be involved in health, education, or welfare activities pertaining to children for at least seven years.²⁶⁷ This panel is to be appointed by the State Government. The Magistrate and social workers must function as a Bench i.e working together but their roles are distinct. The Bench has to deal with juvenile delinquency in a child friendly manner. The Role of the principal magistrate is to ensure that the Juvenile Justice (Care and Protection of Children) Act, 2000 is followed. The two social workers have to ensure that the rehabilitation oriented objective of the Act is followed throughout the trial.

If the Juvenile Justice Board is satisfied that the juvenile has committed an offence then the social workers play an important role in deciding what should be done for the rehabilitation of the juvenile keeping in mind the circumstances under which the offence was committed.²⁶⁸ The Magistrate takes care of the deed the social workers take care of the need.²⁶⁹ The Principal Magistrate has to guide the other members of the Board and to carry them as a team. The Board has exclusive jurisdiction to deal with juvenile in conflict with law²⁷⁰.

²⁶⁶ See Section 4(3) Read with Rule 5(3)

²⁶⁷ Supra 210

²⁶⁸ Haque, N. *Juvenile Justice System and Extent of Juvenile Delinquency in India*, National Capital Law Journal, Vol.XII-XIII, 2007 -2008 p.202

²⁶⁹ Barry C Feld, *Bad Kids: Race and the Transformation of the Juvenile Court*, Oxford university Press , 1999

²⁷⁰ See Section 6 The Juvenile Justice (Care and Protection of Children) Act 2000

The Juvenile Justice Board is bestowed with powers as conferred on the Magistrate under the Code of Criminal Procedure, 1973 (2 of 1974²⁷¹). The Metropolitan Magistrate or the Judicial Magistrate of the First Class is designated as the Principal Magistrate. In case the Board is not sitting and the juvenile is produced before any single member of the Board, the single member is empowered to pass all appropriate orders except final disposition.²⁷² Any such order has to be ratified by the Board in the next meeting.²⁷³ Two members including Principal Magistrate can pass final orders.²⁷⁴ In event of difference of opinion between the members of the Juvenile Justice Board in passing of orders the majority opinion shall prevail.²⁷⁵ The view of Principal Magistrate will prevail when no majority opinion is available.²⁷⁶

Even after notifying the Juvenile Justice (Care and protection) Act, 2000 in Goa the State of Goa failed to constitute Juvenile Justice Board. Two students of V.M. Salgaocar College of Law through a Public Interest Litigation brought this to the notice of the High Court which directed the Government to establish Juvenile Justice Boards in Goa.²⁷⁷ In Goa there was only one Juvenile Justice Board. In the year 2011 vide Government notification²⁷⁸ two Juvenile Justice Boards were constituted one for North Goa and one for South Goa. The Juvenile Justice Boards are housed in the Apna Ghar located at Mercedes. Apna

²⁷¹ See Rule 5(2) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁷² See Section 5(2) read with Rule 11(10)

²⁷³ See Rule 11(14) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁷⁴ See Section 5(3) The Juvenile Justice (Care and Protection of Children) Act 2000

²⁷⁵ See Section 4(2) The Juvenile Justice (Care and Protection of Children) Act 2000

²⁷⁶ See Section 5 (4) The Juvenile Justice (Care and Protection of Children) Act 2000

²⁷⁷ *Anjali Salkar and Others V. State of Goa & Anr* Writ Petition (PIL) No. 446/2002

²⁷⁸ See Notification No.2-109(5)-2008/DWCD/1194 Dated 28-8-09 read with Corrigendum No. 2-109(5)-2008/DWCD/2084 dated 1-12-2009

Ghar is the state observation home for juveniles in conflict with law and children in need of care and protection. The Juvenile Justice Board North Goa has days of sittings on Mondays and Thursdays and the Juvenile Justice Board South Goa which has sittings on every Tuesdays and Fridays. Thus the Juvenile Justice Board has fixed days of sittings and timings. The frequency of the sittings depends on the pendency of the cases before the Juvenile Justice Board. The Apna Ghar has no witness box and the premises are child friendly.²⁷⁹ Expeditious completion of an inquiry by Juvenile Justice Board is vital so that the juvenile's life is not unnecessarily disrupted for a long period, and its rehabilitation process starts at the earliest.²⁸⁰ Prolonged incarceration pending inquiry causes trauma to the juvenile and has to be avoided. Every member of the Board sits for a minimum five hours per sitting.²⁸¹

The law recognizes speedy inquiry and has mandated the Juvenile Justice Board to complete inquiry in 4 months from the date of the commencement, and if the same is not possible due to the special circumstances of the case the Juvenile Justice Board is required to extend the stipulated period for completion of inquiry by a reasoned order.²⁸²

²⁷⁹ See Rule 9(1) and (2) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁸⁰ Singh, S. *Juvenile Justice System in India: A Critique*, Criminal Law Journal, Feb 2003, p.54-62

²⁸¹ See Rule 9(3),(4) and (5) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁸² See Section 14 of Juvenile Justice (Care and Protection) Act 2000

5.10.2. Functions of the Board

The Board has to adjudicate and decide cases of juvenile in conflict with law.²⁸³ They have to take cognizance of crimes committed under Section 23 to Section 28 of the Act which deal with offences committed on a child.²⁸⁴ The Board is responsible for the juveniles and has to monitor Institutions for juveniles in conflict with law.²⁸⁵ The Board has power over government functionaries of voluntary organizations who are appointed to look into the welfare of the juvenile.²⁸⁶ The Board may direct the District authority and Police to provide necessary infrastructure or facilities so that minimum standards of justice and treatment are maintained according to the spirit of the Act.²⁸⁷ The Board should maintain liaison with the Child Welfare Committee to ensure that the children are protected specially those who are in need of care and protection.²⁸⁸ The Board has to liaison with Boards in other districts to facilitate speedy inquiry and facilitate disposal of cases through due process of law.²⁸⁹ The Board may grant permission to those who wish to visit the premises of an Institution.²⁹⁰

The case is said to have been commenced before the Juvenile Justice Board when the juvenile is produced before the Juvenile Justice Board or when the Apprehension memo is filed or when the plea of the juvenile is recorded. While

²⁸³ See Section 6 r/w Rule 10(a)

²⁸⁴ See Section 27 r/w Rule 10 (b) and 18

²⁸⁵ See Rule 10(c) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁸⁶ See Rule 10 (d) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁸⁷ See Rule 10 (e) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁸⁸ See Rule 10(f) The Juvenile Justice (Care and Protection of Children) Rules 2007

²⁸⁹ Supra 98

²⁹⁰ See Rule 73 (1) The Juvenile Justice (Care and Protection of Children) Rules 2007

holding any inquiry, the procedure which is followed is as laid down in the Code of Criminal Procedure, 1973²⁹¹ is used hence the trial in summons cases²⁹² is followed.²⁹³ The Magistrate has to review the pendency of the cases every six months²⁹⁴ and can direct the Board to increase the frequency of the sittings or constitute an additional Board. In Goa an additional Board was set up.²⁹⁵

The law obligates the members of the Juvenile Justice Board regularly attend the sittings. The services of the members can be terminated if he fails to attend less than three fourth of the sittings in a year.²⁹⁶ The members can also be terminated after conducting inquiry if they are found to have been convicted under any law.²⁹⁷ Those who have indulged in child abuse or employed a child or have committed any human rights violations or immoral acts are also disqualified. The members can be terminated if they hold other occupations that does not allow them or give them sufficient time to work on the Board.²⁹⁸

5.10.3. Production before Juvenile Justice Board

If the Police or Special Juvenile police unit produces a juvenile before the Juvenile Justice Board. Board has exclusive jurisdiction to deal with Juvenile in

²⁹¹ Act No. (2 of 1974)

²⁹² See Section 54

²⁹³ Sharma, R. *Legal Framework for Children in Conflict with Law in India- Problems and Prospects* , The Journal of Social Work, Volume 71, Issue 3, January 2010 p. 351-363

²⁹⁴ Section 14(2) Juvenile Justice (Care and Amendment) Act 2006

²⁹⁵ Supra 5

²⁹⁶ See Section 4 (4)(iii) The Juvenile Justice (Care and Protection of Children) Act 2000

²⁹⁷ See Section 4(5) The Juvenile Justice (Care and Protection of Children) Act 2000

²⁹⁸ Supra 94

conflict with Law.²⁹⁹ Any other person producing the juvenile must inform the Police Station or Special Juvenile Police Unit about such production. If the Juvenile Justice Board is not sitting the juvenile may be produced before a single member³⁰⁰ who is empowered to pass all appropriate orders except final disposal.³⁰¹

5.10.4. Powers of the Juvenile Justice Board

On production of juvenile, before the Board it can pass any order it deems fit however first summary inquiry must be conducted on the same day. The Juvenile Justice Board must dispose of the case, if the evidence of the juvenile in conflict with law appears to be unfounded or where the juvenile is involved in trivial law breaking.³⁰² The Juvenile Justice Board may also consider the release of the juvenile on bail.³⁰³

The Board members have to first proceed to make due inquiry as to the age of that person produced before them.³⁰⁴ The Board shall determine the age of juvenile within a period of 30 days.³⁰⁵ Where a plea of juvenility is raised even in a later stage or in the appellate court (may be apex court) for the first time,³⁰⁶

²⁹⁹ See Section 6 of Juvenile Justice (Care and Protection) Act 2000

³⁰⁰ See Rule 11(4) of The Juvenile Justice (Care and Protection of Children) Rules 2007

³⁰¹ See Section 5(2) r/w Rule 11 (10)]

³⁰² See Rule 13(1)(a) The Juvenile Justice (Care and Protection of Children) Rules 2007

³⁰³ See Section 12 The Juvenile Justice (Care and Protection of Children) Act 2000

³⁰⁴ See Section 49 The Juvenile Justice (Care and Protection of Children) Act 2000

³⁰⁵ See Rule 12 (1)

³⁰⁶ Supra 94

the same should be examined having regard to the beneficial nature of the socially oriented legislation.³⁰⁷

The Board must ensure that the police file the Apprehension memo at the earliest as possible and produce prosecution witness when instructed to do so. The investigations culminate when the police file the report and the chargesheet.³⁰⁸ The chargesheet should contain the name of the complainant, the nature of the information, the name of the juvenile in conflict with law, witness statement etc.³⁰⁹ It is on the perusal of the chargesheet that the Juvenile Justice Board determines whether there is prima facie case against the accused. If further evidence is obtained after filing the Apprehension memo a supplemental apprehension memo shall be filed by the special juvenile police unit.

Juvenile Justice Board is empowered to stop the inquiry at any stage after the submission of charge-sheet and acquit or discharge the juvenile. The Juvenile Justice Board can act in suo-moto or on application being filed on behalf of the juvenile. For example if the prosecution continuously fails to present their witnesses before the Juvenile Justice Board the Board may invoke the Section of 258 Criminal Procedure Code to stop the inquiry. Also if the charge-sheet reflects an adult as being the main accused and the juvenile to have abetted or aided the offence, and the Magistrate acquits the adult accused, the Juvenile Justice Board may step in the proceedings and acquit or discharge the juvenile

³⁰⁷ *Bhola Bhagat v. State of Bihar*: (1997) 8 SCC 720; *Jitendra Ram v. State of Jharkhand*: (2006) 9 SCC 428 The issue regarding determination of juvenile status has been dealt already.

³⁰⁸ See Section 173 Criminal Procedure Code

³⁰⁹ *Supra* 94

depending upon the stage of inquiry. The invoking of Section 258 of Criminal Procedure Code by the Juvenile Justice Board results in expeditious disposal of juvenile cases especially when an inquiry is not going to yield any evidence against the juvenile.

In *Shri Audrey Pinto Director, SCAN Vs State of Government through Secretary Social Welfare, C.W.C., and Superintendent Apna Ghar, Mercedes, Goa*³¹⁰ An NGO in Goa filed a Public Interest Litigation to inquire into Rule 65(2) of the Juvenile Justice (Care and Protection of Children) Act 2000 and Section 33 of the Act as the said provisions were not being implemented. The High Court directed the Children's Court to endeavour to take the statements of children within three months for the filing of the apprehension memo before the court.³¹¹

In cases involving serious offences to safeguard the rights of juveniles the Juvenile Justice Board should record evidence in detail as in warrant case. The prosecution witness is examined by the Assistant Public Prosecutor on behalf of prosecution and cross-examination by the juvenile's lawyer.³¹² The evidence is recorded by the Juvenile Justice Board and a copy of the notes of evidence should be given to the juvenile's lawyer.

The Juvenile Justice Board must ensure that the prosecution witness is present to give evidence on the notified date, and in case they are not present seek

³¹⁰ Public Interest Litigation Writ Petition No. 2 OF 2010

³¹¹ Adenwalla, M. *Child Protection and Juvenile Justice System for Juveniles in Conflict with Law*, available at <http://www.childlineindia.org.in/pdf/CP-JJ-JCL.pdf>

³¹² Narrian, A. *Juvenile Justice in Globalizing India: Challenging our Conscience*, New Delhi, HAQ Center for Child Rights, 2002

report from the police for such absence. If prosecution witness fails to attend the Juvenile Justice Board the Board should issue a bailable or non-bailable warrant to guarantee the witness presence or else call the prosecution to close the case.³¹³

After the prosecution closes the case the Section 313 statement of the juvenile is recorded by the Juvenile Justice Board. Questions will be put by the Juvenile Justice Board to the juvenile to enable him to explain any portion of evidence that incriminates him. No oath is administered at the time of recording Section 313 of Criminal Procedure Code statement of the juvenile, nor is he liable for giving false answer.³¹⁴ The statement of the juvenile cannot be a substitute for the prosecution's evidence; the prosecution has to independently prove that juvenile has committed an offence. The juvenile's statement has to be considered by the Juvenile Justice Board in conjunction with evidence adduced by the prosecution.³¹⁵

The juvenile is given opportunity to lead defence evidence if he wishes. Defence witnesses are cross examined by the prosecution. Then the prosecution and defence arguments are heard. On the basis of the arguments and evidence the Juvenile Justice Board will pass orders. An opportunity is given to the defence to make arguments on point of sentence.³¹⁶

³¹³ Supra 94

³¹⁴ Supra 311

³¹⁵ Supra 280

³¹⁶ Supra 311

5.11. Application before Juvenile Justice Board on behalf of Juvenile

Different type of applications may be filed before the Juvenile Justice Board on behalf of the juveniles. Such applications may seek reliefs pending inquiry or on completion of inquiry. i.e during the juvenile's stay in the Special Home.

5.11.1 Bail

In juvenile jurisprudence the grant of bail is mandatory except in certain prescribed instances which could harm the child if so released.³¹⁷ The nature and gravity of the offence is not a condition under which bail can be refused to the juvenile.³¹⁸ If the child is likely to come in association with any known criminals³¹⁹ or shall expose him to moral danger or where his or her release would defeat the ends of justice³²⁰ all these factors have to be considered in the context of the welfare of the juvenile.³²¹ Bail cannot be rejected on the ground that juvenile had criminal antecedents.³²² Releasing a juvenile on bail is essential as it prevents disruption of his life.

The Indian courts have repeatedly held that bail can be refused to a juvenile on three prescribed grounds³²³ as mentioned in Section 12 of the Act and not on

³¹⁷ *Manmohan Singh v. State of Punjab* (2004) 136 PLR 497 :MANU/PH/1005/2003; *Manoj @ Kali v. State (Delhi)* 2006 CrLJ 4759

³¹⁸ *Master Niku Chaubey .v. State (Delhi)* 129(2006) DLT 577:MANU/DE/8535/2006

³¹⁹ *Devesh v. State (Delhi)* MANU/DE/8693/2006; *Dattatray G. Sankhe v. State of Maharashtra (Bombay)* 2003(2) ALD (Cri) 139:2003(2)ALT (Cri) 13:2003(4) Mah LJ 15

³²⁰ See Section 12 of JJAct 2000

³²¹ *Master Abhishek (Minor) v. State (Delhi)* 2005 VI AD del 18 ; *Dev Vrat (Minor) V. Government of NCT of Delhi*, MANU/DE/8999/2006

³²² *Aswani Kumar Singh v. State of Jharkhand* 2008(3) JCR 459: MANU/JH/0445/2008

³²³ *Dattatray G. Sankhe vs. State of Maharashtra 7 Ors* 2003 AIIMR(Cri) 1693 (Bombay); *Ranjit Singh vs. State of H.P* 2005 CriLJ 972(H.P)

grounds of heinousness of offence³²⁴ or prima facie proof of guilt.³²⁵ Bail cannot be rejected merely because parents are involved in the same case.³²⁶ The juvenile is engaged in smuggling activity the possibility of his joining the gang and repeating the activity if released on bail cannot be ruled out and thus he was denied bail.³²⁷ In another case bail application was refused where the juvenile was involved in the murder of a foreign tourist.³²⁸

5.11.2. Leave of Absence Applications

A juvenile in an observation home or special home may in special circumstances be permitted by the Juvenile Justice Board to leave the institution. The competent authority may also permit the leave of absence to any juvenile or child to allow him on special occasions like examination, marriage of relatives, death of kith and kin or the accident or serious illness of parent or any emergency of like nature to go on leave under the supervision for a period not exceeding seven days excluding the time taken for the journey.³²⁹

5.11.3. Release of Juvenile incarcerated in special home

Under The Juvenile Justice (Care and Protection of Children) Act, 2000 a juvenile found to have committed an offence is placed in a special home may be released by the Juvenile Justice Board under the care of the parent or

³²⁴ *Vikky alias Vikram Singh vs. State of U.P* 2003 CriLJ 3457 (Allahabad) ; *Vijendra Kumar Mali, etc. vs. State of U.P* 2003 CriLJ 4619 (Allahabad)

³²⁵ *Rahul Mishra vs. State of M.P* 2001 CriLJ 214 (M.P)

³²⁶ *Mochi Ram Lohra .v. State of Jharkhand*, 2008(3)JCR 513 (Jhr):MANU/JH/0432/2008

³²⁷ *Jaif Ahmed Sheikh v. State of Rajasthan* 3272 :RLW 2004(2) Raj 1090:MANU/ RH/ 0009/2004

³²⁸ *Gopal Sharma v. State of Rajasthan* RLW 2004(1) Raj 450 :MANU/RH/0371/2003; See Supra 104

³²⁹ See Section 59(2) of The Juvenile Justice (Care and Protection of Children) Act 2000, ;See Supra 311

guardian or any other person named in the Juvenile Justice Board's order. When a juvenile or the child is kept in a children's home or special home. A report has to be filled by the Probation Officer or social worker or a government or a voluntary organization, as the case may be. Based on the report the competent authority may consider the release of a juvenile or the child permitting him to live with his parent or guardian. The juvenile can be sent under the supervision of any authorized person named in the order willing to receive and take charge of the juvenile or the child to educate and train him for some useful trade or calling or to look after him for rehabilitation.³³⁰

5.12. Orders that may be passed by Juvenile Justice Board

A variety of dispositions such as care, guidance and supervision orders, counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care is available to ensure that children are dealt in a manner appropriate to their well being both to their circumstances and offence.³³¹

Under Section 15(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 has a wide range of orders that the Juvenile Justice Board can pass from admonition and counselling to confinement in a Special Home. When the Board is satisfied that the juvenile has committed an offence the Board may allow the juvenile to go home after advice and admonition following inquiry

³³⁰ See Section 59(1) The Juvenile Justice (Care and Protection of Children) Act 2000, 2000 ; *ibid*

³³¹ See Article 40 (4) CRC

and by giving counselling to the parent or the guardian.³³² The Board can direct the juvenile to participate in group counselling and similar activities.³³³ The Board can order the parent or the juvenile in case he is above fourteen years and earns money to pay fine.³³⁴ The Board can order the juvenile to perform community service that is not degrading and dehumanizing like cleaning park, getting involved with habitat for humanity, serving the elderly in nursing home, helping out the local fire or police department, helping at a local hospital or serving disabled children.³³⁵ The Board may direct the juvenile to be released on probation of good conduct and place him in care of any parent, guardian or other fit institution. Such parent, guardian or fit person has to execute a bond with or without sureties for good behaviour and wellbeing of the juvenile for any period not exceeding three years. The Board may after looking at the nature of offence and circumstances of the case reduce the period of stay.³³⁶

A juvenile who has crossed 18 years of age should not be incarcerated in a Special Home. This gave rise to a situation where a juvenile who on the date of the offence is 17 years 10 months of age and on completion of inquiry had crossed the age of 18 years³³⁷ could not be placed in a special home though such detention was in the opinion of the Juvenile Justice Board an appropriate mode of treatment for that juvenile.³³⁸

³³² See Section 15(1)(a) The Juvenile Justice (Care and Protection of Children) Act 2000

³³³ See Section 15(1)(b) Read With Rule 15(4)

³³⁴ See Section 15(1)(d) read with Section 16(1)

³³⁵ See Section 15(1) (c) Read with Rule 2 (e) and 15(4)

³³⁶ Supra 280

³³⁷ *Gurpreet Singh vs. State of Punjab* (2005) 12 SCC 615

³³⁸ Supra 311

5.13. Constitutional and Procedural Safeguard

Merely because the juvenile is not treated severely under juvenile legislation does not mean that he should be deprived of basic constitutional and procedural safeguards that an adult is entitled to.³³⁹

5.13.1. Appeal

Any order passed by the Juvenile Justice Board may be challenged in appeal before the Sessions Court. The appeal is to be filed within thirty days of the Juvenile Justice Board's passing of the order.³⁴⁰ The Sessions Court may entertain the appeal if the court is satisfied that the appellant was prevented to file the appeal within time. Section 52 (2) of the Juvenile Justice (Care and Protection of Children) Act, 2000 bars the filing of an appeal from an order passed by the Juvenile Justice Board acquitting the juvenile. Hence an order of acquittal is a final order that cannot be challenged in appeal before the Sessions Court. Section 52(3) of Juvenile Justice (Care and Protection of Children) Act, 2000 bars the filing of second appeal from an order passed in appeal by the Sessions Court. Hence an order of conviction can only be challenged once by the juvenile.³⁴¹

5.13.2. Revision

Under juvenile legislation the High Court is empowered with revision jurisdiction to examine the legality or propriety of any order passed by the

³³⁹ Beijing Rules deal with similar provisions

³⁴⁰ See Section 52 of The Juvenile Justice (Care and Protection of Children) Act 2000

³⁴¹ *ibid*

Juvenile Justice Board or the Sessions Court. Ordinarily a finding of guilt passed by the Juvenile Justice Board is challenged in appeal before the Sessions Court. The order passed in appeal by the Sessions Court may be questioned by either party before the High Court in revision. Any person aggrieved by an order passed by the Juvenile Justice Board may directly file a revisions application to the High Court. The party aggrieved by a finding of guilt loses the opportunity to challenge the order twice, once in appeal and next in revision.³⁴²

A revision application before the High Court may be filed by the juvenile from an order passed by the Sessions Court confirming the Juvenile Justice Board's order.³⁴³

5.14. Powers of Sessions Court and High Court

Section 6(2) of the Juvenile Justice (Care and Protection of Children) Act 2000 allows the High Court and the Sessions Court to determine the issues and pass orders regarding a juvenile when the same is brought before them in appeal , revisions or otherwise. The word 'otherwise' is wide and empowers the High Court and the Sessions Court to entertain any petition or application dealing with juveniles in conflict with law and pass orders thereon without remanding the issue for reconsideration to the Juvenile Justice Board.³⁴⁴

³⁴² Supra 94

³⁴³ Supra 98

³⁴⁴ Supra 94

5.15. Institutions under the Juvenile Justice system

The philosophy of institutionalizing the juvenile offenders has undergone many changes the focus is now on revenge, incapacitating the juvenile from continuing a life of crime and deterrence. Institutionalization is being advocated not for reformation or rehabilitation of juveniles. But by institutionalising the juvenile the state sends a message into the society that it intends to deal strictly with juveniles especially those who have committed serious offences such as murder and rape. Incarceration is a means to placate the fearful public that strong action is being taken against a juvenile offender and at the same time rationalize it by propounding that treatment within institution is for the future and welfare of the institutionalized child.³⁴⁵

5.15.1. Observation Home

An observation home is an institution established for the temporary reception of juveniles in conflict with law during the pendency their inquiry before the Juvenile Justice Board.³⁴⁶ After Liberation of Goa from Portuguese Colony in 1961 there were no proper institutions to house juveniles in the territory they were sent to the 'Certified School' situated at Khanapur in the Belguam District of the state of Karnataka. Such an arrangement continued till 14 Nov, 1975 when the Bal Niketan an institution to house juvenile delinquents, neglected and abandoned children was set up in Ribandar. In October 1999 the Bal Niketan was shifted to a new premises in Mercedes. In September 2002 the Bal

³⁴⁵ Supra 311

³⁴⁶ See Section 8 of The Juvenile Justice (Care and Protection of Children) Act 2000

Niketan was renamed Apna Ghar by which it is known today. Apna Ghar houses children in conflict with law and children in need of care and protection. This Institution is set up under the Juvenile Justice (Care and Protection of Children) Act, 2000. The Protective Home is set up under Immoral Traffic (Prevention) Act, 1956 to house these children who are victims of Immoral Trafficking.³⁴⁷

There must be separate observation homes for girls and boys.³⁴⁸ Juveniles are to be segregated in an observation home according to their age: 7 to 12 years, 12 to 16 years and 16 to 18 years. This separation is essential to curtail bullying of the younger juveniles at the hands of the older ones, and to protect the young juveniles from the influence of the older juvenile offenders, who may have committed violent offences or have been consistently engaged in criminal activities. This segregation takes place pursuant to preliminary inquiries that are conducted in the Reception Unit of the Observation Home where the juvenile is initially kept for classification according to age, and physical and mental status. Separate Observation Homes are to be maintained for boys and girls.³⁴⁹

5.15.2. Special Home

A special home is established for reception and rehabilitation of juveniles in

³⁴⁷ Menon, N.R. and Banerjee D. *Correctional Services*, Criminal Justice India Series, Volume 9, Goa, 2002 p.125

³⁴⁸ See Section 9 Read with rule 16(1)

³⁴⁹ Supra 94

conflict with law.³⁵⁰ On completion of inquiry if the Juvenile Justice Board is of opinion that the juvenile should be institutionalised he is required to be placed in a Special Home for his treatment.³⁵¹ Special homes may be established and maintained by the State Government either by himself or by agreement with voluntary organization in every district separately for boys and girls.³⁵²

Placement of a juvenile in a Special Home is under the law restricted to a period of 3 years. During their stay in the Special Home a juvenile should be able to avail of education or vocational courses depending upon the child's aptitude, as also facilities for sports and co-curricular activities such as music, painting, reading, drama, yoga, etc.³⁵³

5.15.3. Inspection of Institutions

Observation Homes and Special Homes are closed institutions; hence, it is essential that some checks be put in place to ensure transparency and accountability in their functioning in order to ensure that the institutions are not mal-administered and that the children housed therein are not ill-treated. In a public Interest Litigation *Audrey Pinto v. State Government*³⁵⁴ the High Court directed the Principal Judge of North Goa Panaji to visit Apna Ghar and ascertain whether the premises are suitable as required according to Rule

³⁵⁰ See Section 9 of The Juvenile Justice (Care and Protection of Children) Act 2000

³⁵¹ Shilwant, S.S. *Role of Correctional institutions, Child Welfare Boards, police, Juvenile courts and other social agencies in prevention and control of global problems of juvenile delinquency*, M.D.U. Law Journal, 2002 p. 251

³⁵² See Section 9 read with Rule 16(1)

³⁵³ Ashoka, *Children in correctional institutions – A Study of their educational and vocational background*, Indian Journal of Criminology and Criminalistics, 2009, 30(1), p.24-35

³⁵⁴ No.2 of 2010

24 of Juvenile Justice (Care and Protection of Children) Rules, 2007. The learned judge was also required to submit report in this regard.

Inspection committees are to be constituted to inspect Children's Homes and social auditing³⁵⁵ to be conducted by the Central and State government. Children can be placed in Children's Home pending inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.³⁵⁶

5.16. Role of Lawyers

Representation by a lawyer is imperative to assure a juvenile, justice. It is preferable for a juvenile to be represented by a competent lawyer who is familiar with the juvenile jurisprudence and its essence. Juveniles due to their age, in the absence of lawyers are unable to meaningfully participate in their inquiry. They do not understand the legal language its procedure and nuances. In absence of legal help juvenile justice will remain a distant dream and harm the growth and development of the juvenile.

The Next Chapter analyzes the Child Law in Goa i.e. the Goa Children's Act, 2003. The chapter frames the rubric of the offences outlined in the Act and analyses the 'child friendly' nature of the Children's Court.

³⁵⁵ See Section 36 of The Juvenile Justice (Care and Protection of Children) Act 2000

³⁵⁶ See Section 34 (1) of The Juvenile Justice (Care and Protection of Children) Act 2000; See Reddy, Y.P. *Justice to Juvenile Offenders: Trends and issues*, Criminal Law Journal 1992 April 98, p.49-53

6. Child Law in Goa – The Goa Children’s Act, 2003

The Constitution of India permits positive discrimination in favour of children and enumerates that the State can direct its policy to ensure that children are not abused. Keeping in mind this mandate of our Constitution it is incumbent upon the State to create an environment or a culture where children feel safe and secure. India being a signatory to the United Nations Convention on the Rights of Child has placed an obligation on the country to give primary consideration to the best interest of the child in all actions undertaken by it including the actions undertaken by the Courts of Law, Administrative Authorities or the Legislative Bodies. The Convention on the Rights of the Child in its Articles 32(a) to (d) and Article 34 places a specific duty on the State to protect the child from all forms of sexual exploitation and sexual abuse.

The major existing Central laws that address sexual offences against children in India are The Indian Penal Code, 1860, The Immoral (Traffic) Prevention Act, 1956, The Cable Television Network (Regulation) Act, 1995 and The Information and Technology (Amendment) Act, 2008 and the Prevention of Children from Sexual Offences Act 2012. The Prevention of Sexual offences against Children, Act 2012 is a specialized law while the other laws make some attempt to define some offences against children. However, some offences like sexual assault, sexual harassment, sexual violence against

children¹ etc still remain undefined in any laws present in the country. Further there is no effective law dealing with sexual abuse of a male child. In such a scenario, with increasing incidents of sexual offences against children and low conviction rate, one can only conclude that the existing laws are not adequate to protect children.

Currently, children's trials were getting mixed with adults trials.² The Criminal Justice Administration System was more geared to dealing with the crimes committed by adults. Investigations undertaken by the police were also geared to handling crimes against adults.³ In such a situation, it was very difficult to safeguard the interests of the child both as a victim and as a witness. Hence there was a need to bring forth a jurisprudence which was child sensitive and which provided a child-friendly environment in dealing with crimes against children.

This Chapter lays out the normative framework of the Goa Children's Act, 2003 and dwells on the child friendly provisions of the said Act. It focuses on the jurisprudence of the Children's Court and the trial mechanism for the child victim.

¹ Though the Act Prevention of Sexual Offences Against Children, 2012 is a specialized law, as of now it is a law without teeth since the Government is still to set up Children's Court to try offences against children.

² Satyashree, P.E, *Children the Neglected Lot?* Kerela Law Times 2005, Jul3(2) p.12

³ Valsamma, P. *Sexual abuse of Children: Need for Legislation*, Indian Bar Review, Jan-Jul, 2005 p.113

6.1. Need for Special Law for Child Victims

Sexual offence of any kind not only harms the child physically but also causes long term damage to the mental state of the child.⁴ Therefore, there is need to provide an effective mechanism for handling child-related sexual offences through a legislation. There is an urgent need for initiating some preventive measures so as to ensure that chances of sexual exploitation of children remain at a minimum. Along with preventive, protective safeguards need to be put in place. The relief and rehabilitation of these most vulnerable victims is also needed to be taken care of.

In the case of *Sakshi vs. Union of India*⁵ the Supreme Court had recognized the need to enact a new law or amend existing law on the issue of child sexual abuse. The Court held the interpretation laid in Section 375 and Section 376 of the Indian Penal Code, 1860 is not in tune with the current state of affairs existing in the society particularly in matters of sexual abuse. Pursuant to the order passed in Sakshi Case the Law Commission of India reviewed the laws with regard to child sexual abuse. The Law Commission recommended the use the word “sexual assault” instead of rape for such offences.⁶

6.2. Legislative Process of Passing Goa Children’s Act, 2003

The Government of Goa declared the year 2003 as the year of the child. The Secretary of Women and Child Development Rina Ray initiated a series of

⁴ Debate of the Hon’ble Rajya Sabha on Prevention of Sexual Offences Against Children, Bill 2011

⁵ (1999)6SCC 591

⁶ Bhat, A, *Supreme Court on Children*, Human Rights Law Network, New Delhi 2006

consultations in collaboration with non-governmental organizations to identify the problems of children in Goa. Non Governmental Organizations working in different parts of Goa in collaboration with the government facilitated taluka level consultations after which district level consultations were held. This concluded in a State Level Consultation in January 2003 facilitated by the Directorate of Women and Child Development. The recommendations which emerged from these consultations were collated and referred to while drafting the Goa Children's Act, 2003.

In March 2003 Rina Ray the Secretary of Women and Child Development held a meeting with the representatives of various nongovernmental organizations working for child rights in Goa and V.M. Salgaocar College of Law, Miramar, Panaji Goa inviting them to draft the said Act. Accordingly the issues which were considered were the problem of child sex tourism, child sexual abuse, the problems of children in difficult circumstances, the issue of child trafficking and child labour, education, health of the child and children's homes.⁷

These fourteen participatory and transparent consultations were held to collate and define the action necessary to bring about a child friendly state which was in terms of the resolution of the United Nations General Assembly a 'World Fit for Children.'⁸The recommendations of the final State Level Workshop held on 9th and 10th January 2003 culminated in the Goa Declaration on the Rights of

⁷ Desai, N and Pinho, E. *Child Sexual Abuse in Goa – A Case Analysis*, Children Rights in Goa, 2006 p.1

⁸ The Agenda of the Special Session for creating a 'World Fit For Children' is available at <http://www.unicef.org/specialsession/wffc/index.html>

the Child which was adopted by the State Government as the State Policy for Children. A major recommendation of the Goa Declaration was to enact a Legislation that will take care of uncovered areas in Central Acts and consider issues which should be covered by the legislation. The Legislations should also be able to make enforceable the provisions pertaining to children in the Directive Principles of the State Policy and the Convention on the Rights of the Child.

6.2.1. Proactive Steps in Goa

To protect, promote and preserve the best interests of children in Goa and to create a society that is proud to be child friendly⁹ the Goa Government passed the Goa Children's Bill, 2003.¹⁰ The Vision of the State of Goa was to be at par with the developed country by 2020. The Bill was debated and passed in the Legislative assembly and finally the State of Goa got a specialized law for its children namely The Goa Children's Act, 2003 which came into force on 8th July, 2003. The Goa Children's Act, 2003¹¹ has jurisdiction and operates within the geographic territory of the State of Goa. The State of Goa accepts the concept that where children are concerned they are covered by the precise meaning of the phrase '*Res Ipsa Loquitor*' which means there is no argument. The Act also functions on the principle of '*best interest of child*'.¹² This principle seeks to ensure the physical, emotional, intellectual, social and moral

⁹ Statement of Objects and Reasons of the Goa Children's Act, 2003

¹⁰ Bill No 21 of 2003

¹¹ Goa Act 18 of 2003 dated 8/7/2003 In Official Gazette Government of Goa Series I No.15 dated 14th July, 2003

¹² See Section 2(uu)

development of the child, and to provide him or her, safe environment from all kinds of child abuse. The predominant and non-negotiable position of children and their rights has been clearly spelt out in the Act. This Act seeks to create the right conditions so that the rights of the child can be realized. The Goa Children's Act, 2003 attempts to make the United Nations Convention on the Rights of the Child as acceded by the government of India legally enforceable in Goa.¹³ The Act has 42 Sections.

6.3. The Goa Children's Act, 2003

The Goa Children's Act, 2003 is a self contained comprehensive legislation. It provides for protection of children from offences like sexual assault, sexual harassment and pays due regard to safeguarding interest and well being of the child at every stage of the judicial process. The Act was the first legislative attempt to cover all types of children in vulnerable situations like child labor, street children, child trafficking particularly those victims of child sex tourism.

It incorporated child-friendly procedures and provision and called for the establishment of Special Courts for speedy trial of such offences. The Children's Court was set up and special Officers have been appointed according to the provisions of the Act. The Children's Court has the power to try all offences 'against children'. These include rape of a minor, kidnapping, murder, and other offences.¹⁴ For an offence to be tried under the Goa

¹³ See Section 3(5)

¹⁴ These offences are punishable offences under the Indian Penal Code, 1860. Rape Under See Section 375 IPC, Kidnapping S. 363 IPC and Murder under See Section 302 IPC.

Children's Act, 2003 the victim of the offence must be a child. The Aim of the Goa Children's Act, 2003 has been to contribute to the enforcement of the rights of all children and to provide for their safety, security and protection from sexual abuse and exploitation. Goa has also set up a State Commission for Protection of Children.¹⁵ Thus Goa has all administrative and judicial bodies required to guarantee child rights in Goa.

Goa Children's Act, 2003 was amended twice. The first Amendment was The Goa Children's (Amendment) Act, 2004¹⁶ which came into force at once. The next amendment was The Goa Children's Act, 2005 which also came into force at once.¹⁷ The Amendment enhances the punishment and makes all offences cognizable and reduces the layers of the authorities. It has also made possible appointment of special taluka level officers for effective enforcement.¹⁸

In exercise of the powers conferred by section 37 read with sub-section (2) and (3) of section 29, section 32 and Section 38 of the Goa Children's Act, 2003 and all other powers conferred by the said Act in this behalf, the Government of Goa made rules called as the Goa Children's (Court) Rules, 2004.¹⁹

¹⁵ See Notification 2-61(1)-97/ICDS/637(A) The Goa State Commission for Children Rules, 2004

¹⁶ Goa Act No. 12 of 2004 published in Official Gazette (Extraordinary), Series I, No. 8, dated 20-5-2004

¹⁷ Goa Act No. 20 of 2005 published in Official Gazette (Extraordinary), Series I, No. 37, dated 21-12-2005.

¹⁸ Only in the year 2006 Mamlathars were appointed as special officers for One year. Sadly the government never appointed Special Officers again.

¹⁹ See Notification No 2-61(1)-97/I.C.D.S./637(B). Manual of Goa Law, Vol.1 p. 603 - 605

The Goa Children's Act, 2003 has power to override other laws in the State of Goa.²⁰ The Goa Children's Act, 2003 has power to override any other State Law or custom or usage.²¹ The Act envisages the setting up of a Children's Court hence no civil, criminal court has jurisdiction to deal with any question of dispute relating to a child victim.²² The High Court and Supreme Court have appellate jurisdiction.²³ The State Government is responsible and has to take appropriate measures to ensure effective implementation of the Act.²⁴

The focus of the Act is on the 'Child in need.'²⁵ The Act defines a 'child in need' which includes all children those whose rights are being violated or who need special attention and/or protection. Such a child is very vulnerable²⁶ and there are high chances of it becoming a victim. A child in need could include any child in need of care and protection. It also includes a juvenile in conflict with law.²⁷ Further it also encompasses children who are victims of child labour,²⁸ street children,²⁹ a child who is dedicated³⁰ or even a child who has been residing in a children's home.³¹ It includes a child given in foster care³² or a child in situation of abuse.³³ It covers differently abled children³⁴ and children

²⁰ See Section 35 of Goa Children's Act, 2003. Also See Section 5 Criminal Procedure Code.

²¹ See Section 35 of Goa Children's Act, 2003

²² See Section 34 of Goa Children's Act, 2003

²³ See Section 34 of Goa Children's Act, 2003

²⁴ See Section 36 of Goa Children's Act, 2003

²⁵ See Section 2(1) of Goa Children's Act, 2003

²⁶ Section.2(i) (xiii) of Goa Children's Act, 2003

²⁷ Section.2(1)(i) of Goa Children's Act, 2003

²⁸ See Section 2(1)ii of Goa Children's Act, 2003

²⁹ See Section 2(1)iii of Goa Children's Act, 2003

³⁰ See Section 2(1)iv of Goa Children's Act, 2003

³¹ See Section 2(1)vi of Goa Children's Act, 2003

³² See Section 2(1)viii of Goa Children's Act, 2003

³³ See Section 2(1)ix of Goa Children's Act, 2003

³⁴ See Section 2(1)x of Goa Children's Act, 2003

of prisoners.³⁵ Children of commercial sex workers³⁶ and also vulnerable children are included in this definition. It is wide enough to include children whose parents are divorced³⁷ or a child who has a disease or a social stigma attached to it like leprosy and HIV.³⁸ The Act also casts a duty on the Government to notify high risk areas in which children may be vulnerable as there may be chances of exploitation of children in such places.³⁹ The focus of the Act is to ensure that all children have a safe environment.⁴⁰ A safe environment is an environment in which he/she will not be abused in any way and his/her development will be nurtured.⁴¹

6.4. Offences under the Goa Children's Act, 2003

The Goa Children's Act, 2003 enumerates offences which can be tried by the Children's Court. The word "Offence" has been defined as an act or omission made punishable under any law.⁴² Offences like child abuse, child trafficking, child labour, commercial sexual exploitation and all kinds of sexual offences can be tried under the Act. All offences to be tried under this Act are cognizable and non-bailable⁴³ offences.⁴⁴ The words complaint, bailable offence, non-bailable offence, cognizable offence, charge-sheet, police report, warrant, search warrant, remand, offence, compounding, and cognizance have been

³⁵ See Section 2(1)(xi) of Goa Children's Act, 2003

³⁶ See Section 2(1)(xii) of Goa Children's Act, 2003

³⁷ See Section 2(1)(xiv) of Goa Children's Act, 2003, Also See Section 2(1)(xv) of the Act.

³⁸ See Section 2(1)(xiii) of Goa Children's Act, 2003

³⁹ See Section 2 (r) of Goa Children's Act, 2003

⁴⁰ See Section 8 of Goa Children's Act, 2003

⁴¹ See Section 8(1) of Goa Children's Act, 2003

⁴² See Section 2(s) of Goa Children's Act, 2003

⁴³ See Section 33 of Goa Children's Act, 2003

⁴⁴ Except those under See Sections 3, 4, 5 and clause (c) of sub-See Section (5) of See Section 7.

given the same meaning as assigned to them under the Code of Criminal Procedure, 1973.⁴⁵

6.4.1. Child Labour

In the State of Goa a child is prohibited from working if it has not completed the age of 14 years.⁴⁶ Child Labour includes all forms of hazardous and non-hazardous employment as defined in the *Child Labour (Prohibition and Regulation) Act 1986*.⁴⁷ Non-hazardous employment is interpreted as defined in the *Goa Daman and Diu Shops and Establishment Act, 1973*.⁴⁸ In case of hazardous and non-hazardous employment of children such offences are prosecuted under these two enactments if the establishment, in which the child is working is listed in these Acts. The Goa Children's Act, 2003 defines 'domestic employment' as employment in households, doing work of a domestic nature either temporarily, permanently, and piece rated or part time.⁴⁹ It also includes all forms of self employment such as rag picking, plastic bag selling, running errands, carrying load of shoppers.⁵⁰

The punishment for employing a child for hazardous employment is a fine of Rupees fifty thousand and simple imprisonment of one year of the employer.⁵¹

The punishment for employing a child for non-hazardous employment is a fine

⁴⁵ See Section 2 (zb) of Goa Children's Act, 2003

⁴⁶ Dr. Padhi, P.K. *Child Labour :Retrospect & Prospect*, Laxmi Offset, Cuttack, p.3

⁴⁷ See Part A and Part B of the Act available at

http://pblabour.gov.in/Pdfs/Child%20Labour%20_Prohibition%20_%20Regulation_%20Act,%201986.pdf

⁴⁸ Act No.13 of 1974 See Section 7 (b) of Goa Children's Act, 2003

⁴⁹ See Section 7 (c) of Goa Children's Act, 2003

⁵⁰ See Section 7 (d) of Goa Children's Act, 2003

⁵¹ See Section 7 (5) (a) of Goa Children's Act, 2003

of Rupees Twenty five thousand and simple imprisonment of one year of the employer.⁵² All children identified as child labourers have to be placed in Children's Homes or State run institutions.⁵³ The punishment for employing domestic labour is fine of Rupees fifty thousand.⁵⁴

6.4.2. Commercial Sexual Exploitation

Commercial Sexual Exploitation of children⁵⁵ means all forms of sexual exploitation of a child including visual depiction of a child or engaging a child in explicit sexual conduct. It includes acts like child prostitution and child trafficking. It could also include acts in religious name like the devdasi system. Commercial sexual exploitation is sexual conduct which could be real or stimulated.⁵⁶ It could also include the lewd exhibition of the genitals intended for sexual gratification of the user and being done with a commercial purpose. The commercial purpose could be in terms of trade where money is involved or for kind. It also includes acts like implying, allowing, using, inducing or coercing any child to engage in sexual conduct. Even if a child is used to assist other persons to engage in explicit sex it is included within the ambit of this definition. Making the child available in any form for commercial sexual exploitation is prohibited

⁵² See Section 7(5)(b) of Goa Children's Act, 2003

⁵³ See Section 7(3) of Goa Children's Act, 2003

⁵⁴ See Section 7(5)(c) of Goa Children's Act, 2003

⁵⁵ See Section 2(jj)

⁵⁶ Mohammed Sahed, *Child and Criminal Law in Tanzania*, Academy Law Review, 2004:28(1&2), p.189

A child rescued from trafficking is to be placed in a protective home and steps need to be taken to deny visiting rights to perpetrators. In case the parent is a perpetrator the parent can be denied visiting rights.⁵⁷ Punishment for exploiting a child for commercial sexual purpose includes a penalty a fine of Rupees one lakh and an imprisonment which may extend to a term of seven years.

Using the child for tourism and tourism related activities amounts to an offence of sexual abuse of the child. This is a non-bailable offence.⁵⁸ Providing materials, soliciting customers, guiding tourists and other clients is also a punishable offence. Anyone using children as touts or agents such acts would be punishable with imprisonment for three years and fine of Rupees fifty thousand.⁵⁹

6.4.2. 1. Child Trafficking

Exploitation includes exploitation for the purpose of prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁶⁰ It could include simply procuring, recruiting or transporting or receipt of persons legally or illegally by use of force or abuse of power for monetary gain or any other reason.⁶¹ The following forms and purposes of child trafficking have been identified namely Sexual Exploitation, Forced prostitution, Socially and religiously sanctified forms of

⁵⁷ See Section 9(5)

⁵⁸ See Section 8(11) of Goa Children's Act, 2003

⁵⁹ See Section 8 (12) of Goa Children's Act, 2003

⁶⁰ In India the Immoral Traffic Prevention Act, 1956 is the law used to combat trafficking in women and children

⁶¹ See Section 2(z) equivalent to See Section 5 of Immoral Traffic Prevention Act, 1956

prostitution, Sex tourism, Pornography, Illegal Activities, Begging, Organ trade, Drug Peddling and Smuggling.⁶²

The Goa Children's Act, 2003 for the first time gave the word 'trafficking' a legal definition in Indian jurisprudence. Section 2(z) defines child trafficking. Child trafficking could be for procurement, recruitment, transportation, transfer, harbouring or receipt of children. This could be a legal or an illegal process.⁶³ Illegal procurement occurs when the child is brought across borders, by means of threat or use of force or other forms of coercion. The child could be abducted. In some cases fraud or deception may be used. There is always an abuse of power as in such cases the child is vulnerable and the person willing to pay money succeeds in obtaining the consent of the child.⁶⁴ Sexual exploiters include not only 'users' but also include suppliers, pimps, brothel owners and protectors like government officials, local politicians and even the police.

6.4.2.2. Child Prostitution

Prostitution is commonly defined as an activity where sexual acts are enhanced for payment. The payment need not be a monetary transaction but could be in kind like a place to stay or food to eat. Child prostitution is a form of child sexual exploitation. The Goa Children's Act, 2003 calls for protection of the

⁶² Nair P.M, *Trafficking of Women and Children in India*, Orient Blackswan, 2005 p.14

⁶³ Abraham, S. *Going Nowhere Trafficking of Women & Children in International Sex Trade*, Dominant Publishers and Distributors, New Delhi, 2001

⁶⁴ Mathes, S. *International Trafficking in Children: Will New U.S Legislation provide an ending to the Story?* *Houston Journal of International Law*, Vol.27 Spring 25, No.3 p.652

child from child prostitution.⁶⁵ The Act also identifies children of commercial sex workers as a 'child in need'.⁶⁶

6.4.2.3. Devdasi System

The Act prohibits customary practices like devdasi system and in case a minor girl has been dedicated such declaration is declared as unlawful and void.⁶⁷ Any person who conducts the ceremony of a devdasi girl can be punished with imprisonment for three years and fine of two thousand rupees.⁶⁸ In case a parent or guardian dedicates its own child then the punishment is five years imprisonment which shall not be below two years and fine of rupees five thousand.⁶⁹ Dedication is defined as the performance of any act or ceremony or could be given any customary name for the process. It is important to establish that a girl child is dedicated to the service of any deity, idol, object of worship, temple, or to other religious institutions or places of worship.⁷⁰ A person who abets the performance of any ceremony for dedicating a minor girl child as a devdasi is also punished with imprisonment for three years and a fine of Rupees two thousand.⁷¹

⁶⁵ See Section 3, Section 13 and Section 18 of the Goa children's Act, 2003

⁶⁶ See Section 2(1)(xii)

⁶⁷ See Section 9(6) of Goa Children's Act, 2003

⁶⁸ See Section 9(7) of Goa Children's Act, 2003

⁶⁹ Proviso of See Section 9(7) of Goa Children's Act, 2003

⁷⁰ See Section 2(n) of Goa Children's Act, 2003

⁷¹ See Section 9(7) of Goa Children's Act, 2003

6.4.3. Child Abuse

Child abuse or neglect is defined as an act by the parents or caretakers resulting in the death, serious physical or emotional harm. Sexual abuse or exploitation or that presents an imminent risk of serious harm. Child abuse is violation of a child's dignity.⁷² Child abuse was defined in the Indian context at a National level seminar on child abuse in India in 1988 as; 'Child abuse and neglect is the intentional non accidental injury, maltreatment of children by parents, care takers, employers or others including those individuals representing government or non government bodies which may lead to temporary or permanent impairment of their physical, mental, psycho-social development disability or death.'

The Goa Children's Act, 2003 lays importance on a child who is not bought up in a safe environment and hence could be vulnerable. Child abuse is defined under Section 2(m) of the said Act. Child abuse includes any kind of maltreatment which may or may not be habitual.⁷³ It covers various kinds of abusive situations like psychological abuse, physical abuse, sexual abuse and emotional abuse.⁷⁴ The worst form of physical abuse is neglect and cruelty. Maltreatment can include any act by deeds or words which debase degrade or demeans the intrinsic worth and dignity of a child as a human being.⁷⁵ Neglect

⁷² Ademwalla, M. *Child Sexual Abuse and Law*, HRLN, New Delhi 2008 p.6

⁷³ Tiwari, J. *Child Abuse and Human Rights*, Volume I, Isha Books, New Delhi, 2004 p.3

⁷⁴ See Section 2(m)I of Goa Children's Act, 2003

⁷⁵ See Section 2 (m)ii of Goa Children's Act, 2003

and cruelty to the child include acts of deprivation of its basic needs⁷⁶ for survival such as food and shelter; or failure to immediately give medical treatment to an injured child resulting in serious impairment of its growth and development or in its permanent incapacity or even death of the child.⁷⁷ Child abuse has several manifestations like child sexual abuse, commercial sexual abuse, parental abuse, police abuse and societal abuse.⁷⁸

A child who is likely to be exposed to child abuse or sexual offence or child trafficking or commercial sexual exploitation is in a threatened position.⁷⁹ Such a child is vulnerable and in such a position may lose his or her rights. Such a child is referred to a child in difficult circumstances.⁸⁰

Physical abuse is characterized by physical injury (example bruises and fractures) resulting from punching, beating, kicking, burning or otherwise harming the child.⁸¹ Any injury resulting from physical punishment requires medical treatment. Mental Abuse is the failure to provide the child with adequate exposure to education and learning. It includes not catering to a special education or need when facilities are available but are not made use of for no apparent reason. Verbal abuse is subjecting the child to constant abuse by nature of calling the child a variety of hurtful names such as ‘stupid’, ‘fatty’

⁷⁶Nayak,N. *Justice For Children A Handbook on Implementing The Juvenile Justice(Care and Protection of Children) Act, 2000*, Puliani and Puliani, 2nd ed, 2009 p.74-75

⁷⁷ See Section 2 (m)iii of Goa Children’s Act, 2003

⁷⁸ Adenwalla, M. *Child Sexual Abuse and the Law*, India Center for Human Rights and the Law, Mumbai, 2000

⁷⁹ Jha, A.K. *Child Abuse and Human Rights*, Vol. 1, Institute for Sustainable Development Lucknow and Anmol Publication Pvt. Ltd, New Delhi, 2006, p.106

⁸⁰ See Section 2(II) of Goa Children’s Act, 2003

⁸¹ Henry, R. *Child abuse, Neglect and delinquency: Neurological Link*, Juvenile and Family Court Journal, 2004 Fall; 55(4)p.14

etc. Emotional abuse is the most difficult form of child maltreatment to identify. Emotional abuse includes acts such as scapegoating and belittling or omissions as in never praising the child or withholding love, by the parents or other persons responsible for the child's care.⁸² This kind of abuse can cause or could have caused serious behavioral, cognitive, emotional or mental disorders. To prohibit abuse in schools corporal punishment is banned in all schools.⁸³

6.4.4. Child Pornography

Child pornography is the sexually explicit reproduction of the child's image. The definition of child pornography⁸⁴ is 'visual or audio depiction of a child for the sexual gratification of the user, the production, the distribution and use of such material.'⁸⁵ It is also a manifestation of sexual abuse of children. Such acts could include acts like hosting websites, taking suggestive or obscene photographs of the child. These photos may be used for soliciting customers. Showing pornographic pictures or films to minors or making children watch others engaged in sexual activity such acts are also included.⁸⁶

6.4.5. Kinds of Sexual Offences

Sexual abuse can be defined as any sexual act committed by an adult on a child for the purpose of the adult's gratification. Child sexual abuse includes a wide

⁸² Dabir,N and Nigudkar, M. *Child Abuse Confronting Reality* , Economic and Political Weekly, July 2007, p.66

⁸³ See Section 4 (12) of Goa Children's Act, 2003

⁸⁴ The Goa Children's Act, 2003 makes the offence punishable by imposing Liability on the people who force a child into pornography. However it does not define child pornography.

⁸⁵ Mathew, P.D, *Sexual Abuse of Children and the Law*, Legal News and Views, 1996 p.11

⁸⁶ See Section 10(12) of Goa Children's Act, 2003

range of behavior acts and is present in a number of forms. Some are more physical in nature and therefore more obvious others are more insidious and does the same if not greater damage.⁸⁷ Child sexual abuse could be in the form of sexual molestation, rape, incest, commercial sexual exploitation, pornography, sex tourism, net crimes, child marriage, child labour, female infanticide and female genital mutilation.⁸⁸ The Act defines Sexual Offence in Section 2(x). The Act has included a range of possible activities that an offender may engage in like grave sexual assault, sexual assault and incest.

6.4.5. 1. Grave Sexual Assault

Grave Sexual Assault covers different types of intercourse, vaginal oral or anal. It could involve acts like using objects with children or forcing minors to have sex with each other. It could include acts which could cause injury to the sexual organs of children.⁸⁹ This section also covers the offence of rape.⁹⁰ In case of grave sexual abuse it is mandatory for the investigating authorities to conduct medical examination on the child victim.⁹¹ The Punishment for Grave Sexual Assault is imprisonment of either description for a term that shall not be less than ten years but which may extend to life imprisonment and shall also be

⁸⁷ Rufus, D and Beulah, *Child Abuse an Overview*, Indian Police Journal, Jan –March 2009, p.28

⁸⁸ Naikar, L.D. *The Law Relating to Human Rights, Global, Regional and National*, Puliani and Puliani, 2004 p.572

⁸⁹ Dr. Lata, S and Dr. Kant , A. *Child and the Law*, APH Publishing Corporation, New Delhi, 2009 p.148-149

⁹⁰ See Section 2 (y) (i) of Goa Children's Act, 2003. Also See Section 2 (uv) of Goa Children's Act, 2003

⁹¹ See Section 8(3) of Goa Children's Act, 2003

liable to a fine of Rs. 2,00,000.⁹² This offence includes the offence of Rape as defined in Section 375⁹³ of the Indian Penal Code, 1860.

6.4.5. 2. Sexual Assault

Sexual Assault covers acts like touching the child with sexual intent. Using force on any body part or using objects on the child. Making the child perform acts of voyeurism, or making the child an object of exhibitionism in front of others is also an offence. It could include acts of threatening to sexually abuse a minor, verbally by using vulgar and obscene language.⁹⁴ Some of the acts included under this definition are petting a child in an uncomfortable manner, fondling the child in its private areas, kissing, mutual masturbation, verbal sexual abuse and innuendo. These are acts included under sexual molestation which is usually physically stressful to the child.⁹⁵ The offender could also be booked under the Indian Penal Code if the victim is a girl child depending on the act performed. The police may charge the perpetrator also for molestation or outraging the modesty of the girl. Punishment for the offence of Sexual

⁹² See Section 8(2) of Goa Children's Act, 2003

⁹³ See Section 375 IPC defines Rape.—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—First— Against her will. Secondly.—Without her consent. Thirdly.— With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt. Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Fifthly.— With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent .Sixthly.— With or without her consent, when she is under sixteen years of age. Explanation - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.]

⁹⁴ See Section 2(y) ii of Goa Children's Act, 2003

⁹⁵ Jha, A.K. *Child Abuse and Human Rights*, Vol. 2, Institute for Sustainable Development Lucknow and Anmol Publication Pvt. Ltd, New Delhi, 2006, p.395

Assault is an imprisonment for a period of three years and a fine of Rs. 1,00,000 only.⁹⁶ The investigating authorities must ascertain that the child is sent for medical examination.⁹⁷

6.4.5. 3. Incest

Incest is the commission of a sexual offence by an adult on a child who is a relative or is related to the child by ties of adoption.⁹⁸ The term may apply to sexual activities between individuals of close blood relationship; or members of the same household; or step relatives related by adoption or marriage; and members of the same clan or lineage.⁹⁹ Incest includes exploitative sexual activity whether or not they involve in physical contact between the child and another person who by virtue of his power over the child due to his strength, age and position or relation uses the child to meet his own sexual and wants and emotional needs.¹⁰⁰ The act though sexual in nature is also about the abuse of power and the betrayal of trust. A child is told to be wary of strangers and is caught off-guard when advances are made by the relative, neighbour or family or friend. The act is not only a gross violation of the child's body but also the trust implicit in a care giving relationship.

⁹⁶ See Section 8(2) of Goa Children's Act, 2003

⁹⁷ See Section 8(3) of Goa Children's Act, 2003

⁹⁸ See Section 2(y) iii of Goa Children's Act, 2003

⁹⁹ See Section 2 (iii) of Goa Children's Act, 2003

¹⁰⁰ Voices from the Silent Zone: Women's experiences of incest and childhood sexual abuse the Rahi findings.

In *Gorakh Daji Ghadge vs. State of Maharashtra*¹⁰¹ the father raped his 13 year old daughter in their home. The Bombay High Court has held seminal emission is not necessary to establish rape, what is necessary is there must be penetration. The Court also dealt with father-daughter relationship. Punishment for incest is imprisonment of either description for a term that shall not be less than ten years but which may extend to life imprisonment and also a fine which may extend to Rs.2,00,000.

6.4.6. Sale of Children

Sale of children is also considered as an abuse since it is a failure of the parents to provide a safe environment for the child.¹⁰² Sale of a child is defined¹⁰³ as actual trading i.e an act of selling the child. Or an act when a pregnant mother executes an affidavit of consent for adoption for a consideration or when a person or agency or an establishment or child caring institution recruits women or couples to bear children for the purpose of child trafficking. Sale of the child could also happen when a doctor of a hospital or clinic or nurse or midwife or the local civil registrar creates birth records for child trafficking. Perpetrators may indulge in acts of finding children in low income groups, families,

¹⁰¹ 1980 CRLJ 1380

¹⁰² Kumar, P.J, *Custody of Victim Child*, Delhi Judicial Academy Journal, June, 2005 p.182

¹⁰³ Offence under IPC As well. See Section 372 of IPC also defines the sale of the child and states it is a crime to buy a child for the purpose of prostitution or to illicit sex from any person. See Section 317 of IPC states that is it a crime against children, if their mother or father exposes or leaves a child in a place with the intention of abandonment. If the abandonment results in the death of the child then the parents can also be charged with culpable homicide or murder. See Section 315 and 316 of IPC discusses the offence of foeticide and infanticide. If a person commits an act with the intention of preventing the child from being born alive or an act that results in the death of the child after birth, that person is committing foeticide/infanticide as long as they do not do it in the interest of the mother's health or life. If a person does an act that amounts to culpable death which results in the quick death of an unborn child, he will be charged with culpable homicide.

hospitals, clinics, nurseries, day care institutions or other child caring institutions to offer such children for trafficking. In such cases the consent of the child is irrelevant.¹⁰⁴

Any person who commits or abets the sale of a child, or even a part or organ of the child such an act amounts to an offence. Organ of the child will include even its blood. Such a person can be punished with imprisonment for three years and a fine which can extend upto rupees fifty thousand.¹⁰⁵

6.4.7. Offence for keeping an unrelated child

Adults who keep any child who is not related to them can be prosecuted. Adults keep such unrelated children for a number of reasons.

6.4.8. Paedophilia/Unrelated Child

Paedophilia has been defined in the oxford dictionary as “condition of being sexually attracted to children.” A paedophile is considered to be a person who is sexually abusing the children. These paedophiles particularly target children coming from the lower strata of the society.¹⁰⁶ The paedophile keeps this child who is not related to it to sexually abuse such a child. The Indian context normally understands a paedophile as a foreigner who is not related to the child.

¹⁰⁴ See Section 8(16)(17) of Goa Children’s Act, 2003

¹⁰⁵ See Section 8(14) of Goa Children’s Act, 2003

¹⁰⁶ Desai, N. *See the Evil, Tourism Related Paedophilia in Goa* , Vikas Adhyayan Kendra, Mumbai, 2004

All people who keep such unrelated children are required to register with the Director, Women and Child Development. If the Director deems necessary, he/she will authorise the District Inspection Team to inspect the case and submit a report with recommendations. Failure to inform the director can attract a fine of Rs 1 lakh and imprisonment of one year.¹⁰⁷

6.4.9. Gambling

Inducing a child to gamble or assisting the child to gamble is a punishable offence with imprisonment for 3 years and a fine of rupees fifty thousand.¹⁰⁸

6.4.10. Liability of Establishments

Hotels and other establishments that provide boarding lodging or any similar facility have the responsibility of ensuring the safety of children in their premises including adjoining areas like beaches and parks.¹⁰⁹ No child can be allowed to enter any room of any hotel or establishment with an unrelated adult. The Act contains exceptions in 'reasonable cases' such as a teacher staying the hotel with its students or children staying with friends. The owner and the manager will be held responsible for violation of this section.¹¹⁰ All hotels and establishments are expected to see that children do not have access to Internet facilities that are not fitted with filters and that they have no access to any 'objectionable material' through any other medium such as videos and

¹⁰⁷ See Section 8 (4 to 9) of Goa Children's Act, 2003 Also See Appendix 8 – 2 Standing Order on Paedophilia

¹⁰⁸ See Section 13(21) of Goa Children's Act, 2003

¹⁰⁹ See Section 8(10)(a) of Goa Children's Act, 2003

¹¹⁰ See Section 8 (10 (a) to (b)) of Goa Children's Act, 2003

cable.¹¹¹ If any violation of child rights occurs in an establishment the owner can be punished with imprisonment for three years and fine of rupees one lakh.

6.4.11. Liability of Photo Studios and Cyber Cafe Owners

Photo studios are required to periodically report to the police that they have not shot any obscene photographs of children. In case a developer of films and photos finds photos of children with obscene content they need to report the same to the Deputy Superintendent of police.¹¹² Failure to inform can result in an imprisonment of one year and a fine of rupees fifty thousand. The cyber cafe owners need to maintain identity of every netizen and submit reports to the police to prevent child pornography. The state also prohibits degrading and violent portrayal of girl child in films and makes efforts to prohibit child pornography.¹¹³ Children below the age of 14 years cannot enter a cyber cafe or any other facility providing computer services unless accompanied by an adult. Such establishments shall also ensure that child-friendly safeguards are installed and that children below the age of 14 years can only access the internet in the presence of an adult or a person from the establishment.¹¹⁴

¹¹¹ See Section 8 (10(c)) of Goa Children's Act, 2003

¹¹² See Section 8(14) of Goa Children's Act, 2003

¹¹³ See Section 11(3) of Goa Children's Act, 2003

¹¹⁴ See Section 13 of of Goa Children's Act, 2003 Other Provisions Clauses (16-18)] Also See Appendix 8 -4 Standing Order for imposing Restrictions on Cyber Café Owners. Standing Order No. 4/1/92-MAG(IV)340/873 Dated 12th April 2012 and Standing Order No . 4/1/92-MAG(IV)340/873 Dated 12th April 2012

6.5. Authorities under the Act

There are different authorities under the Act like Competent Authority, Special Officers and the Director of Women and Child.

6.5.1. Competent Authority

The Central focus of the Act is on Rights of the child. For the purpose of this Act the Competent authority¹¹⁵ and Special Officers have an important role in enforcing the Rights of the child. The government of Goa has set up the Directorate of Women and Child Development for enforcement of Child Laws in Goa. The Director¹¹⁶ of the Directorate of Women and Child Development is the officer in charge. The Secretary to the government Incharge of the department of Women and Child Development is also responsible for the effective functioning of the Goa Children's Act, 2003.¹¹⁷

The Competent authority can impose penalties for violations of rights of the child. When any act or omission is committed by any person under the relevant Sections¹¹⁸ is reported to the competent authority, the authority has to ascertain the facts. After considering the facts they have to record reasons in writing, that the act or omission or commission constitutes a violation. The Competent Authority has power to impose penalties ranging from Rs. 100/- to Rs. 50,000/-

¹¹⁵ The word competent authority has not been clearly defined under the Act.

¹¹⁶ See Section 2(o) of Goa Children's Act, 2003

¹¹⁷ See Section 14(2) of Goa Children's Act, 2003

¹¹⁸ See Section 3,4,5 of the Goa Children's Act, 2003

on every occasion of violation.¹¹⁹ If such fine is imposed on any Government servant for violation of the rights of a child, the fine so imposed shall be paid by the defaulting employee or recovered from his salary or wages.¹²⁰ Decisions of the Competent Authority are final and binding.¹²¹

6.5.2. Special officers

The Government may authorize Special Officers to entertain representations or petitions regarding contravention of or non-adherence to the rights of a child.¹²²

The Special Officer may refer the petitioner to the police or may call for information from any person in Goa regarding such alleged contravention or non-adherence and may conduct inquiry into the representation or petition. The Special Officer can submit his report on each violation to the competent authority. Any Special Officer who sees a person committing a contravention against a child such an offender can be handed over to the officer-in-charge of the nearest police station as expeditiously as possible.¹²³

6.5.3. Powers of the Competent Authority, Director and Special Officer

Competent Authority or Director or Special Officer can issue notice to any person responsible for violation of child rights to appear before them and show cause why action should not be initiated against him.¹²⁴ According to the powers conferred under Section 7 sub clause(8) of the Goa Children's Act, 2003

¹¹⁹ See Section 14(3) of Goa Children's Act, 2003

¹²⁰ See Section 14(4) of Goa Children's Act, 2003

¹²¹ See Section 14(4) of Goa Children's Act, 2003

¹²² See Section 14(7) of Goa Children's Act, 2003

¹²³ See Section 23 of Goa Children's Act, 2003

¹²⁴ See Section 15(1) of Goa Children's Act, 2003

the government appointed Taluka Mamlatdars as special officers within the jurisdiction of respective taluka.¹²⁵ The circle inspector in the office of the mamlatdar, talathi of the area and the officer incharge of police station have jurisdiction to conduct inspection. They can constitute a task force under the Act. They can also assist the special officer to carry out duties under the Act. Special Officers were appointed only for the year of 2006.¹²⁶ The government failed to appoint special officers again. The Competent Authority, Director and Special Officers have to investigate the matter within sixty days. They have power to dismiss the representation or petition.¹²⁷ They may direct the person or persons to take such steps as may be necessary in the best interests of the child.¹²⁸ They can refer the matter to any other authority including the Police.¹²⁹ They have power to pass an order in the interest and welfare of the child including to place the child in a children's home, boarding school or other safe place.¹³⁰ The Competent Authority may call the person for a personal hearing and direct that a child be removed. If the Competent Authority records reasons in writing they may increase the period specified in the notice.¹³¹

¹²⁵ 6th April 2006

¹²⁶ Notification No 2-61(1) –ICDS/amendment (PART)/32 dated 6th April 2006. Taluka Mamlatdhars were appointed as Special Officers.

¹²⁷ See Section 15(a) of Goa Children's Act, 2003

¹²⁸ See Section 15(b) of Goa Children's Act, 2003

¹²⁹ See Section 15(d) of Goa Children's Act, 2003

¹³⁰ See Section 15(dd) of Goa Children's Act, 2003

¹³¹ See Section 15(e) of Goa Children's Act, 2003

6.6 Police

The Goa police have set up the Women and Child Protection Unit.¹³² The objective was to ensure that the police adopt child friendly procedure with regards to any complaints against the child. The Officer-in-charge of the Police Station of the area is responsible where the concerned violation reportedly takes place. This officer is responsible to the Competent Authority, Director or any Special Officer and has to provide all possible assistance including efforts to remove the child from the place of violation of the rights of the child. The officer-in-charge of the police station shall be answerable and responsible for non-compliance of the requisition made by the Competent Authority or by the Director or by any Special Officer.¹³³

The Competent Authority or the Director or any Special Officer or any officer-in-charge of a police station may enter and inspect any premises, after obtaining a search warrant from the District Magistrate, and make efforts for removal of a child from such premises.

For the purpose of removing a child from such abusive premises the police have to constitute a group of minimum four persons out of which one must be a woman. In cases where the officer feels that obtaining a search warrant or authorization will afford an opportunity to the offender to conceal evidence or to escape, he may enter, inspect and rescue the victim from any premises at any time between sunset and sunrise. He can also enter and search the premises

¹³² Standing Order No.10/2004 No .MISC-I/7674/2004 See Appendix 8-1

¹³³ See Section 15(2) of Goa Children's Act, 2003

without warrant or authorization, after recording grounds if he has reasons to belief in writing. The same must be forwarded to the Competent Authority and to the President of the Children's Court.¹³⁴

Every wing of the police the district police, airport police, traffic police, border police, Labour Inspectors and railway police all have to be alert and take cognizance of all reports or information's or petitions or complaints of offences of child labour or child trafficking and have to investigate into the matter and take necessary action. They have to intimate in writing every such suspected case or report such information or petition or complaint of child labour and of child trafficking to the nearest Special Officer. The Special Officer has power to pass orders deemed fit in the best interest of such victim child.

6.6.1. Duties of Police

The police have to take up investigation of rape, sexual harassment, child abuse, exploitation, domestic violence and other cases of violence against children. They have to monitor and investigate the crimes. Most culprits are booked under the Provisions of the Indian Penal Code.¹³⁵ For example for offences of kidnapping they have to provide counselling to the trauma victims and also refer suitable cases to family counselling centers. Police to work as coordinating link between police department and Goa Commission for women, Goa Commission for Children, Juvenile Justice Board, Child Welfare

¹³⁴ See Section 15(4) of Goa Children's Act, 2003

¹³⁵ See Appendix 3 for Similarities and differences between the Indian Penal Code and Goa Children's Act, 2003

committee, Department of Women and Child Development and Tourism, besides the NGOs/ Social workers and other are associated with the Unit. Police is required to maintain close liason with all the Police Stations and collect all data and relevant information pertaining to crimes against children, analyse them and suggest measures to prevent and control them.¹³⁶ Police officers have power to arrest any person committing any violation under any of the provision of this Act or any Rules.¹³⁷ When police see children begging at the beach or in tourist houses¹³⁸ police need to produce these children before the Child Welfare Officer.

A large number of children below fourteen years of age are also seen selling petty items on the beaches. These children are vulnerable to exploitation. These children have to be picked up under Section 7 of the Goa Children's Act, 2003 and produced before the Child/Juvenile Welfare officer at the concerned police station.

If an Indian child is seen going to any hotel or establishment which provides boarding/lodging and such a child is accompanied by a foreigner, the local police can ask the foreigner to come to the police station to conduct inquiries.¹³⁹ Police can conduct verification of foreigners according to Section 8(15) of the Goa Children's Act, 2003.

¹³⁶ Supra 6

¹³⁷ See Section 22 of Goa Children's Act, 2003

¹³⁸ See Section 10(2) of Goa Children's Act, 2003

¹³⁹ See Section 10(b) of Goa Children's Act, 2003

To curb the menace of using children for gambling¹⁴⁰ and other abusive practices the police have to Co-ordinate among local police, tourist police, excise department, tourist department, and public in general and the people who are associated with the tourism business. Police should maintain records of Hoteliers, travel agencies, tourist guides, taxi operators, shack and restaurant owners. Police have to collect intelligence about the shacks and other joints who are involved in the sale of narcotic drugs and prostitution activities. Police have the power to inspect and check for written permission when they have reason to believe that a person is residing with an unrelated child. The police must submit report in such cases.¹⁴¹

In cases of rape or a case of child abuse is reported at the Police Station it is mandatory for the respective Control Rooms and the Duty Officers of the Police Stations to record the same and telephonically inform the In-charge, Women and Child Protection Unit and the dy.SP/CB about such cases.

6.6.2. Procedure after arrest

Any person arrested for an offence has to be informed of the grounds of arrest and produced before the nearest Judicial Magistrate within a period of twenty-four hours of arrest excluding the time necessary for the journey from the place of arrest to the Court of Judicial Magistrate. No person can be detained beyond the said period without the authority of the Judicial Magistrate.

¹⁴⁰ See Section 13 (21) of Goa Children's Act, 2003

¹⁴¹ See Section 8(6) of Goa Children's Act, 2003

The first remand under this Act shall be given by the Judicial Magistrate before whom the accused is produced. However, the second and subsequent remands of the accused can only be granted by the President of the Children's Court. Only the Children's Court can take cognizance of all offences under this Act which are punishable with imprisonment of either description and of any term.

6.7 Who can Complain? S.20

A complaint can be made by the child victim or his or her parent, and in their absence, his or her guardians or close relatives, or police or the Competent authority which is the i.e Secretary to the Government in charge of the Department of Women and Child Section 14(2) of the Act or the Director or a Special Officer or Labour Inspector or any authority or Officer authorized in this behalf by the Government. The competent authority is Secretary to the Government in charge of the Department of Women and Child. Under Section 14(2) of the Act it can be the, Labour Inspector or the Police.

Under Section 154 Criminal Procedure Code the police are permitted to register a complaint based on information provided by an informant.¹⁴² Any such police report is also treated as a complaint under the Act. When a complaint is made or the police are made aware of an instance like for example commercial sexual exploitation of a child the police have to make a physical verification, arrest persons who are suspected of being involved and prepare a First Information Report (FIR).¹⁴³ The FIR is prepared by the police on the basis of the

¹⁴² See Section 20 of Goa Children's Act, 2003

¹⁴³ Almeida,A. *Tug and Tear Dealing with Child Sexual Abuse*, Jan Ughahi Trust, 2008 p.17

information received through either a private complaint or their own investigation. Under the Criminal Procedure Code under Section 154 the police are obliged to write down any information about a crime that is made known to them; refusal to register an FIR is an offence.¹⁴⁴

Only offences punishable with fine can be compounded. Compounding of offences can be done before and after institution of prosecution. A Nongovernmental organization working with the child victim can also file a complaint. Goa also has Childline, a toll free telephone number¹⁴⁵ dedicated to children in emergency situations. In collaboration with the nodal department, calls to this number are directed to the “nodal” NGO’s in Goa.¹⁴⁶ Children in distress or adults who see children in distress can call this number and speak with someone who can assist the child.

6.7.1. Pre Trial Procedures

The police are one of the first person’s who come in contact with the child victim. Nongovernmental organizations can be called to assist the child from time to time and the child’s statement can be recorded by the police.

Children below 12 years of age are seen as unable to make sworn statements before any authority as they are unable to understand the consequences of

¹⁴⁴ Ramchandran, R: *The Police and Effective Investigation of Crimes*, Puliani and Puliani, Bangalore, 2007 p.41-53

¹⁴⁵ Telephone no - 1098

¹⁴⁶ In various regions of the country the calls may be directed to the nodal NGO but in some areas like Bangalore this service is operated through the police.

speaking on oath. *The Oath's Act, 1969*¹⁴⁷ prohibits a oath of a child below 12 years of age. A child above the age of 12 years its statement under Section 164(5) Criminal Procedure Code can be recorded. This statement is useful when the victims are from out of the state and may not be available at the time of trial. Or the Offender is not an Indian national or is an influential person and could exert pressure on various agencies dealing with the case and pay large sums of money to key witness who may turn hostile. This statement is preferably to be recorded in the presence of the child's parents or an NGO. Children end up getting detained in the police station for the purpose of recording statements for long duration of time. Repeated questioning by different police officers also occurs. This tires the child so that by the time the child's statements are finally recorded vital details are often left out. In many cases when the child is a foreigner and does not know an Indian language there is wastage of time in getting an interpreter for the child.

An essential pre trial procedure that has to be followed is the identification of the accused by the child in cases in which the offender is not a person known to the child. The child is expected to identify the accused from the line up in which similar looking people are juxtaposed along with the accused. The child is required to enter the room all by himself and physically approach and identify the accused.¹⁴⁸

¹⁴⁷Act No. 44 Of 1969 Dated 26th December, 1969. Full text of the Act available at www.indiankanoon.org/doc/241320/

¹⁴⁸Adv. Gupte A.K, *Criminal Manual* issued by the High Court of Judicature Appellate Side Bombay, 2005

The Criminal Procedure Code in Section 156 authorizes the police to conduct an inquiry in cases involving sexual crimes against children without permission from Magistrate. The police officer is required immediately thereafter to send a report to the Magistrate and can proceed to investigate the facts and circumstances of the case and if necessary take measures to discover and arrest all alleged exploiters and abusers. Under Section 160 of the Criminal Procedure Code the police officer has powers to recall the attendance of all witness deemed necessary to assist in the investigation but this section exempts children from appearing in police stations at night.

The police arrest criminals and record the relevant sections of the offence committed either under the Immoral Traffic Prevention Act or the Indian Penal Code or the Goa Children's Act, 2003 and other relevant laws. Following arrest it is mandatory for the alleged suspect to be medically examined by a competent medical officer. Hence the police take the accused for medical examination. Next the alleged accused is produced before the magistrate and may be remanded to judicial custody if bail is denied within 24 hours of the arrest. At any stage after being arrested the alleged offender can apply for bail to the Sessions court, the High court or both.¹⁴⁹ The High Court has parallel jurisdiction to hear and grant bail. It is during bail application that lawyers are involved. The police through the public prosecutor can apply to cancel the bail¹⁵⁰ or challenge the grant of bail in the Appellate Court. The police must

¹⁴⁹ See Sarkar *Criminal Procedure Code*, Lexis Nexis, Buttersworth, Wadhwa and Company, 2008

¹⁵⁰ See Section 439 Criminal Procedure Code, 1973

justify the need to keep the alleged offender in judicial custody. On receiving an application made by the police the magistrate can extend judicial custody every two weeks if satisfied that the police need time to complete investigation and it is imperative that during that time the accused needs to remain in custody. If the police fail to prepare a charge sheet within 90 days judicial custody cannot be extended.

The police continue with their investigation by recording statements of prospective witnesses. These statements are written down by the police in their own hand. The person making the statement does not sign them. These statements are not evidence but they can be used to confront the witnesses when their subsequent testimony is inconsistent. The police also take child victims for medical examination.¹⁵¹ The report of the Doctor known as Medico-Legal Certificate has significant evidentiary value and doctors are asked to appear as expert witnesses. Multiple medical examination of the child has to be avoided.¹⁵²

The police can apply to a magistrate to record witness's statements. These statements have evidentiary value and are recorded *In Camera* in the Magistrate's own handwriting. The Magistrate must explain to the witness that he/she is not required to make a statement, and if made these statements must be signed by the witness.

¹⁵¹ See Section 8(3) of Goa Children's Act, 2003

¹⁵² See Section 32(2)(i) of Goa Children's Act, 2003

The police conclude their investigation of the case record statements and secure medical evidence. Throughout their investigation the police must document in writing all steps taken this is done in the case diary.

6.8. Children's Court

In Goa the State Government in consultation with the High Court has constituted a Children's Court. The Children's Court is guided at all times by the principle of 'best interests of the child' in all its procedures. The aim of the Children's Court is to ensure physical, emotional, intellectual, social and moral development of the child. This is necessary to ensure the healthy development¹⁵³ of the child so as to make it a useful and good citizen. The Children's Court has to avoid any harm and extreme care to be taken so as to not harm the sensitivity of the child.

The Children's Court is housed in separate a premise which is located at Shiv Towers 1st floor at Patto, Panaji. Goa has only one Children's Court for the entire State. The physical environment of the Children's Court is also designed with children in mind. The benches have been replaced with cushioned chairs. There is no witness's stand, and no dock to hold the accused. Thus the Court is given an office like environment to avoid the stigma of the court environment. Care has to be taken to ensure that the presence of the child victim in the court has to be at a minimum, perhaps only to record his or her evidence which has to be restricted to a day of two at the most. This statement is recorded in the

¹⁵³ See Section 27(d) of Goa Children's Act, 2003

chamber of the Judge in a very child friendly way. Such *in camera* proceedings are already in vogue.

The Children's Court has to follow principles of equality. The Court has to follow the principle of equality of access, equality of opportunity, and principle of equality as enshrined in the Act. It also has to ensure that equality is guaranteed to the child. There cannot be any discrimination in any judicial procedure on the basis of age, sex, place of birth, disability, race, ethnicity, status, caste, cultural practices, or nature of work done by the child. The activity or behaviour of the child or the activity or behaviour of the parents or guardians or the civil and political status of the child cannot be a ground for discrimination.¹⁵⁴ The child's rights cannot be waived and the Children's Court has to ensure that these rights are protected at all times.¹⁵⁵

The Goa Children's Court Rules, 2004 in Section 3 prescribe a jury Trial and also gives suggestions for appointment of members of the jury. However, the Goa Children's Court functions with only a President and does not follow jury system in practise. A person, who is or has been or is qualified to be a District Judge, is appointed as the President.¹⁵⁶ Government is empowered to appoint Additional Sessions Judge as President of Children's Court. All such appointments are to be made in consultation with the High Court. The Court has to meet at such times and observe such rules of conduct as the President, in

¹⁵⁴ See Section 27(h) of Goa Children's Act, 2003

¹⁵⁵ See Section 27(f) of Goa Children's Act, 2003

¹⁵⁶ See Section 28(1) of Goa Children's Act, 2003

consultation which the High Court deems proper.¹⁵⁷ Initially when the court was installed it used to function on Mondays, Wednesdays and Fridays. In 2012 the High Court passed orders for the Court to function once a week i.e. every Monday. The frequency of the sittings depends on the pendency of the cases before the Court. Thus the court has affixed premises and days of function. The days of sitting of the Children's Court are notified in the Official Gazette for the convenience of all parties.

The President of the Children's Court can be removed if he or she is found guilty of misuse of power. In case the President is convicted for an offence involving his or her moral turpitude and has been convicted and such conviction is not reversed or the president has not granted pardon in such cases the President may be removed. The President can be removed if the President fails to attend the proceedings of the Court, for a consecutive period of three months without any valid reason.¹⁵⁸ Till date in Goa only one President of the Children's Court was removed for not having powers to be President of the Children's Court.¹⁵⁹

A child victim may be produced before the President, when the Court is not sitting.¹⁶⁰ Since the President is a sitting District Judge all such children may be produced in the premises of the District Court even on non sitting days. The President of the Children's Court can hold office for a term of five years or

¹⁵⁷ Goa Children's (Court) Rules, 2004 See Section 7(3) Children's (Court) Rules, 2004 As notified on 2-61(1)-97/I.C.D.S./637(B)

¹⁵⁸ See Rule 6, Goa Children's (Court) Rules, 2004

¹⁵⁹ See Chapter 7 Study of Enforcing Child Laws and Juvenile Justice In Goa.

¹⁶⁰ Goa Children's (Court) Rules, 2004 See Section 7(4)

upto the age of 65 years and is not eligible for reappointment.¹⁶¹ The President is a judicial employee. He or she shall be governed by the Goa State Judicial Service Rules. The dress worn by the Members of the legal profession and all others shall be consciously and deliberately be ‘Child friendly’.

6.8.1. Nature of the Children’s Court

The Children’s Court under Section 30 of the Act, has powers to try all offences against children whether such offence are specified under this Act or any other Penal Law.¹⁶² This would include rape on a minor kidnapping, assault on a minor and a whole gamut of other offences including the picking of pocket of a minor or robbing candy from a kid. This is because the term ‘offence’ has been defined to mean any act or omission made punishable under any law for the time being in force. The bottom line is that the offence must have been committed against a minor. The accused must be a major to be tried by the Children’s Court since it has not been given power to try any child in conflict with law.

Other authorities and special officers do not fall within the jurisdiction of Children’s Court. The Children’s Court has all the powers of the Court of Sessions under the Code of Criminal Procedure, 1973¹⁶³ and a Civil Court for the purpose of summoning and enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects,

¹⁶¹ See Section 29(1) of Goa Children’s Act, 2003

¹⁶² See Section 30 of Goa Children’s Act, 2003

¹⁶³ Act No 2 of 1974

and administering oath or recording evidence.¹⁶⁴ Every proceeding of the Children's Court shall be deemed to be a judicial proceeding within the meaning of Sections 195 and 228 of the Indian Penal Code, 1860.¹⁶⁵

6.8.2. Procedure of Children's Court

Unlike other court proceedings the President is permitted to ask leading questions to a child victim to facilitate the trial. While examining any child who is a victim of any crime or a witness to any crime the Magistrate is empowered to give special instructions even to the members of the legal profession appearing before him or her in order to protect the interest of the child.¹⁶⁶ For example the Magistrate can stop cross examination of the child if it is traumatic to the child. The child's statement in the court can be recorded in the presence of the social worker or counsellor as early as possible.¹⁶⁷ If the child is below eight years of age the child, the statement is recorded in the presence of a social worker/parent/guardian or they may even be permitted to respond to leading questions. The questioning of the child should be short and clear so as to not confuse the child. The child should also be provided with translators and interpreters when the child does not understand the language of the land.¹⁶⁸ In case of mentally challenged child competent service provider must be provided to the child.¹⁶⁹ The Magistrate is also empowered to issue

¹⁶⁴ See Section 31 (a) and (b) of Goa Children's Act, 2003

¹⁶⁵ Act No 45 of 1860.i

¹⁶⁶ See Section 9 Goa Children's (Court) Rules, 2004

¹⁶⁷ See Section 32(2)(k) of Goa Children's Act, 2003

¹⁶⁸ See Section 32(2)(l) of Goa Children's Act, 2003

¹⁶⁹ See Section 32(2)(m) of Goa Children's Act, 2003

general instructions and can also notify such instructions in the official gazette.¹⁷⁰

The procedure adopted by the Children's Court is it has to safeguard the innocence of children. A child is presumed to be innocent of any malafide or criminal intent upto the age of 7 years in all cases and upto 12 years in cases wherein he is unable to understand the consequences of his action on account of immaturity of understanding.¹⁷¹ Every child is entitled to free legal aid.¹⁷² Legal aid is to be provided at all stages, from the initial contact till final disposition.¹⁷³ Extreme care has to be taken by the Court to avoid any harm to the sensitivity of the child.

Care and facilities have to be provided to the child to enable the child to familiarise with the court surroundings. The child needs to be informed of the different roles of the key persons such as judge, lawyer and prosecutor. The court has to be informed of the needs of the child and in case the child has specific difficulties these have to be addressed. The child should be made to feel comfortable in the proceedings of the court.

After the investigating officer files a charge sheet that contains the details of the offence. The charge sheet is to be read in open court to the accused and it is

¹⁷⁰ Goa Children's (Court) Rules, 2004 See Section 9(1) and (2)

¹⁷¹ See Section 27 (a) and (b) of Goa Children's Act, 2003

¹⁷² See Section 27(c) of Goa Children's Act, 2003

¹⁷³ The Researcher did make efforts to find out the number of children who have applied for Free Legal aid. However it was found that in the Children's court there were no children who had applied for free Legal Aid. Many accused had applied for free legal aid. In South Goa one child had applied for legal aid in a Civil Suit in the year 2009 and in North Goa one child had applied for Free Legal Aid in a Civil suit in the year 2012. Since the study undertaken is the 'Child in the Criminal Justice System' the same has not be depicted in the next chapter.

mandatory for the accused to be present in Court on all the dates till the case is disposed. In many cases when the accused is not produced in the Court, the case is adjourned.¹⁷⁴ This can cause hardship to the child victim.

After the charge sheet is filed the accused has an opportunity to argue on the charges. Following the argument the Court frames the formal charges. The accused can plead guilty or not guilty and the trial begins.

The prosecutor begins presenting evidence and prosecution witnesses such as child victims are summoned and produced before the Court to give oral evidence. Prosecution witnesses are then cross examined by the counsel for the alleged offence. Under Section 301(2) of Criminal Procedure Code child victims of sexual crimes do not have the right to private legal counsel but they can apply to the judge to appoint a private counsel. It is within the judge's discretion to determine whether a child victim may employ a private attorney.

After the evidence is concluded arguments are heard and a final judgement is passed. If the accused is found guilty the case is heard on sentencing and a sentence is fixed.

The Children's Court prohibits the use of the name of the child to avoid any stigma which will be attached to the child as a result of the trial. The privacy of the child is maintained at all times by the Court.¹⁷⁵ The Court prohibits the use of adversarial or accusatory words, such as, arrest, remand, accused, charge

¹⁷⁴ The probable reasons may be the accused is absconding or the accused is untraced or the accused may not attend the proceedings of the court one he or she is granted bail.

¹⁷⁵ See Section 27(i) of Goa Children's Act, 2003

sheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody when referring to a child.¹⁷⁶ Delay in proceedings involving child victims must be reduced.¹⁷⁷ At all stages the child victim must be prepared for the judicial process and prosecution of alleged abuser. The child should not be rushed but given sufficient time to prepare. If the child is not ready to go to court additional time can be granted to prepare the child.

If the alleged offence is punishable with fine, in order to ensure the attendance of the accused during the proceedings and compliance of the Court's directives, the Court can direct the accused to deposit 75% of the maximum fine leviable for that offence at the beginning of the trial itself.¹⁷⁸

6.9. Appeals in Cases

Both the prosecution and defense have a right to appeal the Children's Court judgement to the High Court but ordinary Appeals against acquittals are not easily allowed and the state has to show special cause of maintainability of the appeal lies before the High court. After the appeal is filed the case may be sent back for fresh trial. The judgment of the Children's Court may be set aside or the appeal may be dismissed. The Appellate Court has jurisdiction to enhance the sentence award a lesser sentence or modify the order of the magistrate in any way it deems fit.

¹⁷⁶ See Section 27(e) of Goa Children's Act, 2003

¹⁷⁷ See Section 32(2)(d) of Goa Children's Act, 2003

¹⁷⁸ See Section 27(o). The study revealed that many accused had Applied for Free Legal Aid in the Children's Court many accused were unable to pay the fine as prescribed under the Goa Children's Act. In Many cases the Presidents of the Children's Court have used their discretion and imposed a minimum fine which is within the paying capacity of the accused. In some cases this fine is paid to the victim while in most cases it is deposited in the States Treasury.

A second level of appeal is available to the Supreme Court of India. These appeals are under the Constitution of India and either party can file an appeal against a judgment of the High Court. The Supreme Court can alter, modify or set aside the judgment of the High Court it can increase or reduce the sentence or order a retrial. After the Supreme Court hears the case there is a further provision for review.

Child victims and child witnesses have no direct rights of appeal under the law. Child victims may file a Revisions petition under the Revisional jurisdiction. Under Article 227 of the Constitution of India, Revisional jurisdiction allow the High Courts to intervene on limited grounds related to technical issues and questions of law, including whether a lower court judge has exceeded the scope of their mandate. Unlike a regular appeal that can address the merits of a case a revision petition is limited to challenging a judge's authority and the only relief available is to wither quash the proceedings or remand the case.

6.10. Goa Children's Act, 2003 V/s Juvenile Justice (Care and Protection of Children) Act 2000

The Goa Children's Act, 2003 defines the terms like 'child in need of care and protection'¹⁷⁹ and a 'juvenile in conflict with law' and adopts the same definition as defined in the Juvenile Justice (Care and Protection of Children)

¹⁷⁹See Section 2 (i) includes a child who has been dedicated. A child who is found in a children's home. A Child who is given in foster care. It includes children of prisoners. Children of commercial sex workers. A child who is suffering from an illness or disease or ailment which has a social stigma attached to it like for example HIV and leprosy. These categories are not included under the same definition of a child in need of care and protection under the Juvenile Justice (Care and Protection of Children) Act, 2000.

Act, 2000. Further in Section 2(h) of the Goa Children's Act, 2003 it defines 'Children's Home' so as to include orphanages, crèches, boarding schools, hostels and protective homes. This definition is quite inclusive and follows a list while the definition under Juvenile Justice (Care and Protection of Children) Act, 2000 covers any institution provided it is established by the State Government or voluntary organization.

The Children's Court has power to try all offences against children whether such offences are specified under the Act or not.¹⁸⁰ This could include, offences such as rape of a minor, kidnapping, assault on a minor, and a whole gamut of other offences including picking the pocket of a minor, or smaller offences like robbing something from a child. This is because the term 'offence' has been defined to mean any act or omission made punishable under any law for the time being in force. The bottom line is that the offence must have been committed against a minor. It goes without saying that the accused must be a major to be tried by the Children's Court since it has not been given the power to try any 'child in conflict with the law'.¹⁸¹ The power to try a child in conflict with law is given to the Juvenile Justice Board as set up under the Juvenile Justice (Care and Protection of Children) Act, 2000.

Goa Children's Act, 2003 has several provisions which are similar to and found in the Juvenile Justice (Care and Protection of Children) Act, 2003. The Act

¹⁸⁰ See Section 30 of Goa Children's Act, 2003

¹⁸¹ As defined under Juvenile Justice (Care and Protection of Children) Act, 2000.

has provisions like the age of innocence of the child i.e. that a child is innocent under the age of seven years. It also has provision that there should be a guarantee for procedural 'Protection of Innocence'. The Act also provides free legal aid etc.

In particular there is an interesting sub-clause which states the Principle of non-stigmatizing semantics, decisions or actions, meaning thereby that adversarial or accusatory words, such as arrest, remand accused, charge sheet, trial, prosecution, warrant, summons conviction, inmate, delinquent, neglected, custody etc., is prohibited in the process pertaining to the child, and must be strictly adhered to. All these ideas are well appreciated, but they are meant more for a court under the Juvenile Justice (Care and Protection of Children) Act, 2000 which is meant to deal with those minors in conflict with the law.¹⁸²The Children's Court is created to try adults, and perhaps hardened criminals with multiple offences to their credit. Therefore 'Principle of Fresh Start', 'Principle of last resort' etc. as mentioned in the Act is of little use to the child victim.

The major issue of concern is when a child commits an offence on another child. E.g. A Boy of 15 years kidnaps a boy of 10 years. In such a situation, the offence is committed by a child on a child. The issue of contention is there is a child victim. In such a case the Children's Court as a matter of practice

¹⁸² Adv. D'Souza, P. *ABZee of Children's Act*, 2003

automatically refers the case to the Juvenile Justice Board.¹⁸³ This is because the offence has been committed by a child who has come in conflict with law.

The Juvenile Justice Act, (Care and Protection of Children) Act 2000 is a Central Legislation. While the Goa Children's Act, 2003 is a State Law. The Juvenile Justice Act, (Care and Protection of Children) Act 2000 has received the President's assent while the Goa Children's Act, 2003 has received the Governors assent. The situation discussed above is an issue of conflict of laws. In India whenever there is an issue of conflict of laws the Central Law overwrites the State Law. This practice is also followed by the Children's Court in Goa.¹⁸⁴

In doing so the Goa Children's Act, 2003 has somewhere forgotten the essence of its presence. While the Act, protects one child who in this case is the 'sinner' in doing justice to this child. It completely ignores its rightful child the 'child victim'. It fails to do justice to the child victim. It also does not provide for any kind of remedy to the child victim when such cases are moved to the Juvenile Justice Board. It was learnt from the study that there are number of cases in Goa where juvenile offenders are apprehended for rape and sexual assault on child victims. In such cases the Goa Children's Act, 2003 is silent and not able to provide any relief or address rights of the child victim. The Act also does not have a non-obstante clause which provides that in such a situation the juvenile

¹⁸³ Powers, Functions of the Juvenile Justice Board and Trial mechanism to be followed by the Juvenile Justice Board for Juveniles has already been discussed in Chapter 5 dealing with Juvenile Justice Law in Goa. This was a question asked to the Presidents of the Children's Court and they have opined that there is no need for interpreting the law as they just refer the child to the Juvenile Justice Board.

¹⁸⁴ Presidents of the Children's Court of Goa have opined this view.

offender must be referred to the Juvenile Justice Board and this limitation or lacuna in the law also raises questions of interpretation of the law.

6.11. Conflict of Laws

Whenever there is conflict between Central and State Act is found in Article 254 of the Constitution of India is invoked. In India whenever there is a provision of a State law which is repugnant to the provision in a law made by the Parliament which is competent to enact any existing law with respect to matters in the concurrent list¹⁸⁵ then the Parliament of the existing law prevails over the State law and it does not matter whether the Parliamentary law had been enacted before or after the State Law. The State Law is void.¹⁸⁶ Since the Goa Children's Act, 2003 has similar provisions to the Juvenile Justice Act, (Care and Protection of Children) Act 2000 Article 254 of the Constitution of India is resorted to solve the ambiguity in law.

According to Article 254 (2) of the Constitution of India states that whenever a law is made by the Legislature of a State for matters mentioned or enumerated in the concurrent list and contains any provision repugnant to the provisions of the earlier laws made by the Parliament or an existing law with respect to the matter. Then the law so made by the Legislature of the State shall prevail if it is reserved for the consideration of the President or has received his Assent. In

¹⁸⁵ This list includes matters Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.
2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

¹⁸⁶ M.P.Jain, *Indian Constitutional Law*, Wadhwa and Company, Nagpur, 5th ed. 2003 p .629 - 631

Goa the above deliberations cannot be applied to the Goa Children's Act, 2003 since the Act was passed on April 30th 2003 and received the Governor's assent.¹⁸⁷ Hence only cases in which a child is a victim are tried according to the procedure mentioned under the Goa Children's Act, 2003 in the Children's Court.

The criminal justice system looms around the criminal must be punished. The victim must be compensated. The society must get justice. The legal system must do justice to itself. This is equal justice system. Every crime doer is a victim of his own crimes. For immediately after the commission of crimes criminal action is initiated against him. Every crime doer has a victim of his own and it is the victim who suffers the consequences. He or she also makes many other victims of his act like the family, parents and the next of kin. While doing justice to the crime doer it in no way ensures victims justice.¹⁸⁸

The Criminal Procedure Code enshrines that whenever there is a special or local law covering the same area the latter law will prevail.¹⁸⁹ Unless the law has a specific provision to the contrary that will override the special or local law is limited in scope.¹⁹⁰ Therefore when the State has a special law for Juveniles the Juvenile Justice (Care and Protection of Children) Act, 2000 this Law clearly bars the jurisdiction of the Criminal Courts to try a juvenile. All proceedings where a juvenile comes in conflict with law are to be tried by the

¹⁸⁷ It is a gazette Act as of July 14, 2003 Gazette No Reg:GR/RNP/Goa/32, Series 1 No 15

¹⁸⁸ Vadackumchery, J. *Police, Victim and Victim Justice*, Kaveri Books, New Delhi, 2001 p.2

¹⁸⁹ See Section 5 of the Criminal Procedure Code, 1973

¹⁹⁰ Sarkar, S.C. on *The Law of Criminal Procedure*, India Law House, New Delhi, 2002 p.25

Juvenile Justice Boards. E.g. If a juvenile is apprehended for trafficking drugs he cannot be tried by the courts set up under the Narcotic Drugs and Psychotropic Substances Act, 1985 and has to be tried by the Juvenile Justice Board.

Therefore, criminal cases of juvenile in conflict with law are to be dealt with by Juvenile Justice Board (JJB) and not the regular Criminal Courts.¹⁹¹ When a child and any person who is not a child are accused of an offence separate trials are to be held.¹⁹²

Similarly there may be instances when there will be same area of operation of the Goa Children's Act, 2003 and the Criminal Procedure Code.¹⁹³ Since the Goa Children's Act, 2003 does not have any specific provision which limits the operation of the Act the Goa Children's Act, 2003 prevails and ousters the operation of the Criminal procedure code. For e.g. All offences on the Child victim after the passing of the Goa Children's Act, 2003 are tried in the Children's Court established under the provisions of the Act. The Court of Sessions will have no jurisdiction to try any such offences.

The Next Chapter is analyzes the empirical data collected by the Researcher to understand the role played by the Statutory bodies in delivering justice to the child in conflict with law and the child victim.

¹⁹¹ See Section 23 of the Juvenile Justice (Care and Protection of Children) Act 2000

¹⁹² See Section 24 of the Juvenile Justice (Care and Protection of Children) Act 2000

¹⁹³ See Section 2(zb) of the Goa Children's Act, 2003

8. Conclusion

“Law should not sit limply, while those who defy it go free and those who seek its protection lose hope.”¹

The Indian ethos accords the highest importance to truth. The motto Satyameva Jayate² is inscribed in our National Emblem “Ashoka Sthambha”. For the common man truth and justice are synonymous. So when truth fails, justice fails. One may ask what is the place accorded to ‘truth’ in the Criminal Justice System in India? Dr. R.Venkataraman, former President of India said “The Adversarial System is the opposite of our ancient ethos. In the panchayat justice, they were seeking the truth, while in adversarial procedure, the Judge does not seek the truth, but only decides whether the charge has been proved by the prosecution. The Judge is not concerned with the truth; he is only concerned with the proof. Those who know that the acquitted accused was in fact the offender, lose faith in the system”. For justice to be done the truth must prevail. Even the Supreme Court has criticised the passive role played by the Judges and emphasized the importance of finding truth in several cases

It is the duty of the court to arrive at the truth and sub serve the ends of justice. The courts have to take a participatory role in the trial and not act as mere tape recorders to record whatever is being stated by the witnesses. The judge has to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is

¹ *Jennison v. Baker* (1972) 1 All ER 997).

² Truth alone succeeds

remiss in some ways, the court can control the proceedings effectively so that the ultimate objective that is the truth is arrived at. The court must be conscious of serious pitfalls and dereliction of duty on the part of the prosecuting agency. Upon failure of the prosecuting agency showing indifference or adopting an attitude of aloofness, the judge must exercise the vast powers conferred under Section 165 of the Evidence Act and Section 311 of the Criminal Procedure Code to elicit all necessary materials by playing an active role in the evidence collecting process.

The study has revealed that the Law as an instrumentality to bring about change in society has not been effective. Especially in cases of juveniles in conflict with law. The laws i.e The Juvenile Justice (Care and Protection of Children) Act, 2000 and the Goa Children's Act, 2003 both seem to be more concerned with the procedure relating to punishment. Unfortunately though the proclaimed objective of the Juvenile Justice (Care and Protection of Children) Act, 2000 and of the Goa Children's Act, 2003 is to short circuit procedural delay and provide speedy justice to children in conflict with law and contact with law. These two laws have been caught up in their own web. The idea of speedy trial and prompt justice remains merely in the Statute books.

The setting up of Children's Court in Goa was expected to provide protection and a non threatening atmosphere for a child seeking the hands of justice. But the instrumentalities of these laws are being handled by adult members who are otherwise lawyers and judges. Whose minds have become set to certain

procedures, certain requirements and therefore unnecessary procedural formalities and delays have crept into the system.

The reasons being that the law is a specialized law but the people who are dealing with the law are not specialized in that particular area. Their concern seems to be often limited to practise of their profession and nothing more. Secondly if we consider the case of those who profess themselves to be child oriented or child friendly in brief the NGO's. These NGO's are also not consisting of specialized persons. It is often that they have formed an NGO and are concerned with child related issues mainly because there are no other issues with which they can capture the public attention. The fact that these NGO's have done a commendable job in promoting child related rights but they could have done much better if they were really child oriented persons.

In terms of the Courts and establishments there have been efforts in providing a child friendly judicial system. Externally it may seem so but in comparison to other countries the efforts that are spared towards these is much less for India. Child basically suffers from an inherent deficiency of being voiceless. It is only people who can raise their voice, accomplish what they want. This being so the total revenue expenditure towards child welfare as such is very negligible.³

³ It stands at .03% or Rs 192.36 cores of the total budgets of Rs. 563991 cores and raises major concerns about policy making for the protection of children in the country. See wcd.nic.in/cwnew.htm. Similarly A Programme for Juvenile Justice which had a budget allocation of Rs 23.00 cores for the 2006-07 (revised estimate) of which Rs.21.7 cores was utilised.

An effort has been made under the Goa Children's Act, 2003 to expressly incorporate the International Law more specifically the Convention on the Rights of the child as part of this law itself. The efforts in this regard have to be admired. But in the absence of making specific provisions within the legislation providing for specific rights as mentioned under the convention and spelling out remedies in case of violation their attempt to incorporate this part of International Law is merely in the form of a policy declaration. And therefore judicial interpretation has remained vague and unproductive.

There are no so called bold decisions when it comes to child welfare as pronounced by the courts. The concern of the judicial mind is only limited to contemplating and stipulating whether the delinquent should be held guilty or not and nothing more. One can therefore point out this legislative lacuna by analysis of the law in terms of its implementation. The child protective provisions enshrined in the legislation are not at all implemented. Be it in terms of providing mandatory counsellors or even simple terms of providing hospital facilities and rehabilitation centers. Goa is no exception to national standards in its minimum to provide minimum infrastructure for children.

8.1. Overview of the Study

At the initial stages, the study the concern for the study was the child in difficult circumstances and the conceptual distinction which is applied to working class children and children of the poor those who have been exposed

to structural disadvantage.⁴These disadvantages are often responsible for making the child vulnerable and the main reasons why the child could come in contact and in conflict with law. The introductory chapter lays down the complete scheme of the study and the reasons for undertaking the study. The focus of the study is on the administration of justice for a child who has come into conflict and in contact with the law which operates through the five pillars of the criminal justice system the law enforcement/police, the prosecution, the courts and correction.

Chapter 2 deals with the Age of the child and the Ideology of protection. This chapter dealt with the concept of children's rights and justice for children are as old as civilization. It discusses the way in which rights were expressed in diverse cultures differed. Human societies have considered legal prohibitions aimed at regulating the human behaviour of children. The currently practised probation services in the juvenile system originally started as part of religious missionary services. Gradually the supervision during probation shifted from religious missionaries to professional probation officers. The study examined how past cultures have valued and cared for their children can provide insight into the evolution of current child welfare values. This chapter discusses Childhood as viewed under the Ancient Texts in India, as India believes that life begins with conception rather than at birth. The Researcher has also studied the international codes to define different age limits of the child. The medieval age recognized sociological responsibility of the state towards children. The

⁴ Runaway child, neglected child, street child, working child, surrendered child, slum child destitute child (For definition see Chapter 1 p.3-7)

modern age recognized the principle of innocence of the child. Hence the researcher has studied the development of child rights ideology from ancient times to modern times. Children should not be treated as adults by the criminal justice system. In law, the term minor (also infant or infancy) is used to refer to a person who is under the age in which one legally assumes adulthood and is legally granted rights afforded to adults in society. Depending on the jurisdiction and application, this age may vary, but is usually marked at 18, 20, or 21. The Researcher has studied Age thresholds in criminal justice system in Different Jurisdictions. This helps in a better understanding whether the law across the globe treats the child equally in similar circumstances.

The chapter 3 maps out the rights of the Child in the International Legal Regime. International law for the first time recognized the importance of the child in 1924. In this chapter the study was concerned on the conventions of which India is a signatory Geneva Declaration of the Rights of the Child, 1924, United Nations Declaration of the Rights of the Child, 1959, United Nations Convention on the Rights of the Child, 1989 etc dealing with the issue of child rights. India has made positive efforts by enacting legislations after ratifying the conventions. The most significant part of the study was the Convention on the Rights of the Child which is a part of the domestic law of the land and hence can be legally enforceable.

The rubric of chapter 4 is the evolution of Juvenile Justice Law. It studies the Traditional units in India like the joint family, caste groups and village community which played a key role in looking after a child in need of care and

protection in India. However, with the spread of urbanization and industrialization, the break-down of family structures and religious sanctions, population explosion, prospects of adventure and excitement in cities, this traditional system was no longer able to provide for care of needy children.⁵The Researcher has studied Juvenile Justice from two angles. First began the development of the legal system on juvenile laws. The Researcher has studied the early laws which are a legacy of British rule in India and the later rules which India passed to suit the juveniles in India. Secondly the Researcher has also studied the development of the jail rules which made segregation of juveniles from adults and started the system of according special treatment for juveniles.

Chapter 5 deals with the Law for Juvenile Justice in Goa. Goa was under the Portuguese Rule for 450 years. The Portugal was one of the first European countries, which instituted the criminal law for minors, by forming tribunals. By Decree No.10:767, of 15 of May of 1925 Portugal introduced this new Criminal Law for Minors in Goa. The Researcher has studied the provisions of this Decree of 27th May 1925 which created special courts called *Tutorias da Infancia* to try offences committed by children.⁶ The Researcher has also studied the Post Liberation Laws in Goa the Juveniles Justice (Care and Protection of Children) Act 2000 which is a Central Act and is enforced in Goa. The focus of this Act was to ensure that in no circumstances the child in

⁵ Bajpai, A. *Child Rights in India Laws, Policy and Practice*, , Oxford University Press, 2003.

⁶ Diploma Legislative No 1389; Boletim Official Do Estado Da India, , 19 de Julho de 1951, I Series No. 29, 136 (Legislative Diploma No. 1389, Official Gazette of the State of India dated July 19, 1951 I Series No 29, 136)

conflict with law is lodged in regular prison. Its ambit is to ensure minimum quality standards in the juvenile justice services. The study was done to understand the effectiveness of this law for juveniles in conflict with law.

Chapter 6 focuses on Child Law in Goa the Goa Children's Act, 2003. Goa is a special state which has passed a special law the Goa Children's Act, 2003 hence being the only state in India to have a law for the child victims. This law seeks to protect, promote and preserve the best interests of the Children in Goa⁷ and to create a society that is proud to be child friendly the Goa government passed the Goa Children's Act, 2003.⁸ The Vision of the State of Goa is to be at par with developed country by 2020. The Act also functions on the principle of 'principle of best interest of child.'⁹ This chapter analyzes the child friendly aspects of the Goa Children's Act, 2003 and the jurisprudence of the Children's Court. The study dwells on whether the 'best interest' of the child has been really looked into or it merely remains a distant dream.

Chapter 7 is the fundamentals of the study Enforcing Child Law and Juvenile Justice in Goa. The Researcher has collected and analyzed data on juveniles in conflict with law where the researcher has studied juvenile delinquency both in males and females and the nature of offences committed by the juveniles in conflict with law. The Researcher has tried to study groups formed by juveniles. The Researcher has also studied the role played by the Juvenile Justice Boards in delivering justice to juveniles. The Researcher has also

⁷ Statement of Objects and Reasons of the Goa Children's Act, 2003

⁸ Bill No 21 of 2003

⁹ Section 2(uu)

studied the jurisprudence of the Children's Court. Data has been collected from the Presidents appointed to the post of the Children's Court, The days of functioning of the Court, The cases filed and the number of cases pending and the fine amount collected by the Children's court. The Researcher has also analyzed primary data collected with the help of questionnaire where the researcher has tried to understand the difficulties faced by the children in Conflict with law and the role played by the state during the stay of the child in the Observation home. The Researcher has also tried to understand the child friendly nature of the Goa Children's Act, 2003 to the child victim. The study has dwelt whether the police have been sufficiently trained and whether procedural safeguards have been ensured to the child in the court. Finally the Researcher has also interviewed the Accused who are serving as Under Trials and are housed in Sada Jail, Vasco. The Researcher has studied the domicile of the domicile of the accused, their qualification and their relationship with the child.

Having conducted the in-depth study it is but natural for the researcher to draw certain specific conclusions as an outcome of the study and in the process prove the hypothesis, as enumerated in the initial chapter of the research study. The Last Chapter 8 is the Concluding chapter of the study which draws conclusions and makes suggestions.

8.2. HYPOTHESIS

The first hypothesis proposed is:

- 1. Juvenile Delinquency under both Special Law Crimes and under the Indian Penal Code has increased steadily in the last 5 years.**
- 2. Most of the juvenile offenders who commit crimes under the Indian Penal Code are in the age group of 16 -18 years.**

The study has espoused the existing systemic flaw as stipulated in the hypothesis that the legal system is not adequately equipped to meet complete justice for the child be it the offender or the victim. The fact that the field study has revealed the passing of the enactment Juvenile Justice (Care and Protection of Children) Act, 2000 has not in any way reduced juvenile delinquency but to the contrary there is a quantum increase in juvenile delinquency over the past 12 years which has been clearly established in the study.

The statistical analysis of the empirical data in this regard points that for the Two age groups which were studied. Firstly those in the age group of (12-15) years and those in the age group of (15-18)years. Most juvenile offenders are male. The age group (15-18) years records more number of crimes then the age group (12–15) years¹⁰ and are crimes which are offences under The Indian Penal Code, 1860. Male juveniles are also apprehended for committing offences which are under the Special Laws like Arms Act, Narcotic Drugs and Psychotropic Substances Act,1985 Motor Vehicles Act and Prevention of

¹⁰ See Table No 1 and Figure No.1

Cruelty to Animals Act.¹¹ The number of offences committed by juveniles under these Acts are fewer than those crimes committed under the Indian Penal Code. Thus **proving the hypothesis proposed** by the researcher. However the growing concern as to what should be the age factor in determining juvenility and the ongoing controversy and different criteria of those children especially those in the age group of (16- 18) have been brought out successfully in this study.

3. Most juvenile offenders are male.

4. Most of juvenile crimes are related to the Offence of theft and hurt.

The data have brought out two fundamental issues. One is specifically relating to the nature of crime. The Charts are self explanatory in depicting the factual situation that the juvenile crimes. The study was done on male juveniles and female juveniles. Male juveniles are apprehended for theft which includes house theft. Male juveniles are apprehended for theft of auto parts and theft in dwelling house.¹² Compared to males fewer females are apprehended for offences like theft of auto parts and theft in dwelling house.¹³ Male juveniles are also apprehended for causing hurt and grievous hurt.¹⁴ No Female juveniles have been apprehended in the last 12 years for committing offences like hurt and grievous hurt. This being the limited area within which a juvenile comes in conflict with the law, the law should have been more concerned with

¹¹ See Table No 10 and Figure No 10

¹² See Table No 3 and Figure No 3

¹³ See Table No 4 and Figure No 4

¹⁴ See Table No 9 and Figure No 9

prescribing and enforcing preventive methods rather than focusing on the punishment and the procedure relating to those punishments. The study has also brought out that juveniles are not involved in a plethora of crimes and that it is not necessary to keep in mind the whole spectrum of criminal law in understanding juvenile delinquency but that the juveniles often commit crimes within a limited 4-5 range of sections of IPC. In addition to proving the limited nature of criminality has brought to light the fact that the law of this nature has to be more focussed and localized in order to be effective.

The fact of gender difference in terms of juvenile delinquency has been well established and been substantiated by the statistical data. This factor also needs to be considered in this rights perspective while planning and implementing remedial measures. Hence there is need for speedy trials for juveniles.

The researcher is of the opinion that the **hypothesis proposed has been proved** and therefore the research is useful and stands validated.

5. The pendency rate before the Juvenile Justice Board is above the desirable limits.

The study has also brought out the overall concern and the general national pattern of pendency of litigation which has shown that even after enacting a special legislation the pendency often occurred due to the persons who handle law and their incapacity to deal with the changing needs of the child. It is often that these law enforcers are interpreters and decision makers. They like to remain within their comfortable zone of familiar procedures has not benefited

but harmed the juvenile justice delivery system in the country. This is clearly illustrated from the study of the number of cases received¹⁵ by the Juvenile Justice Board and the number of Cases disposed by the Juvenile Justice Board¹⁶ on an yearly basis. The members of the Board do not seem to do justice to their work. As the rate of cases disposed is very low.

The number of sitting of the Juvenile Justice Board is fewer than required.¹⁷ The Board members enjoy most public holidays like government servants and work only thrice a week. The entire state of Goa had only one Juvenile Justice Board. Only in the year 2012 the Government established Two Juvenile Justice Boards one for North Goa and one for South Goa. Despite this Fact the year 2012 has maximum number of pending cases and this is a result of the cases from the previous year's being still pending.¹⁸

It is clear that the **hypothesis proposed by the researcher is proved.**

6. Percentage of crimes against children in Goa is high. In Goa most of the crimes against children relate of child sexual abuse.

A study was done on the Data collected from various Police Stations in North Goa and South Goa. The data was collected for a period of 9 years beginning from the year 2004 and ending in 2012. The crimes registered in Panjim are the highest 18.07%. Next highest taluka was Mapusa with 16.94%. Bicholim registered 12.42% crime rate and Old Goa registered 11.86% crime rate.

¹⁵ See Table No 15 and Figure Number 15

¹⁶ See Table No 16 and Figure Number 16

¹⁷ See Table No 14 and Figure No 14

¹⁸ See Table No 17 and Figure No 17

Agassim has a crime rate of 9.23%. Anjuna and Pernem had the same crime rate of 8.47%. Calangute registered a low crime rate of 4.51% and shared the same number with Porvorim of 4.51% and Valpoi 4.51%. The beach belts of Anjuna and Calangute registered a low crime rate. Ponda registered a 6.21% crime rate. Collem registered the lowest crime rate of 3.95%. Crimes registered in South Goa are higher than those registered in North Goa with the highest Taluka in Crime being Maina having a crime rate of 18.81%. The lowest Taluka in crime is again in South Goa, Sanguem which has registered a crime rate of 1.67%. There is not a single taluka in Goa which has not registered any crime over the 9 years.¹⁹

Rape cases, Kidnapping, Unnatural Offences, Molestation registered in North Goa were higher than South Goa.²⁰ In South Goa there is a steady increase in cases of child abuse than North Goa.²¹

The Research has further pointed out that most of the crimes against children would be qualified to be classified as 'cases of child abuse'. Therefore there seems to be a psychological aspect which is more peculiar to child abuse cases in Goa. This necessarily calls for a prolonged strategy. One being to ensure that those situations of child abuse must be eliminated if not restricted. The second is certainly more important that is of creating awareness among the children, among the parents and guardians and even among the public.

¹⁹ Table no 44,45 and Figure No 44 and 45

²⁰ See Table no 46,47, 48 and 49 and Figure No 46,47,48 and 49

²¹ Among most of the offences sexual crimes registered on child victims are much higher. See Table no 50,51 and Figure No 50,51. Also See Table no 52,53 and Figure No 52,53.

This further proves that the **hypothesis put forth by the researcher is proved**

7.The disposal rate of cases before the Children's Court are much lower than expected.

The Researcher has brought to light another glaring lacuna in the criminal justice system that being the rate of disposal of cases with the setting up of a separate judicial system the object, ideology and the hope of the legislative draftsman was to ensure prompt disposal of child abuse cases. To ensure that no trauma is caused to the victim child right from the stage of inquiry. But the legal machinery in this existing format cannot boast of such an achievement.

Firstly the Children's Court does not have fixed days of sitting in a week. This has been altered time and again due to deficits in finding a President for the Children's Court.²² Compared to the number of cases being filed in the Children's Court²³ the Disposal rate of the Children's Court is much lower than expected. Maximum of 46 cases were disposed in the Children's court in the year 2008 and in 2009 there were 40 cases disposed. In the year 2011 only 12 cases were disposed and in 2012 there were only 10 cases disposed.²⁴ This has resulted in pendency of cases before the Children's court.²⁵

This further proves that the **hypothesis put forth by the researcher is proved**

²² See Table No 55

²³ See Table No 56 and Figure Number 54

²⁴ See Table No57 and Figure No 55

²⁵ See Table No 58 and Figure Number 56

8. The perpetrators of child sexual abuse are mostly persons previously known to the child.

The Researcher interviewed the inmates of Sada Jail. This study brought out and interesting but well accepted findings of this study is that the offenders of child abuse are persons previously known to the victims they could wither be a relative to the child or a person who comes in daily contact with the child,²⁶ this is off course a sociological and psychological factor. The only remedy available to deal with such situations is intensive awareness campaigns. The best available format for the same in the present day context is the electronic media. In the Indian and more especially Goan scenario most of the children do have recourse to electronic media in its various formats, television being the most common. Necessary awareness programs and campaigns in the television would certainly act as effective preventive steps in dealing with situations of this nature.

This further proves that the **hypothesis put forth by the researcher is proved**

9. Most of child abuse perpetrators are of Goan Origin.

The Researcher interviewed the inmates of Sada Jail. This study enabled the researcher to draw a conclusion that most abusers are known to the child and most are of Goan Origin.²⁷ It is important for one to understand that it is often a particular category of people who commit crimes against children and there are

²⁶ See Table No 80 , 81 and Figure No 77 ,78 and Also Table No 82 and Figure No 79

²⁷ See Table No 85 for North Goa and Table No 86 for South Goa and Figure No 82 for North Goa and Figure No 83 for South Goa.

certain specified situations in which the child becomes a victim and is abused. The law does provide a strong preventive measure like declaring certain areas as high risk areas even identifying potential offenders. The fact that these are not implemented is evidence of the lackicidel attitude of the government when the matter is of concern to the child.

As mentioned earlier the child merely remains a voiceless victim to governmental apathy and bureaucratic insensitiveness.

This further proves that the **hypothesis put forth by the researcher is proved**

10. The procedure and methodology of the atmosphere of the Children's Court is not conducive in reducing the victim's trauma.

The final findings of the Researcher go against the very purpose for which special Children's Courts have been set up in Goa. The proclaimed objective for the same is to provide children a non threatening atmosphere and a surrounding to which a child does not feel like an alien in deposing or sharing his or her trauma which is part of the criminal investigation and trial proceedings.²⁸ This Children's Court in Goa is unfortunately not equipped one prominent reason for the same the process of appointing the President of the Children's Court.²⁹ It is often that when a judge has to be posted Presiding Officer ship of a Children's Court is only one of the posting that a judicial officer of the Rank of Principal District Session Judge goes through and nothing more there is no assessment of interest, no special promotional

²⁸ See Table No 73 and Figure No 70. Also See Table No 74 and Figure No 71.

²⁹ See Table No 54 and 55

facilities and the most alarming factor is that the female judicial officers are often not appointed to this position. The Act does not permit reappointment of judges to the Children's Court in practise these guidelines are not followed. The Act provides for collecting fine from the Accused but as seen from the study only in just about 2 or 3 cases the fine was actually paid to the child victim.³⁰ The State also has no facilities and is also not able to provide services to the child victim to help it recover the trauma of abuse.³¹ Hence the Act is not able to ensure justice to the child victim.

This further proves that the **hypothesis put forth by the researcher is proved**

8.3. SUGGESTIONS

1. Juvenile Courts

Juvenile courts have to be revitalized. They have to develop an understanding of the psychological and social forces which bring children to Court. Juvenile Courts should be sensitive to the needs of the juvenile in each case flexible enough to respond to new discoveries and willing to invest in and experiment with promising new interventions for offenders. Personnel in the juvenile courts are the key. Judges of the juvenile courts must be trained to recognize the educational social and treatments needs of the child and families in crises. The juvenile court also must have inter disciplinary connections with a variety of professionals like law, medicine, psychiatry, psychology and child welfare

³⁰ See Table no 59

³¹ See Table No 75 and Figure No 72

administration. The court should be able to supervise and control other services provided for the child.

2. Speedy Disposal of cases involving children in order to ensure that the development needs of the child are addressed.

Juvenile Boards must make arrangement for quick disposal of cases with the earliest possible period. Hence the Juvenile Board needs the effective help and support of the police and Probation officer for the same.

The police must ensure that the pre sentence investigation report is prepared without any waste of time. Police while bringing the children to court should not follow any coercive methods or practices like bringing the children with handcuffs, collecting photographs, finger prints of children. Such steps are not necessary for children. Police should not interrogate the child.

Goa has two Juvenile Justice Boards however there is only one Probation Office, it is better to appoint two Probation Officers for the quick disposal of cases.

The study has found that the number of sittings of the Juvenile Justice Board is fewer than expected. The cases are not heard if the Juvenile Justice Board is not functioning.

i. LokAdalats

In order to overcome this problem LokAdalats can be organized to overcome the pendency of Juvenile cases.³² States like Maharashtra, Delhi have already started using Lok Adalats at Juvenile Justice boards. Which are held once every two months to dispose in bulk, cases dealing with minor injuries, eve-teasing, petty thefts and rash driving, pending for past seven years or more. The State of Bihar has initiated *Bal Samvad Adalat*, a unique fast-track process to deal with long-pending cases. The cases of petty offences can be taken up first, where parents are contacted, invited and provided with legal aid, counselling and advice on children's rehabilitation. These same methods which have delivered success in other States can be adopted in the State of Goa.

3. Terminology

The courts to a larger extent have taken care of the terminology to be used by the personnel. The words like 'conviction' and 'sentence' should not be used in juvenile proceedings or in a Children's Court instead terms like 'finding of guilt' and order made on finding of guilt' should be used.

4. Age of Juvenile

Some countries have reduced the age of juvenile to 16 years. Some have still put it at 18 years, like in India. There is need to examine whether age and

³²Lok Adalat is a system of alternative dispute resolution developed in India. It roughly means "People's court. Cases that are pending in regular courts can be transferred to a Lok Adalat if both the parties agree. A case can also be transferred to a Lok Adalat if one party applies to the court and the court sees some chance of settlement after the other party has been given an opportunity of being heard. LokAdalats help in reducing the pendency of cases

gravity of the offence have a correlation. Currently the law provides blanket protection against all and every offence committed unmindful of its nature and gravity, actual age and mental maturity of the juvenile, his socio-economic background and right of victim to justice in an offence committed by a juvenile. The changes which start around puberty reach a level at a age of 16 for a child, where their prefrontal cortex is developed to an extent that it helps them to inhibit impulses plan and organize their behaviour to reach a goal.³³ They are in a position to decide what is right and wrong. Parliament should consider reducing the minimum age of the juvenile from 18 to 16 years. Also instead of prescribing a minimum age what should be considered is the criminal bent of mind and the accused intention to commit the offence. Currently a Public Interest Litigation is pending in the Supreme Court soon this same issue.³⁴ The Supreme Court judges³⁵ observed fixation of age is a question of law. The fixation of age should have some nexus with the gravity of the crime or offence for deciding whether the offenders can be tried as adults in heinous offences.

5. Analysing the Emotional Quotient in Children

Many people with low IQ end up in menial jobs and those with high IQ tend to become well paid. IQ contributes to about 20 per cent to the factors which

³³ Goleman, D. *Emotional Intelligence Why it can matter over IQ*, Bantam Books London, 1995

³⁴ Tougher penalty for heinous crimes by juveniles? SC agrees to examine http://articles.timesofindia.indiatimes.com/2013-02-05/india/36763770_1_juvenile-offenders-jj-act-offences

³⁵ Justices K S Radhakrishnan and Justice Dipak Misra

determine lives success which leaves 80 percent to other forces.³⁶ In the real sense we have two minds one that thinks and one that feels. The emotional mind is quicker than the rational mind springing into action without pausing even a moment to consider what it is doing. Its quickness precludes the deliberate, analytic reflection that is the hallmark of thinking mind. One is an act of the emotional mind and the other of the rational mind. Childhood abilities to handle frustrations, control emotions and get on with other people made the greater difference.³⁷ Our emotions they say guide us in facing predicaments and tasks too important to leave the intellect alone face danger, painful loss, persistent towards a goal despite frustrations bonding with a mate, building a family. Each emotion offers a distinctive readiness to act; each points us in a direction that has worked well.

This helps to handle the recurring challenges of human life.³⁸ Thus the understanding of one's own self and of others in motives, in habits of working and in putting that insight into use in conducting one's own life and getting along with others.³⁹ Children have to be taught that they have choices about how to respond to emotion and the more ways they know to respond to an emotion the richer their life will be.

³⁶ Vaillant, G. *Adaptation to Life* Little Brown Boston, 1997

³⁷ Felsman, J.K, and Vaillant G.E, *Resilient Children as Adults A 40-Year Study* in Anderson E.J and Cohlereds B.J . *The Vulnerable Child* Guilfords Press New York 1987

³⁸See Appendix 3 For Calculating Emotional Intelligence. The Researcher had made efforts to calculate the Emotional Intelligence of Juveniles in Conflict with Law at Apna Ghar. However since the Apna Ghar in Goa has been in news for repeated escapes of juveniles in conflict with law the Authorities denied permission to the Researcher to carry out any such tests. The Researcher was granted permission only to interact with the juveniles in conflict with law.

³⁹Supra 32 p.43

The ingredients of emotional intelligence are core skills which have to be taught to children as primary prevention techniques. The topics taught should include self awareness, in the sense of recognizing feelings and building a vocabulary for them and seeing the links between thoughts and feelings and reactions. One has to realize whether one's thoughts or feelings are ruling a decision and understand the consequences of alternative choices. Finally one has to apply insights to decisions about such issues such as drugs, smoking and sex. Self-awareness also takes the form of recognizing strengths and weaknesses and seeking oneself in a positive but realistic light. Another important aspect of managing emotions is realizing what is behind the feeling for example hurt, anger and sadness. Also children have to be taught to take responsibility for decisions and actions and keeping commitments.⁴⁰

6. Rewards and Earnings

The rewards to a juvenile or child, at such rates as may be fixed by the management of the institution from time to time, and may be granted by the Officer-in- Charge as an encouragement to steady work and good behavior; and at the time of release, the reward shall be handed over after obtaining a receipt from the parent or the guardian who comes to take charge of the juvenile or child or juvenile or child himself by depositing in a post office account which can be transferred to his/her place of residence.

⁴⁰ Supra 32

7. Research into judicial trends and case law

It would be useful for the State of Goa to engage in legal research into the judicial trends and case law emerging from the implementation of the Act in various states. The Government should request the Legal Services authority and use the services of young Advocates and Law College Students to conduct Research.

8. Role of State in ensuring Juvenile Justice

1.State must provide more incentive to the staff engaged in juvenile administration in the State.

2. State should also provide computerized facilities for recording social histories. It is important to keep confidential records for repeat offenders.

3.Juvenile Justice be adopted as a subject in the curriculum for training refresher course for Magistrates, court staff and police personnel and para legal volunteer trainings. The same should be introduced for LL.B Students.

5. State should set up colleges offering courses in Psychology and Psychiatry and there is need to develop specializations in juvenile forensic psychology/psychiatry, as most counsellors and psychiatrists currently do not have this specialized training required for effective implementation of the law.

6. State must institute Juvenile Justice Fund and Child Victim Fund to help rehabilitation of juveniles. Children who become involved in crime do not and should not lose their right to be treated as children. As has been observed,

young offenders are less immediate danger to society than adult law –breakers, they are less responsible for their actions and more amenable to training and education.⁴¹

This fund may be used for the education of juveniles and child victims or for finding them suitable livelihood options. Mysore University has already started reserving seats for sexual harassment and trafficking victims for education at the university. If other Universities throughout India follow suit it would help in the rehabilitation of juveniles and child victims.

9. Amenities in Police Stations

Many crimes of sexual violence or gender violence are facilitated in police stations because of lack of essential and separate amenities. There should be a separate waiting room for visitors to prevent intimidation and harassment of those trying to register complaints of sexual violence or trying to prevent harassment from the accused. To interrogate juveniles a separate room should be available to the police to enable the juvenile to freely depose.⁴² Women police officers and social workers should be present while recording statements of victims. Efforts to be made to reduce fear of a juvenile or child victim to depose at all stages while deposing.

All police stations should have CCTV's at the entrance of the police station, in police cells and in the questioning room. All PCR vans should also contain

⁴¹ Ingleby Committee Report, Home Office, 1996 para 106.

⁴² Some juveniles are found on streets without a home and in such cases it may not be possible for the police to record the statement at the home of the child.

CCTV's. The CCTV's must not be tampered with and every month an independent expert should ensure that the CCTV footage has not been tampered with. This is an additional method to ensure safety in police stations and that proper procedure is followed in handling complaints, the recording and filming of FIR's should be compulsory.

In addition to every individual being able to register an FIR at any police station irrespective of the jurisdiction in which the crime was complained of in writing.

Every individual must also be able to register his complaint online on a designated website. After this a complaint number should be automatically generated so the complainant can track the FIR. Non-recording of FIR is to be made punishable.

Legal assistance must be provided by the police at the police station since the victim in cases of sexual offences might be in a distressed state upon arrival at the police station and the guidance and support of a lawyer at this stage while being questioned will be of great assistance to the victim.

10. Recording of Statement of Child Victim

Victim should be allowed to give statement when it wants. The statement of the victim shall be recorded verbatim. The statement of the child must be recorded in a child friendly manner and the child must not be made to repeat the incident over and over again. The officer recording the statement of the child victim

should not be in police uniform. The statement should be recorded promptly without any loss of time. The Investigating Officer recording the statement of the child victim shall ensure that the victim is made comfortable before proceeding to record the statement and ensure that the statement carries accurate narration of the incident covering all relevant aspects of the case. In the event the Investigating Officer should so feel the necessity, he may take the assistance of a psychiatrist.

The law should make it possible to video record the child statement and the same may be used in the courts to avoid the child undergoing the same traumatic experience again. Audio video recording of child's evidence needs to be introduced.

A child should be permitted to lodge a complaint before the police station. Police should not insist that only a parents should lodge a complaint for the child. This could put the child in a difficult situation when the abuser is the parent or a member of the family. If police receive information of offence on a child they should register the complaint and not wait for parents to lodge a complaint

Children who are victims of abuse sometimes run away from their homes due to fear of the abuser and end up lodging complaints in other police stations. Police often raise jurisdiction issues in such issues. Instead the police should be directed to lodge the complaint before the appropriate police station.

11. Receipt of the Complaint

The police must maintain an intake form in which certain details to the complaint are filed. Such as contact details of the victim, the profile of the offender of the victim and the profile of the abuser.

12. Recording of statement by magistrate

The statement of the child victim shall be recorded promptly. In the event of the child victim being in the hospital, the concerned Magistrate shall record the statement of the victim in the hospital. To create a child friendly environment separate rooms must be provided within the Court precincts where the statement of the child victim can be recorded. The child victim shall not be separated from his/her parents/guardians nor taken out from his/her environment on the ground.

13. Abuse by parents

Those parents who blame the child or who are hostile towards child abuse should be penalized. If the parent is the perpetrator of abuse then the parent or relative it needs to be treated as a serious offence because of the permanent scars it leaves of the psyche of the victim.

14. Safe place

When the perpetrator of child abuse is a family member the child needs to be shifted immediately to a place which is safe. Apna Ghar has failed to provide the essential services like counselling, medical and psychiatric treatment to the

child. Hence the State needs to set up a safe home to provide for foster care for victims of abuse.

15. Children's Court

The main flaw remains in the use of the term 'Children's Court'. The criminal justice system aims in creating an informal system for the child victim but use of the term 'Court' is unable to remove the stigma attached to the criminal proceedings. It would be advisable to use the term 'Children's Tribunal' or 'Children's Forum'.

i. Infrastructure

The physical environment of the courtroom has to be changed to foster better communication without compromising the security of the court. The Court should have a child friendly atmosphere where the child will feel welcomed. It should not be like an office but should be well lit and provided with toys where the child will feel he is in a safe and secure environment. The Court should be provided with more space so that child witness may be examined in special room.

ii. Informality

Plain language has to be developed as an alternative for legal and technical words. The defense lawyer must ensure that the complexities of the court hearing which take place are explained to the client in an accessible way prior to the hearing itself. It is important to use proper language without being patronizing.

Most legal terms can be phrased in a simple and accurate way for the child to understand.

iii. Taking a plea

When dealing with a child the court should explain the nature of the proceedings and the substance and the charge in simple language suitable to the age and understanding of the child. The court should not give detailed explanation of the charge but should ensure that the essential elements of the offence are explained.

iv. Assisting the child through the court process

The child must be familiarized about court proceedings. Someone needs to accompany the child to the court and be with the child in the court. The child needs help in the interaction between the child and the public prosecutor. Brushing the memory of the child is important with every effort to ensure that there is no secondary trauma in the process. Arranging and providing legal advice needs to be done on case to case basis. Assisting other witnesses to come to court specially child witnesses has to be done to facilitate an early trial.

v. Test Identification Parade

Where the victim does not know the accused it must be ensured that a test identification parade is done to identify the accused. This Test Identification Parade must be conducted by a Special Judicial Magistrate at the request of the

investigating police officer in his chamber. Another useful method would be to show the photographs of the accused on the television screen and ask the child to identify the accused. This would be an informal method and go a long way in reducing the trauma of the child. It would also prohibit contact of the child with the accused and hence prevent re-victimization of the child.

vi. Live Television Links

If the accused has not been granted bail and is lodged in prison before the trial begins the court may through video conferencing conduct the trial. Live television links can be used to record statements of the accused who is in prison this will greatly reduce the state expenditure of bringing the accused to court for every hearing.⁴³

vii. Defence Evidence

The court should permit use of practical aids such as plans, photographs which can bring the case back to life and assist as a witness in court in visualising the location where the allegation is said to have taken place. Distances are sometimes difficult for the child to describe and a simple plan may help to give clear evidence.

viii. Role of the Judge

The judge must receive training to develop oral questioning skills and listening skills while examining children. Judges who are trained in child psychology

⁴³ In Goa in Adult proceedings this technique is being used. Sadly it has not been adopted for Cases involving child victims.

have to be appointed. If possible women magistrates must be appointed. Young girls who are victims of sexual abuse are reluctant to speak in the court hence they must be assisted and guided of the kind of questions that will be asked and also prepared for questions in cross examination so that they are able to give right answers to the questions and chances of confusion is reduced.

A judge is permitted to ask leading questions to a child victim to facilitate the trial. The judge must note these questions in Question Answer Format and the same has to be recorded in the same format. In case the judge is transferred the answers with relevant questions will be available to the new judge.

If the parent has suffered a loss of a child the parent is under trauma and during examination and cross examination the parents are made to go through the same trauma again and again. Care has to be taken to minimize the trauma and pain suffered. Whenever a chargesheet is filed the judges must ensure that the first witness is a child witness. This will help to relieve the child from the proceedings of the court.

ix. Speedy Trial

The defense lawyer needs to ensure that the preparation of the case for the trial is not compromised. Court needs to give quick dates of hearing. In cases involving child victims the law should specify a time limit to complete trial just like juvenile cases. The Children's Court should have a full time judge

appointed. But since children are involved the child's right to fair trial may again lead to adjournments if the trial is traumatic to the child.⁴⁴

16. Medical examination

Where it is possible to procure medical evidence to support the case it is necessary to ensure that the child is immediately referred by the police for medical examination for ascertaining abuse. Reference can also be made for ossification test to determine the age of the child if there is no record of the age of the child such as birth certificate, or school leaving certificate. The child also has to medically examine and a DNA Test conducted to determine the paternity of the child in event of pregnancy following rape, chemical analysis tests for vaginal swabs for indication of presence of semen, cross matching tests if semen is found in sabs or on the clothes of the victim. Chemical analysis can be done for other incriminating evidence on the clothes such as blood stains of the accused or the victim, presence of pubic hair of the victim on the clothes of the accused or at the scene where the offence is alleged to be occurred. To make the child feel reassured and comfortable it is advisable to accompany the child for medical examination by someone who is assisting the child. The *Delhi High Court in Delhi Commission for Women Vs. Delhi Police W.P*⁴⁵ and it is seen that the said order contains a set of comprehensive guidelines to police, hospitals/doctors, Committees, Sessions Courts, Magistrate Courts, Prosecutors and other concerned authorities in order to tackle cases of sexual offences. The

⁴⁴ Criminal Defense Service, Criminal bills assessment manual, paras 3.3.16-3.3.18

⁴⁵ (CrI) No. 696 of 2008

said guidelines have comprehensively laid down protocols and procedures to be followed for medical examination of the victim. Every State needs to follow these guidelines.

17. Forensic Laboratory

In Goa the forensic department is near the morgue. Forensic department should be shifted away from the morgue to enable child victims to feel safe. A child should not be kept waiting for long hours for a medical examination to be done. Goa also needs to set up a forensic laboratory to reduce the delay of sending the samples to Hyderabad for testing.

Medical reports need to take into account in cases of child abuse that the child's body heals much faster. Hence recording small signs and giving value to these will help rather than ignoring them and making it difficult to prove sexual abuse.

18. Sexual Offences

Child abuse is often not a one time event. Child abuse is equivalent to being raped over and over again mostly by a person who is in the position of power or authority of the child. The law does not take note of this.

Rape, sexual assault, eve-teasing and stalking are matters of serious concern not only because of the physical, emotional and psychological trauma which they engender in the victim, but also because these are practices which are being tolerated by a society ostensibly wedded to the rule of law.

There are two attitudes in criminal law towards sex offenders. One is to deal with them like other criminals by applying penal sanctions. Most of them quite severe keeping in view the rehabilitative ideal in special cases. The second attitude is based on the belief that sexual offenders are different from other offenders mentally, constitutionally and they must therefore be treated differently. India follows the first attitude which is reflected in our laws and judicial decisions. Severe punishments have been prescribed for some of the sexual offenders. The legal system should also evolve methods to deal with the second class of offenders and the offenders to be provided with counselors, psychiatrists and other medical treatments to prevent them from reoffending.

The offence of child rape should not be part of the general law and be separately dealt with by making a separate provision in the Penal Code or in a special law including enhanced punishment for the accused, with special provisions. The age in Section 375 of the Indian Penal Code should be amended for sexual offences and made 18 years as prescribed under The Goa Children's Act, 2003. Minimum punishment for child rape should be 10 years rigorous imprisonment with discretion toward a lesser punishment for reasons to be recorded in writing. The investigation, prosecution and trial of child rape cases should be conducted by lady officers. Investigation by the police in the cases of child rape should be on priority basis to be completed within the prescribed time limit. Child rape cases should be given top priority and the courts should deal with them on a day to day basis for the disposal within a prescribed time limit.

In incestuous child rape mitigating circumstances and immediate efforts must be made by courts to remove such children from the home in which the child and the abuser live. The state should set up a fund to rehabilitate such children and bring them in mainstream society.

Section 354 of the Indian Penal Code punishing an offender for force or criminal assault with the intention of outraging the modesty of a woman should be amended to provide for enhanced punishment of five years where the victim is a female child.

19. Safety measures when a foreigner is the abuser

i. Attachment and release of passport

If the abuser is a foreigner the passport must be attached by the police so that the abuser cannot escape. The police have to ensure that the application made by the Abuser to the Court for release of passport is not granted by the Court. The movement of the abuser has to be monitored.

ii. Communication with Interpol

If the alleged offender has a past record of sexual abuse it is important to remind the police to establish contact with Interpol. This also needs to be done when the offence has international dimensions. The police have their own protocols to follow and the local investigating officer cannot directly contact the Interpol but has to do so by putting up the matter to his supervisors who in turn have to forward the request to the Central Government through whom the

request to Interpol is processed. Since sexual offenders carry dual names Interpol has to keep records of finger prints to verify details.

iii. Communication with Consulates

The police need to officially communicate with consulates. If the accused is not arrested has been released on bail it is necessary that the police get in touch with the Emigration authorities to issue a llok-out circular.

20. Role of State in ensuring Justice to Child Victims

1. Two Children's Court, one for each of the District of Goa be created.
2. The Hon'ble High court be requested to appoint Additional Session Judges to function as full time judges of the Children's Courts.
3. The Hon'ble High Court may also be requested to transfer all cases relating to sexual offences against children to these Courts.⁴⁶
4. State to formulate a Children's Code for the State and the State to set up Victims Assistance Unit.⁴⁷

⁴⁶ See Report of The 2nd Law Commission constituted by Government of Goa for a period of one year (Order No. 9/5/2008-LA/100 dated 20th January 2009) and further extended for two years w.e.f. 06/04/2010 (Order No. 22/1/2010- LD(Est.)/LC/530 dated 05/04/2010). Available at www.goalawcommission.gov.in

⁴⁷ See Notification No 2-61(1)-97/ICDS The Goa Children (Child Labour Vigilance Officer, Task Force, Victim Assistance Unit and other Authorities) Rules, 2004. Though the Notification has been passed. The State is yet to set up the infrastructure and appoint personnel for the Victim Assistance Unit.

2. Compensation to Child Victim

Compensation can be awarded only if the offender has been convicted of the offence with which he is charged.⁴⁸ The amount of compensation which the Court can thus order is flexible enough to make it real and truly compensatory. It may be paid directly to the beneficiary before the court on a fixed date and if not so paid, may be reconsidered as a fine. Compensation should be awarded even if the accused is released. The payment of compensation by the offender is not possible where there is acquittal or where the offender is not apprehended. Further, the payment remains suspended till the limitation period for the appeal expires or if an appeal is filed, till the appeal is disposed of⁴⁹. The delay in the realization of the amount often adds to the woes of the victim. In such cases the District Legal Services Authority must play the role of a front runner in providing compensation to the victims.

6. Educational Campaigns

Campaigns against sexual abuse must be conducted through various programmes for people to understand the gravity of the problem and its many facets. The campaign must include components of trafficking and child rights encompassing the rights to survival, protection, participation and development. It is often the denial of these rights which puts children in vulnerable situations of abuse. These campaigns must also address issues like the way we look at

⁴⁸ While Section 357 (i)(c) of the Criminal Procedure Code , 1973 provides for the payment of compensation out of the fine imposed, Section 357 (3) makes way for the payment of compensation even if fine does not form part of the punishment.

⁴⁹ See Section 357(2) Criminal Procedure Code, 1973

children, their participation in their lives social stereotypes of children's dependency on adults and issue of discrimination of girl child. Children need to be educated on what is a good touch and a wrong touch. Sex education to be made a part of the curriculum at all schools. Campaigns also need to be conducted on prevention of child abuse.

Another proactive method the State can involve in is to put up posters and hoardings warning public and especially tourists of a stringent legal system which would not hesitate to met out even the harshest punishment in case of any sort of child abuse. Such a step will act as a deterrent atleast for to categories of offenders the first being the tourists and the second the habitual child abusers.

7. Register of Referral Services

The Department of Women and child needs to maintain and update a register with names and addresses of organizations providing services to children who are victims. Like Psychologists, Advocates, Doctors, Counsellors, Para Legal Volunteers, Educational intuitions, job opportunities and social welfare schemes.

8. Health Card

Health Card is useful to record any physical illness that has resulted from the physical contact with the adult or any psycho somatic illness so that the progress of the child's recovery from its past illness.

21. Amendments Proposed to Goa Children's Act, 2003

1. The definition of the word child in S.2 (d) has to be amended.

In Goa the child is defined as means any person who has not completed eighteen years of age unless any other law in force specifies otherwise or unless otherwise indicated in specific provisions in this Act. Under the Indian Penal Code, 1860 for offences like rape a child is a person below 16 years of age. So if a child is raped in Goa it raises an ambiguity of whether the court should follow 16 as prescribed by Indian Penal code, 1860 or as prescribed by the Goa Children's Act, 2003. Hence the definition is arbitrary. The definition in the Indian Penal Code, 1860 to is to be amended to 18 years.

2. In Section 8(2)[*Testimony of the child victim shall be treated on par with the testimony of a child rape victim*] under section 375 of the IPC, as laid down by the Supreme Court of India.⁵⁰ (Emphasis added). This portion stipulating that which is laid down by the Supreme Court is uncalled for and totally unwarranted and has to be deleted.

3. *Section 32 (1) - Whenever any offence is alleged to have been committed against a child, the burden of proving that such offence has not been committed by the accused shall lie on the accused*.⁵¹

⁵⁰ See Section 8(2) of Goa Children's Act, 2003

⁵¹ See Section 32(1) of Goa Children's Act, 2003

The State has to prove a commission of offence. This section completely violates the rights of the accused as envisaged under the Criminal Procedure Code. Hence this section also has to be deleted.

4. *Section 32 (o) - The court to direct the accused to deposit 75% of the maximum fine at the beginning of the trial itself.*⁵² This provision is arbitrary as nothing is said of what has to be done if the accused, being an indigent person, is defended under the free legal aid scheme of the State.

5. Section after section is filled with conferring responsibility on the State. ‘For example: *‘The State shall endeavour to promote holistic education..*⁵³ .’; *‘The State accepts the concept of zero rejection for children*⁵⁴’; and nearly all other provisions incorporated in section on Education is nothing but redundant verbosity. The same could be said about the section on Health and Nutrition⁵⁵ which also envisages that the State shall endeavour to make possible Maternity leave of six months in all sectors of employment including for adoptive mothers and single parents. No Act confers responsibility on the State. Hence the words conferring responsibility on the State need to be deleted.

6. Insert appropriate definition of the word ‘competent authority.’

7. The term ‘offence’⁵⁶ under the Goa children’s Act, 2003 has a definite legal connotation and does not include violation of rights. The jurisdiction of the

⁵² See Section 32(o) of Goa Children’s Act, 2003

⁵³ See Section 4 (1)

⁵⁴ See Section 4 (2)

⁵⁵ See Section 5

⁵⁶ See Section 2(s) and Section 2 (zb)

Children's Court is limited to only offences committed against children and does not include violations of child rights as the Court is not competent to provide redressal on those matters. For instance, the denial of admission to a child living with HIV/AIDS in a government school would constitute a violation of the right to equality and non-discrimination guaranteed under Article 14 of the Indian Constitution and Article 2(1) of the UN Convention on the Rights of the Child. However, this is not a criminal offence and does not carry any punishment in the form of imprisonment or fine. Either the Act must clarify this view or insert sections to impose penalty on the violation of child rights.

8. To prevent the conflict of law the Goa Children's Act, 2003 must insert a non-obstante provision; *In case a child in need of care or protection or a juvenile in conflict with law is brought before the Children's Court such a child has to be dealt according to the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.*

9. Amendment to Section 27- The words "*Children's Court*" for the State of Goa be substituted by the words "*Children's Court for each District in the State of Goa*". The State is in need of two Children's Courts in the two Districts of Goa.

7. Study of Enforcing Child Laws and Juvenile Justice In Goa

Rights no matter how well enunciated or spelt out, do not necessarily become a reality. The providing of services or the laying down of procedures and even the translation of Articles of the Convention on the Rights of the Child into national legislation do not ensure that these rights actually become a reach out to our children. If these rights are not exercised all other rights become redundant and the individual becomes a mere passive recipient of services if and when they are delivered by benevolent providers. They are also likely to become the meek victims of abuse and exploitation. This is the current state of the children in India. In spite of having a plethora of Laws, marginalized groups like children have not been successful in securing and maintaining their rights. Goa is the 5th highest State in India to have recorded crimes against children.¹

The findings of this Chapter, are based on data collected through interviews, statistical data and data collected and analyzed from questionnaires. The Range of study begins from the year 2000 and ends with the year 2012 hence travelling a period of 12 years. The study is limited only to the State of Goa. Part I deals with statistics of juvenile offenders and Part II deals with statistics of the child as a

¹ Source: Crime In India Publication, NCRB 2011, "*Children In India 2012 - A Statistical Appraisal*", Statistics Division Central Statistics Office Ministry of Statistics and Programme Implementation, Available at mospi.nic.in/Mospi. Crime rate means ratio of number of crimes committed under IPC to the population

victim of crime. Part III deals with the data obtained and analyzed from the questionnaire.

a. Statistics

Goa is geographically divided into districts North Goa and South Goa. It is further divided into 11 Talukas. There are 11 police stations in South Goa and 12 police stations in North Goa. Crimes registered at various Taluka Police Stations in North Goa² and South Goa³ have been collected. The data has been collected from the Juvenile Welfare Officers located at every police station in Goa. A total of 23 police stations in North and South Goa were visited. Data was also collected from the District Court and Sessions Court in North and South Goa, the Children's Court and the North and South Goa Juvenile Justice Board. Some material was obtained from the Directorate of the Women and Child, Goa State Legislative Assembly and also the Home Department.

b. Analysis of data from the questionnaire

Three questionnaires were prepared one for the child in conflict with law, one for child victims and one for the accused who commit offences on child victims. Questionnaires which were prepared were distributed to stakeholders who come in contact with the child who could be either a child victim or a child offender. A total of 50 respondents were selected for the study. Respondents were randomly

² Anjuna, Bardez, Bicholim, Calangute, Collem, Old Goa, Mapusa, Panaji, Ponda, Pernem, Porvorim, Valpoi

³ Canacona, Colva, Cuncolim, Margao, Maina, Mormugao, Quepem, Sanvordem, Sanguem, Vasco, Verna

selected, however care was taken to identify victims of the crime and their relatives and ensure that their views are recorded. Accused housed in Sada jail were selected for the study of offenders who commit crimes on children.

c. Analysis of Data from Interviews

The focus of the interviews was to identify the current shortcomings and collect suggestions from the experts in the area. Interviews were conducted with hotel owners, photo studios and cyber cafe owners. Interviews were planned with Presidents of the Children's court, members of the Juvenile Justice Boards. Police inspectors and the Special Juvenile Police unit were also asked to share their experiences of children as victims of crime and those children who commit crimes. Various nongovernmental organizations were interviewed and their opinions studied. Interviews were also organized with the State Commission for protection of child rights. Lastly the accused that have committed crimes on children and are presently serving as under trials in Sada jail were also interviewed to understand the reasoning for committing the crime on innocent children. A total of 300 under trials were interviewed. The data has been divided into North Goa and South Goa. During the Interview it was found that some accused were arrested by Police stations in North Goa and some in South Goa accordingly they have been divided and represented for the study.

PART I

DATA OBTAINED REGARDING JUVENILES IN CONFLICT WITH LAW IN GOA

7.1. Juvenile Delinquency

Data has been obtained from all police stations in Goa. The period of study begins from the year 2000 and ends with the year 2012. Since the study found that most ‘juveniles in conflict with law’ commit crimes under the Indian Penal Code, 1860 these are listed separately. The ‘juveniles in conflict with law’ are represented according to their sex and their age and the nature of crimes committed. Two age groups are represented for ‘juveniles in conflict with law’ firstly those in the age group of (12-15) years and those in the age group of (15-18) years.

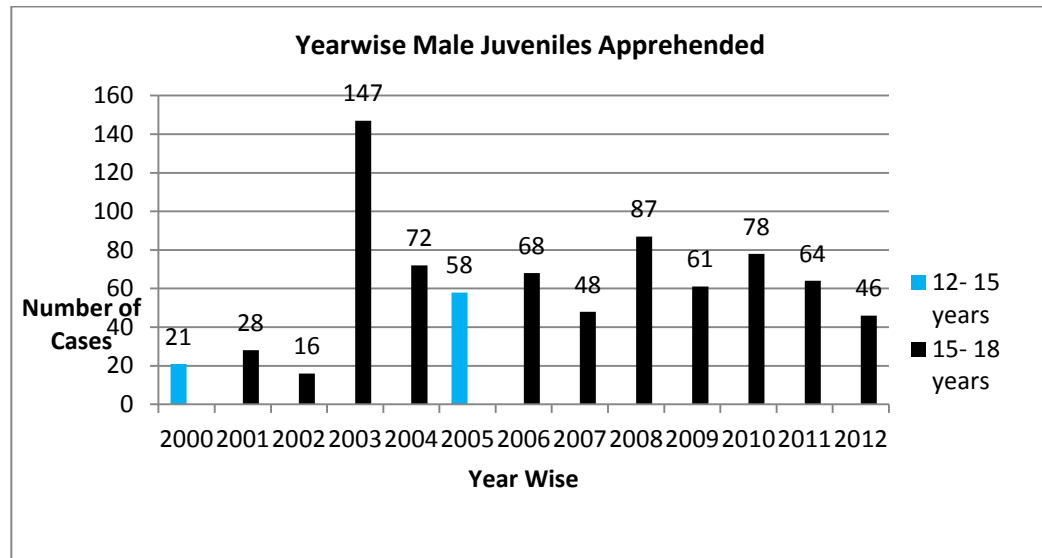
7.1.1. Male juveniles apprehended for Offences under IPC according to their Age

Table No 1 : Male Juveniles Apprehended under IPC – According to Age

Year	Age Group		Under IPC
	(12-15) years	(15-18) years	
2000	21	-	IPC
2001	-	28	IPC
2002	-	16	IPC
2003	-	147	IPC
2004	-	72	IPC
2005	58	-	IPC
2006	-	68	IPC
2007	-	48	IPC
2008	-	87	IPC
2009	-	61	IPC
2010	-	78	IPC
2011	-	64	IPC
2012	-	46	IPC

Source –Police station Records from all Police Stations in Goa.

Figure 1 shows Male Juveniles Apprehended under IPC according to their Age



X axis depicts the number of crimes registered. Y axis depicts the year. There are a few male juveniles who commit crimes, who are in the Age group of (12-15) years. In the age group of (12-15) years in the year 2000 there were 21 cases registered. In the age group of (12-15) years the year 2005 saw a rise in the number of cases where 58 cases were registered. The remaining years there were no cases registered of juveniles who were in the age group of (12-15) years.

There is a steady increase in the number of crimes committed by Juveniles in the age group of (15-18) years. Juveniles in the age group of (15 -18) years in the year 2000 and 2005 both years have registered no crimes. Earlier it was noticed that for the same year 2000 and 2005 there were 21 and 58 cases respectively were registered for juveniles in conflict with law who were in the age group of (12-15) years. In the year 2001 there were 28 cases registered and in the year 2002 there were 16 cases registered for juveniles who were in the age group of (15-18) years.

The maximum numbers of cases were registered in the year 2003 where 147 juveniles in conflict with law were in the age group of (15-18) years. In the same age group the year 2006 registered 68 cases while 2007 registered a decrease with 48 cases. In the age group of (15-18) years the year 2008 again there was a rise in crime with 87 cases being registered for the same age group. For the same age group the year 2009 there were 61 cases registered. In the year 2010, 78 cases were registered. In the year 2011, 64 cases were registered. In the age group of (15-18) years the year 2012, 46 cases were registered. Thus we can conclude that there is an increase in rate of incidence of crime committed by juveniles who were in the age group of (15-18) years.

Conclusion- Most juvenile offenders are male. The age group (15-18) years records more number of cases than the age group (12–15) years. In some cases more than one juvenile is involved in the crime.⁴ Most juveniles are apprehended for committing Offences under Indian Penal Code.

⁴This information is also confirmed from interviews with the Juvenile Welfare Officers and members of the Juvenile Justice Board.

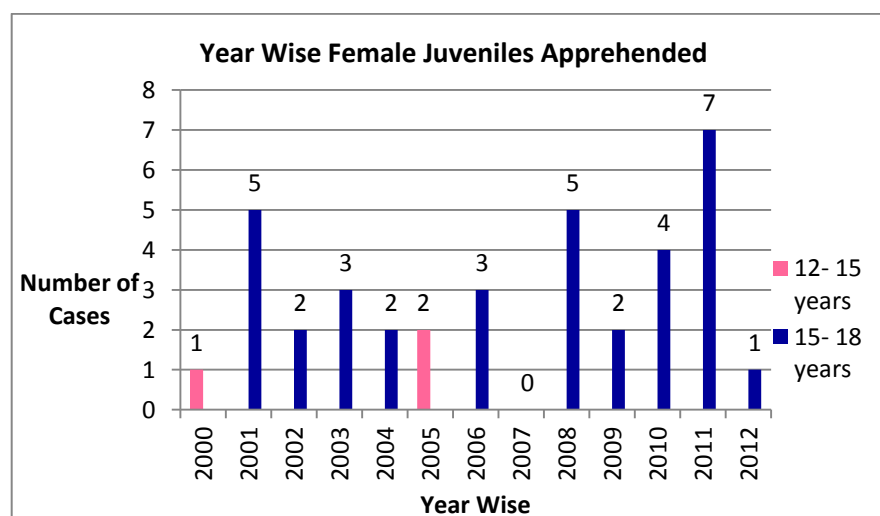
7.1.2. Female Juveniles apprehended for Offences under IPC according to their Age

Table No. 2 – Female Juveniles apprehended under IPC – according to their Age

Year	Age Group		Under IPC
	12- 15 years	15- 18 years	
2000	1	-	IPC
2001	-	5	IPC
2002	-	2	IPC
2003	-	3	IPC
2004	-	2	IPC
2005	2	-	IPC
2006	-	3	IPC
2007	-	-	IPC
2008	-	5	IPC
2009	-	2	IPC
2010	-	4	IPC
2011	-	7	IPC
2012	-	1	IPC

Source – Police station Records from all Police Stations in Goa

Figure 2 – Female Juveniles Apprehended for committing crimes under IPC – According to Age



X axis depicts the number of crimes registered. Y axis depicts the year. The number of female juveniles committing crimes in Goa is comparatively lesser than male juveniles. In the year 2000 in the age group of (12-15) years only one case was registered. For the same age group in the year 2005 two cases were registered. The year 2000 and 2005 show cases registered for male and female juveniles in the same age group i.e (12–15) years. Hence it could be true that some females could also be involved in a group crime with male juveniles for the same year.⁵

There is a steady increase in the number of crimes committed by Female Juveniles in the age group of (15- 18) years. In the age group of (15- 18) years in the year 2000 and 2005 there were no cases registered for female juveniles. The highest numbers of crimes were registered for the age group of (15- 18) years in the year 2011 were 7 cases were registered in the year 2008 and 2001 five cases were registered. In the year 2002, 2004 and 2009 only two cases were registered for the same age group. While in the year 2003 and 2006 there were three cases registered for female juveniles in the same age group. In the year 2012 for the same age group only one case was registered. The year 2007 there were no crimes registered for female juveniles.

Conclusion- Fewer female juveniles commit crimes under IPC as compared to male juveniles. The Age group of (12-15) years records less number of crimes than the age group of (15-18) years for both male and female juveniles.

⁵ Information also confirmed from interviews with officials.

7.2. Juvenile Crime – Classification of Offences

The classification of offences is done according to the classification method followed under various chapters of the Indian Penal Code, 1860.

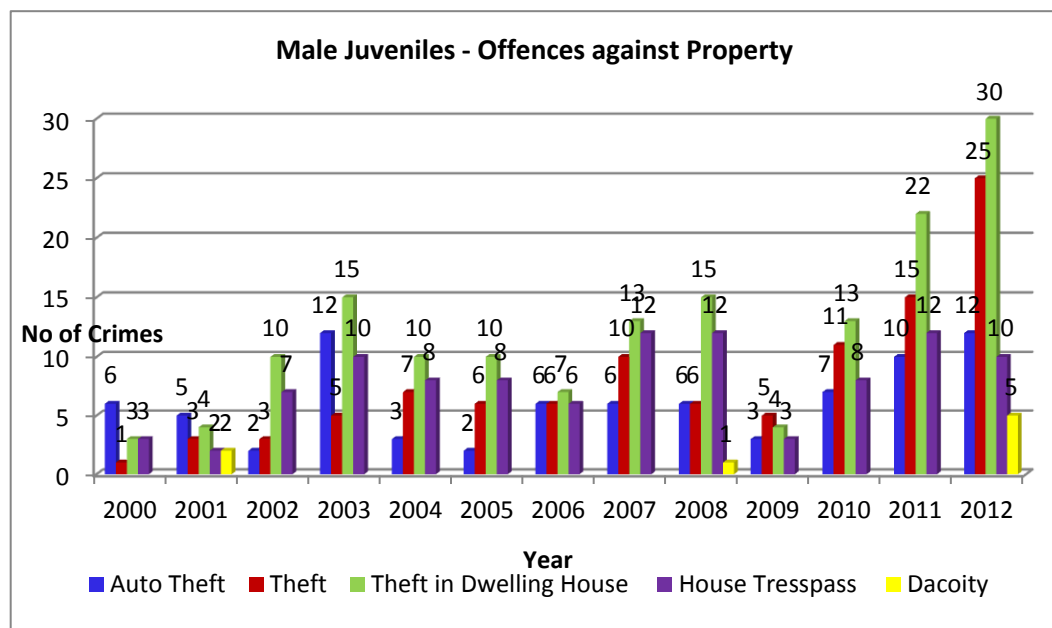
7.2.1. Male Juveniles – Apprehended for offences Against Property

Table No 3 – Male Juveniles committing crimes under IPC

Offence	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Theft of Auto	6	5	2	12	3	2	6	6	6	3	7	10	12
Theft	1	3	3	5	7	6	6	10	6	5	11	15	25
Theft in Dwelling House	3	4	10	15	10	10	7	13	15	4	13	22	30
House Tress pass	3	2	7	10	8	8	6	12	12	3	8	12	10
Dacoity	-	2	-	-	-	-	-	-	1	-	-	-	5

Source – Police Station Records (North and South Goa Police Station Consolidated)

Figure No. 3 Male Juveniles apprehended for offences against property



X axis depicts the number of crimes registered. Y axis depicts the year. The main reason for juveniles to come in conflict with law is theft.⁶ Most juveniles commit theft of automobiles.⁷ They break open locks drive the vehicle and when the vehicle runs out of petrol leave it at isolated areas.⁸ Some even steal its parts and sell. The reasons for stealing automobiles may be for thrill or to earn a quick buck or in some cases to purchase cigarettes, alcohol and other necessities.⁹ The year 2003 and 2012 registered 12 cases of auto theft. The year 2000, 2006, 2007, 2008 there were 6 cases registered of Auto Theft. In the year 2010 there were 7 cases registered for the offence of Auto theft. It could indicate the same juveniles committing the crime or instigated to commit the crime. In Goa there are reports¹⁰ of juveniles have been forced to commit automobile theft and this is becoming an organized industry. The year 2002 had the lowest number of cases only two cases were registered.

Juveniles commit theft mostly of mobile phones, snatch gold chains or ornaments. Some also get involved in breaking and taking away public telephone boxes (PCO).¹¹ The year 2012 registered 25 cases of theft while 2011 registered 15 cases. In the year 2011 there were 15 cases of Theft registered. In the year 2010 there were 11 cases registered. The year 2000 only one case was registered. The year

⁶ Data obtained from interviews with 'juveniles in conflict with law' housed at Apna Ghar.

⁷ Automobile is an offence of theft of movable property under Section 379 The Indian Penal Code 1860. Since most juveniles come in conflict with law for committing auto theft it has been represented separately though it is an offence of theft.

⁸ Data obtained from interviews with 'juveniles in conflict with law' housed at Apna Ghar.

⁹ Data obtained from interviews with Juvenile Welfare Officers.

¹⁰ Levinson Martin *Enquiry Report of Escape of Children* from Apna Ghar Merces Goa, April 2012 p.23

¹¹ Data obtained from interviews with 'juveniles in conflict with law' housed at Apna Ghar

2005, 2006 and 2008 there were 6 cases registered. Theft in dwelling house¹² is another crime which ranks the highest in the list of crimes for juveniles in conflict with law. There were 30 cases registered of juveniles who committed theft in dwelling house in the year 2012 which is the highest till date. In the year 2011 there were 22 cases were registered for theft in dwelling house. The year 2010 and 2007 registered same number of 13 cases were registered for theft in dwelling house. In 2009 there was a decrease with only 4 cases being registered for theft in dwelling house. In 2006 there were only 7 cases registered for theft in dwelling house. The year 2004 and 2005 there were same number of 10 cases registered for theft in dwelling house. In the year 2000 there were 3 cases and the year 2001 there were 4 cases being registered for theft in dwelling house. The statistics depict increase in the number of cases of theft of movable property.¹³ Juveniles break into houses at night and commit thefts.¹⁴ Breaking into the house is a crime which is committed by gangs of juveniles. In the gang one of the juvenile will be an expert in breaking locks. It is learnt that most juveniles learn this trade when housed in Apna Ghar. Those lodged in Apna Ghar for committing simple theft come out to commit bigger thefts after learning the art.¹⁵

¹² See Section 380 of the Indian Penal Code, 1860

¹³ See Section 379 The Indian Penal Code, 1860

¹⁴ Data obtained from interviews with Juvenile Welfare Officers.

¹⁵ Levinson Martin *Enquiry Report of Escape of Children from Apna Ghar* Merces Goa, April 2012 p.25

Most juveniles who are apprehended for theft in dwelling house are also booked under house trespass.¹⁶ In the year 2007, 2008 and 2011 there were 12 cases registered for house trespass. The year 2003 and 2012 there were 10 cases registered for house trespass. The lowest number of cases was in the year 2001 only 2 cases were registered and the year 2000 and 2009 there were 3 were registered for theft in dwelling house. Two cases of dacoity¹⁷ were registered in the year 2001 one case was registered in the year 2008 and five cases of dacoity were registered in the year 2012.

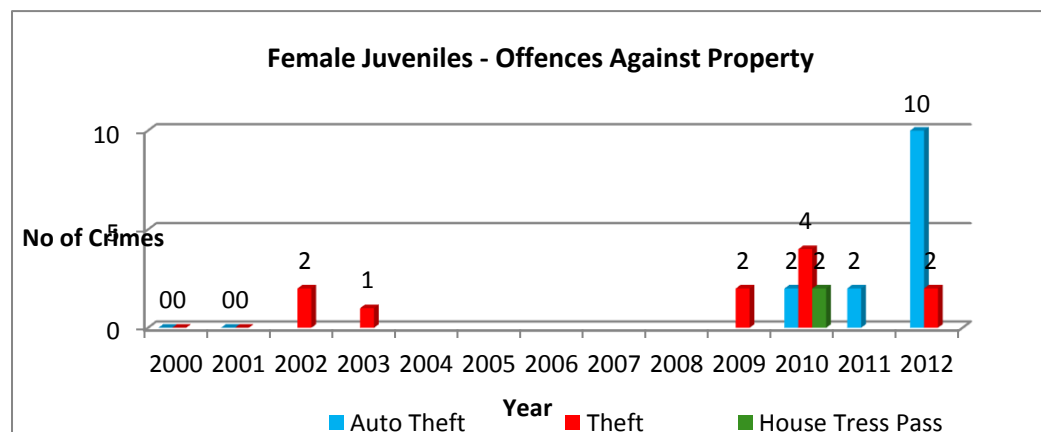
7.2.2. Female Juveniles apprehended for Offences against Property

Table No 4 Female Juveniles apprehended for offence against property

Offence	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Auto Theft	-	-	-	-	-	-	-	-	-	-	2	2	10
Theft	-	-	2	1	-	-	-	-	-	2	4	-	2
House Trespass	-	-	-	-	-	-	-	-	-	-	2	-	-

Source- Police Station Records (North and South Goa Police Station Consolidated)

Figure No.4 –Female Juveniles apprehended for offences against property



¹⁶ See Section 452 of The Indian Penal Code, 1860; Data confirmed from interviews with Officials.

¹⁷ See Section 391 The Indian Penal Code, 1860

X axis depicts the number of crimes registered. Y axis depicts the year. Female juveniles along with male juveniles commit offences of theft.¹⁸ In 2012 there were ten cases registered for female juveniles committing automobile thefts.¹⁹ In the year 2010 and 2011 there were two cases registered for auto theft. Female juveniles committing theft²⁰ were the highest in the year 2010 with 4 cases were registered. There were two cases registered in 2001, 2009 and 2012 and one case registered in 2003 for Theft. For the offence of House trespass²¹ two cases were registered in the year 2010.

7.2.3. Male Juveniles Apprehended for Offences against public

Table No.5 shows Male Juveniles apprehended for offences against public

Offence	2	2	2	2	2	2	2	2	2	2	2	2	2
	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	1	1	1
	0	1	2	3	4	5	6	7	8	9	0	1	2
Unlawful assembly	-	1	1	2	3	-	3	-	2	-	1	1	-
Rioting	-	1	-	-	-	-	3	-	2	-	-	-	-

Source- Police Station Records (North and South Goa Police Station Consolidated)

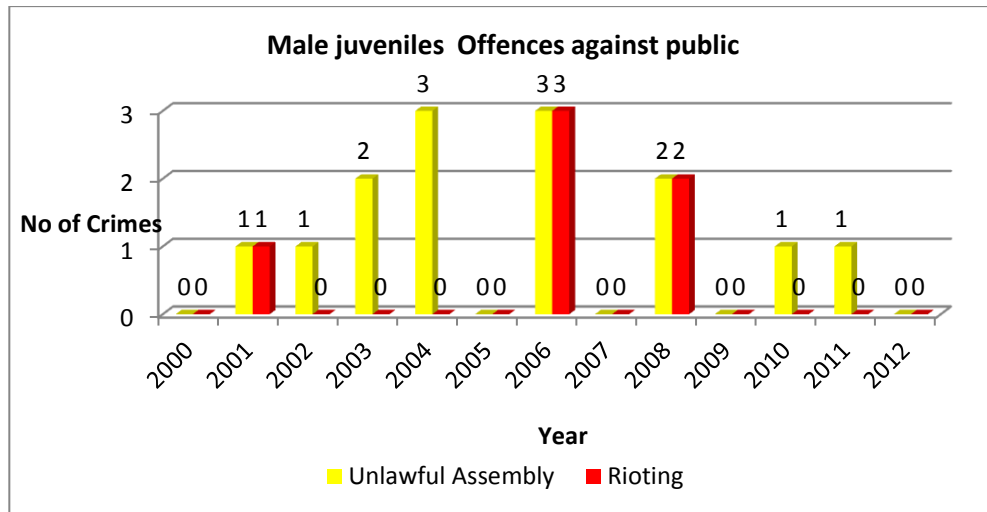
¹⁸ Data obtained from interviews with Juvenile Welfare officers

¹⁹ Automobile is an offence of theft of movable property under Section 379 The Indian Penal Code 1860. Since most juveniles come in conflict with law for committing auto theft it has been represented separately though it is an offence of theft

²⁰ See Section 380 of the Indian Penal Code, 1860

²¹ See Section 452 of The Indian Penal Code, 1860

Figure 5 shows Male juveniles apprehended for offences against public



X axis depicts the number of crimes registered. Y axis depicts the year. The year 2006 and 2004 registered 3 cases for the offence of unlawful assembly.²² In the year 2008 and 2003 two cases of unlawful assembly were registered. The year 2000, 2002, 2010 and 2011 one case was registered of unlawful assembly.

For the offence of Rioting,²³ 3 cases were registered in the year 2006. In 2001 one case of rioting was registered. In the year 2008 two cases of rioting were registered. Since the offence of Unlawful Assembly and Rioting require 3-4 members to commit the offence. This also indicates that juveniles function in groups of 3 to 4 members.

²² See Section 149 of The Indian Penal Code, 1860

²³ See Section 147 of The Indian Penal Code, 1860

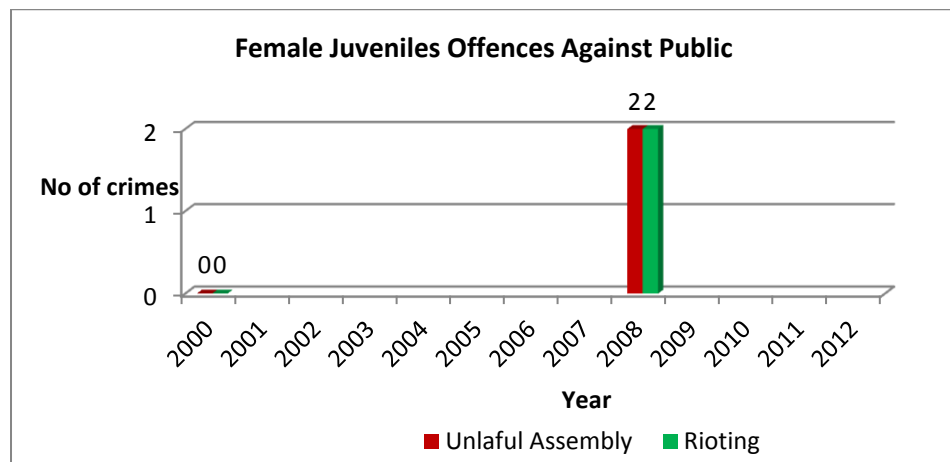
7.2.4. Female Juveniles Apprehended for Offences Against Public

Table No.6 shows Male Juveniles apprehended for offences against public

Offence	2	2	2	2	2	2	2	2	2	2	2	2	2
	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	1	1	1
	0	1	2	3	4	5	6	7	8	9	0	1	2
Unlawful assembly	-	-	-	-	-	-	-	-	2	-	-	-	-
Rioting	-	-	-	-	-	-	-	-	2	-	-	-	-

Source- Police Station Records (North and South Goa Police Station Consolidated)

Figure.6 shows Male Juveniles apprehended for offences against public



X axis depicts the number of crimes registered. Y axis depicts the year. Two cases were registered for unlawful assembly²⁴ and rioting²⁵ in the year 2008. Earlier it was seen for the same year 2008 there were two cases of rioting registered for

²⁴ See Section 149 of The Indian Penal Code, 1860

²⁵ See Section 147 of The Indian Penal Code, 1860

male juveniles. This could indicate that male juveniles and female juveniles may commit such offences by forming groups.

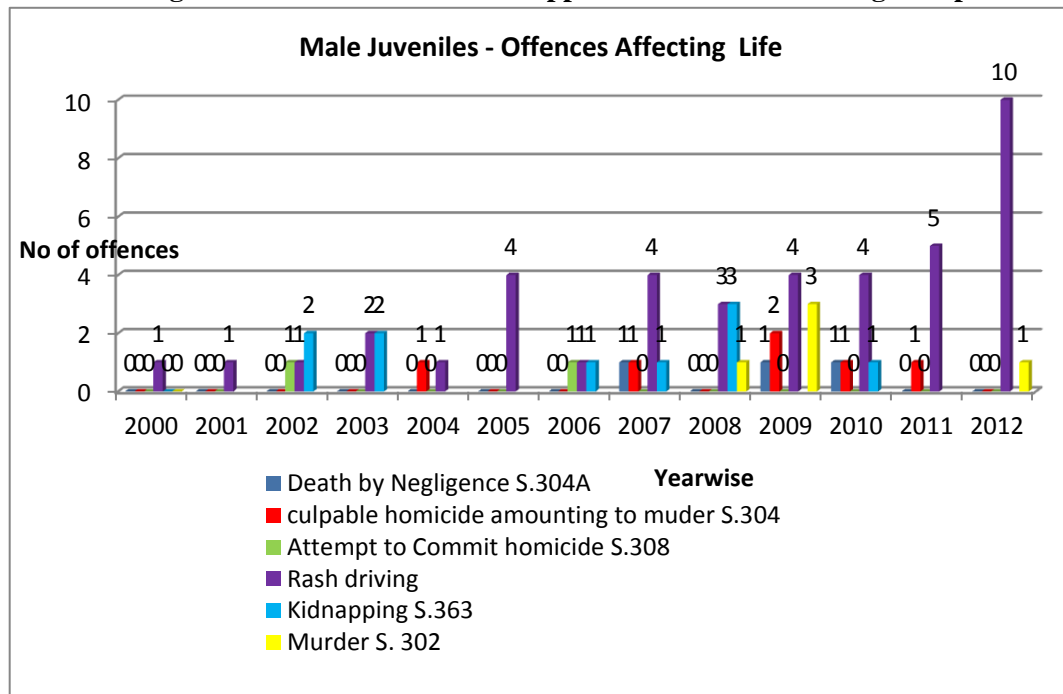
7.2.5. Male Juveniles Apprehended for Offences Affecting Life

Table No.7 shows Male Juveniles apprehended for offences affecting Life

Offence	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Death by Negligence S.304A	0	0	0	0	0	0	0	1	0	1	1	0	0
Culpable homicide not amounting to murder S.304	0	0	0	0	1	0	0	1	0	2	1	1	0
Attempt to Commit homicide S.308	0	0	1	0	0	0	1	0	0	0	0	0	0
Rash driving	1	1	1	2	1	4	1	4	3	4	4	5	10
Kidnapping S.363	0	0	2	2	0	0	1	1	3	0	1	0	0
Murder S. 302	0	0	0	0	0	0	0	0	1	3	0	0	1

Source- Police Station Records (North and South Goa Police Station Consolidated)

Figure 7 shows Male Juveniles apprehended for offences against public



X axis depicts the number of crimes registered. Y axis depicts the year. For the offence of kidnapping two cases registered in the year 2002 and 2003. One case registered in the year 2006 and 2007. Three cases of kidnapping registered in the year 2008. One case of kidnapping each was registered in the year 2006, 2007 and 2010. For the offence of murder three cases registered in the year 2009 and one case registered in the year 2008 and 2012. Death by negligence one case registered in the year 2007, 2009 and 2010. For the offence of culpable homicide not amounting to murder there was one case registered in the year 2004, 2007, 2010 and 2011. Two cases for this offence were registered in the year 2009. For the offence of attempt to commit homicide one case registered in the year 2002 and 2006. For the offence of Rash and negligent driving²⁶ 5 cases registered in the year

²⁶ See Sections 279, 337 & 304-A of the Indian Penal Code, 1860

2011. The year 2012 is the highest with 10 cases registered for rash and negligent driving. 4 cases were registered for this offence in the year 2005, 2007, 2009 and 2010. Two cases for the same offence were registered in the year 2003. In the year 2008 there were 3 cases registered for Rash and negligent Driving.

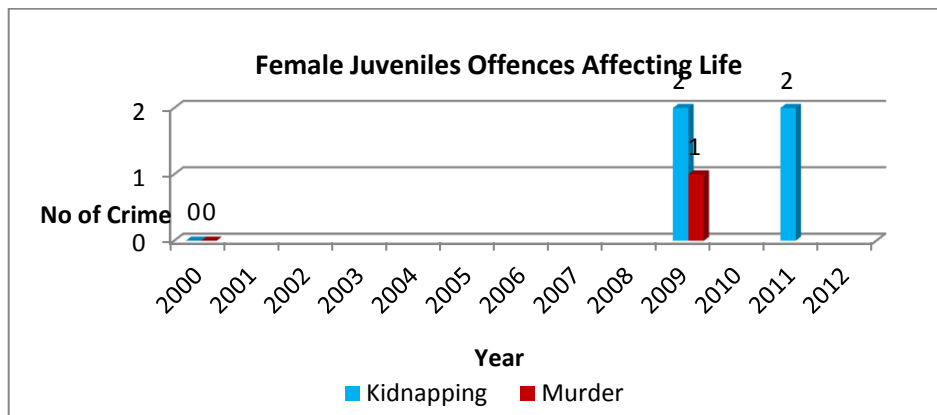
7.2.6 Female Juveniles Apprehended for Offences Affecting Life

Table No 8 shows Female Juveniles apprehended for offences affecting life²⁷

	2	2	2	2	2	2	2	2	2	2	2	2	2
	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	1	1	1
Offence	0	1	2	3	4	5	6	7	8	9	0	1	2
Kidnapping and Abduction	-	-	-	-	-	-	-	-	-	2	-	2	-
Murder	-	-	-	-	-	-	-	-	-	1	-	-	-

Source- Police Station Records (North and South Goa Police Station Consolidated)

Figure 8 shows Female Juveniles apprehended for offences affecting life



²⁷ Source – Police Station Records

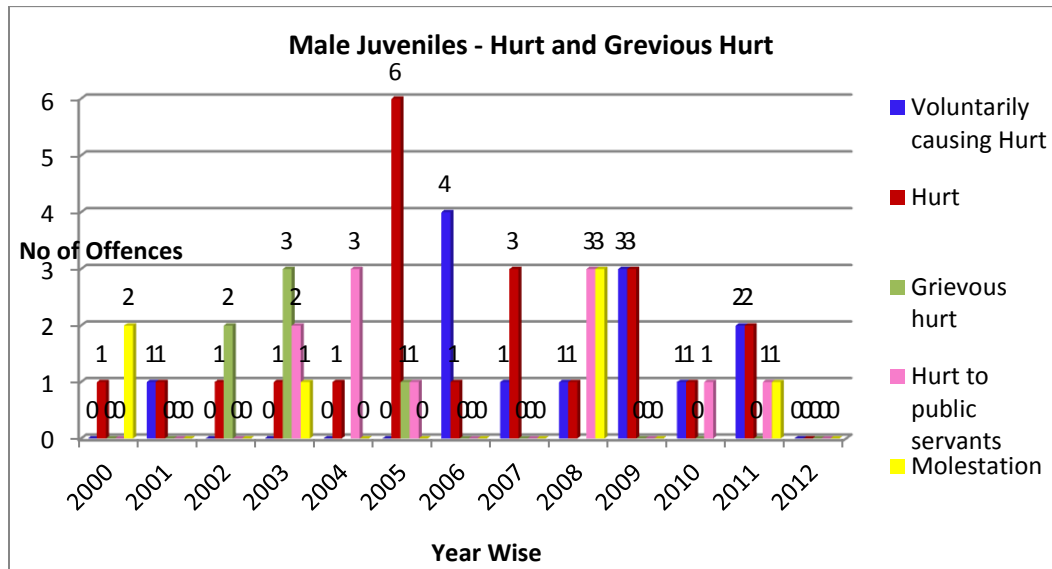
X axis depicts the number of crimes registered. Y axis depicts the year. Two cases were registered for female juveniles who committed the offence of kidnapping in the year 2009 and 2011. One case was registered for female juvenile one case for committing murder in the year 2009. No female juveniles were apprehended for crimes like death by negligence, culpable homicide amounting to murder; attempt to commit homicide and rash and negligent driving.

7.2.7. Male Juveniles Apprehended for Offences of Hurt and Grievous Hurt

Table No. 9 male juveniles apprehended for offences of hurt and grievous hurt

Offence	2	2	2	2	2	2	2	2	2	2	2	2	2
	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	1	1	1
	0	1	2	3	4	5	6	7	8	9	0	1	2
Voluntarily causing Hurt	0	1	0	0	0	0	4	1	1	3	1	2	0
Hurt	1	1	1	1	1	6	1	3	1	3	1	2	0
Grievous hurt	0	0	2	3		1	0	0		0	0	0	0
Hurt to public servants	0	0	0	2	3	1	0	0	3	0	1	1	0
Molestation	2	0	0	1	0	0	0	0	3	0		1	0

Source- Police Station Records (North and South Goa Police Station Consolidated)

Figure 9 male juveniles apprehended for offences of hurt and grievous hurt

X axis depicts the number of crimes registered. Y axis depicts the year. The Offence of Voluntarily causing Hurt²⁸ the year 2006 there were 4 cases registered. In the year 2009 there were 3 cases registered of the offence of voluntarily causing Hurt and in the year 2011 there were 2 cases registered for the same offence. The year 2001, 2007, 2008, 2010 registered one case each of the Offence of Voluntarily causing Hurt. Cases of causing hurt²⁹ were the highest in the year 2005 there were 6 cases registered. In the year 2009 and 2007 there were 3 cases were registered for the offence hurt. In 2011 two cases were registered. In the year 2000, 2001, 2002, 2003, 2004, 2006, 2008, 2010 one case was registered. For the offence of grievous hurt³⁰ there were 3 cases registered in the year 2003 and two cases registered in the in the year 2002. One case of grievous hurt was registered

²⁸ See Section 337 The Indian Penal Code, 1860

²⁹ See Section 319 The Indian Penal Code, 1860

³⁰ See Section 320 The Indian Penal Code, 1860

in the year 2005. Hurt to public servant³¹ was the highest in the year 2004 and 2008 and 3 cases were registered. Hurt to public servant two cases were registered in the year 2003. In the year 2005, 2010 and 2011 there was one case registered for the same offence. Molestation or Outraging modesty of women³² in the year 2008 it was the highest with 3 cases registered. In the year 2000 there were two cases registered for molestation. In the year 2003 and 2011 there were one case each registered for molestation.

No female juveniles were apprehended for committing offences like hurt, hurt endangering life, Grievous hurt and Hurt to public servant.

7.2.8 Male Juvenile crimes under Special Laws

Table No .10 Male Juveniles apprehended for Crimes committed under Special Laws

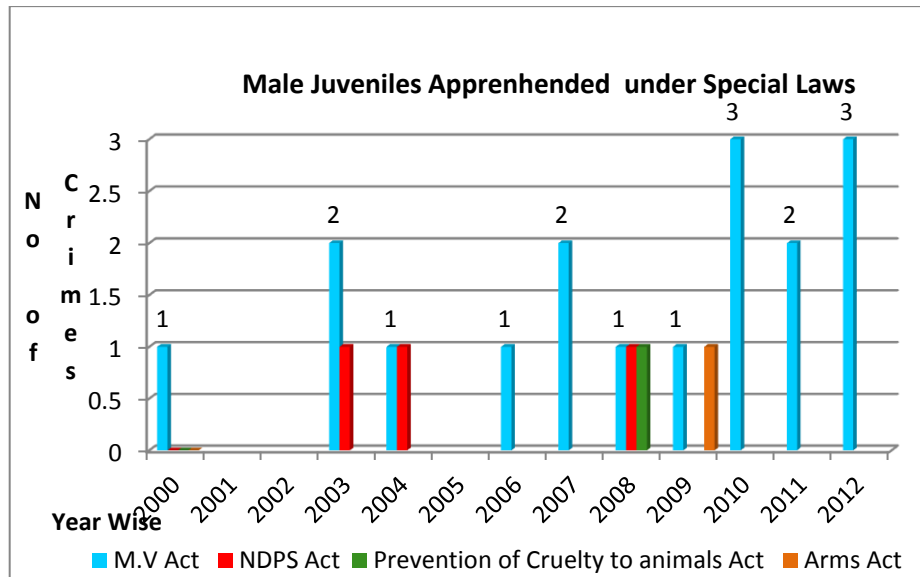
Year	M.V Act	NDPS Act	Prevention Of Cruelty To Animals Act	Arms Act
2000	1	-	-	-
2001	-	-	-	-
2002	-	-	-	-
2003	2	1	-	-
2004	1	1	-	-
2005	-	-	-	-
2006	1	-	-	-
2007	2	-	-	-
2008	1	1	1	-
2009	1	-	-	1
2010	3	-	-	-
2011	2	-	-	-
2012	3	-	-	-

Source - Police Station Records (North and South Goa Police Station Consolidated)

³¹ See Section 332 The Indian Penal Code, 1860

³² See Section 354 The Indian Penal Code, 1860

Figure 10 shows Male juveniles apprehended under special Laws



X axis depicts the number of crimes registered. Y axis depicts the year. Male juveniles are mostly apprehended for offences committed under the Motor vehicle Act. These offences include driving without license.³³ Since they are minors they are unable to obtain a driving licence. Hence some are also caught for committing the same offence for the second time. 3 cases were registered in the year 2010 and 2012 under the Motor vehicle Act. Two cases were registered under the Motor vehicle Act in the year 2003, 2007 and 2011. One case each was registered under the Motor vehicle Act in the year 2000, 2004, 2006, 2008 and 2009.

Juveniles are also apprehended in trafficking of drugs and are apprehended under the Narcotic Drugs and Psychotropic Substances Act, 1985 one case was registered for drug trafficking in the year 2003, 2004 and 2008.

³³Information obtained from interviews with Juvenile Welfare Officers

One case registered for cruelty towards animals under the Prevention of cruelty to animals act in the year 2008.

One juvenile was apprehended with a dangerous weapon and one case was registered under Arms Act in the year 2009.

However the police station has no records of any female juvenile committing crimes under the Special Laws.

7.3. Male Juveniles operating in Gangs

There are three age groups in which gangs function. The age of 12 – 15 years the next group is 16-17 years and the third which is the lowest 17 -18 years. The police is yet to trace the manner in which groups are formed. In many instances gangs are formed within the Juvenile Protective Home i.e. Apna Ghar.³⁴ Till date the police were able to arrest only one professional gang which has been caught that is in Vasco.³⁵ It is found that gangs have a professional networking mechanisms and these juveniles have been caught in Goa are from Pune, Mumbai, Bihar, Orissa, Kerela , Sawantwadi and Karnataka.³⁶

³⁴ Data obtained from interviews with NGO's

³⁵ Data obtained from interviews with Juvenile Welfare officer

³⁶ Information obtained from interviews with probation Officer at Apna Ghar, Apna Ghar Officials and from Juvenile Welfare officers at various police stations.

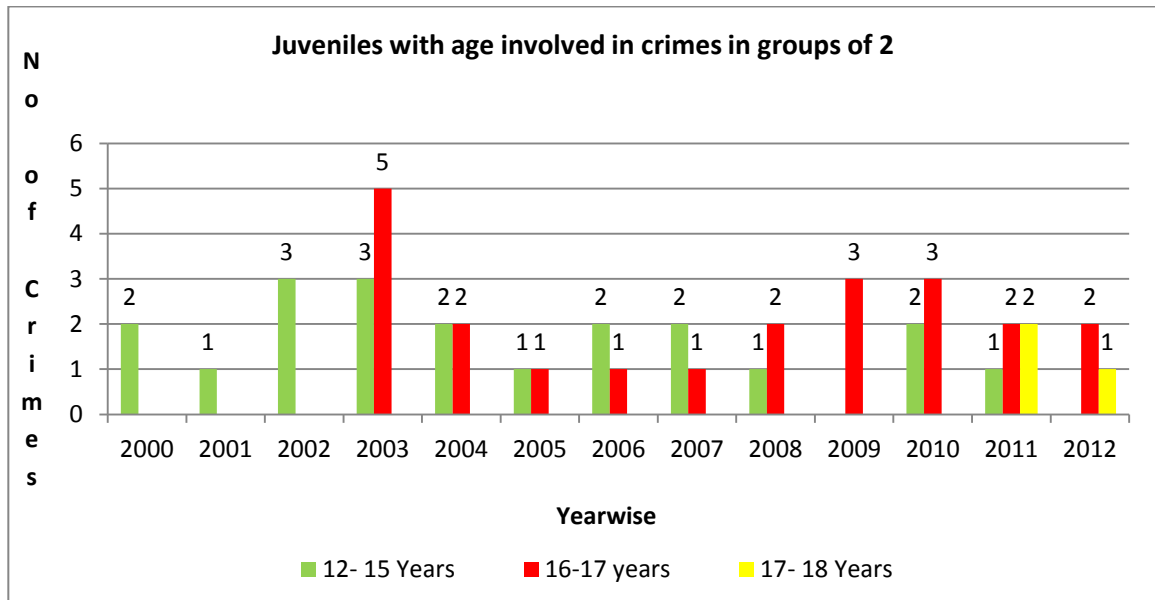
7.3.1. Groups of 2 Juveniles committing Crimes - According to Age

Table No. 11 Groups of 2 juveniles coming crimes – According to Age

YEAR	12-15years	16-17	17-18
2000	2	-	-
2001	1	-	-
2002	3	-	-
2003	3	5	-
2004	2	2	-
2005	1	1	-
2006	2	1	-
2007	2	1	-
2008	1	2	-
2009	-	3	-
2010	2	3	-
2011	1	2	2
2012	-	2	1

Source - Police Station Records (North and South Goa Police Station Consolidated)

Table No. 11 Groups of 2 juveniles in a Gang coming crimes – According to Age



X axis depicts the number of crimes registered. Y axis depicts the year. In the age group of (12 – 15) years there were 3 cases registered of a 2 member gang in the

year 2002 and 2003. In the age group of (12 – 15) years there were 2 cases registered of 2 member gang in the year 2000, 2004, 2006, 2007 and 2010.

In the age group of (16-17) years of a 2 member gang it ranks the highest with 5 cases registered in the year 2003. In the age group of (16-17) years of a 2 member gang in the year 2009 and 2010 three cases were registered. In the age group of (16-17) years of a 2 member gang two cases were registered in the year 2004, 2008, 2011 and 2012.

In the age group (17-18) years two member gang two cases were registered the year 2011 and one case registered in the year 2012. These age groups are the lowest.

7.3.2 Groups of 3 Juveniles in a Gang committing Crimes - According to Age

Table No. 12 Groups of 3 juveniles coming crimes – according to Age

YEAR	12-15	16-17	17-18
2000	2	-	-
2001	-	-	-
2002	3	-	-
2003	-	1	-
2004	-	-	-
2005	1	1	-
2006	-		-
2007	3	2	-
2008	-	1	-
2009	1	2	1
2010	-	1	-
2011	1	6	1
2012	-	2	-

Source - Police Station Records (North and South Goa Police Station Consolidated)

Figure No. 12 Groups of 3 juveniles coming crimes – According to Age

X axis depicts the number of crimes registered. Y axis depicts the year. When 3 juveniles are involved in a gang the highest age group are (16-17) years with 6 cases being registered in the year 2011. Two cases for the same age group were registered in the year 2007, 2009 and 2012. The next is the age group of (12 – 15) years with 3 cases being registered in the year 2000, 2002 and 2007. In the age group of (17-18) years one case each was registered in the year 2009 and 2011.

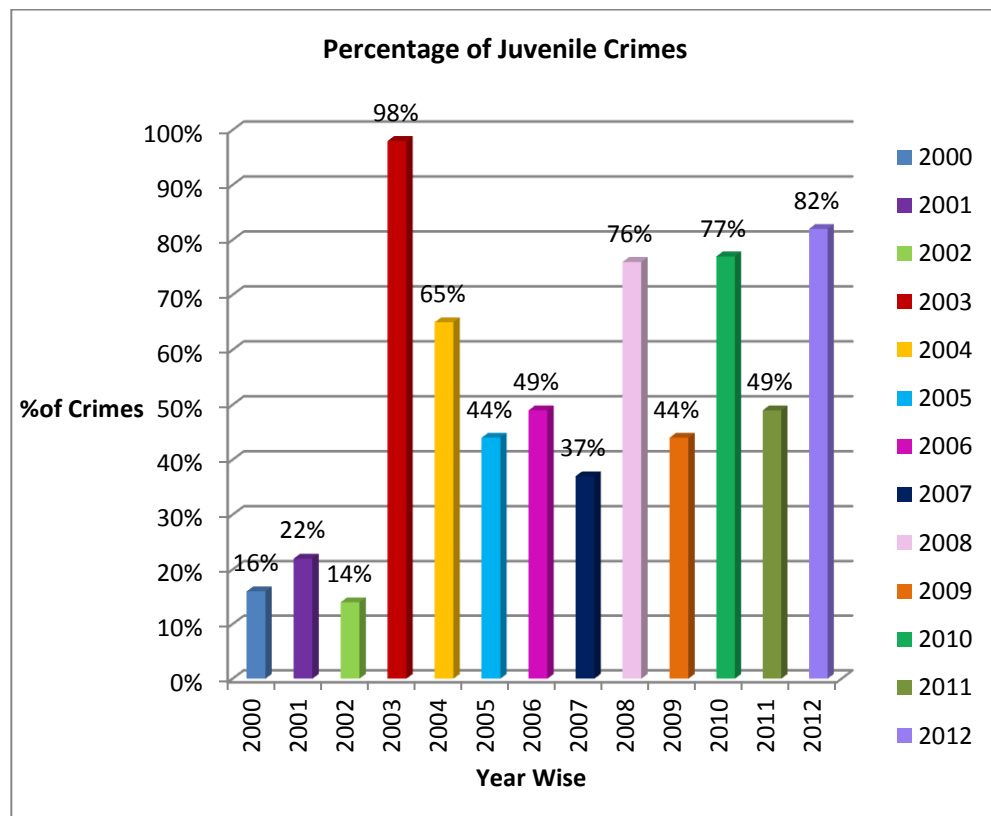
7.4. Incidence of Juvenile Crime Rate in Goa

The data Collected from the Directorate of Women and Child depicts the crime rate of juveniles in conflict with law both male and female for over a period of 12 years.

Table No 13 shows Incidence of Juvenile Crime Rate in Goa

Year	Percentage of Crimes
2000	16%
2001	22%
2002	14%
2003	98%
2004	65%
2005	44%
2006	49%
2007	37%
2008	76%
2009	44%
2010	77%
2011	49%
2012	82%

Source - Directorate of Women and Child, Goa

Figure 13 shows Incidence of Juvenile Crime Rate in Goa

X axis depicts the percentage of crimes registered. Y axis depicts the year. The year 2003 registered the highest percentage of crime 98% which is the highest. The year 2004 the crime percentage was 65%. The year 2008 the crime percentage was 76%. In the year 2009 the crime percentage was 44%. The year 2010 the crime percentage was 77%. The year 2012 registered 82 % percentage. The lowest crime rate was registered in 2000 was 16%. In 2002 the crime percentage was 14 % which is the lowest .While in the year 2001 the crime percentage as 22 %.

Hence proving that there is an yearly Increase in Crime Percentage of Juvenile Crimes over the years in Goa.

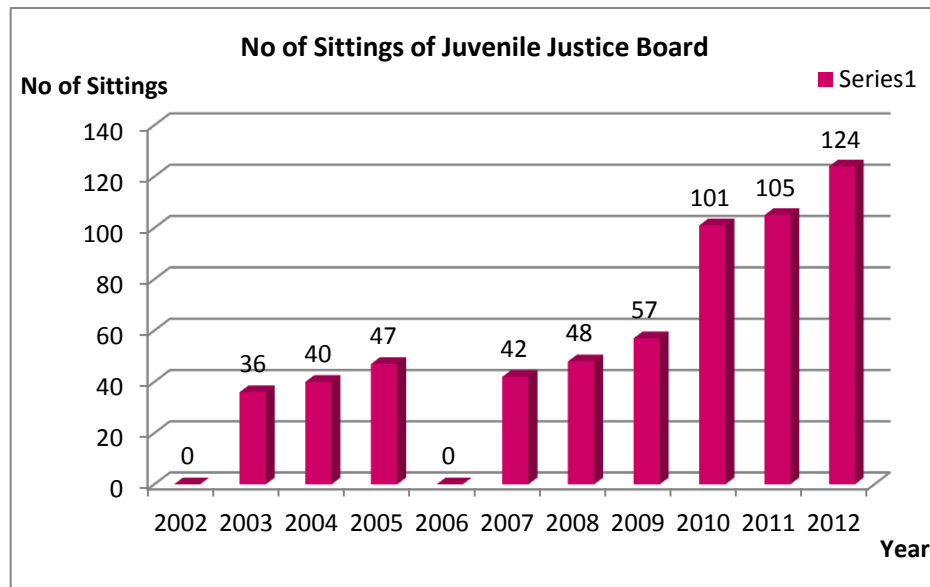
7.5. Juvenile Justice Board

7.5.1. Number of Sitzings of the Juvenile Justice Board

Table No 14 shows the number of sittings of the Juvenile Justice Board³⁷

Year	No of sittings
2002	0
2003	36
2004	40
2005	47
2006	0
2007	42
2008	48
2009	57
2010	101
2011	105
2012	124

Figure No.14 shows the sittings of the Juvenile Justice Board



³⁷ Source Juvenile Justice Board

X axis depicts the number of crimes registered. Y axis depicts the year. The South Goa Juvenile Justice Board³⁸ members are Mrs. Auda Viegas and Mrs Seema Salgaokar and the Principal Magistrate. Its sittings are every Tuesday and Fridays. The North Goa Juvenile Justice Board members are Judge P.M Shinde who is the Principal Magistrate, Prachi Khandeparkar and Gurunath Dhume. This Board has sitting on every Monday and Friday.³⁹The Board sits for five hours per sitting. The lowest numbers of sittings were in the year 2003 with 36 sittings. In the year 2004 there were 40 sittings. In the year 2005 there were 47 sittings. The year 2006 there were no sittings. In the year 2007 there were 42 sittings. In the year 2008 there were 48 sittings and in the year 2009 there were 57 sittings. In the year 2010 and 2011 the Board increased its sittings with 101 and 105 sittings. The Board had maximum number of sittings in the year 2012 with 124 sittings.

³⁸ Was constituted vide Notification No.2-109(5)-2008/DW & CD/1194 dated 28/08/2009

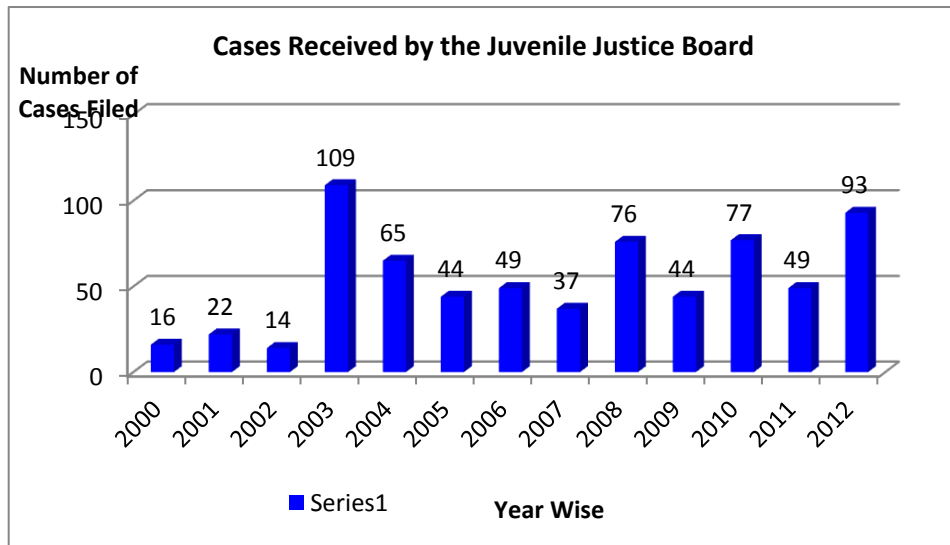
³⁹ Notification No. 2-109(5)-2010/DW&CD/1778 dated 07/04/2011. Since the North Goa Juvenile Justice Board and South Goa Juvenile Justice Board were constituted in the year 2011 the Board has not maintained separate records of the sittings, cases filed or cases disposed.

7.5.2 Cases Received by the Juvenile Justice Board

Table No 15 shows the number of the cases received by the Juvenile Justice Board⁴⁰

Year	Cases Received
2000	16
2001	22
2002	14
2003	109
2004	65
2005	44
2006	49
2007	37
2008	76
2009	44
2010	77
2011	49
2012	93

Figure No 15 shows number of cases received by the Juvenile Justice Board



⁴⁰ Source- Juvenile Justice Board

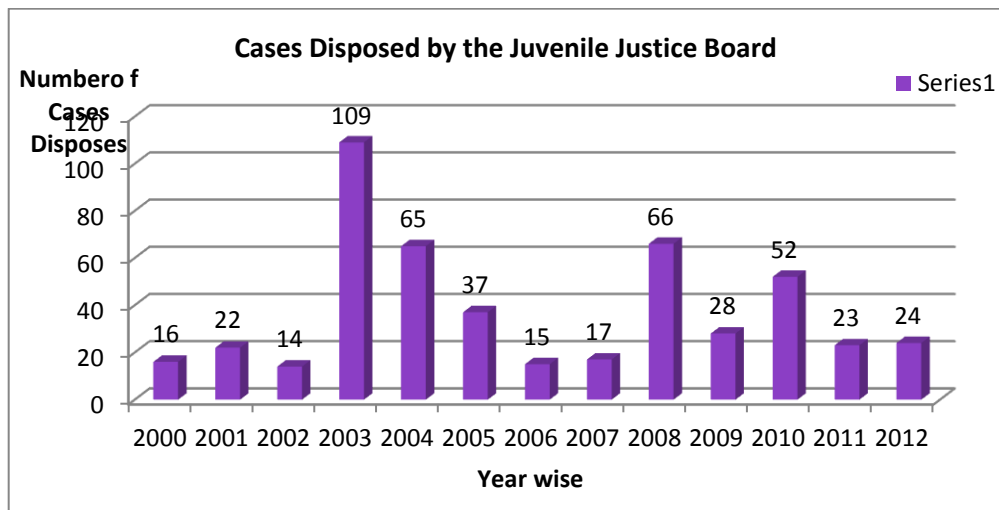
X axis depicts the number of crimes registered. Y axis depicts the year. The lowest number of cases was received by the Juvenile Justice Board in the year 2002 with 14 cases and in the year 2000 there were 16 cases received by the Board. In the year 2001 there were 22 cases filed. In the year 2002 there were 14 cases filed. The year 2003 there were 109 cases received. The year 2004 there were 65 cases filed. In the year 2006, 49 cases were filed. In the year 2007, 37 cases were filed. The year 2008 and 2010 similar amount of cases were filed 76 and 77 cases respectively. The year 2005 and 2009 there were 44 cases filed. In the year 2011 49 cases were filed. In 2012 there were 93 cases were filed. A Total of 695 cases were received by the Juvenile Justice Board in 12 years.

7.5.3 Number of Cases Disposed by the Juvenile Justice Board

Table No 16 shows the number of cases disposed by the Juvenile Justice Board⁴¹

Year	Cases Disposed
2000	16
2001	22
2002	14
2003	109
2004	65
2005	37
2006	15
2007	17
2008	66
2009	28
2010	52
2011	23
2012	24

Figure No 16 shows the number of cases disposed by the Juvenile Justice Board⁴²



⁴¹ Source Juvenile Justice Board

⁴² Source- Juvenile Justice Board

X axis depicts the number of cases disposed Y axis depicts the year. The disposal rate of cases is very low. The year 2003 the number of cases disposed was 109 which was the highest. In the year 2004 and 2008 similar number of cases were disposed 65 and 66 cases. In 2010 a total of 52 cases were disposed. In the year 2012 only 24 cases were disposed. The Board has disposed only 488 cases in 12 years.

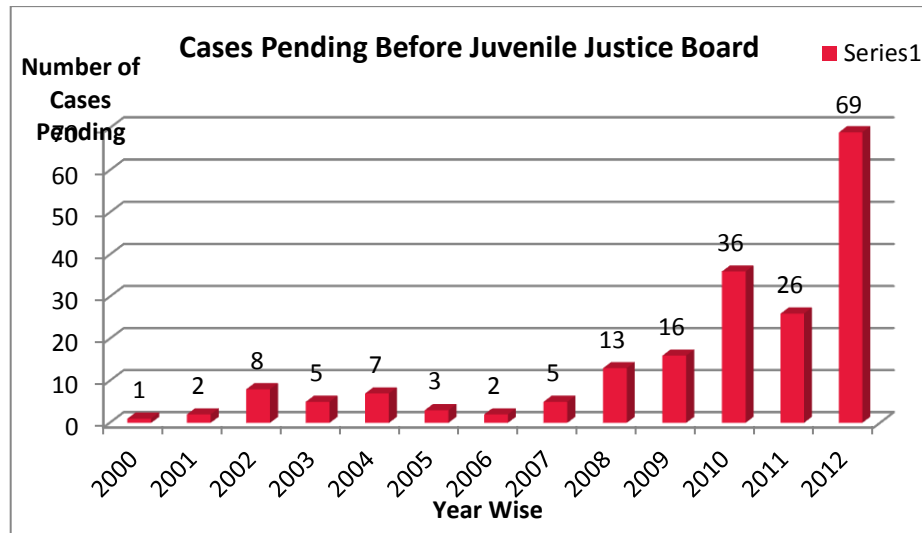
7.5.4. Number of Cases Pending Before the Juvenile Justice Board

Table No 17 shows the number of cases pending before the Juvenile Justice Board

Year	Pending
2000	1
2001	2
2002	8
2003	5
2004	7
2005	3
2006	2
2007	5
2008	13
2009	16
2010	36
2011	26
2012	69

Source- Juvenile Justice Board

Figure No 17 shows number of cases pending



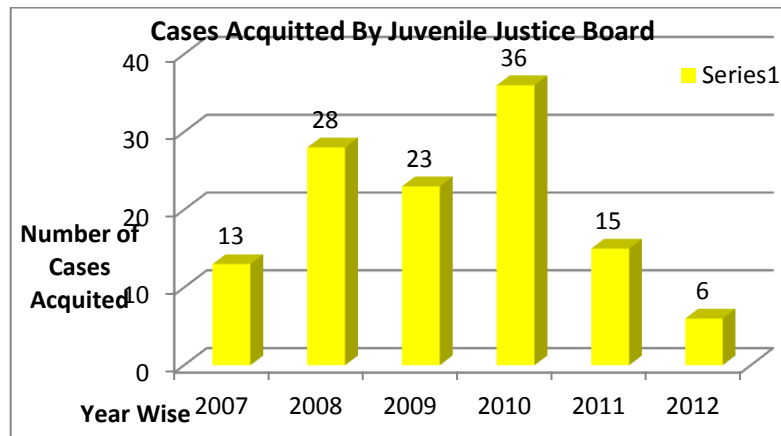
X axis depicts the number of cases pending Y axis depicts the year. There is a steady rise of cases pending before the Board. In the year 2010 there were 36 cases pending for the year. The year 2011 there were 26 cases pending and the in the year 2012 there are 69 cases pending. The lowest rate was 2000 with one case and 2001 and 2006 there were two cases pending. A steady increase in pendency of cases was from 2009 with 16 cases. A total 220 cases are still pending before the Board as on date. Thus the pendency rate before the Juvenile Justice Board is above the desirable limits.

7.5.5. Number of Juveniles Acquitted by the Juvenile Justice Board

Table number 18 shows number of cases acquitted⁴³

Year	Acquitted
2007	13
2008	28
2009	23
2010	36
2011	15
2012	06

Figure Number 18 shows number of cases acquitted by the Juvenile Justice Board.



X axis depicts the number of cases acquitted Y axis depicts the year. In the year 2010 there were 36 juveniles were acquitted, in the year 2008, 28 juveniles were acquitted and in 2009 there were 23 juveniles acquitted. 2012 being the lowest only 6 juveniles were acquitted. In 2011 there were 15 juveniles acquitted and in 2007 there were 13 juveniles acquitted.

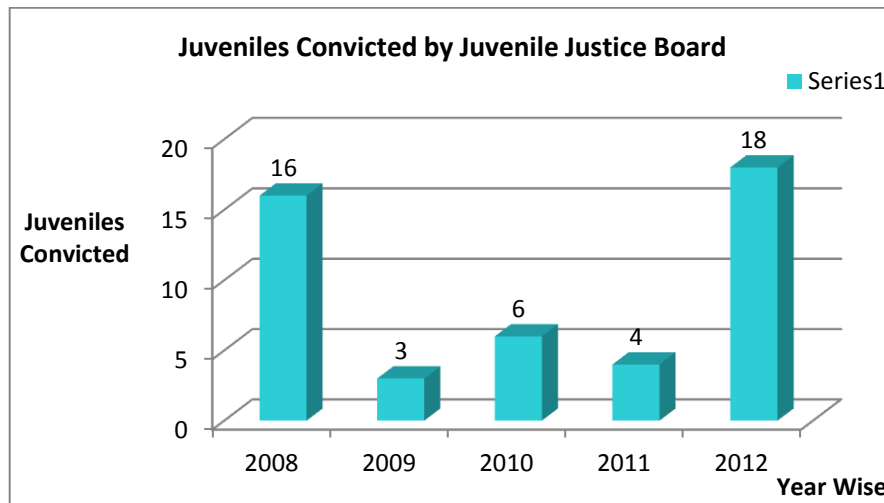
⁴³ Source – Juvenile Justice Board

7.5.6. Number of Juveniles Convicted by the Juvenile Justice Board

Table No 19 shows number of juveniles convicted before the Juvenile Justice Board⁴⁴

Year	Convicted
2008	16
2009	3
2010	6
2011	4
2012	18

Figure number 19 shows number of juveniles convicted by the Juvenile Justice Board



X axis depicts the number of juveniles convicted Y axis depicts the year. In 2012 there were 18 juveniles convicted by the Juvenile Justice Board. In the year 2008 the number of juveniles convicted was 16. In the year 2009 there were 3 juveniles convicted in the year 2011 there were 4 juveniles convicted and in the year 2010 there were 6 juveniles convicted.

⁴⁴ Source- Juvenile Justice Board

PART II - DATA OBTAINED REGARDING CHILD VICTIMS IN GOA

7.6 Crime Scene in Goa before passing of Goa Children's Act, 2003

Table no 20 shows the number of crimes registered and detected year wise⁴⁵

Crime	2001		2002		2003		2004	
	rep ⁴⁶	det ⁴⁷	rep	det	rep	det	rep	det
Murder ⁴⁸	0	0	0	0	0	0	2	1
Rape ⁴⁹	10	10	8	8	22	21	20	20
Kidnapping ⁵⁰	6	6	4	3	9	9	9	5
Molestation ⁵¹	8	7	4	4	9	8	8	6
Eve Teasing ⁵²	1	1	3	3	1	1	2	1
Un-natural offence ⁵³	4	4	0	0	2	1	3	2
Procuration of minor girl ⁵⁴	2	2	2	2	5	5	1	1
Exposure to abandonment ⁵⁵	3	1	4	1	5	1	1	1
Other Misc equivalent to child abuse under Goa Children Act	0	0	0	0	0	0	3	3

⁴⁵Source Law Department in the Legislative Assembly, Secretariat, Government of Goa. The data was referred by the Hon'ble government to justify the need for a special law for children in Goa. This data was produced by the Hon'ble Minister Shri Manohar Parrikar on the floor of the Assembly in the year 2003 when the government was debating on introducing a special law for children in Goa.

⁴⁶Rep- Indicates number of cases registered at the police station

⁴⁷Det- Indicated number of cases detected by the police. Various reasons can be cited for the difference in number of cases registered and detected like accused may be absconding, or the complaint may be withdrawn by the victim.

⁴⁸See Section 302 of The Indian Penal Code 1860

⁴⁹ See Section 375 of The Indian Penal Code 1860

⁵⁰ See Section 366 Of The Indian Penal Code 1860

⁵¹ See Section 354 The Indian Penal Code 1860

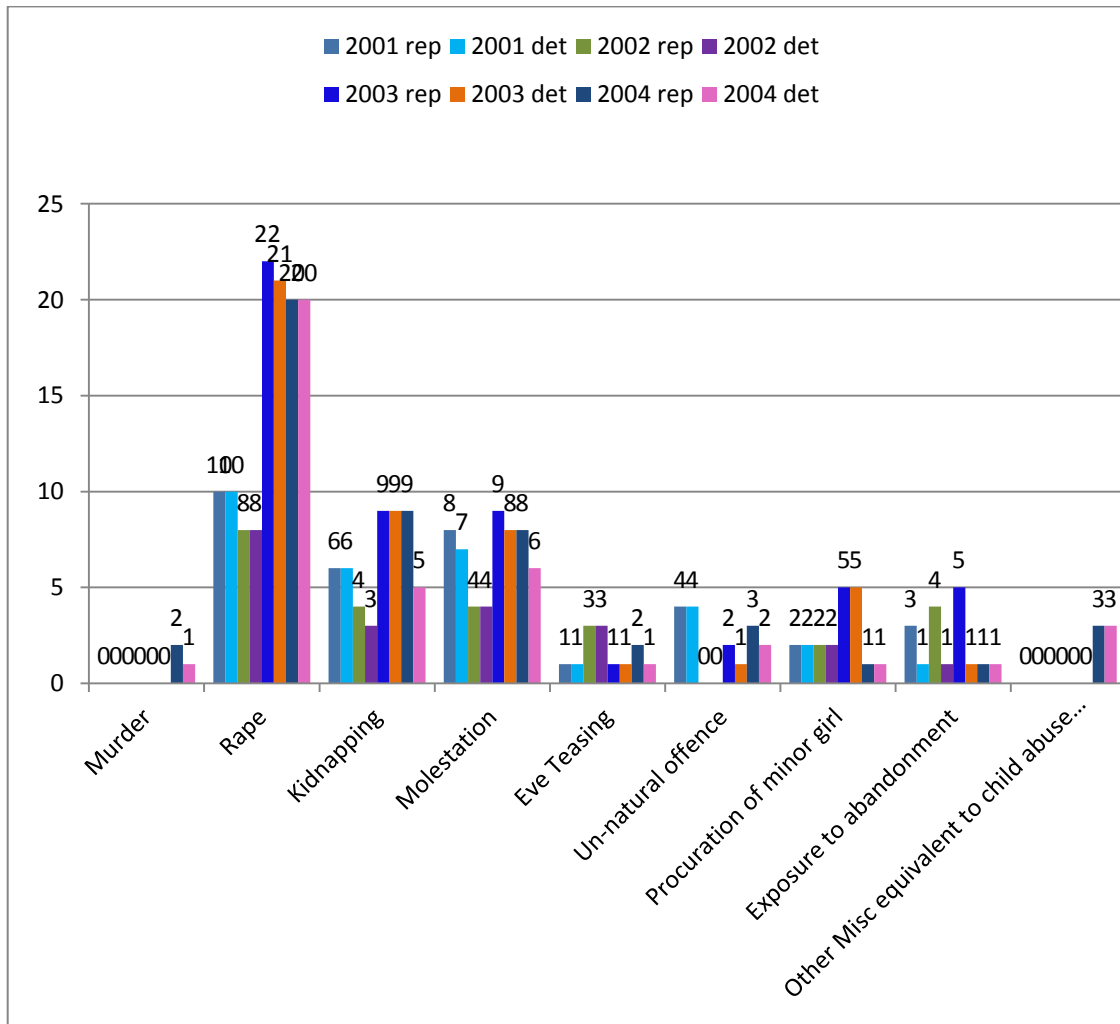
⁵² See Section 509 Of The Indian Penal Code 1860 And Section 294 Of The Indian Penal Code 1860

⁵³ See Section 377 Of The Indian Penal Code 1860

⁵⁴ See Section 366A Of The Indian Penal Code 1860

⁵⁵ See Section 317 The Indian Penal Code 1860

Figure No 20 shows Offence wise crimes registered and detected



Y axis shows number of crimes & X axis shows type of crimes committed. In the year 2001 total number of crimes registered were 34, out of which 31 were detected. In the year 2002 total number of crimes registered were 25, out of which 21 were detected. In the year 2003 total number of crimes registered were 53, out of which 46 were detected. In the year 2004 total number of crimes registered were 49, out of which 40 were detected. The percentage of crime for the year 2001 was 91.17%. In the year 2002 the percentage in crime was 84%. In the year 2003

the percentage of crime is 86.79%. In the year 2004 the percentage of crime is 81.63%. The highest percentage of crime was seen in the year 2001. The lowest percentage of crime was seen in the year 2004.

7.7. Police Stations wise crimes registered on Child Victims in Goa

Goa is geographically divided into districts North Goa and South Goa. It is further divided into 11 Talukas. There are 11 police stations in South Goa and 12 police stations in North Goa. Crimes registered at various Taluka Police Stations in North Goa⁵⁶ and South Goa⁵⁷ after passing of Goa Children's Act, 2003 and establishment of the of the Children's Court has been collected.

7.7.1 Classification according to Age of Child Victims and Offences under IPC in Goa

For the purpose of this study the crimes registered by the police under the Indian Penal Code are collected. Since most offences against children are offences registered under the various Sections of the Indian Penal Code, 1860. The crimes which have been registered under Indian Penal Code are illustrated for both North Goa and South Goa. The victims of the crime have been identified in two age groups. Firstly those victims in the age group of (0-15) years and secondly those in the age groups of (15-18) years.

⁵⁶ Anjuna, Bardez, Bicholim, Calangute, Collem, Old Goa, Mapusa, Panaji, Ponda, Pernem, Porvorim, Valpoi

⁵⁷ Canacona, Colva, Cuncolim, Margao, Maina, Mormugao, Quepem, Sanvordem, Sanguem, Vasco, Verna

7.8. Crimes Registered On Child Victims in North Goa

In North Goa there are 12 police stations from where data as collected. They are Agassaim, Anjuna, Bicholim, Calangute, Collem, Old Goa, Mapusa, Panaji, Ponda, Pernem, Porvorim, Valpoi.

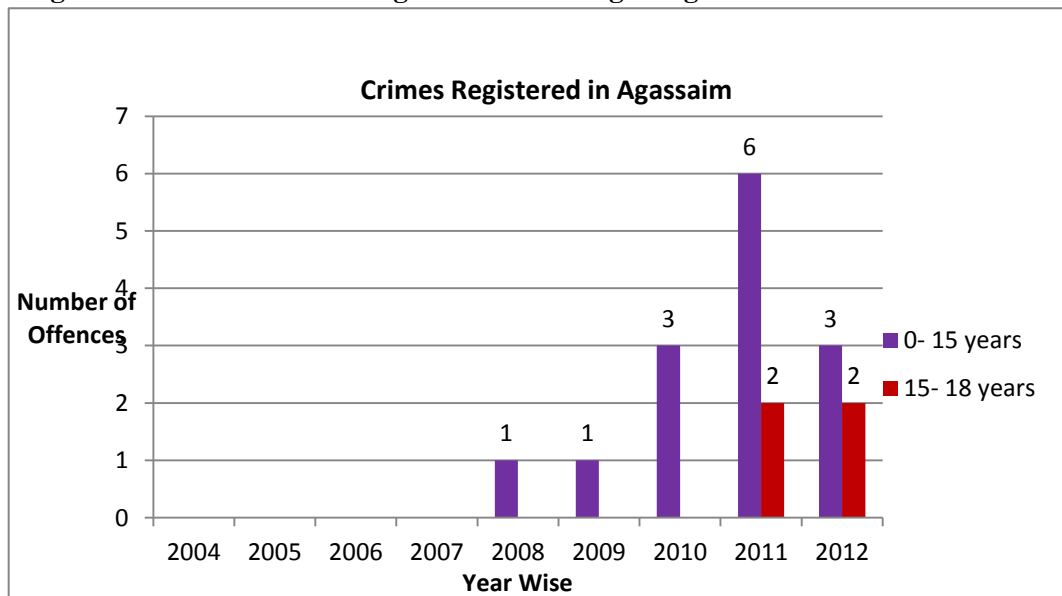
7.8.1. AGASSAIM

Table no 21 shows crimes registered according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	-	-
2005	-	-
2006	-	-
2007	-	-
2008	1	-
2009	1	-
2010	3	-
2011	6	2
2012	3	2

Source- Agassaim Police Station Records

Figure No 21 shows crimes registered according to Age of Child Victim under IPC



In the age group (0-15) years for the year 2011 there were 6 cases registered. In the same age group one case was registered in the year 2008 and 2009. In the (0-15) age group three cases were registered in the year 2012 and the year 2010. In the age group of (15-18) years there were two cases registered in the year 2011 and 2012. Most of the child victims were in the age group of (0-15) years. A total of 18 cases were registered over the years.

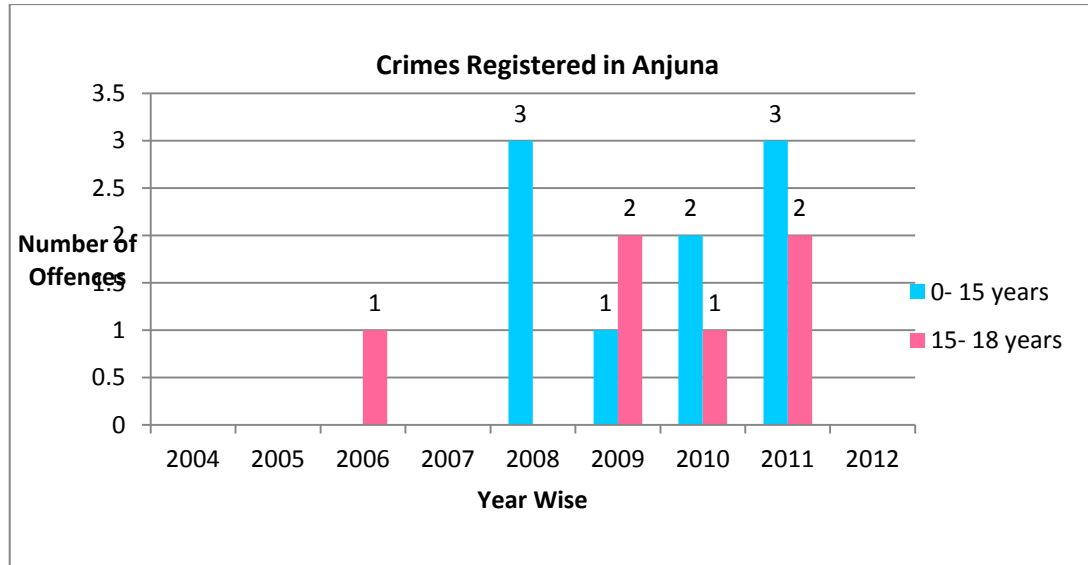
7.8.2. ANJUNA

Table no 22 shows crimes registered according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	-	-
2005	-	-
2006	-	1
2007	-	-
2008	3	-
2009	1	2
2010	2	1
2011	3	2
2012	-	-

Source - Anjuna Police Station

Figure no 22 shows crimes registered according to Age of Child Victim under IPC



In the age group (0-15) years for the year 2008 and 2011 three cases were registered. For the same age group two cases registered in the year 2010 and one case in the year 2009. In the age group of (15- 18) years there were two cases registered in the year 2009 and 2011. In the same age group one case was registered in the year 2006 and 2010. Most of the child victims were in the age group of (0-15) years. A total of 15 cases registered over the years.

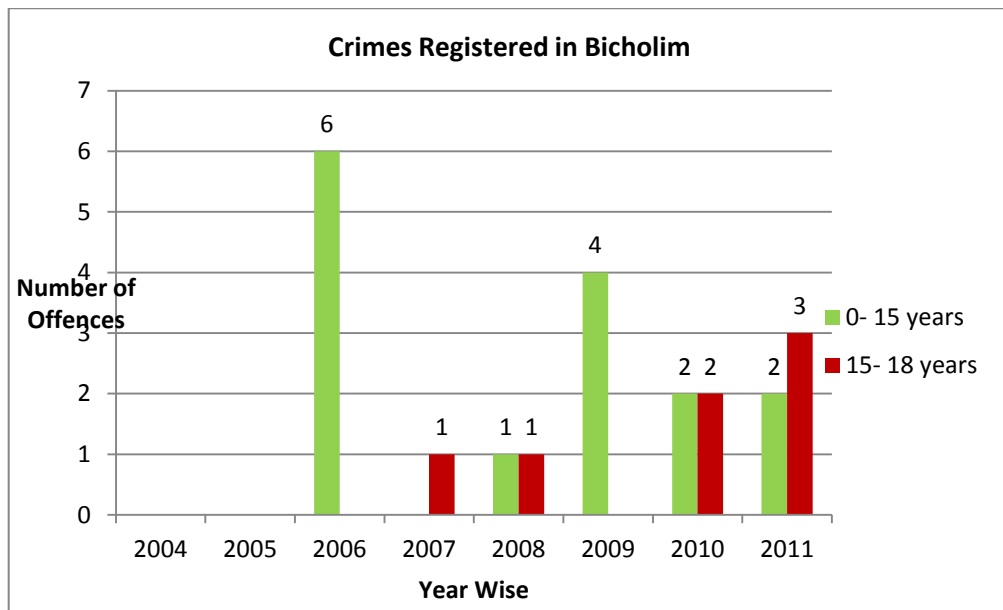
7.8.3. BICHOLIM

Table No 23 shows crimes registered⁵⁸ according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	-	-
2005	-	-
2006	6	-
2007	-	1
2008	1	1
2009	4	-
2010	2	2
2011	2	3

Source- Bicholim Police Station

Figure No 23 shows crimes registered according to Age of Child Victim under IPC



⁵⁸ Source Bicholim Police Station

In the age group of (0-15) years 6 cases were registered in the year 2006. In the same age group there were 4 cases in the year 2009 and two cases in the year 2010 and 2011. In the age group of (15 -18) years there were three cases in the year 2011 and two cases in the year 2010. Most of the child victims were in the age group of (0-15) years. A total of 22 cases were registered over the years.

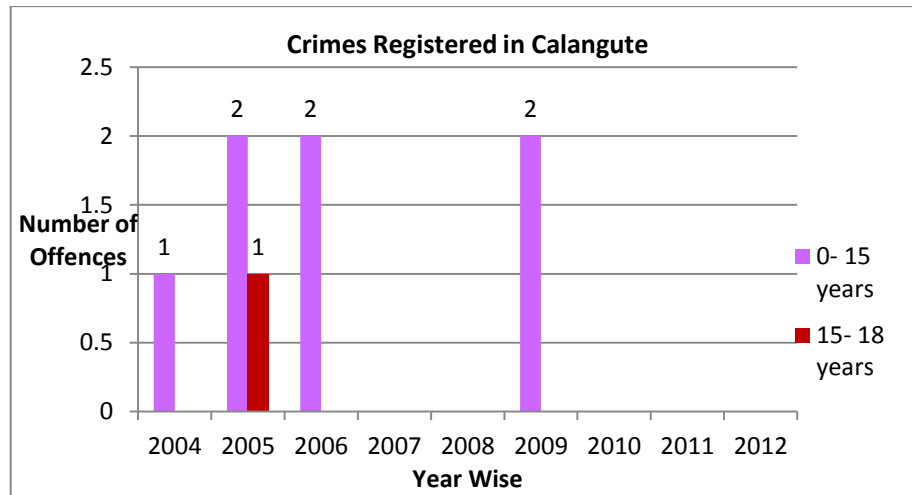
7.8.4. CALANGUTE

Table no 24 shows crimes registered according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	1	-
2005	2	1
2006	2	-
2007	-	-
2008	-	-
2009	2	-
2010	-	-
2011	-	-
2012	-	-

Source- Calangute Police Station

Figure No 24 shows crimes registered according to Age of Child Victim under IPC



In the age group (0-15) years for the year 2005, 2006 and 2009 there were two cases registered. In the age group of (0-15) years one case was registered in the year 2004. In the age group of (15- 18) years one case registered in 2005. Most child victims were in the in the age group (0-15) years. A total of 8 cases registered of the years.

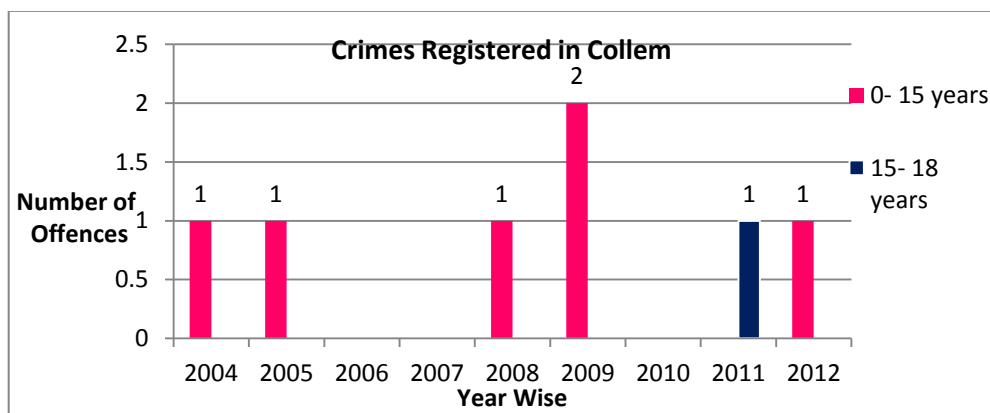
7.8.5. COLLEM

Table No 25 shows crimes registered according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	1	-
2005	1	-
2006	-	-
2007	-	-
2008	1	-
2009	2	-
2010	-	-
2011	-	1
2012	1	-

Source- Collem Police Station

Figure No 25 shows crimes registered according to Age of Child Victim



In the age group (0-15) years for the year 2009 there were two cases registered. In the same age group. One case was registered in the year 2004, 2005, 2008 and 2012. In the age group of (15-18) years one case as registered in the year

2011. Most child victims were in the age group of (0-15) years. A total of 7 cases registered over the years.

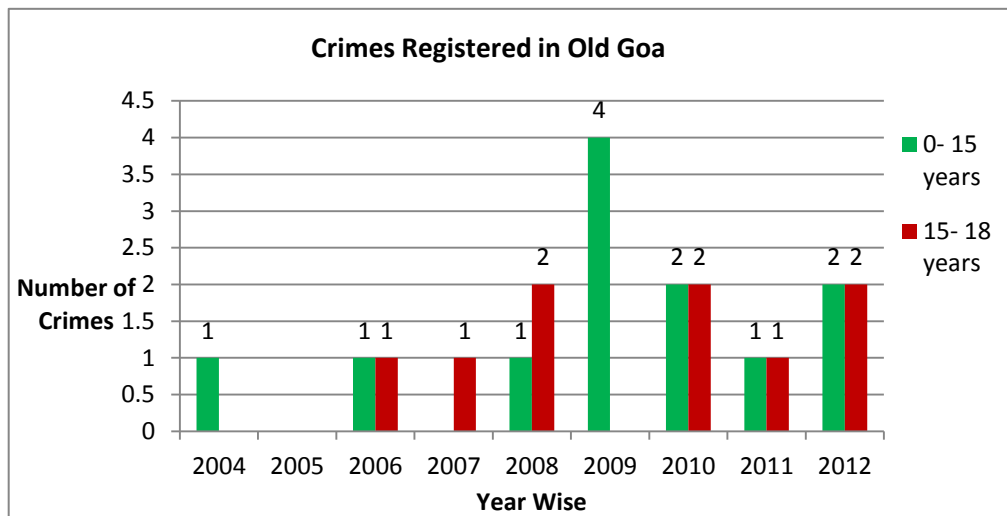
7.8.6. OLD GOA

Table No 26 shows crimes registered⁵⁹ according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	1	-
2005	-	-
2006	1	1
2007	-	1
2008	1	2
2009	4	-
2010	2	2
2011	1	1
2012	2	2

Source- Old Goa Police Station Records

Figure 26 shows crimes registered according to Age of Child Victim under IPC



⁵⁹ Source Old Goa Police Station Records

In the age group (0-15) years for the year 2009 there were 4 cases registered. In the same age group two cases were registered in the year 2010 and 2012. In the age group of (15- 18) years, two cases were registered in the year 2008, 2010 and 2012. Most of the child victims were in the age group of (0-15) years. Total number of cases registered is 21.

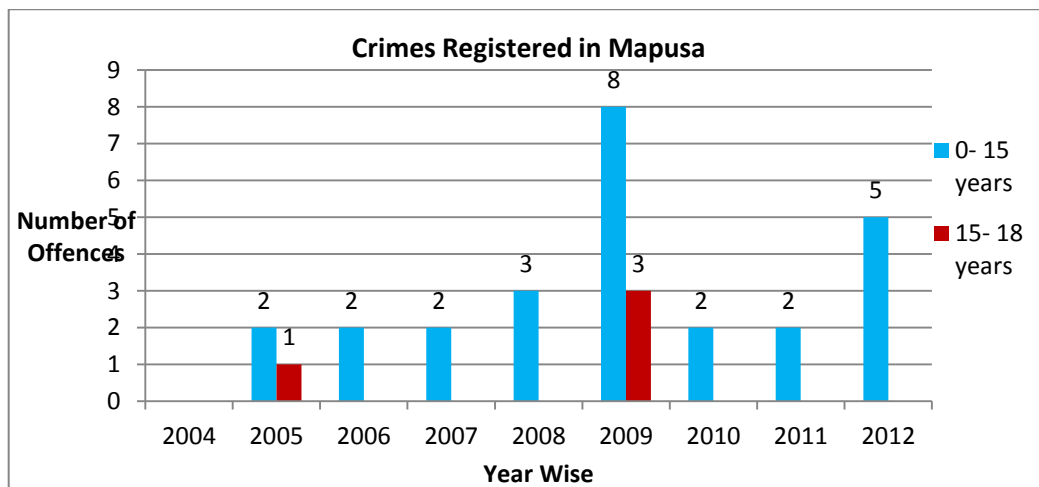
7.8.7. MAPUSA

Table No 27 shows crimes registered⁶⁰ according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	-	-
2005	2	1
2006	2	-
2007	2	-
2008	3	-
2009	8	3
2010	2	-
2011	2	-
2012	5	-

Source- Mapusa Police Station

Figure no 27 shows crimes registered according to Age of Child Victim under IPC



⁶⁰ Source Mapusa Police Station

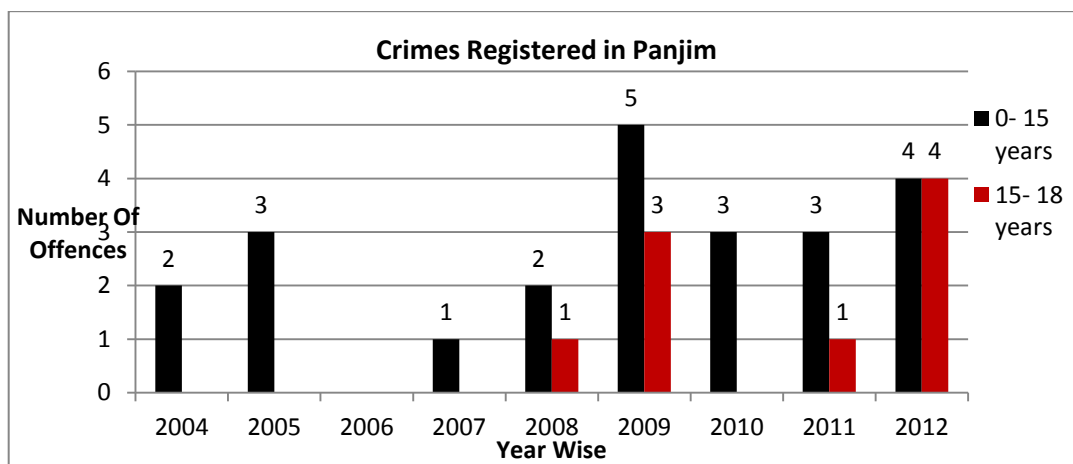
In the age group (0-15) years for the year 2009 eight cases were registered. In the same age group in the year 2012 five cases were registered. In the age group of (0-15) years three cases were registered in the year 2008 and two cases in the year 2005, 2006, 2007, 2010 & 2011. In the age group of (15- 18)years three cases were registered for the year 2009. Most of the child victims were in the age group of (0-15) years. A total of 30 cases were registered over the years.

7.8.8. PANJIM

Table no 28 shows the crimes registered according to Age of Child Victim ⁶¹ under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	2	-
2005	3	-
2006	-	-
2007	1	-
2008	2	1
2009	5	3
2010	3	
2011	3	1
2012	4	4

Figure No 28 shows the crimes registered according to age of Child Victim under IPC



⁶¹ Source Panaji Police Station

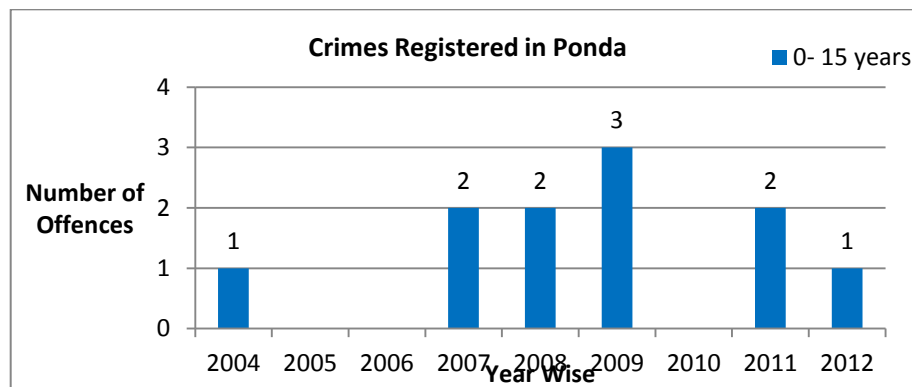
In Panjim⁶², the victims who were in the age group of (0 -15) years there were 5 cases registered in 2009 and 4 cases in 2012. The year 2005, 2010 and 2011 registered 3 cases with 2007 reporting lowest with one case while in 2006 no crimes were registered. The victims who were in the age group of (15- 18) years there were 4 cases in 2012 and 3 cases in 2009. Most of the child victims were in the age group of (0-15) years. There were total 32 cases registered in Panjim over the years.

7.8.9. PONDA

Table No 29 shows crimes registered⁶³ according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	1	-
2005	-	-
2006	-	-
2007	2	-
2008	2	-
2009	3	-
2010	-	-
2011	2	-
2012	1	-

Figure No 29 shows crimes registered according to Age of Child Victim under IPC



⁶² Panaji is the Capital of Goa.

⁶³ Source Ponda Police Station

In the age group (0-15) years for the year 2009 there were three cases registered. In the same age group two cases were registered for the years 2007, 2008 and 2011. No crimes were registered in the age group of (15-18) years. Most of the child victims were in the age group of (0-15) years. A total of 11 cases were registered over the years.

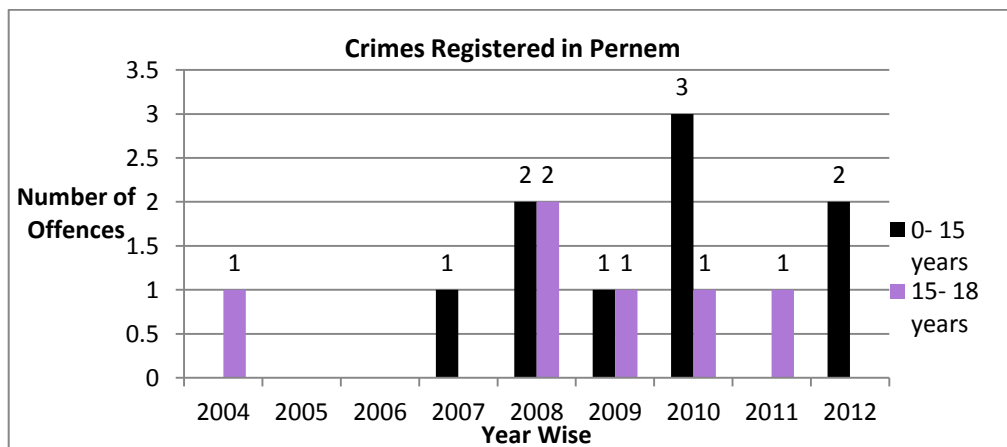
7.8.10. PERNEM

Table No 30 shows crimes registered according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	-	1
2005	-	-
2006	-	-
2007	1	-
2008	2	2
2009	1	1
2010	3	1
2011	-	1
2012	2	-

Source Pernem Police Station

Figure No 30 shows crimes registered according to Age of Child Victim under IPC



In the age group (0-15) years for the year 2010 there were three cases registered. In the same age group two cases were registered in the year 2008 and 2012. In the age group of (15-18) years two cases were registered in the year 2008. Most of the child victims were in the age group of (0-15) years. A total of 15 cases were registered over the years.

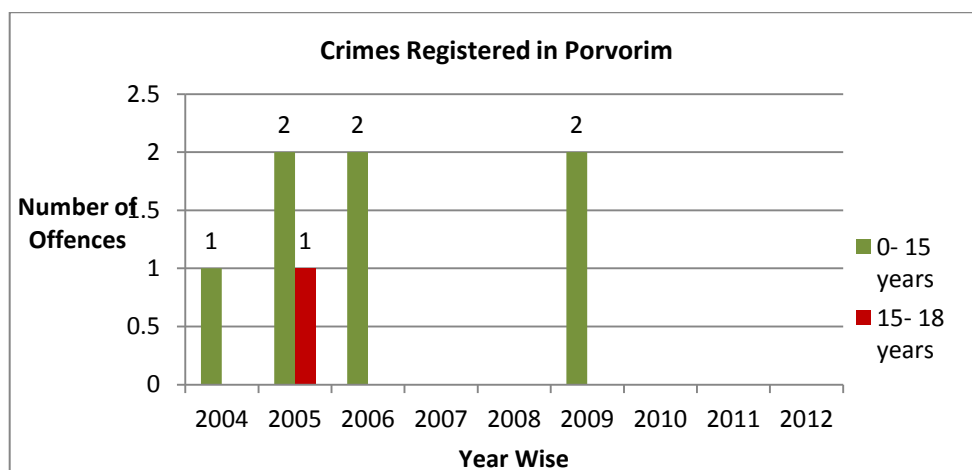
7.8.11. PORVORIM

Table No 31 shows crimes registered according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	1	-
2005	2	1
2006	2	-
2007	-	-
2008	-	-
2009	2	-
2010	-	-
2011	-	-
2012	-	-

Source - Porvorim Police Station

Figure No 31 shows crimes registered according to Age of Child Victim under IPC



In the age group of (0-15) years two cases were registered in the year 2005, 2006 and 2009. In the age group (15-18) years there was one case registered for the year 2005. Most of the child victims were in the age group of (0-15) years. A total of eight cases registered.

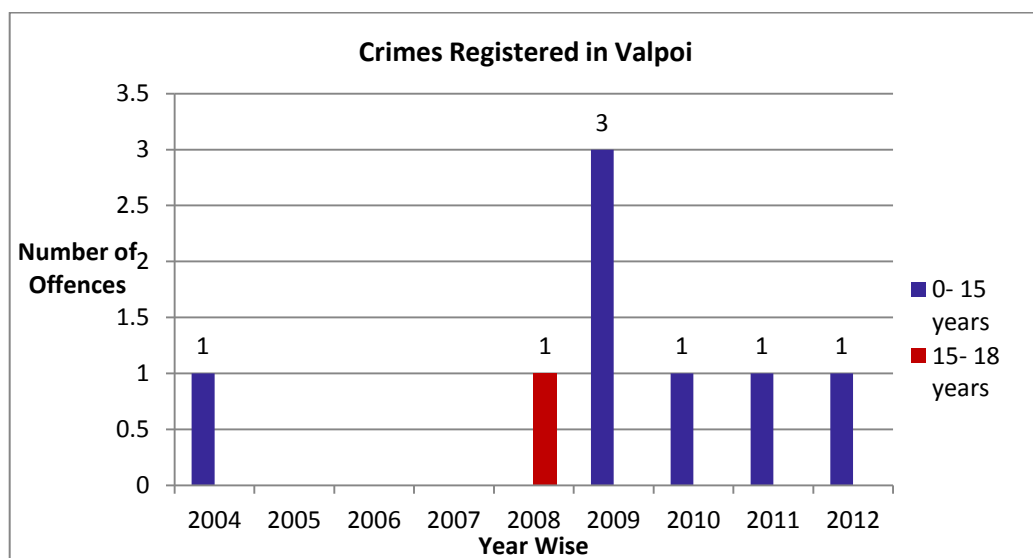
7.8.12. VALPOI

Table No 32 shows crimes registered according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	1	-
2005	-	-
2006	-	-
2007	-	-
2008	-	1
2009	3	-
2010	1	-
2011	1	-
2012	1	-

Source- Valpoi Police Station

Figure No 32 shows crimes registered according to Age of Child Victim under IPC



In the age group of (0-15) years there were three cases registered in the year 2009. In the same age group one case each in the year 2004, 2010, 2011 and 2012. Most of the child victims were in the age group of (0-15) years. In the age group of (15-18) years one case was registered in the year 2008. A total of 8 cases were registered over the years.

Conclusion - Over a period of 9 years the data collected and analyzed showed that most of the child victims were in the age group of (0-15) years. There were a total of 146 cases registered from all police stations in North Goa where the child victim was in the age group of (0-15) years. Only a total of 49 cases were registered where the child victims as in the age of (15- 18) years. Thus indicating that the smaller child in Goa as at a higher risk than teenagers.

7.9. Crimes Registered On Child Victims in South Goa

In South Goa Data was collected from 11 Police Stations. The Police stations are Canacona, Colva, Cuncolim, Maina, Margao, Mormugoa, Vasco, Quepem, Sanvordem, Sanguem, Verna.

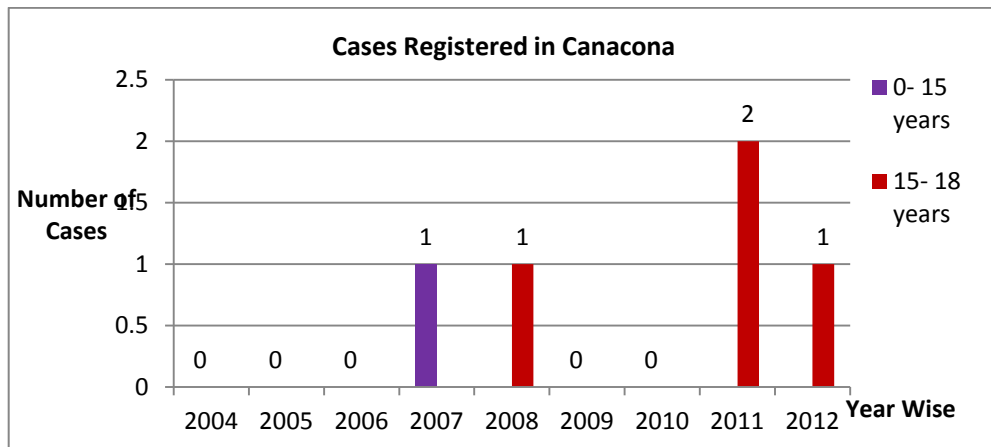
7.9.1. CANACONA

Table No 33 shows crimes registered according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	-	-
2005	-	-
2006	-	-
2007	1	-
2008	-	1
2009	-	-
2010	-	-
2011	-	2
2012	-	1

Source- Canacona Police Station

Figure No 33 shows crimes registered according to Age of Child Victim under IPC



In the age group of (0-15) years one case was registered in the year 2007. In the age group of (15-18) years two cases were registered in the year 2011 and one case

each in the year 2008 and 2012. In Most cases the child victim was in the age group of (15-18) years. A Total of 5 cases registered over the years.

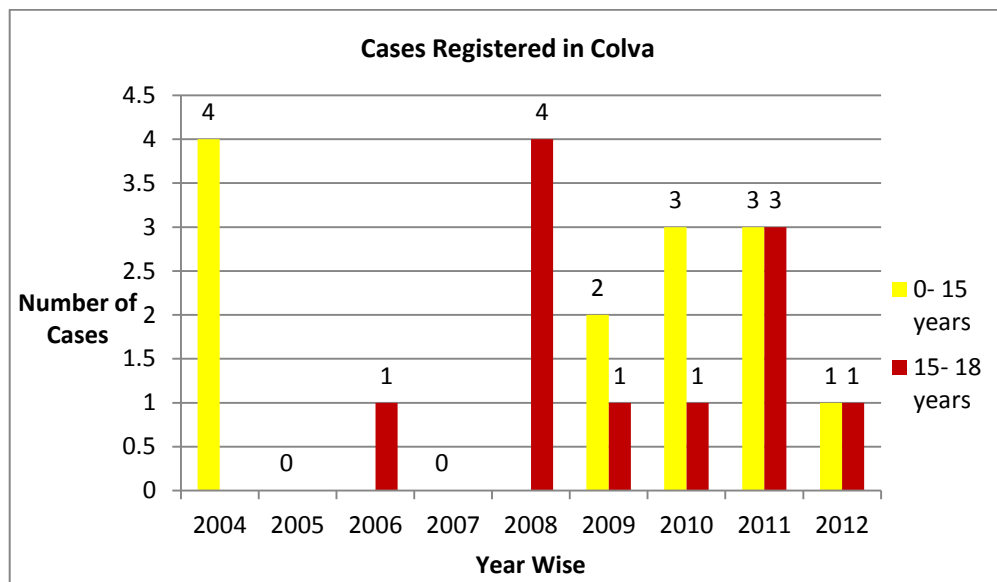
7.9.2. COLVA

Table No 34 shows crimes registered according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	4	-
2005	-	-
2006	-	1
2007	-	-
2008	-	4
2009	2	1
2010	3	1
2011	3	3
2012	1	1

Source- Colva Police Station

Figure No 34 shows crimes registered according to Age of Child Victim under IPC



In the age group of (0-15) years there were four cases registered in the year 2004 and three cases registered in the year 2010 and 2011. In the age group of (15-18) years there were four cases registered in the year 2008 and three cases registered in the year 2011. Most of the child victims were in the age group of (0-15) years. A total of 24 cases were registered over the years.

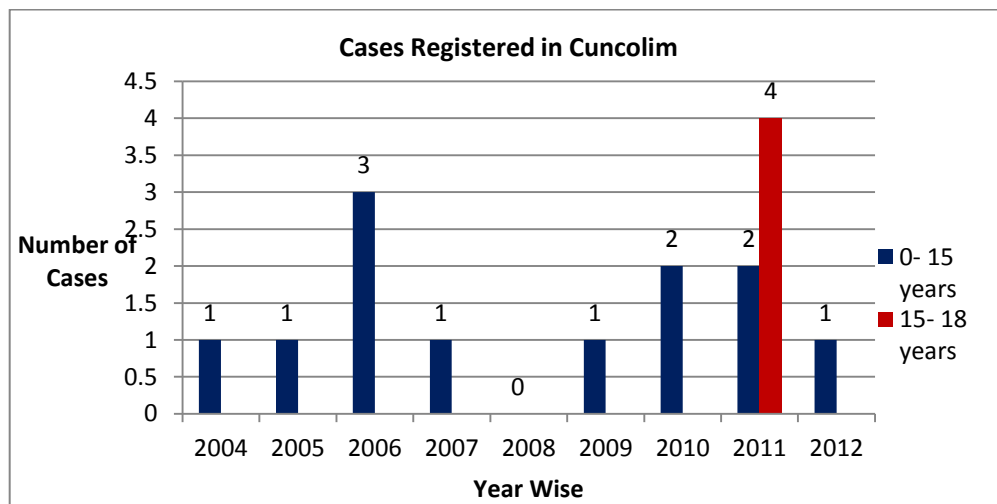
7.9.3. CUNCOLIM

Table No 35 shows crimes registered according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	1	-
2005	1	-
2006	3	-
2007	1	-
2008	-	-
2009	1	-
2010	2	-
2011	2	4
2012	1	-

Source- Cuncolim Police Station

Figure No 35 shows crimes registered according to Age of Child Victim under IPC



In the age group of (0-15) years there were three cases registered in the year 2006 and two cases registered in the year 2010 and 2011. In the year 2011 there were four cases registered in the age group of (15- 18) years. Most of the child victims were in the age group of (0-15) years. A total of 16 cases were registered over the years.

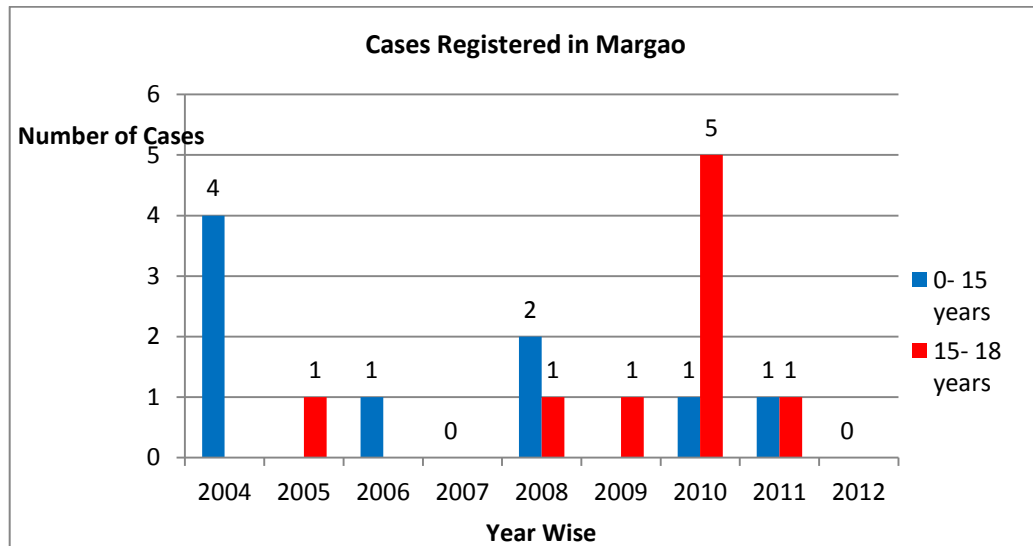
7.9.4. MARGAO

Table No 36 shows crimes registered according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	4	-
2005	-	1
2006	1	-
2007	-	-
2008	2	1
2009	-	1
2010	1	5
2011	1	1
2012	-	-

Source- Margao Police Station

Figure No 36 shows crimes registered according to Age of Child Victim under IPC



In the age group of (0-15) years there were four cases registered in the year 2004 and two cases registered in the year 2008. In the age group of (15- 18) years there were five cases registered in the year 2010. There are same number i.e 9 cases registered in the age group of child victims of (0-15) years and also in the age group of (15-18) years. There are a total of 18 cases registered over the years.

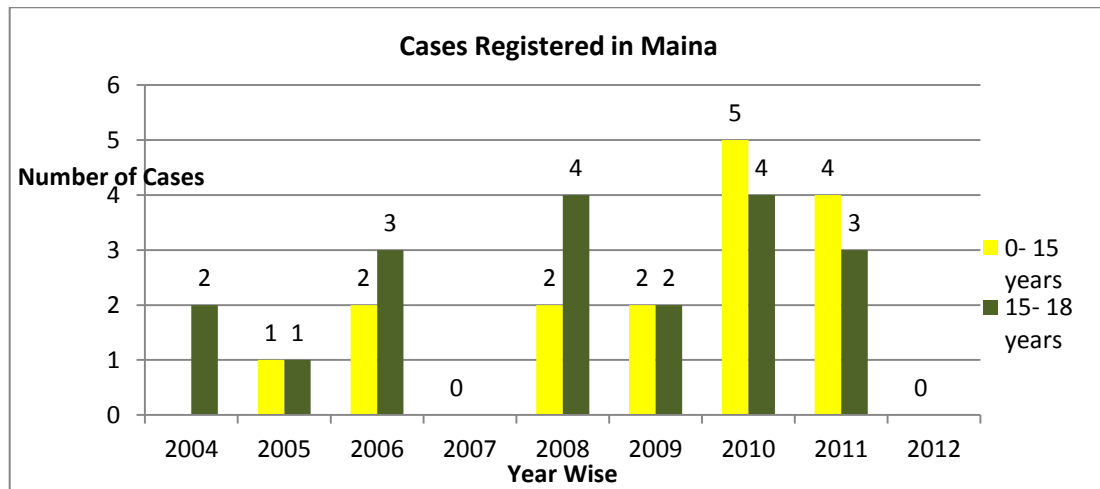
7.9.5. MAINA

Table No 37 shows crimes registered according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	-	2
2005	1	1
2006	2	3
2007	-	-
2008	2	4
2009	2	2
2010	5	4
2011	4	3
2012	0	-

Source- Maina Police Station

Figure No 37 shows crimes registered according to Age of Child Victim under IPC



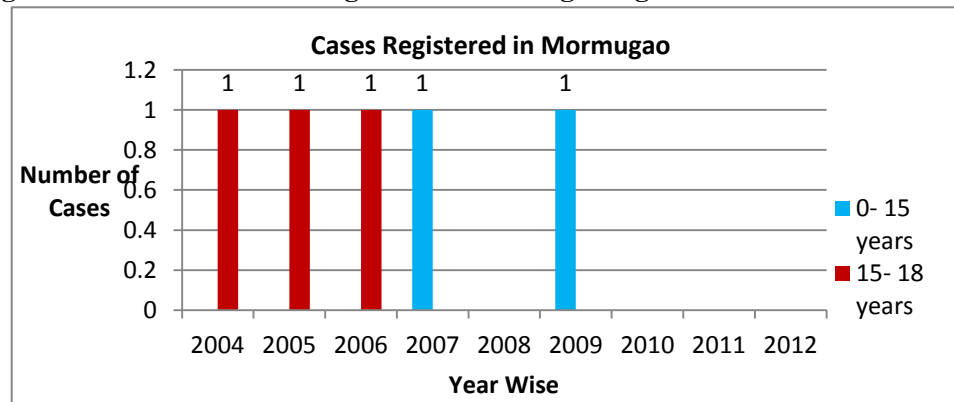
In the age group of (0-15) years there were five cases registered in the year 2010. In the same age group four cases were registered in the year 2011 and two cases in the year 2006, 2008 and 2009. In the age group of (15- 18) years there were four cases registered in the year 2010 and 2008. In the age group of (15- 18) two cases registered in the year 2004 and 2009. Three cases were registered for the age group of (15-18) years in the year 2006 and 2011. Most victims are in the age group of (15-18) years. A total of 35 cases were registered over the years.

7.9.6. MORMUGAO

Table No 38 shows crimes registered⁶⁴ according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	-	1
2005	-	1
2006	-	1
2007	1	-
2008	-	-
2009	1	-
2010	-	-
2011	-	-
2012	-	-

Figure No 38 shows crimes registered according to Age of Child Victim under IPC



⁶⁴ Source Morlugao Police Station

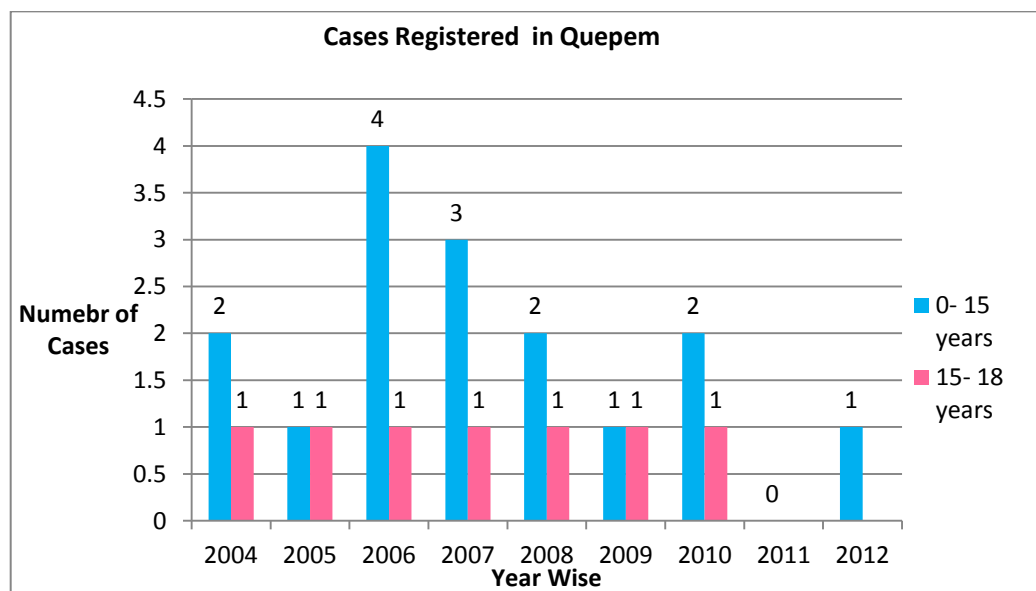
In the age group of (0-15) years one case each in the year 2007 and 2009. In the age group of (15-18) years one case each in the year 2004, 2005 and 2006. Most victims are in the age group of (15-18) years. A total of 5 cases were registered over the years.

7.9.7. QUEPEM

Table No 39 shows crimes registered⁶⁵ according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	2	1
2005	1	1
2006	4	1
2007	3	1
2008	2	1
2009	1	1
2010	2	1
2011	-	-
2012	1	-

Figure No 39 shows crimes registered according to Age of Child Victim under IPC



⁶⁵ Source Quepem Police Station

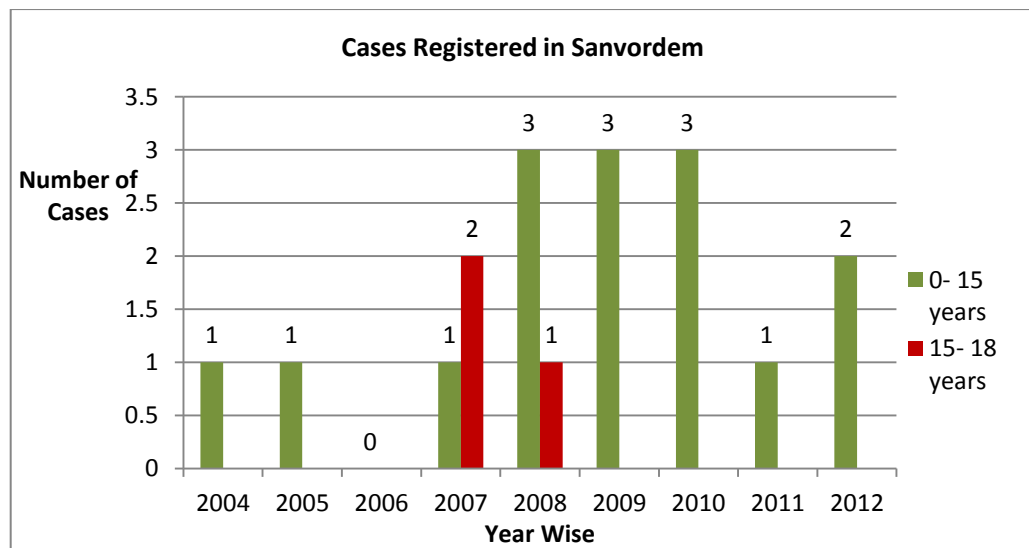
In the age group of (0-15) years there were four cases registered in the year 2006 and three cases in the year 2007 and two cases in the year 2004, 2008 and 2010. In the age group of (15-18) years except for the year 2011 & 2012 the other years registered one case each. In most cases the age of the child victim is in the age group of (0-15) years. Total of 23 cases registered over the years.

7.9.8. SANVORDEM

Table no 40 shows crimes registered⁶⁶ according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	1	-
2005	1	-
2006	-	-
2007	1	2
2008	3	1
2009	3	-
2010	3	-
2011	1	-
2012	2	-

Figure No 40 shows crimes registered according to Age of Child Victim under IPC



⁶⁶ Source Sanvordem Police Station

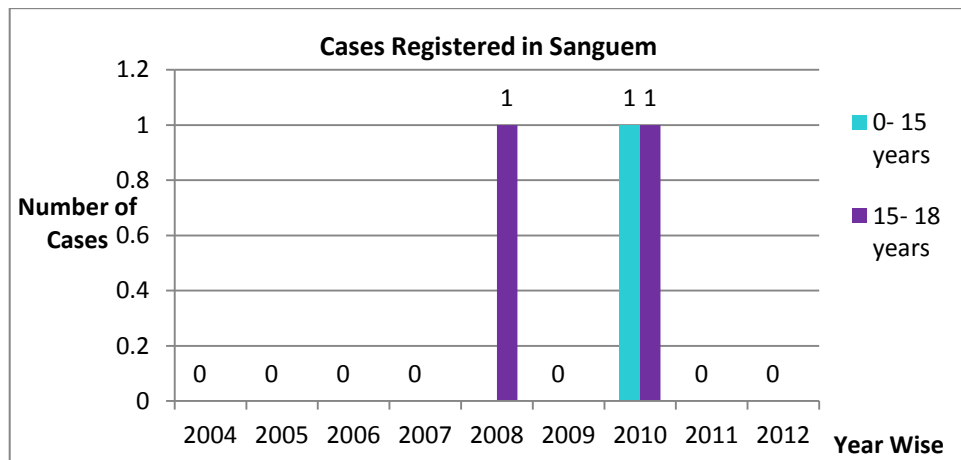
In the age group of (0-15) years three cases were registered for the years 2008, 2009 and 2010. In the same age group two cases were registered in the year 2012. In the age group of (15-18) years two cases were registered in the year 2007. In most cases the age of the child victim is in the age group of (0-15) years. A total of 18 cases were registered over the years.

7.9.9. SANGUEM

Table No 41 shows crimes registered⁶⁷ according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	-	-
2005	-	-
2006	-	-
2007	-	-
2008		1
2009	-	-
2010	1	1
2011	-	-
2012	-	-

Figure No 41 shows crimes registered according to Age of Child Victim under IPC



⁶⁷ Source Sanguem Police Station

In the age group of (0-15) years one case was registered in the year 2010 and one case each for the age group of (15-18) years in the year 2008 and 2010. In most cases the age of the child victim is in the age group of (0-15) years. A total of 3 cases registered over the years.

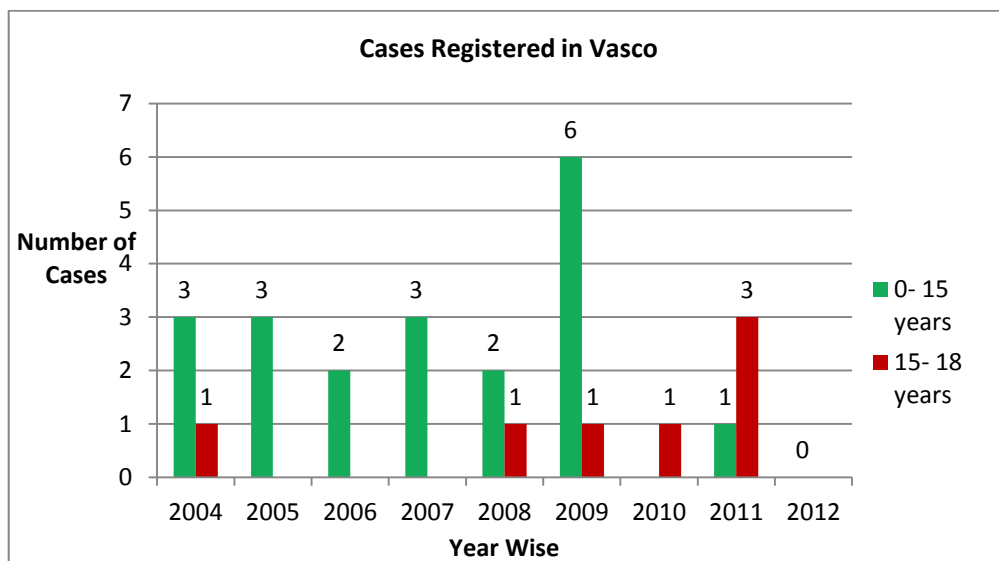
7.9.10. VASCO

Table No 42 shows crimes registered according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	3	1
2005	3	-
2006	2	-
2007	3	-
2008	2	1
2009	6	1
2010	-	1
2011	1	3
2012	-	-

Source Vasco Police Station

Figure No 42 shows crimes registered according to Age of Child Victim under IPC



In the age group of (0-15) years there were six cases registered in the year 2009. In the same age group three cases were registered in the year 2004, 2005 and 2007. In the age group of (15-18) years three cases were registered in the year 2011. In most cases the age of the child victim is in the age group of (0-15) years. A total of 27 cases were registered over the years.

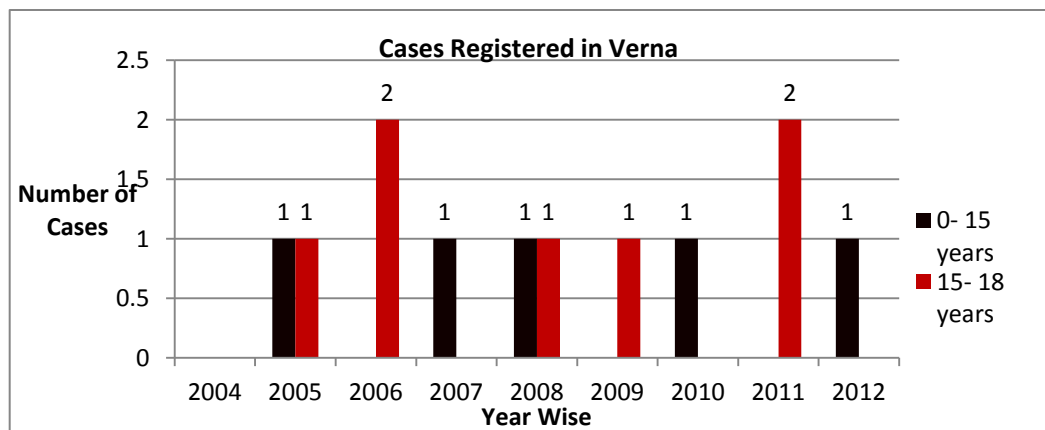
7.9.11. VERNA

Table No 43 shows crimes registered according to Age of Child Victim under IPC

Year	Age Group	
	0- 15 years	15- 18 years
2004	-	-
2005	1	1
2006	-	2
2007	1	-
2008	1	1
2009	-	1
2010	1	-
2011	-	2
2012	1	-

Source Verna Police Station

Figure No 43 shows crimes registered according to Age of Child Victim under IPC



In the age group of (0-15) years there was one case registered in the year 2005, 2007, 2008, 2010 and 2012. In the age group of (15-18 years) there were two cases registered in the year 2006 and 2011. In most cases the age of the child victim is in the age group of (15-18) years. There are a total of 12 cases registered over the years.

Conclusion

Over the years the most of the child victims were in the age group of (0-15) years. There were a total of 110 cases registered from all police stations in South Goa where the child victim was in the age group of (0-15) years. A total of 76 cases were registered where the child victims as in the age of (15- 18) years. Hence indicating that smaller children in Goa are at higher risk than teenagers. South Goa registered highest number of crimes on Child Victims in the Age group of (15-18) years. While North Goa registered highest number of crimes on child victims in the age group of (0-15) years.

7.10. Incidence of Crime in Goa

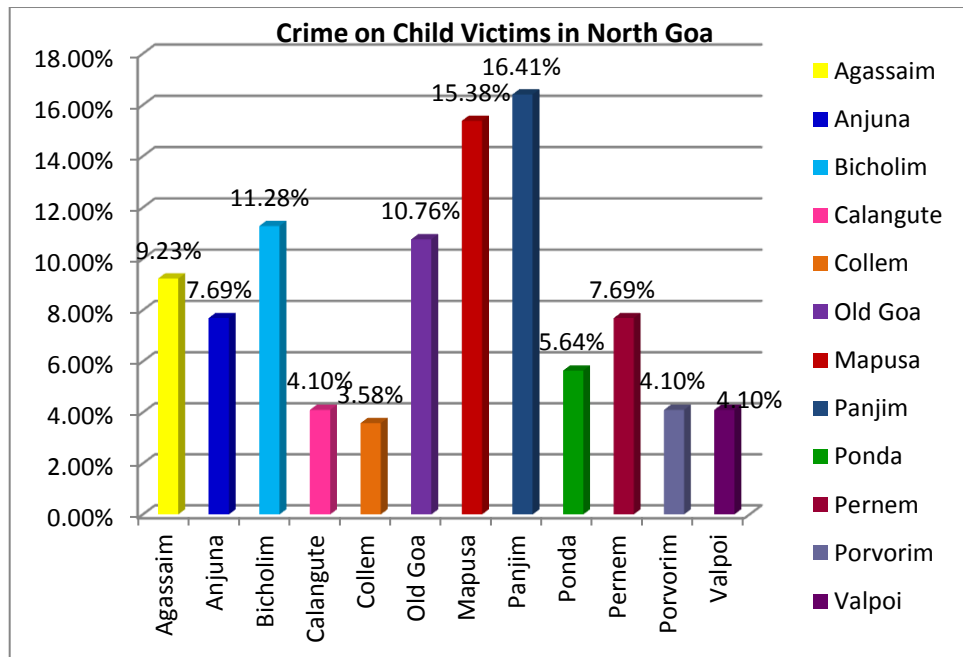
A study was done on the Data collected from various Police Stations in North Goa and South Goa. The data was collected for a period of 9 years beginning from the year 2004 and ending in 2012. The number of cases from each police station was added and then a percentage was calculated on the same. This enabled the Researcher to understand the percentage of crimes on child victims in Goa.

7.10.1. Percentage of Crime in North Goa on Child Victims

Table Number 44 shows crime percentage in North Goa

Taluka	No of Crimes	Percentage
Agassaim	18	9.23%
Anjuna	15	7.69%
Bicholim	22	11.28%
Calangute	8	4.10%
Collem	7	3.58%
Old Goa	21	10.76%
Mapusa	30	15.38%
Panjim	32	16.41%
Ponda	11	5.64%
Pernem	15	7.69%
Porvorim	8	4.10%
Valpoi	8	4.10%

Figure No 44 shows crime percentage in North Goa



A comparative study of a period of over 9 years⁶⁸ shows that among the various Police Stations in North Goa, the crimes registered in Panjim are the highest crime rate of 18.07%. Next highest taluka was Mapusa with crime rate of 16.94%. Bicholim registered 12.42% crime rate and Old Goa registered 11.86% crime rate. Next taluka was Agassaim with crime rate of 9.23%. Anjuna and Pernem had same crime rate of 8.47%. Calangute registered low crime rate of 4.51% and shared the same number with Porvorim of 4.51% and Valpoi 4.51%. The beach belts of Anjuna and Calangute registered a low crime rate.⁶⁹ Ponda registered 6.21% crimes. Collem registered the lowest crime rate of 3.95%.

7.10.2. Percentage of Crime in South Goa on Child Victims

Table No 45 shows crime percentage in South Goa

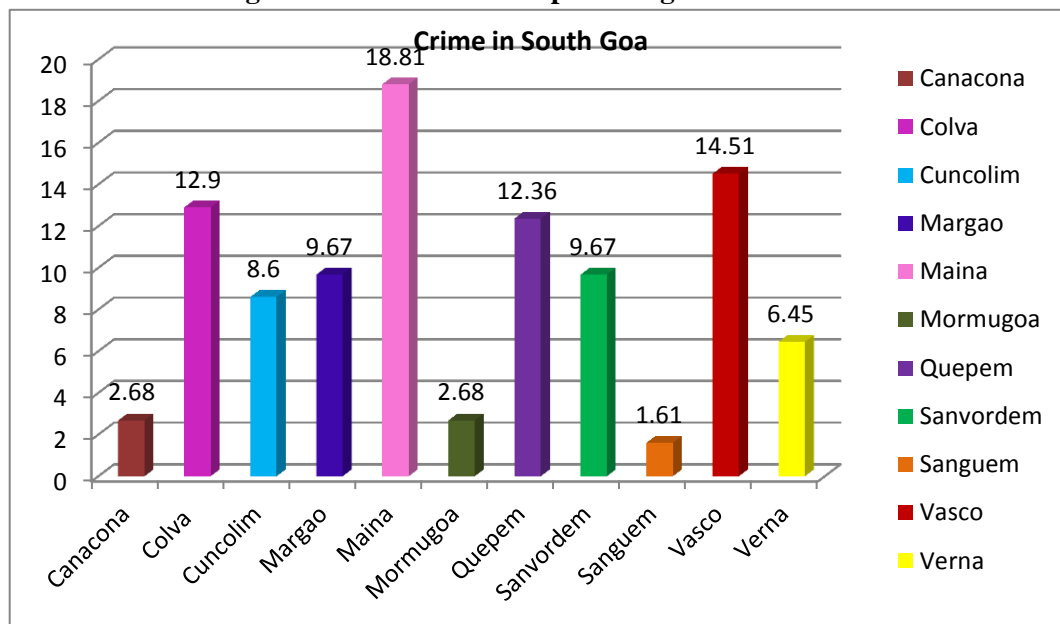
Taluka	No of Crimes	Percentage
Canacona	5	2.68%
Colva	24	12.9%
Cuncoim	16	8.6%
Margao	18	9.67%
Maina	35	18.81%
Mormugoa	5	2.68%
Quepem	23	12.36%
Sanvordem	18	9.67%
Sanguem	3	1.61%
Vasco	27	14.51%
Verna	12	6.45%

⁶⁸The number of Crimes registered at each police station for a period of 9 years is added. The same number was used to calculate the percentage of crime for over a period of 9 years.

⁶⁹ It cannot be said that there is low crime rate in such areas however there could be a possibility of offences are not being registered in these areas

⁷⁰ Information obtained from interviews of NGO's who said that many cases which are registered do not end up in trial due to reasons like the accused being a foreigner and has immigrated out of the country. The other reasons could be accused is Indian but unknown. In some cases the parents do not wish to file complaint particularly when the offence is an offence of Rape.

Figure No 45 shows crime percentage in South Goa



A comparative study of a period of over 9 years⁷¹ shows that among the various Police Stations in South Goa. In the police stations in South Goa Maina registered the highest crime rate of 18.81% followed by Vasco at 14.51%. The crimes registered in Colva and Quepem is nearly similar at 12.9% and 12.36% respectively. Sanguem registered the lowest crime rate of 1.61%. Canacona and Mormugao registered a low crime rate of 2.68% each. Margao registered a crime of 9.67%.Cuncolim registered crime of 8.6%.Sanvordem registered 9.67% and Verna 6.45%.

Conclusion

Crimes registered in South Goa are higher then those registered in North Goa with the highest Taluka in Crime being Maina has a crimes at a rate of 18.81%. The

⁷¹The number of Crimes registered at each police station for a period of 9 years is added. The same number was used to calculate the percentage of crime for over a period of 9 years.

lowest Taluka in crime is again in south Goa, Sanguem which has registered crime of 1.67%. There is not a single taluka in Goa which has not registered any crime over the 9 years. The government must declare, Panjim, Old Goa , Mapusa and Bicholim Maina, Margao, Vasco , Colva, Quepem as high risk areas for children.⁷²

7.11. Offences registered under IPC at police Stations in North and South Goa

Data is represented separately for North Goa and South Goa. The detailed offence wise crimes on child victims are represented.

7.11.1. Crimes in North Goa - Sexual Crimes on child Victims

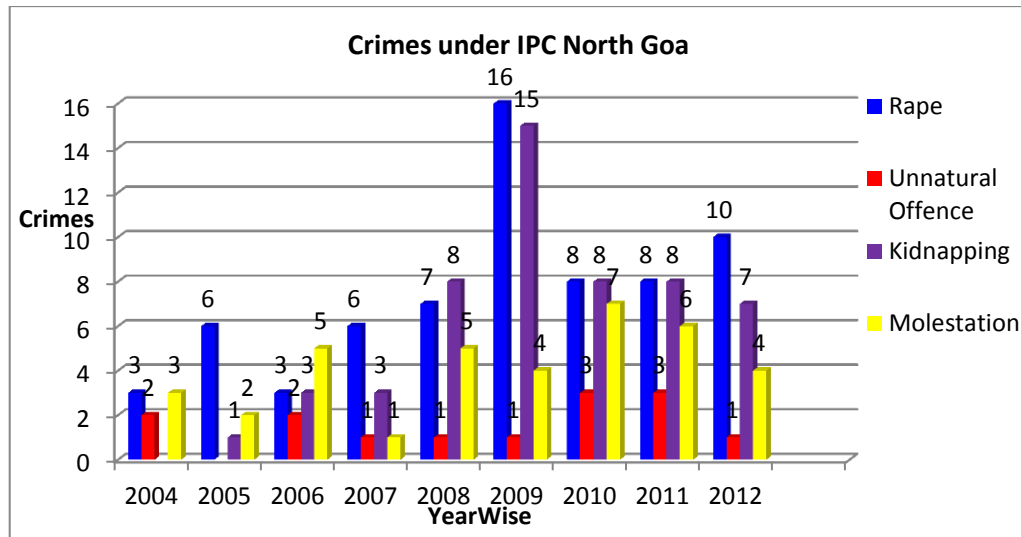
Table No 46 shows crimes registered in North Goa

IPC Crimes	2004	2005	2006	2007	2008	2009	2010	2011	2012
Rape	3	6	3	6	7	16	8	8	10
Unnatural Offence	2		2	1	1	1	3	3	1
Kidnapping		1	3	3	8	15	8	8	7
Molestation	3	2	5	1	5	4	7	6	4

Source Police Station Records of All Police Stations in North Goa

⁷²Under Section 2(r) of the Goa Children's Act, 2003 the Government has power to officially mark 'High Risk areas' by marking them as potential risk areas and notifying such areas in official gazette. See S.2(r) "High risk" areas means those areas in which children are vulnerable to exploitation as notified by the Government in the Official Gazette

Figure No 46 shows crimes registered in North Goa



Y axis shows number of crimes & X axis shows the year. The year 2009 there was maximum number of 16 rape⁷³ cases in North Goa. Kidnapping⁷⁴ there were 15 cases in 2009 which is the highest number of cases rape cases registered. This could indicate that there could be a possibility of victims being kidnapped for being raped. In the year 2010 and 2011 there were 8 cases registered of the offence of rape and also kidnapping. In the year 2012 there were 10 cases of rape registered. In the year 2012 for the offence of kidnapping there were 7 cases registered. There were 8 cases of kidnapping registered in the year 2008 and for the same year there were 7 rape cases. In the year 2007 and 2005 there were 6 Rape Cases in the year 2006 and 2004 there were 3 rape cases. In the year 2004 there were no kidnapping cases registered. In the year 2005 there was one kidnapping case registered and in the year 2006 and 2007 there were 3 kidnapping

⁷³See Section 375 The Indian Penal Code, 1860

⁷⁴ See Section 363 The Indian Penal Code, 1860

cases registered. There could be nexus between kidnapping and rape.⁷⁵ The statistics also show a similar number of rape and kidnapping cases thus confirming this fact.

Molestation⁷⁶ is also an offence which was highest number of cases in 2010 with 7 cases were registered. The year 2004 there were lowest numbers of cases there were only 3 cases registered. In the year 2011 there where 6 cases registered. In the year 2009 there were 4 cases of molestation registered. In the year 2007 there was one case of molestation registered. In the year 2006 there were 5 cases of molestation registered. In the year 2005 there were 2 cases of molestation registered.

For the offence of unnatural offence⁷⁷ there were 3 cases registered in the year 2010 and 2011. Two cases each were registered in the year 2004 and 2006. One case of unnatural offence registered in the year 2007, 2008, 2009 and 2012.

⁷⁵Interview with the accused revealed that some accused had first kidnapped the victim and then raped them.

⁷⁶ See Section 354 The Indian Penal Code, 1860

⁷⁷ See Section 377 The Indian Penal Code, 1860

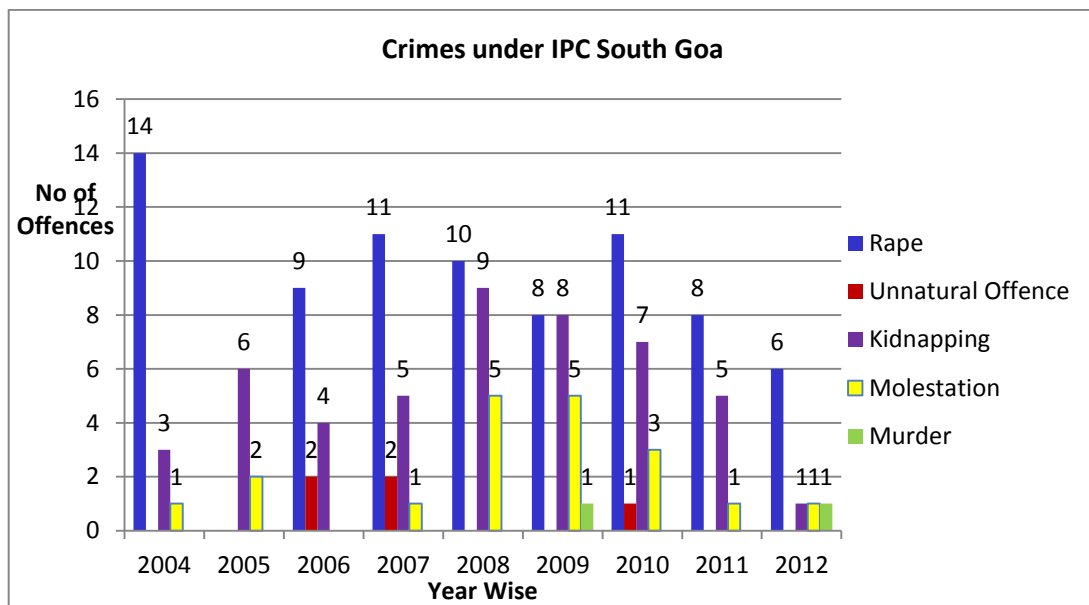
7.11.2. Crimes in South Goa - Sexual Crimes on child Victims

Table No 47 shows crimes registered in South Goa

IPC Crimes	2004	2005	2006	2007	2008	2009	2010	2011	2012
Rape	14	-	9	11	10	8	11	8	6
Unnatural Offence	-	-	2	2	-	-	1	-	-
Kidnapping and Abduction	3	6	4	5	9	8	7	5	1
Molestation	1	2		1	5	5	3	1	1
Murder	-	-	-	-	-	1	-	-	1

Source - Police Station Records of All Police Stations in South Goa

Figure No 47 shows crimes registered in South Goa



In South Goa maximum number of rape⁷⁸ cases which were registered in 2004 were 14 cases. There is a steady increase in the number of cases with 11 cases of rape being registered in 2007 and 2010 and 10 cases of rape in 2008. Kidnapping

⁷⁸ See Section 375 The Indian Penal Code, 1860

cases⁷⁹ were high in the year 2008 with 9 cases. There were 8 cases of rape registered in the year 2011 and 6 cases of rape registered in the year 2012. There were 9 cases of rape registered in the year 2006. There were 5 cases of kidnapping registered in the year 2011 and one case of kidnapping registered in the year 2012. There were 5 cases of kidnapping registered in the year 2007. 4 cases of kidnapping were registered in the year 2005. There were 6 cases of, kidnapping registered in the year 2005 and 3 cases of kidnapping registered in the year 2004. This also indicates that there could be a possibility that the victims could be kidnapped and then raped. In the year 2009 there were 8 cases of kidnapping cases registered. In the year 2010 there were 7 kidnapping cases registered. Molestation cases⁸⁰ were high in the year 2008 and 2009 with 5 cases. Three cases of molestation were registered in the year 2010. One case of molestation was registered in the year 2011, 2012, 2007 and 2004. Two cases of molestation were registered in the year 2005. There as one rape and murder⁸¹ in the year 2009 and one in 2012.⁸² Unnatural offences⁸³ 2 cases registered in the year 2006 and 2007 and one case in the year 2010.

Conclusion – Rape cases, Kidnapping, Unnatural Offences, Molestation registered in North Goa were higher than South Goa. No cases of murder were registered in North Goa.

⁷⁹ See Section 363 The Indian Penal Code, 1860

⁸⁰ See Section 354 The Indian Penal Code, 1860

⁸¹ See Section 302 The Indian Penal Code, 1860

⁸² Data obtained from interviews with police officials indicated that the victim of murder were raped and then murdered.

⁸³ See Section 377 The Indian Penal Code, 1860

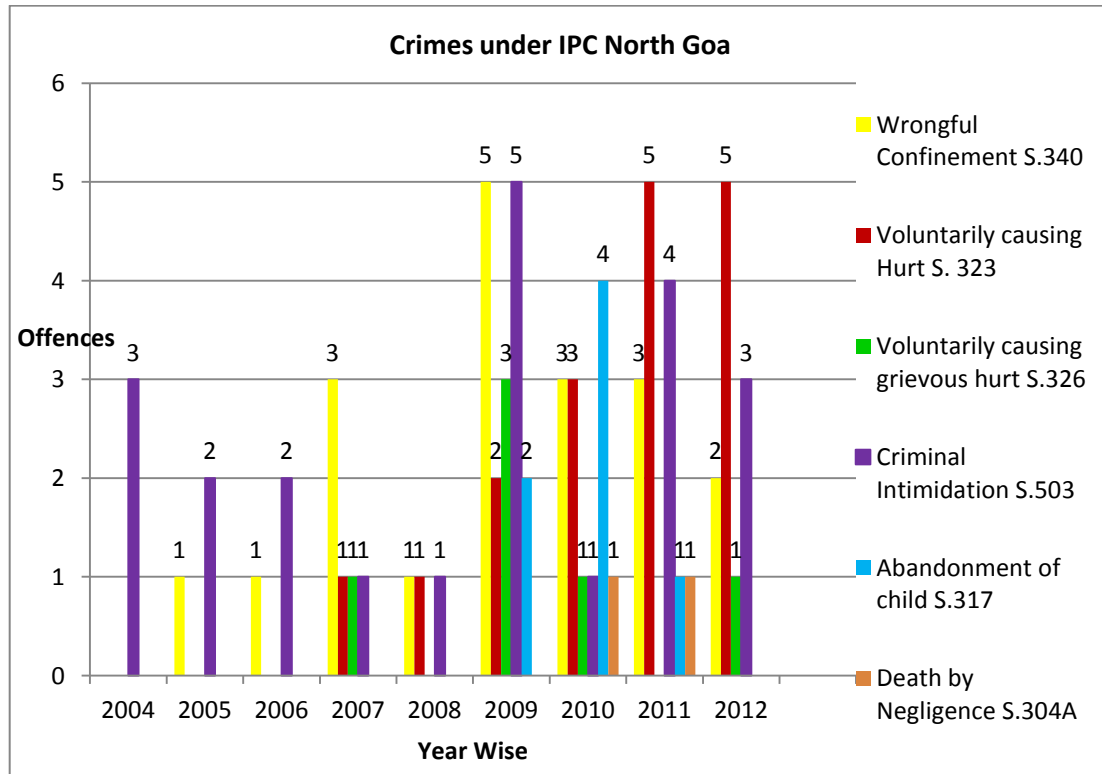
7.11.3. Offences Affecting Life in North Goa Police Stations

Table no 48 shows crimes registered in North Goa

IPC Crimes	2004	2005	2006	2007	2008	2009	2010	2011	2012
Wrongful Confinement	-	1	1	3	1	5	3	3	2
Voluntarily causing Hurt	-	-	-	1	1	2	3	5	5
Voluntarily causing grievous hurt	-	-	-	1	-	3	1	-	1
Criminal Intimidation S.503	3	2	2	1	1	5	1	4	3
Abandonment of child S.317	-	-	-	-	-	2	4	1	-
Death by Negligence S.304A	-	-	-	-	-	-	1	1	-

Source- Police Station Records from All police Stations in North Goa

Figure No 48 shows crimes registered in North Goa



In the year 2009 there were 5 cases of Wrongful Confinement⁸⁴ and 5 cases of Criminal intimidation⁸⁵ were registered. 3 cases were registered of wrongful confinement in the year 2007, 2010 and 2011. Wrongful confinement the lowest there was one case in the year 2005, 2006 and 2008. Criminal intimidation one case registered in 2007 and 2008 and 4 cases in the year 2011 and 3 cases in the year 2012 were registered. For the offence of criminal intimidation 2 cases were registered in the year 2005 and 2006. Three cases for criminal intimidation were registered in the year 2004. In the year 2011 and 2012 there were 5 cases of voluntarily causing hurt.⁸⁶ One case each registered in the year 2007 and 2008 for the offence of voluntarily causing hurt. One case was registered of death by negligence⁸⁷ in the year 2010 and 2011. 4 cases of Abandonment of child⁸⁸ registered in the year 2010 and two cases in the year 2009 and one case in the year 2011. Voluntarily causing grievous hurt⁸⁹ there were 3 cases in 2009 and one case each in the year 2007, 2011 and 2012.

⁸⁴ See Section 340 The Indian Penal Code, 1860

⁸⁵ See Section 503 The Indian Penal Code, 1860

⁸⁶ See Section 326 The Indian Penal Code, 1860

⁸⁷ See Section 304A The Indian Penal Code, 1860

⁸⁸ See Section 317 The Indian Penal Code, 1860

⁸⁹ See Section 326 The Indian Penal Code, 1860

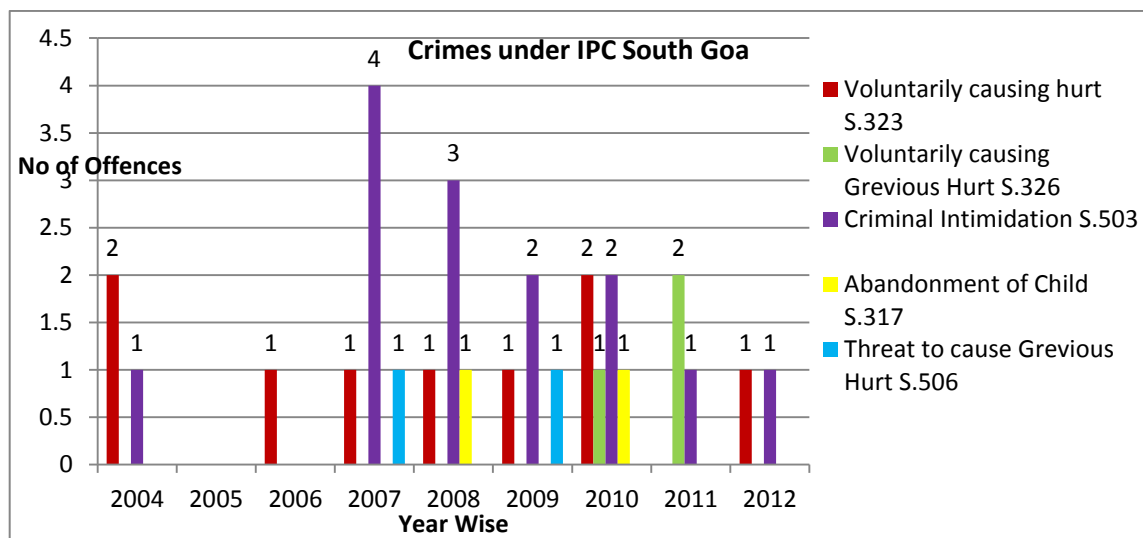
7.11.4. Offences Affecting Life in Police Stations in South Goa

Table No 49 shows crimes registered in South Goa

IPC Crimes	2004	2005	2006	2007	2008	2009	2010	2011	2012
Voluntarily causing hurt S.323	2	-	1	1	1	1	2	-	1
Voluntarily causing grievous hurt S.326	-	-	-	-	-	-	1	2	-
Criminal Intimidation S.503	1	-	-	4	3	2	2	1	1
Abandonment of Child S.317	-	-	-	-	1	-	1	-	-
Threat to cause Grievous Hurt S.506	-	-	-	1	-	1	-	-	-

Source- Police Station Records All Police Stations South Goa

Figure No 49 shows crimes registered in South Goa



Two cases each were registered of voluntarily causing hurt in the year 2004 and 2010. For the same offence, in the year 2006, 2007, 2008, 2009 and 2012 one case was registered. Two cases of grievous hurt were registered in the year 2011 and one case in the year 2010. Four cases of criminal intimidation were registered in the year 2007. Three cases of criminal intimidation were registered in 2008 and two cases each in the year 2009 and 2010. One case each of criminal intimidation

was registered in the year 2004, 2011 and 2012. There were 3 cases of criminal intimidation registered in the year 2008. One case of threat to cause grievous hurt in 2007 and 2009. Hence it can be safely said that in South Goa there is a decrease in crimes of hurt and grievous hurt. One case of the offence of abandonment of child was registered in the year 2008 and 2010.

Conclusion – Number of cases of voluntarily causing hurt, voluntarily causing grievous hurt, criminal intimidation and Abandonment of child were higher in North Goa then in South Goa.

7.12. Offences registered under Goa Children’s Act, 2003 – North Goa

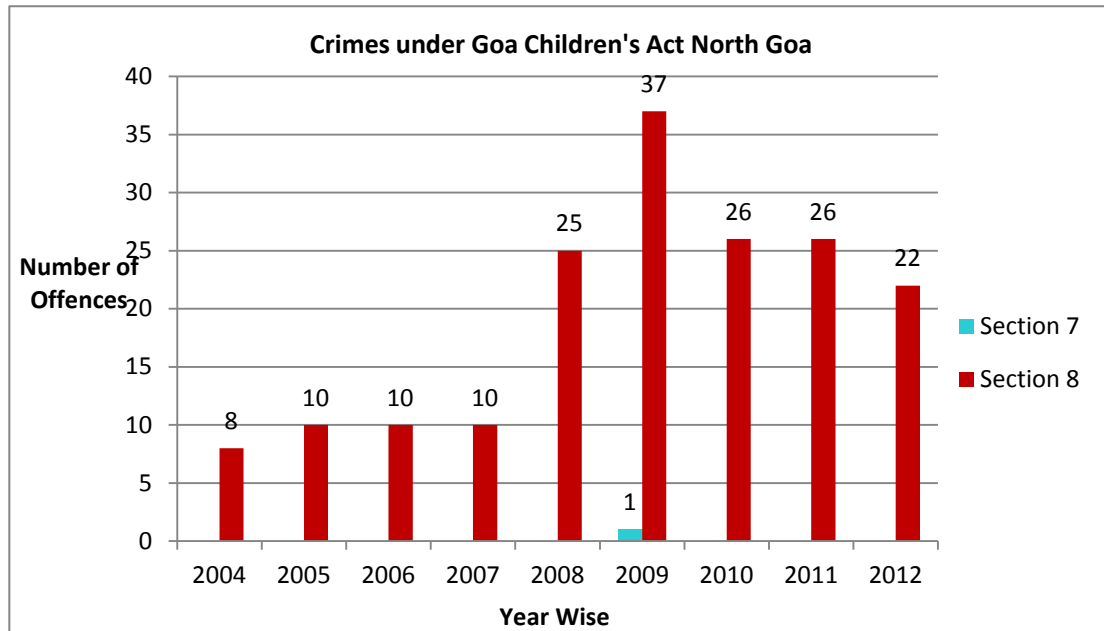
The State of Goa has a special law the Goa Children’s Act, 2003 the study was also based on how the law functions within the state of Goa. Data was collected from police stations to study the number of cases registered within the ambit of this special law The Goa Children’s Act, 2003.

Table No 50 shows crimes registered in North Goa under the Goa children’s Act, 2003

Goa children’s Act	2004	2005	2006	2007	2008	2009	2010	2011	2012
Section 7	-	-	-	-	-	1	-	-	-
Section 8	8	10	10	10	25	37	26	26	22

Source Police Station records from all Police Stations in North Goa

Figure No 50 shows crimes registered in North Goa under the Goa children's Act, 2003



Under Section 7⁹⁰ of the Goa Children's Act, 2003 only one case was registered in the year 2009. The Maximum number of cases, 37 cases were registered under Section 8⁹¹ in the year 2009. Under Section 8, 26 cases were registered in the year 2010 and 2011. Under Section 8, 25 cases were registered in the year 2008. Similarly under the same section 8, 10 cases were registered in the year 2005, 2006, and 2007. In the year 2004 under Section 8 only four cases were registered and in the year 2012 a total of 22 cases were registered. Hence indicating that there the number of cases of child abuse is on a rise in the state of north Goa.

⁹⁰See S.7 [Child Labour and Trafficking] of Goa Children's Act, 2003

⁹¹ See S.8 Child Abuse [and Trafficking] of Goa Children's Act, 2003

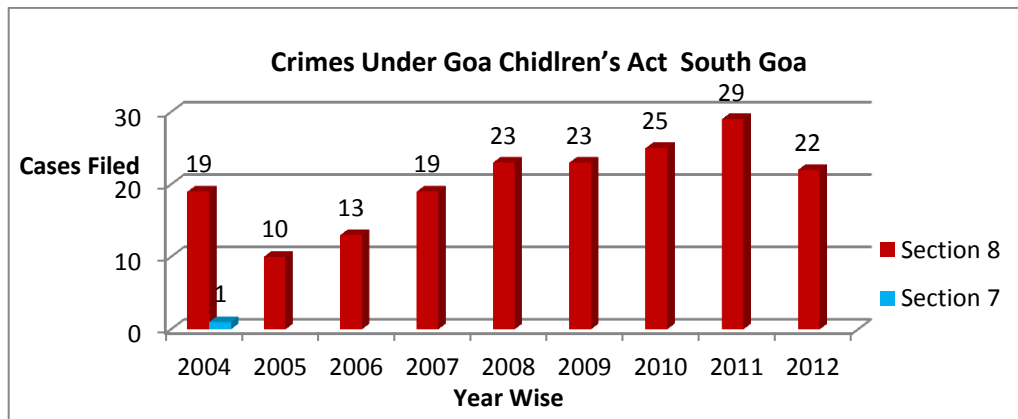
7.13. Offences Registered under Goa Children’s Act, 2003 – South Goa

Table No 51 shows crimes registered in South Goa

Goa Children’s Act	2004	2005	2006	2007	2008	2009	2010	2011	2012
Section 7	1	-	-	-	-	-	-	-	-
Section 8	19	10	13	19	23	23	25	29	22

Source Police Station records from all police Stations in South Goa

Figure No 51 shows crimes registered in South Goa



In the year 2005 there were only 10 cases registered under Section 8. Under Section 8, in the year 2006 there were 13 cases, and in the year 2007 there were 19 cases and in the year 2008 and 2009 there were 23 cases, registered under Section 8. The maximum numbers of cases were registered under Section 8 in the year 2011 was 29 cases and in the year 2010 there were 25 cases respectively. In the year 2012 there were 22 cases registered under Section 8. In the year 2004 there were 19 cases registered under Section 8. Under Section 7 there was one case registered in the year 2004.

Conclusion- In South Goa there are more cases of child abuse. There is also a steady increase in cases of child abuse in South Goa than North Goa.

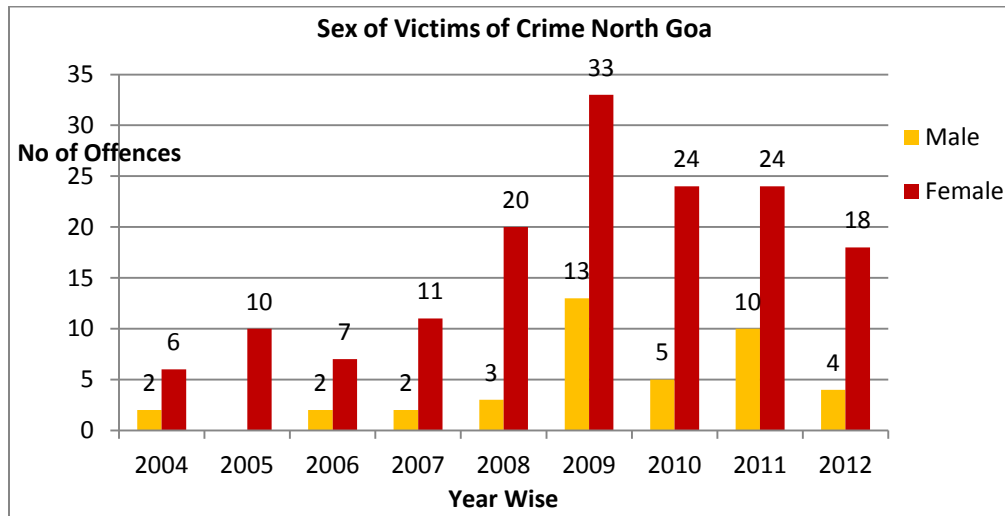
7.14. Sex of Victims – North Goa

Table No 52 shows sex of victims in North Goa

Sex	2004	2005	2006	2007	2008	2009	2010	2011	2012
Male	2		2	2	3	13	5	10	4
Female	6	10	7	11	20	33	24	24	18

Source Police Station records from all police Stations in North Goa

Figure No 52 shows sex of victims in North Goa



In North Goa both male and female children are victims of crime. In the year 2009 there were 13 male victims and 33 female victims which was the highest. The lowest was in the year 2004 there were 2 male victims and 6 female victims. The year 2010 and 2011 showed almost same number of victims there were 24 female victims for both years. There were 10 male victims for 2011 and 5 male victims for the year 2010. The year 2012 there were 4 male victims and 18 female victims. In the year 2008 there were 20 female victims and 3 male victims. In the year 2007 there were 2 male victims and 11 female victims. In the year 2006 there were two

male victims and 7 female victims. In the year 2005 there were no male victims but there were 10 female victims.

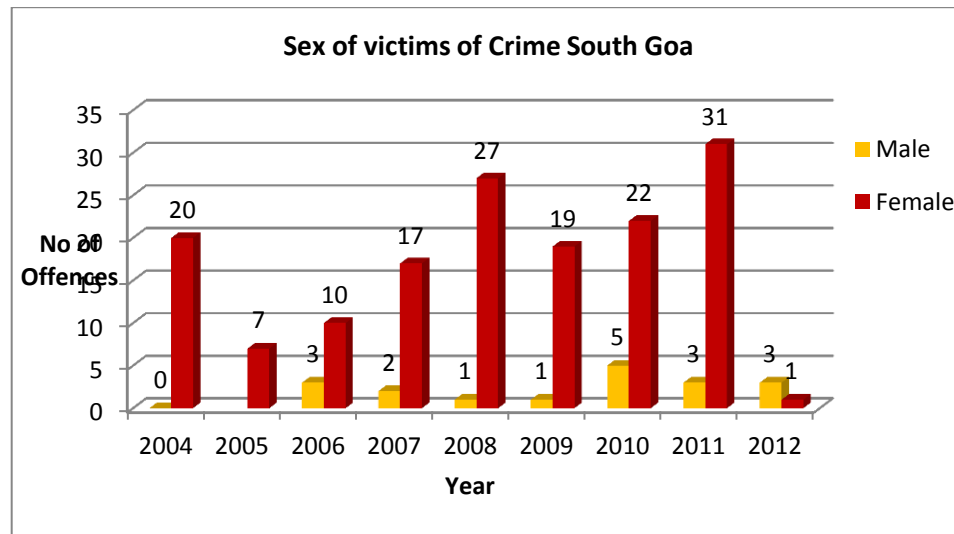
7.15. Sex of Victims – South Goa

Table No 53 shows sex of victims in South Goa

Sex	2004	2005	2006	2007	2008	2009	2010	2011	2012
Male	-	-	3	2	1	1	5	3	3
Female	20	7	10	17	27	19	22	31	1

Source Police Station records from all police Stations in South Goa

Figure No 53 shows sex of victims in South Goa



In South Goa there were more female victims than males. In the year 2011 there were 31 female victims while male victims were only 3. In the year 2008 there were 27 female victims and there was one male victim. In the year 2010 there were 22 female victims and 5 male victims. In the year 2009 there were 19 female victims and one male victim. In the year 2005 there were 7 female victims but there were no male victims. In the year 2012 there were 3 female victims and one

male victim. In the year 2006 there were 3 male victims and 10 female victims. In the year 2004 and 2005 there were no male victims but there were 20 female victims in the year 2004 and 7 female victims in the year 2005.

Conclusion- Over the years there were 153 female victims in North Goa. There were 41 Male Victims in North Goa. There were 18 Male Victims in South Goa and 154 Female Victims in South Goa. Hence the study concluded that there are almost same number of female victims in North and South Goa with 153 and 154 victims respectively. The number of Male Victims is more in North Goa than in South Goa.

7.16. Children's Court

The jurisdiction of the Children's Court is limited to only offences committed against children and does not include violations of child rights as the Court is not competent to provide redressal on those matters. For instance, the denial of admission to school to a child living with HIV/AIDS in a government school would constitute a violation of the right to equality and non-discrimination guaranteed under Article 14 of the Indian Constitution and Article 2(1) of the United Nations Convention on the Rights of the Child. However, this is not a criminal offence and does not carry any punishment in the form of imprisonment or fine. The appropriate forum for relief in such a case would be the High Court or Supreme Court. Hence the Children's Court has no powers in such cases.

7.16.1. Presidents of the Children's Court - (Time of appointment and Tenure)

Table No 54 shows the Presidents of the Children's Court

Sr.No	Name of the President	Tenure
1.	Shri A.D. Salkar	17-6-2004 to 14-8-2007
2.	Kum. Nutan D. Saardessai	14-8-2007 to 23-10-2007
3.	Shri Desmond D'Costa	24-20-2007 to 08-06-2009
4.	Shri B.P. Deshpande	08-06-2009 to 31-05-2010
5.	Shri P.V. Sawaikar	07-06-2010 to 27-12-2010
6.	Shri B.P. Deshpande	27-12-2010 to 31-03-2011
7.	Ms. Sherin Paul	06-06-2011 to 16-09-2011
8.	Kum. Nutan D. Sardessai	16-09-2011 to 02-06-2012
9.	Ms. Anuja Prabhudessai	04-06-2012 up till date

Source – Children's Court, Panaji

According to the Goa Children's Act, 2003 a President of the Children's Court can hold office for a term of 5 years and cannot be reappointed.⁹² It is seen that only Judge A.D Salkar had the longest duration that is 3 years as President. Judge Desmond D'Costa and Judge B.P. Deshpande held office for 2 years respectively. They were also reappointed⁹³ the only difference being they have not completed a five year term. Judge Nutan D. Sardessai also held office for a little less than two years. She was also reappointed and has not completed a 5 year term.

⁹² Section 29(1)

⁹³ The Goa Children's Act, 2003 prohibits reappointment of the President of the Children's Court. The trend in Goa of Reappointing the President is against the spirit of the law.

Judge Sherin Paul held office for the shortest period of time only 3 months. The appointment of the President Ms. Sherin Paul who was appointed on 6-6-2011 was challenged on the ground that the President of the Court has no powers to carry out the trial. Judge Sherin Paul who was appointed the President⁹⁴ had no powers to carry out the trial as she was holding the post of Assistant Judge at the time of appointment as a President of children's court. The President of the Children's Court has to be a Sessions Judge or Additional Sessions Judge at the time of appointment. The appointment of Judge Sherin to the post of Children's Court was thus held to be ultra vires the provisions of the Section 28 of the Goa Children's Act 2003 as she had no powers to act under the Act. After 3 months she had to evict the post of President.

7.16.2. Days of Sitting of the Children's Court

Table No 55 shows the days of sitting of the Children's Court⁹⁵

Year	Days	Day of the Week
2004	One Day	Every Friday
2005	One Day	Every Friday
2006	One Day	Every Friday
2007	Three Days	Every Monday, Wednesday and Friday
2008	Three Days	Every Monday, Wednesday and Friday
2009	Three Days	Every Monday, Wednesday and Friday
2010	Three Days	Every Monday, Wednesday and Friday
2011	Three Days	Every Monday, Wednesday and Friday till September 2011 and after that one day per week.
2012	One Day	Every Monday

⁹⁴As per notification by the High court of Judicature Bombay dated April 27, 2011 Judge Sherin was posted as District Judge 1 and Assistant Judge replacing Judge B.P. Deshpande

⁹⁵ Source – Children's Court, Panaji

Initially the Children's Court used to function every Friday. As the number of cases before the Children's Court increased in the year 2007 the days were increased to 3 days a week i.e Monday, Wednesday, Friday. This system continued till the year 2011. In the year 2011 the functioning of the Court was again reverted to one day per week i.e Monday. This causes huge inconvenience to the child victims and one of the causes for causing delay of trials.⁹⁶ The Goa Children's Act, 2003 does not speak about the number of days the Court should function.

7.16.3. Cases Filed and Trial of Offences before the Children's Court

A study was done on the number of cases filed before the Children's Court, the number of cases disposed by the Children's Court on an yearly basis. The study has revealed the number of cases pending before the Children's Court. This study is important to analyze the jurisprudence and the effective functioning of the Children's Court.

7.16.4. Cases Filed before Children's Court

The study was done on the number of cases filed before the Children's Court. For each year the cases filed were collected. This study begins with the year 2004 which is the year of conception of the Children's Court. During this year it was found that some cases were fresh cases which were filed and also a few existing

⁹⁶Every sitting of the Children's court there are about 20 child victims from North Goa and 20 Child Victims from South Goa. Similarly there are 40 Accused from Sada Jail who are brought to the Court for every sitting and if on some day the Court is unable to function it causes injustice and inconvenience to both the Victim and the Accused.

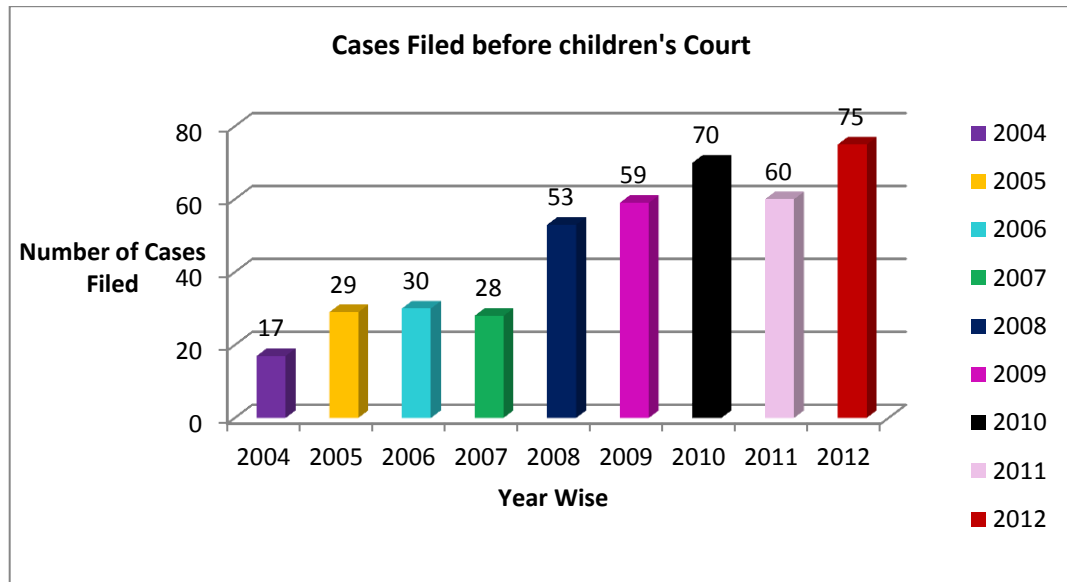
cases which were ongoing cases from the District and Sessions Court were transferred to the Children's Court.⁹⁷

Table No 56 shows the details of the Cases Filed Before Children's Court

Year	Cases Filed
2004	17
2005	29
2006	30
2007	28
2008	53
2009	59
2010	70
2011	60
2012	75

Source – Children's Court, Panaji

Figure No 54 shows the details of Cases Filed Before Children's Court



The number of cases being filed before the Children's Court keeps on increasing.

There were 70 cases filed in the year 2010. In the year 2011 there were 60 cases

⁹⁷ The Researcher did make efforts to find out how many cases were transferred. However the District and Sessions Court in North and South Goa had not kept any records and refused to disclose any information.

filed and 75 cases filed in 2012. The lowest number of cases was in 2004 there were 16 cases. In the year 2005 there were 29 cases filed. In the year 2006 there were 30 cases filed. In the year 2007 there were 28 cases filed and in 2008 there were 53 cases before the Children's court. In the year 2009 there were 59 cases filed. A Total of 421 cases were filed in the Children's Court in the year 2012.

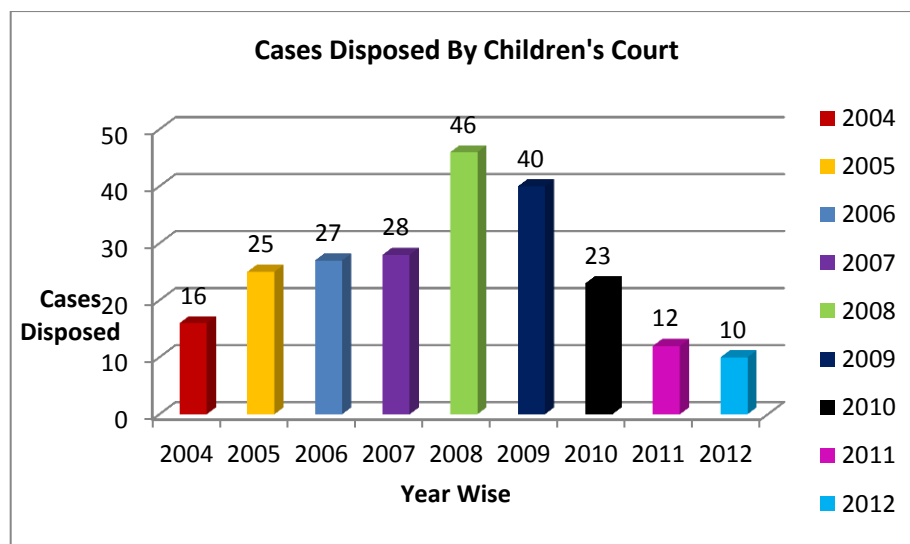
7.16.5. Cases Disposed by the Children's Court

Table No 57 shows the details of the Cases Disposed Before Children's Court

Year	Cases Disposed
2004	16
2005	25
2006	27
2007	28
2008	46
2009	40
2010	23
2011	12
2012	10

Source – Children's Court, Panaji

Figure No 55 shows the details of Cases Disposed before Children's Court



In the year 2004 only 16 cases were disposed by the Children's court. In the year 2005 there were 25 cases disposed. In the year 2006 there were 27 cases disposed. In the year 2007 there were 28 cases disposed. In the year 2008 there were maximum of 46 cases were disposed in the Children's court and in 2009 there were 40 cases disposed. In the year 2011 only 12 cases were disposed and in 2012 there were only 10 cases disposed. The Disposal rate is much lower than expected. A total of 227 cases were disposed by the Children's court in the year 2012.

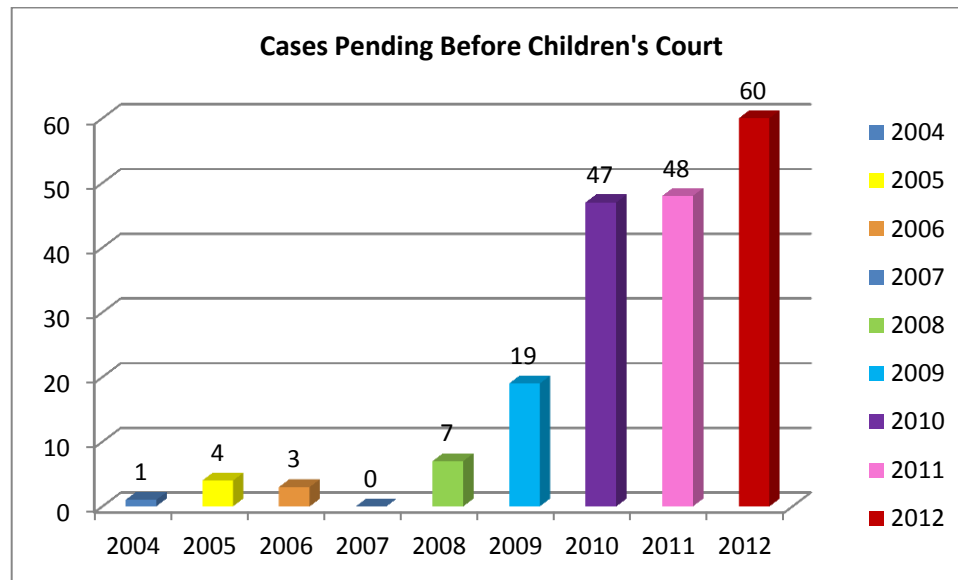
7.16.6 Cases Pending Before the Children's Court

Table No 58 shows the details of the Cases Pending Before Children's Court

Year	Cases Pending
2004	1
2005	4
2006	3
2007	0
2008	7
2009	19
2010	47
2011	48
2012	60

Source – Children's Court, Panaji

Figure No 56 shows the details of Cases Pending Before Children's Court



Initially the Children's Court started functioning effectively uptill the year 2007. In the year 2004 there was only one case pending, in the year 2005 there were 4 cases pending and the year 2006 there were 3 cases pending. The year 2007 is noteworthy as all the cases filed in that year were disposed.⁹⁸ The year 2008 showed 7 cases pending which is a little alarming. It also indicates that cases from the previous year's could also be carried forward to the current year.⁹⁹ In the year 2009 there were 19 cases pending. In the year 2010 there were 47 cases pending. The year 2011 there were 48 cases pending. The year 2011 there was a little crisis in the appointment of President.¹⁰⁰ Ld. Judge Sherin Paul was disqualified and then the next president who took over had to study the cases afresh. This could

⁹⁸The President was Hon'ble Judge Kum. Nutan D. Sardessai. The Presence of Lady President is essential to the working of the Children's Court since most cases filed are of child sexual abuse.

⁹⁹ On current date 12/12/2012 the oldest pending case before the Children's Court is from the year 2006.

¹⁰⁰ In Goa there are few judges trained in Child psychology and since the Court does not have a permanent President. The sitting District and Session's Judge is asked to be the President of the Children's Court.

also be one of the probable causes for the number of pending cases increasing during the year. In the year 2012 there were 60 cases pending. One reason could be in 2012 the President was sitting only one day a week i.e Monday.¹⁰¹ A Total of 189 cases were pending in the year 2012.

7.16.7. Fine Collected by the Children's Court

Table No 59 shows the details of the Fine Collect by the Children's Court

Year	Fine Collected	Number of Cases
2006	7700	2
2007	500	1
2008	32407	1
2009	17500	7
2010	263000	8
2011	67500	9
2012	51000	8
Total	439607	

Source – Children's Court, Panaji

The maximum fine collected was in the year 2010 of Rs.263000 which was collected from 8 cases. The lowest fine was collected in the year 2005 a fine of Rs.

¹⁰¹ See Table No 58 The statistics provided by the Directorate of Child and Women Development showed that there is large pendency of cases involving Children as victims of crime. A number of cases are also pending before the Sessions Court in respect of offences relating to sexual violence in the North and South Districts. The Children's Court functioning at Panaji functions for the entire State of Goa. The Judge appointed to constitute the Children's Courts also functions as a Sessions Judge for sessions work in the District and is also allotted civil work as Additional District Judge. See Report of The 2nd Law Commission constituted by Government of Goa for a period of one year (Order No. 9/5/2008-LA/100 dated 20th January 2009) and further extended for two years w.e.f. 06/04/2010 (Order No. 22/1/2010-LD(Estt.)/LC/530 dated 05/04/2010). Available at www.goalawcommission.gov.in

500 from one case. In some cases the fine is given to the victim while in most cases the money is deposited in the State Treasury. The Goa Children's Act, 2003 prescribes collection of fine at the beginning of the trial.¹⁰² However it is silent on the aspect when the accused is unable to pay the fine and has applied for free legal aid then how such cases are to be dealt.

7.17 Kinds of Cases Tried by the Children's Court

The study was done for the kind of offences which are tried by Children's Court. First the kinds of offences filed before the Children's Court were collected. The same offence was compared and studied for the number of cases convicted by the Children's Court and the number of cases acquitted by the Children's Court. This was done to evaluate the functioning of the Children's Court and study how effective the Children's Court has been in delivering justice to child victims. Sadly there were no judgements which were pronounced by the Children's court which made any substantial changes in the law or are worth mentioning.

¹⁰² See Section 32(o)- Deposit of Fine is an important principle of the Children's Court

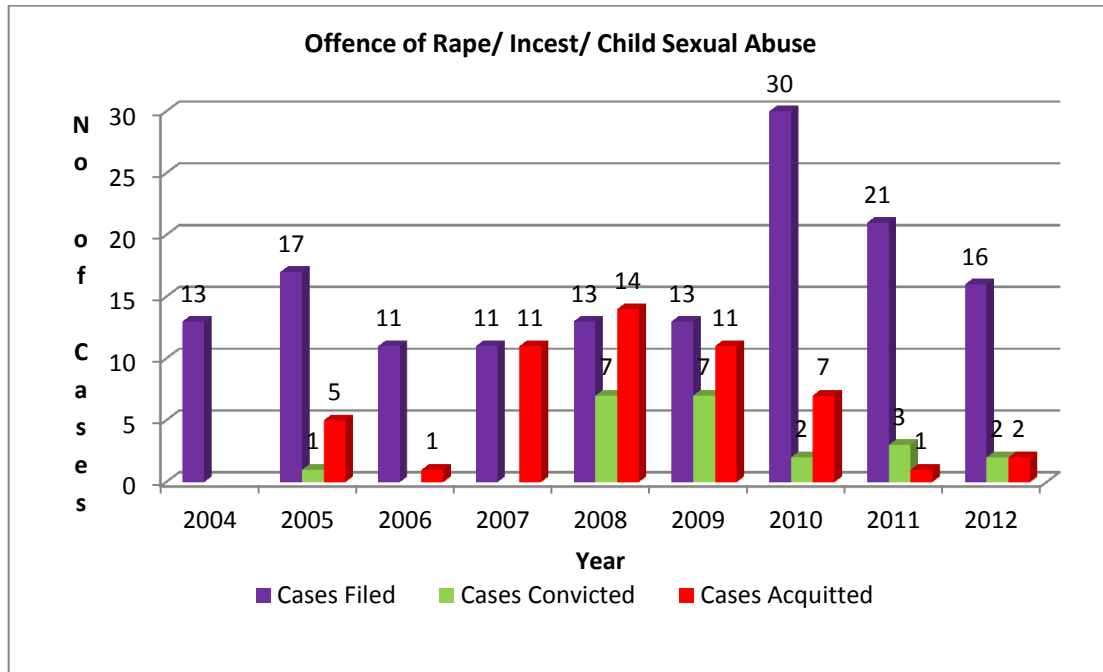
7.17.1. Cases of Rape, Incest and Child Sexual abuse

Table No 60 shows the details of offence of Rape, Incest and Sexual Abuse

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012
Cases Filed	13	17	11	11	13	13	30	21	16
Cases Convicted	-	1	-	-	7	7	2	3	2
Cases Acquitted	-	5	1	11	14	11	7	1	2

Source – Children’s Court, Panaji

Figure No 57 shows the details of offence of Rape, Incest and Sexual Abuse



The year 2010 the highest number, 30 cases of rape cases were filed. In the year 2011, 21 cases of rape were filed and in the year 2012 there were 16 cases of rape were filed. 11 cases of rape are field for the year 2006 and 2007. 13cases were filed in the year 2008, 2009 and 2004. In the year 2005 there were 17 cases filed.

Conviction rate in rape cases is very poor with maximum of seven convictions in the year 2008 and 2009. The year 2010 and 2012 there were two convictions of rape. In the year 2011 there were 3 convictions of rape. The highest number of acquittals for the year 2008 there were 14 acquittals. In 2009 and 2007 there were 11 acquittals. In the year 2011 and 2006 there was only one acquittal. In the year 2010 there were 7 acquittals and in the year 2012 there were 2 acquittals. In the year 2005 there were 5 cases acquitted.

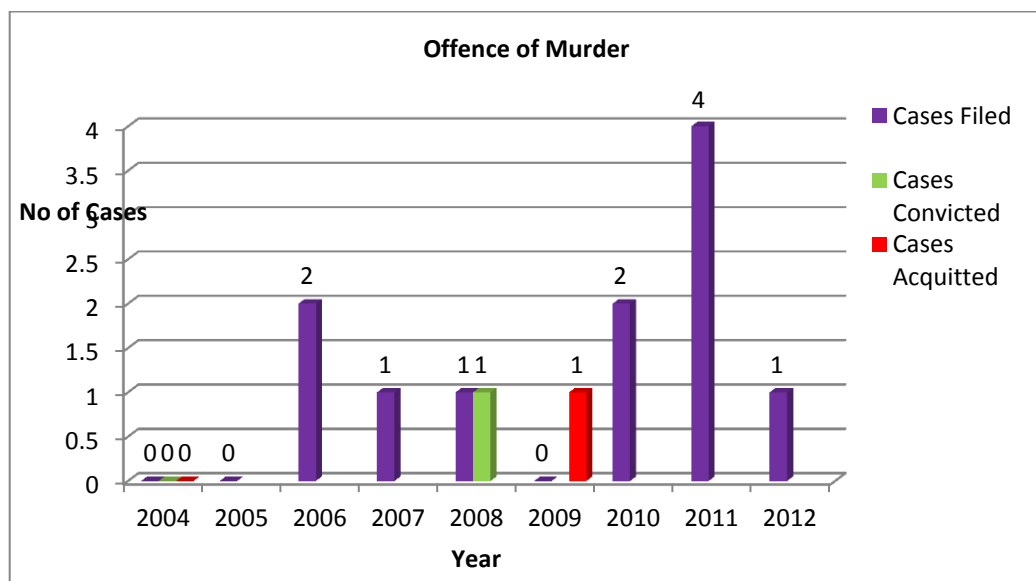
7.17.2. Cases of Murder

Table No 61 shows the details of offence of Murder

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012
Cases Filed	-	-	2	1	1	-	2	4	1
Cases Convicted	-	-	-	-	1	-	-	-	-
Cases Acquitted	-	-	-	-	-	1	-	-	-

Source – Children’s Court, Panaji

Figure No 58 shows the details of offence of Murder



In 2011 there were 4 cases of murder filed which as the highest. In the year 2006 and 2010 there were 2 cases were filed. In the year 2007, 2008 and 2012 one case was filed. Only one case was convicted, in the year 2008. There was one case of Acquittal of murder in the year 2009.

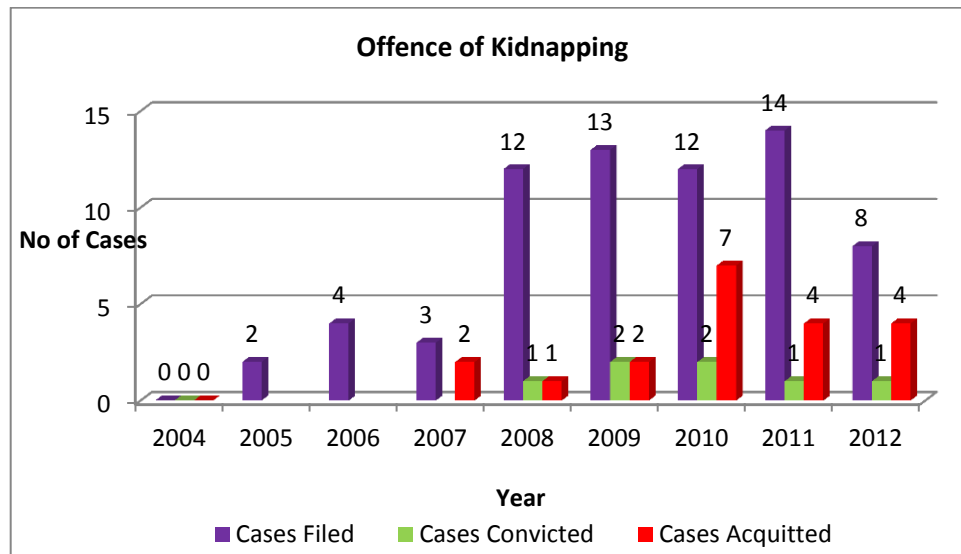
7.17.3. Cases of Kidnapping

Table No 62 shows the details of offence of Kidnapping

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012
Cases Filed	-	2	4	3	12	13	12	14	8
Cases Convicted	-	-	-	-	1	2	2	1	1
Cases Acquitted	-	-	-	2	1	2	7	4	4

Source – Children’s Court, Panaji

Figure No 59 shows the details of offence of Kidnapping



The year 2011 there were maximum of 14 cases filed. In the year 2009 there were 13 cases and 12 cases filed in the year 2008 and 2010. In the year 2012 there were 8 cases of kidnapping filed. In the year 2007 there were 3 cases of kidnapping

filed and in the year 2006 there were 4 cases. In the year 2005 there were 2 cases of kidnapping filed. The number of kidnapping cases being files is on the rise every year. The conviction rate is very less. Only two cases have been convicted in the year 2009 and 2010. One case was convicted by the Children's court in the year 2008, 2011 and 2012. Maximum number of acquittals was in the year 2010, there were 7 cases acquitted by the Children's Court and 4 cases acquitted in the year 2011 and 2012. Two cases were acquitted by the Children's Court in the year 2007 and 2009. One case was acquitted in the year 2008.

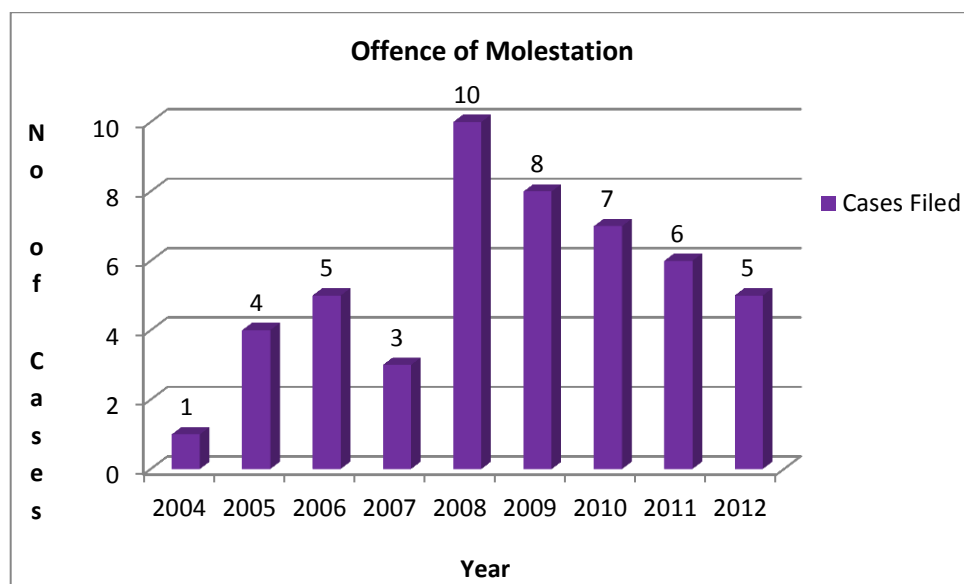
7.17.4. Cases of Molestation

Table No 63 shows the details of offence of Molestation

Offences	2004	2005	2006	2007	2008	2009	2010	2011	2012
Molestation	01	04	05	03	10	08	07	06	5

Source – Children's Court, Panaji

Figure No 60 shows the details of offence of Molestation



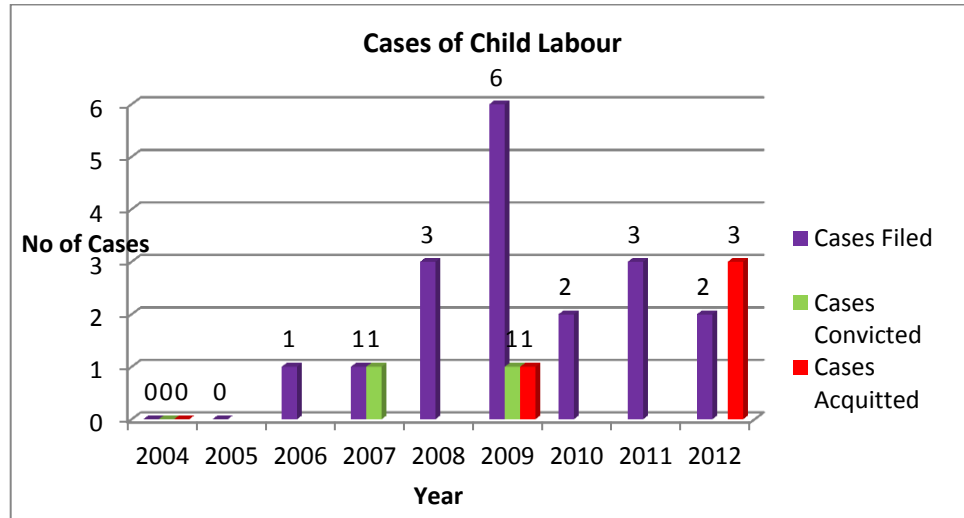
The number of molestation cases was on the rise in the year 2008 with 10 cases being filed. In 2009 there were 8 cases and 2010 there were 7 cases Filed. In the year 2011 there were 6 cases filed and in the year 2012 and 2006 there were 5 cases filed. In the year 2005 there were 4 cases filed and in the year 2004 there was one case filed. No cases have been decided by the Children’s Court hence there are no convictions and acquittals. On interviewing the Presidents of the Children’s Court that in most cases of molestation end up in withdrawal of the complaint. There could also be a possibility of the victims filling false complaints initially when the relations between the victim and accused are strained. If the relations return to normal these victims withdraw their complaints.

7.17.5. Cases of Child Labour

Table No 64 shows the details of offence of Child Labour

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012
Cases Filed	-	-	1	1	3	6	2	3	2
Cases Convicted	-	-	-	1	-	1	-	-	-
Cases Acquitted	-	-	-	-	-	1	-	-	3

Source – Children’s Court, Panaji

Figure No 61 shows the details of offence of Child Labour

Maximum number of child labour cases were filed in the year 2009 with 6 cases. Two cases of child labour were filed in the year 2010 and 2012. Three cases were filed in the year 2011 and 2008. Only one case was filed in the year 2006 and 2007. No cases of child labour were filed in the year 2004 and 2005. Most child labour cases registered are for domestic child labour. The conviction rate is negligible with one conviction each in the year 2007 and 2009. There were three cases which were acquitted by the Children's Court in the year 2012.

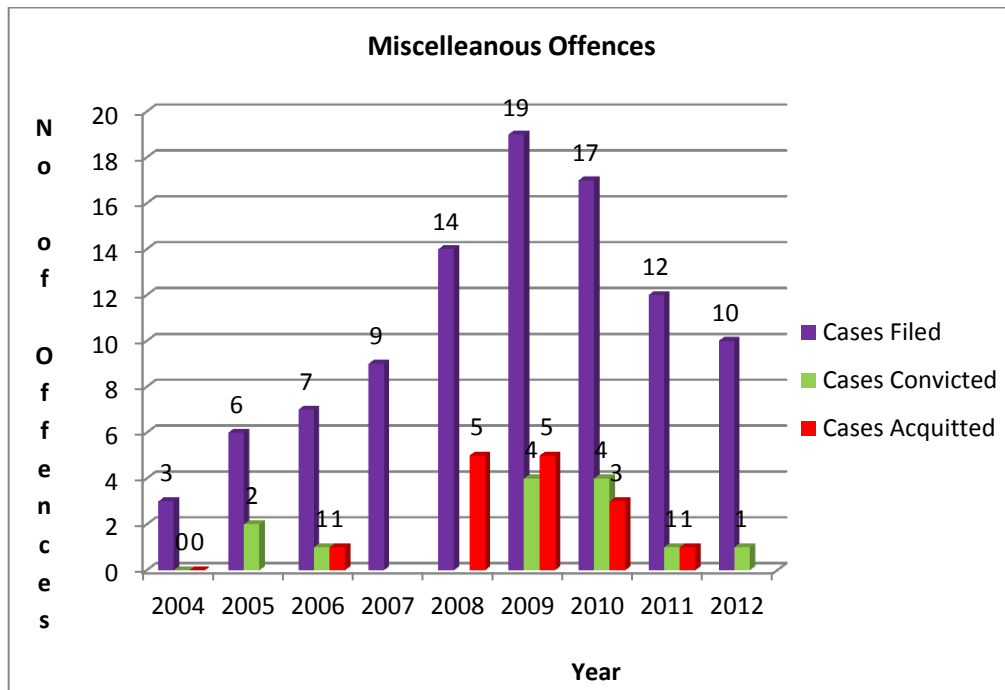
7.17.6. Miscellaneous Cases

Table No 65 shows the details of offence of Miscellaneous offences

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012
Cases Filed	3	6	7	9	14	19	17	12	10
Cases Convicted	0	2	1			4	4	1	1
Cases Acquitted	0		1		5	5	3	1	

Source – Children's Court, Panaji

Figure No 62 shows the details of offence of miscellaneous offences



14 cases of Miscellaneous offences were filed in 2008. There is increasing number of other offences with maximum number of 19 cases filed in the year 2009. There were 17 cases filed in 2010. There were 12 cases filed in the year 2011 and 10 cases filed in the year 2012. Nine cases were filed in the year 2007. There were 7 cases filed in the year 2006 and 6 cases filed in the year 2005 and 3 cases filed in the year 2004. Conviction rate is low with 4 cases in 2009 and 2010. Two cases were convicted in the year 2005. One case was convicted in the year 2006, 2011 and 2012. 5 Cases were acquitted in 2008 and 2009. Three cases were acquitted in the year 2010 and one case acquitted in the year 2011 and 2006.

PART III

DATA OBTAINED AND ANALYZED FROM QUESTIONNAIRES

7.18. Data analyzed through Questionnaire information collected from stake holders regarding ‘Juveniles in Conflict with Law’

The questionnaire was distributed to 50 respondents who were randomly selected. The Respondents included juveniles in conflict with law, parents of the victims, advocates, police officers and presidents of the Children’s Court, members of Juvenile Justice Board and NGO’s for the study. The data obtained was analyzed and represented graphically.

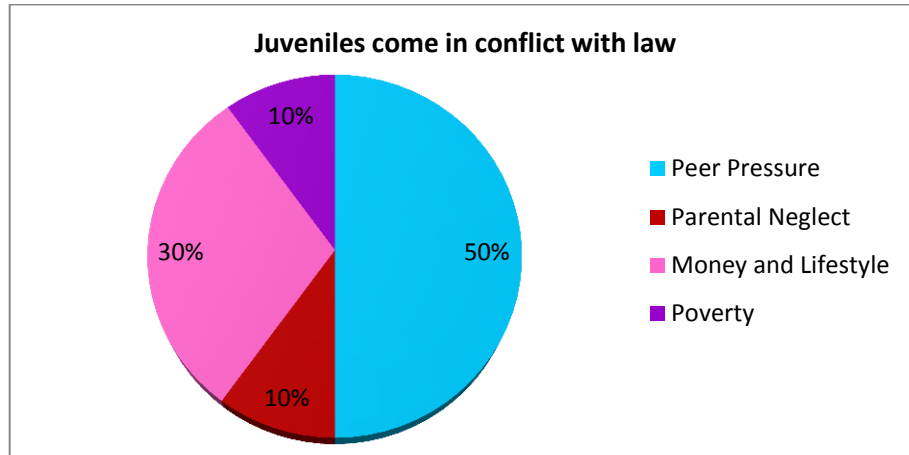
7.18.1. Reasons for juveniles come to come in ‘conflict with law’¹⁰³

Table No 66 shows the Reasons why juveniles come in conflict with law

Total no of respondents	Peer Pressure	Parental Neglect	Money and Lifestyle	Poverty
Percentage	50%	10%	30%	10%
Responses(50)	25	5	15	5

¹⁰³ See Appendix 5 – Questionnaire for Juveniles in Conflict with law Question No1.

Figure No 63 shows the Reasons why juveniles come in conflict with law



50% of respondents felt that the juveniles come in conflict with law after being influenced by their friends to commit crimes. This is also reflected in the statistics that many juveniles commit crimes in groups.¹⁰⁴ About 30% of respondents felt the juveniles commit crimes to fulfil a lavish lifestyle like buying expensive mobile phones, alcohol, clothes and other necessities of life. 10% respondents expressed that the juveniles commit crimes due to parental neglect. Either the parents are dead¹⁰⁵ and the juvenile has no one to look after them or the parents have abandoned them. Also 10% respondents felt the juveniles may have parents but they may be very poor and unable to look after their child. Therefore acute poverty may drive the juvenile to commit a crime.

¹⁰⁴ See Table No 11 and Table No 12

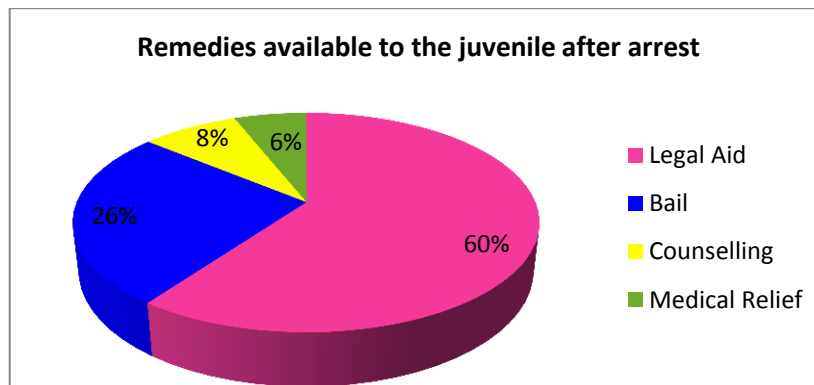
¹⁰⁵ During interview with juveniles in conflict with law it was found there are two juveniles in conflict with law housed at Apna Ghar whose parents are dead.

7.18.2. Remedies available to the juvenile after arrest¹⁰⁶

Table no 67 shows the Remedies available to the juvenile after arrest

Total no of respondents	Legal Aid	Bail	Counselling	Medical Relief
Percentage	60%	26%	8%	6%
Responses(50)	30	13	4	3

Figure no 64 shows the Remedies available to the juvenile after arrest



60% of the respondents answered that the Juveniles are provided with Free Legal Aid.¹⁰⁷ 26% of the Respondents felt that granting bail to the juvenile is a relief provided to the juvenile.¹⁰⁸ 8% of the respondents felt that counselling is provided to the juveniles. 6% of Respondents feel that Medical Relief is provided to the juveniles. However the respondents shared that there is no full time psychiatrist available to the juveniles or a doctor. Only one nurse is on duty. During nights there is no nurse available. Lack of medical attention affects the health of the

¹⁰⁶ See Appendix 5 – Questionnaire for Juveniles in Conflict with law Question No 2

¹⁰⁷ In the order dated 19.08.2011, Hon'ble Supreme Court of India in *Sampurna Behrua v. Union of India & Ors.* W.P.(C) No.473/2005 had directed the National Legal Services Authority to put in place Legal Aid Centres attached to the Juvenile Justice Board (s) in the State capitals where there is a high pendency. In pursuance of the directions of the Supreme Court the NALSA asked State Legal Services Authority to follow the guidelines set out in the judgment. The North Goa District Legal Services Authority has placed a panel of 3 Advocates and provided them with office space at Apna Ghar to provide for free legal aid to juveniles in conflict with law.

¹⁰⁸ Bail is denied to those juveniles mostly who do not have parents to go back to or the other reasons mentioned in the Juvenile Justice (Care and Protection of Children)2000 Act.

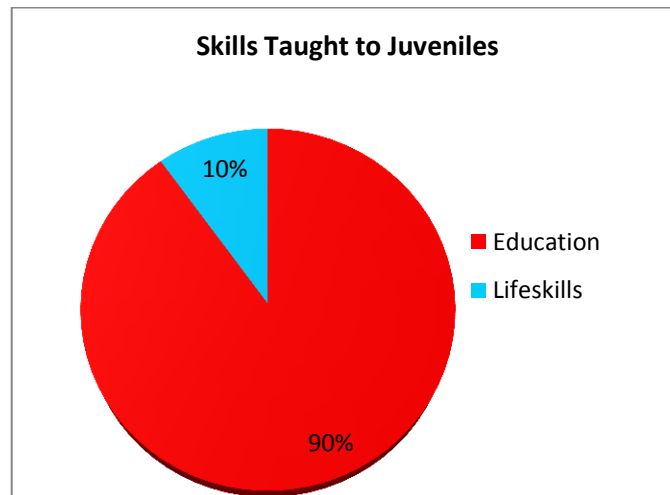
juveniles. Even the prescribed medicine by the doctors is not bought and given to the juveniles.

7.18.3. Skills imparted to juveniles in conflict with Law¹⁰⁹

Table No 68 shows Skills imparted to Juveniles In Conflict with Law

Total no of respondents	Education	Life skills
Percentage	90%	10%
Response (50)	45	5

Figure No 65 shows Skills imparted to Juveniles In Conflict with Law



90% of the respondents felt that the juveniles are provided with education. The Sarva Siksha Abhiyan conducts classes for the juveniles housed at Apna Ghar. However the juveniles in conflict with law the boys shared that there is no time table made for them. The staff working at the Apna Ghar do not provide any kind of training to the juvenile. There are also no programs to impart knowledge or skills for livelihood to the juveniles. 10% of the Respondents felt that life skills are

¹⁰⁹ See Appendix 5 – Questionnaire for Juveniles in Conflict with law Question No 3

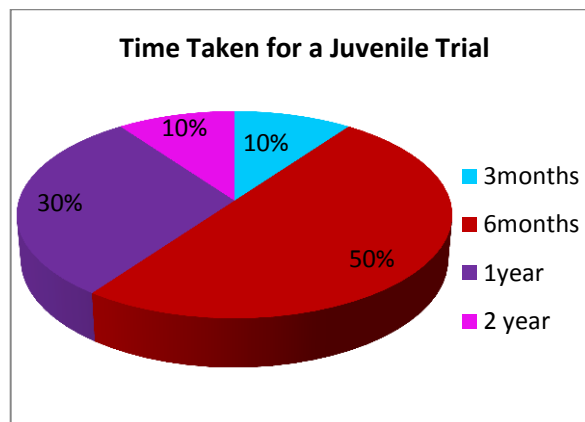
imparted to juveniles. Some Respondents shared that only the juvenile girls are taught some flower making courses.¹¹⁰

7.18.4. Time taken for the trial of a juvenile¹¹¹

Table No 69 Shows Time taken for the trial of a juvenile is

Total no of respondents	3months	6months	1year	2 year
Percentage	10%	50%	30%	10%
Responses(50)	5	25	15	5

Figure No 66 Shows Time taken for the trial of a juvenile is



Majority of the respondents feel that the time taken by the Juvenile Justice Board to complete a trial is 6 months. 50% of respondents felt the trial is completed within 6 months.¹¹² 30% of respondents say that the trial was complete in 1 year. 10% of respondents felt the trial is completed with 2 years. 10% of respondents

¹¹⁰ Data obtained through interviews conducted with the juveniles in conflict with law and NGO's working in Apna Ghar

¹¹¹ See Appendix 5 – Questionnaire for Juveniles in Conflict with law Question No 4

¹¹² This is totally against the spirit of the Juvenile Justice (Care and Protection of Children) 2000 Act which prescribes a time limit of 4 months to complete the trial.

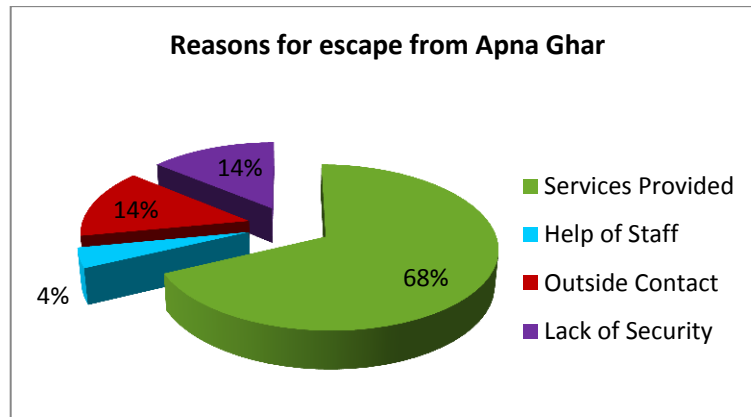
feel the Juvenile Justice Board takes the shortest time of 3 months to complete the trial.

7.18.5. Reasons for Escape from Apna Ghar¹¹³

Table No 70 shows the Reasons for the Escape of children from Apna Ghar

Total no of respondents	Services Provided	Help of Staff	Outside Contact	Lack of Security
Percentage	68%	4%	14%	14%
Responses(50)	34	2	7	7

Figure No 67 shows the Reasons for the Escape of children from Apna Ghar



68% Respondents answered that the juveniles dislike the living conditions at Apna Ghar and the services provided to them. 4% of Respondents say that the children get help from the staff to escape. 14% of Respondents say that the children have contact with the outside world and escape. Similarly 14% of Respondents say that there is lack of security and there are no lights hence one can easily bypass the guard and escape the premises of Apna Ghar. There is also no cctv installed.

¹¹³ See Appendix 5 – Questionnaire for Juveniles in Conflict with law Question No 5

The children shared that the main reason for escape of children is food, living condition and lack of proper services and lack of activities.

The children are confined the rooms which makes living here like a real jail experience.¹¹⁴

7.18.5.1. Food

The food was the same kind there is no change of menu. Juveniles get bored with the same menu. There is no system for children in participating and preparing the diet scale.¹¹⁵ Food is also served very late. Lunch is served at 2.00 p.m and dinner at 8.00 p.m. They are also not allowed to use the dinning halls to have. The juveniles are also used for preparing the food.¹¹⁶

7.18.5.2. Physical Infrastructure

The Juvenile Justice children and the children in need of care and protection are housed in the same building.¹¹⁷ The children are also not segregated according to their age.¹¹⁸ There are no facilities for special children. The juveniles do not have

¹¹⁴Data obtained from interviews with the juveniles in conflict with law

¹¹⁵ Rule 56(c) of Juvenile Justice Model Rules 2007 provides for participation of children in preparing a diet scale

¹¹⁶Levinson Martin Enquiry Report of Escape of Children from Apna Ghar Merces Goa, April 2012 p.9-10

¹¹⁷ Rule 40(1) of Juvenile Justice Model Rules 2007 provides that the homes of juveniles in conflict with law and children in need of care and protection must have different premises.

¹¹⁸ Rule 40(2)(a)(ii) of Juvenile Justice Model Rules 2007 provides for segregation of juveniles according to their age preferably 7-11 years, 12-16 years and 16-18 years.

proper beds, mattresses, bed sheets and pillow. The dormitory and the rooms do not have proper doors and windows. The toilets do not have doors.¹¹⁹

All the above findings were also shared by the respondents and are also find mention in the Levinson Committee Report.

7.18.5.3. Contact with outside world

In 7% respondents said the juveniles had contact with the outside world. There is no frisking of visitors done at Apna Ghar as such the juveniles get mobiles, gutka, beedies, weapons and other articles from the outside world.¹²⁰ Since the juveniles have access to mobile phones it is easier to maintain contacts.

7.18.5. 4. Lack of Security Systems at Apna Ghar

4 % respondents they feel the juveniles escape due to poor security systems in palce. At Apna Ghar there is no checking or frisking the staff or inmates or any visitor. The staff and outsiders are allowed to carry mobile phones. Handling and counting of juveniles is not done properly. The staff do not sleep in the dormitory with the juveniles. It was found most children escape Apna Ghar breaking the toilet door. Even after cases of escape being registered from toilets the escape route has not been closed by the authorities.¹²¹

¹¹⁹ Levinson Martin Enquiry Report of Escape of Children from Apna Ghar Mercedes Goa, April 2012 p.11-14

¹²⁰ Ibid p.19 complaint was also lodged before the Director Women and Child Development

¹²¹ Levinson Martin Enquiry Report of Escape of Children from Apna Ghar Mercedes Goa, April 2012 p.27,28

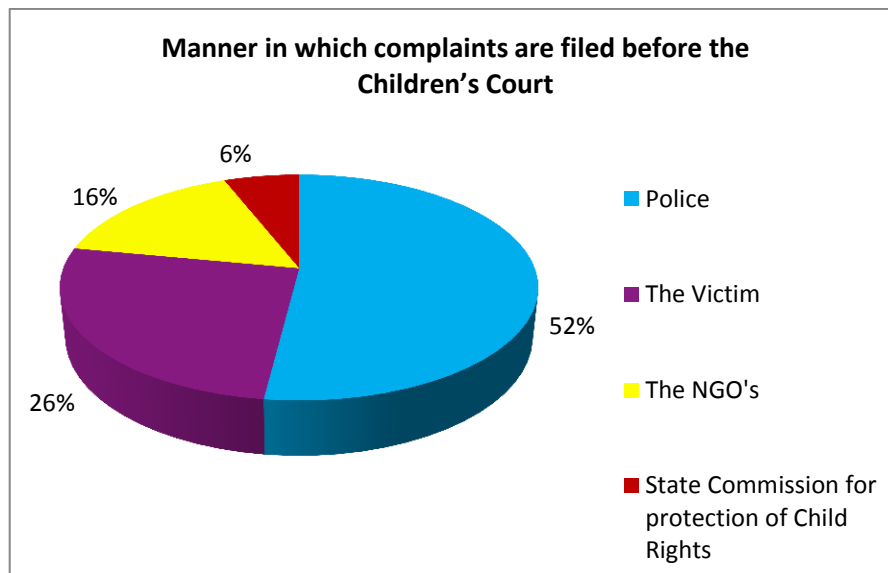
7.19 Data analyzed through questionnaires information collected from stake holders regarding Child Victims

7.19.1. Different channels through which complaints are filed before the Children's Court¹²²

Table No 71 shows the complaints filed by different Authorities

Total No of Respondents	Police	NGO's	The Victim	State Commission for protection of Child Rights
Responses(50)	26	13	8	3
Percentage	52%	26%	16%	6%

Figure No 68 shows the complaints filed by different Authorities



About 52% of Respondents are of the opinion that the complaints are filed directly by the police.¹²³ The respondents shared that the police register the offence after

¹²² See Appendix 6 – Questionnaire for Child Victims Question No1

¹²³ Sometimes on Helpline no 100 of 1091(Women helpline) or 1098(Children Helpline)

finding the dead body or under a tip off. The police register the cases which are later tried before the Children’s Court. About 26 % of Respondents replied that the cases are registered by the Victims. The Victim approaches the police station to lodge a complaint. The Respondents replied that 16% cases the NGO’s play an active role in registering the case. In some cases the NGO’s assist the victim and take the victim to the police station to lodge a complaint. Only 6% of respondents opined that the cases are being investigated by the State Commission for Protection of Child Rights. Hence the Role of the State Commission for Protection of Child Rights is negligible. Since they power only to investigate and file reports. In Goa however the Commission has not referred any case to the Children’s Court.

7.19.2. Assessing Child Friendly Procedure Of Children’s Court¹²⁴

The Focus of the Goa children’s Act, 2003 is its ‘child friendly’ nature. It was important to find out if the statutory body under the Act like the police are geared to adopt a child friendly approach in doing justice to child victim.

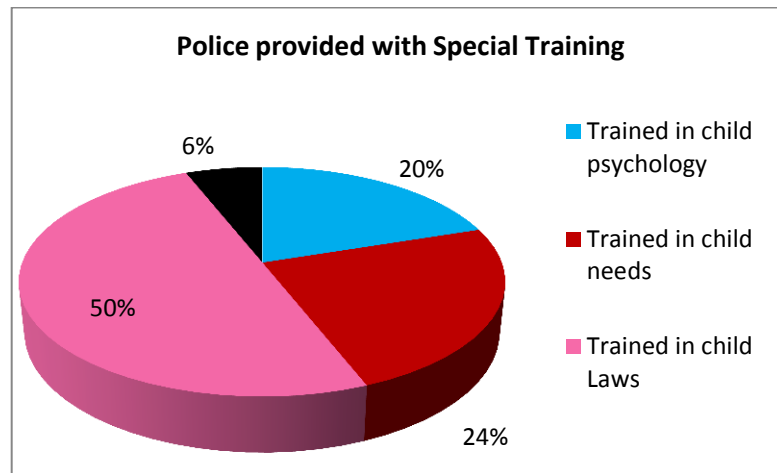
7.19.3. Police provided with Special Training

Table No 72 shows the Response of Police to special training

Total No of Respondents	Trained in Child Laws	Trained in Child Needs	Trained in Child Psychology	Trained in Registered statement of Child
Responses(50)	10	12	25	3
Percentage	50%	24%	20%	6%

¹²⁴ See Appendix 6 – Questionnaire for Child Victims Question No 2,3,4

Figure No 69 shows the Response of Police to special training



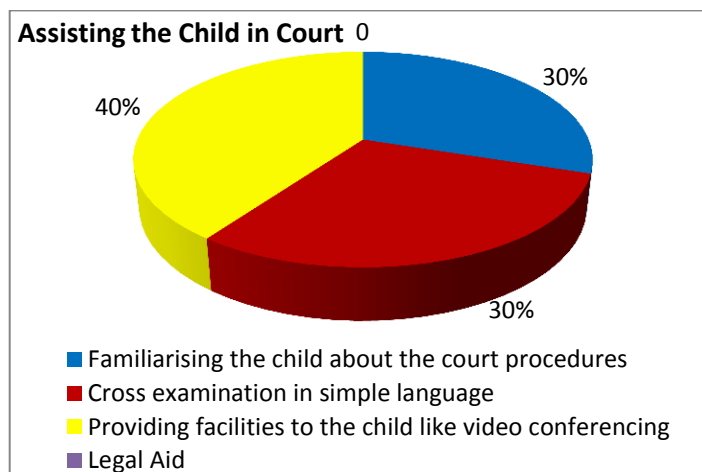
About 50 % of the Respondents replied that i.e the Juvenile Welfare Police Officers are all trained in Goa. They are taught the provisions of The Goa Children’s Act, 2003 and the Juvenile Justice (Care and Protection of Children) Act 2000 by the Goa State Legal Services Authority. About 20% of Respondents felt the police are trained in child psychology. About 24% of Respondents opined that the police are trained in dealing with needs of the child. Need Based training is done by NIPCD and Child line and local NGO’s in Goa. Only 6% of Respondents felt that the police are trained in registering the statement of the child.

7.19.4. Assistance to the Child in Court¹²⁵

Table No 73 shows the assistance provided to the child in the Court

Total no of respondents	Familiarising the child about the court procedures	Cross examination in simple language	Providing facilities to the child like video conferencing	Legal Aid
Percentage	30%	30%	40%	0
Responses(50)	15	15	20	0

Figure No 70 shows the assistance provided to the child in the Court



About 30% of Respondents feel the child is familiarized with the court. They opined that in reality the child is told it is being taken to Children’s Court.¹²⁶ The procedure adopted is also not so child friendly. Child friendly procedures include safeguards like the child’s statement is not registered in front of the accused. The contact of the child with the accused is prohibited. 30% Respondents opined that the cross examination of the child is conducted in a friendly manner. They said

¹²⁵ See Appendix 6 – Questionnaire for Child Victims Question No5

¹²⁶ Information obtained from interview with President of Children’s Court and advocates

that the judge intervenes in the cross examination and the cross examination of the child is even stopped if it is traumatic to the child. The respondents shared that the judge still wears white and black clothes which can be intimidating to the child. 40% Respondents feel that the video conferencing facility is used. This facility is used when the parents and child live in far off places.

During the study the Researcher also found that in the Children Court no legal Aid was provided to the child victim. While on other hand, many accused had applied for free legal aid. Accused applying for free legal aid is a huge drawback to the child because when the Court will impose fine for the offence committed they are unable to pay and hence the rights of the child victim to receive compensation will be affected as the child won't get compensation.

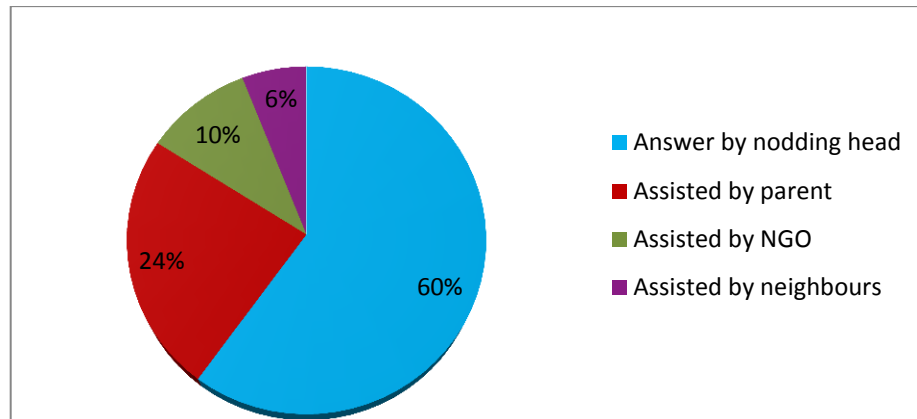
7.19.5.Manner in which the child answers Questions in Court¹²⁷

Table No 74 shows manner in which the Child answers Questions in Court

Total no of respondents	Answer by nodding head	Assisted by parent	Assisted by NGO	Assisted by neighbours
Responses(50)	30	12	5	3
Percentage	60%	24%	10%	6%

¹²⁷ See Appendix 6 – Questionnaire for Child Victims Question No 6

Figure No 71 shows manner in which the Child answers Questions in Court



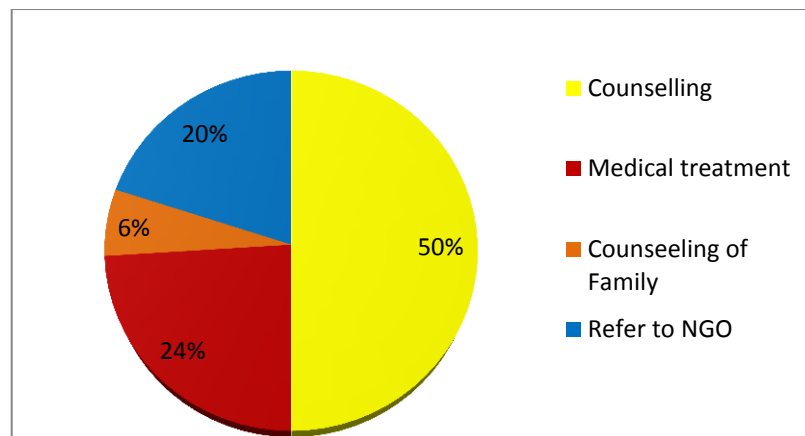
60% of the Respondents are of the view that the child responds to questions by nodding its head. The Respondents shared that the child is so scared of the formal environment of the court and sometimes does not understand the question due to the technical words used to address it. 24% of the Respondents say the child is assisted by parents. The Respondents opined that the parents answer the questions for the child. 10 % of Respondents feel the NGO's assist the child and help it in answering questions in court. 6 % of Respondents feel the child is assisted by a neighbour or a relative.

7.19.6. Efforts made to reduce trauma of the child¹²⁸

Table No 75 shows the efforts made to reduce the trauma of the child

Total no of respondents	Counselling	Medical treatment	Counselling of Family	Refer to NGO
Responses(50)	25	12	3	10
Percentage	50%	24%	6%	20%

Figure No 72 shows the efforts made to reduce the trauma of the child



50% of the Respondents say the child is sent for counselling particularly in cases where the child is a victim of child sexual abuse. 24% of the Respondents opined that the child is provided medical treatment. They said that this is only provided to victims of child sexual abuse. They also said that as a matter of practise the child is sent for Medical Treatment to the Goa Medical College. However the Forensic department is near to the morgue which is very scary for the child. However post medical treatment is not provided to the child. 6% of the Respondents shared that

¹²⁸ See Appendix 6 – Questionnaire for Child Victims Question No 7

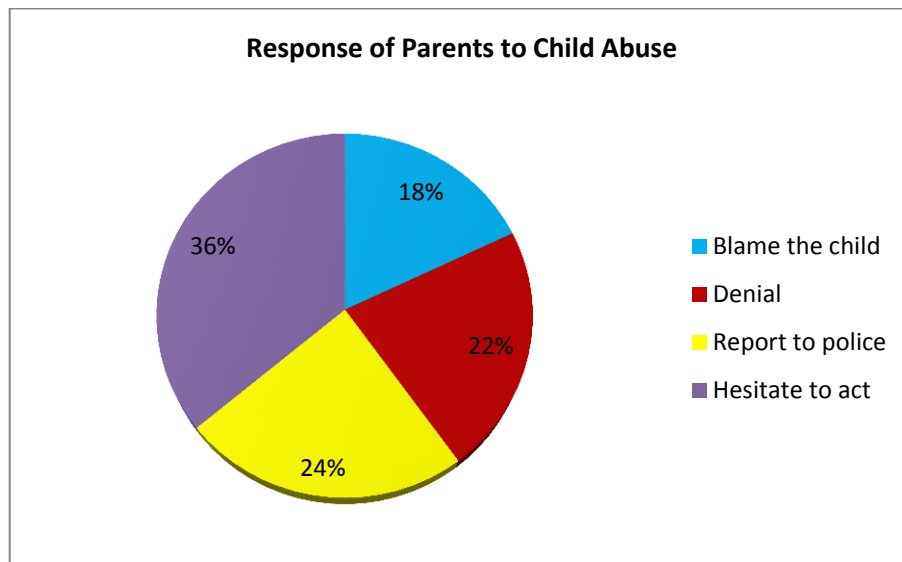
the family members are also provided with counselling. 20% of the Respondents feel most of the victims are referred to an NGO's either by the police or some other agency.¹²⁹ The Respondents shared that the NGO's are more than willing to visit the home of the child however they are more interested in their own publicity than actually providing remedy to the child.

7.19.7. Response of Parents to Child Abuse¹³⁰

Table No 76 shows the response of parents

Total no of respondents	Blame the child	Denial	Report to police	Hesitate to act
Responses(50)	9	11	12	18
Percentage	18%	22%	24%	36%

Figure No 73 shows the response of parents



¹²⁹ Since the law makes it mandatory to record the statement of the child in the presence of the police

¹³⁰ See Appendix 6 – Questionnaire for Child Victims Question No8

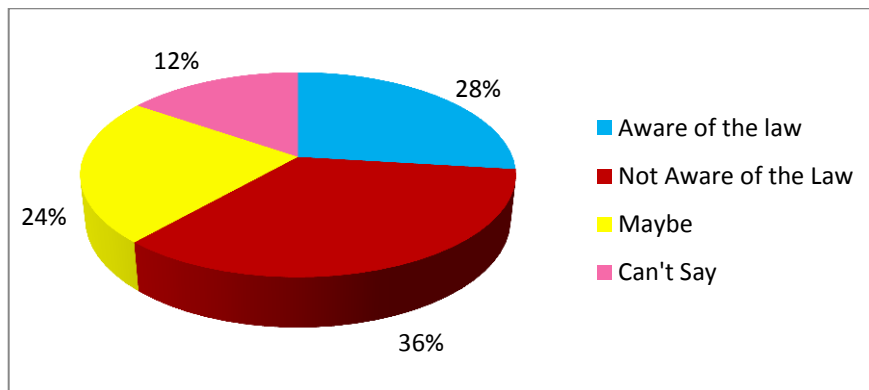
18% of the Respondents said that the parents blame the child for the Act. About 22 % of the Respondents opined that the parents are afraid to report the incidence and hence deny the incidence of crime. They are afraid about its effect on the child and are afraid to face the court. About 24% of the Respondents feel that the parents actually report the crime to the police and about 36% of the Respondents felt the parents hesitate to act.

7.19.8. Awareness of the Law in Goa¹³¹

Table no 77 shows the response of the community about the law

Number of Respondents	Aware of the law	Not Aware of the Law	Maybe	Can't Say
Responses(50)	14	18	12	6
Percentage	28%	36%	24%	12%

Figure No 74 shows the response of the community about the law



The Goa Children's Act, 2003 makes it mandatory to conduct training on Child Laws for the public. However only 28% of the Respondents were people who are aware that Goa, has a special law. 36% of Respondents were people in Goa who

¹³¹ See Appendix 6 – Questionnaire for Child Victims Question No 9

are not aware of the law. Among 24% of the Respondents were not sure. 12% of the Respondents were not aware of the law.

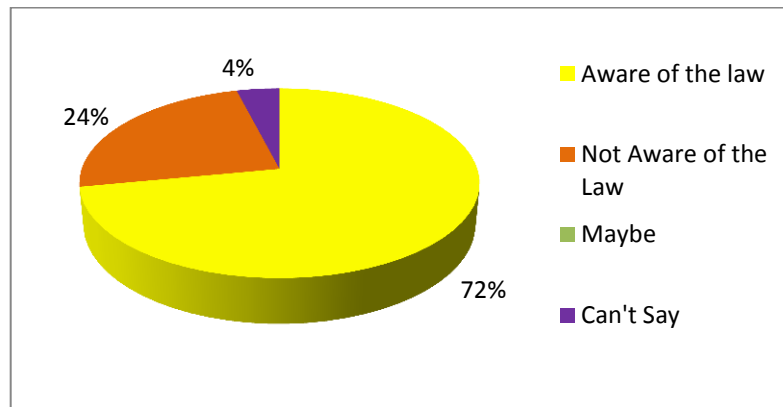
7.19.9. Response of the Hotel Industry about awareness of the Law¹³²

50 Respondents were selected randomly who are hotel owners in beach belts and other parts of Goa. The following is their response.

Table No 78 shows the Response of the Hotel Industry

Total no of respondents	Aware of the law	Not Aware of the Law	Maybe	Can't Say
Responses(50)	36	12	0	2
Percentage	72%	24%		4%

Figure no 75 shows the Response of the Hotel Industry



¹³² See Appendix 6 – Questionnaire for Child Victims Question No10

72% of the Respondents are Hotel owners who are aware of the law in Goa. 24% of Respondents are hotel owners who not aware of the law. About 4 % of the hotel owners did not respond to the question.

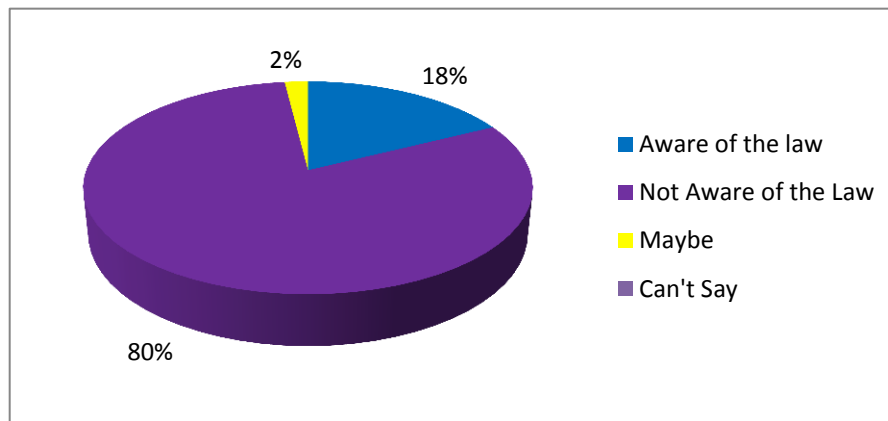
7.19.10. Response of Photo Studios of the awareness of the law¹³³

50 Respondents were selected randomly who are photo studio owners in beach belts and other parts of Goa. The following is their response.

Table No 79 shows the response of photo studios

Total no of respondents	Aware of the law	Not Aware of the Law	Maybe	Can't Say
Responses(50)	9	40	1	0
Percentage	18%	80%	2%	-

Figure No 76 shows the response of photo studios



80% of the Photo studio owners are not aware of the law in Goa. Only 18% of the Photo Studio owners are aware of the law in Goa. 2% of the Photo to Studio were not sure if there was a law in Goa.

¹³³ See Appendix 6 – Questionnaire for Child Victims Question No12

7.20. Data Analysed from Interviews with the Accused in Sada Jail

The researcher with the help of a questionnaire interviewed the inmates of Sada Jail at Vasco. Sada Jail houses the under trials who are kept there pending the trial. About 300 accused were found housed in Sada Jail who have committed offences against children. The Researcher interviewed the 300 accused. The study is presented in two parts by dividing the accused according to geographic area in which they have committed the crime i.e North Goa and South Goa and also the police station which arrested and registered the offence against them.

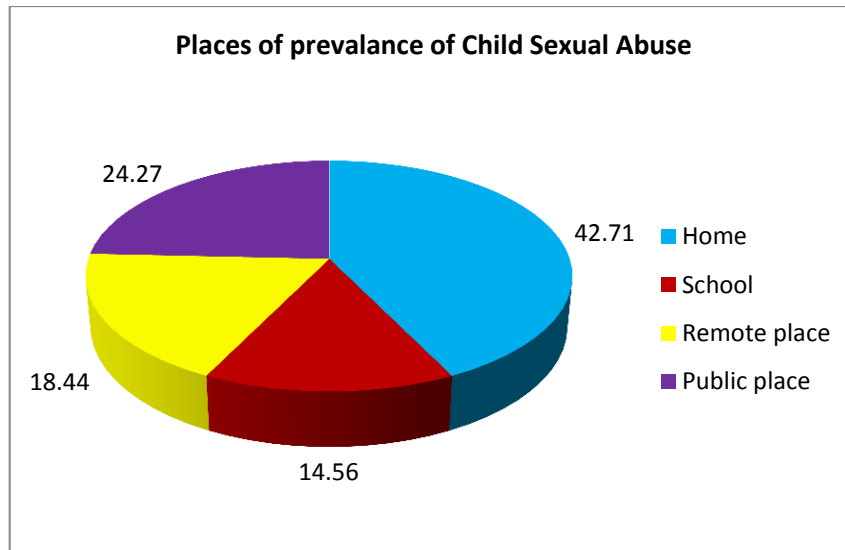
7.20.1.Places where there is high prevalence of Child Sexual Abuse in North Goa¹³⁴

Table No 80 shows where there is high prevalence of Child Sexual Abuse

Total No of Respondents	Home	School	Remote place	Public place
Responses (103)	44	15	19	25
Percentage	42.71%	14.56%	18.44%	24.27%

¹³⁴ See Appendix 7 – Questionnaire for Accused in Sada Jail Question No 1 and Question No 2

Figure No 77 shows where there is high prevalence of Child Sexual Abuse



In North Goa 42.71% of the respondents have found the child from its home. Thus indicating that the abuser was known to the child or the abuser was keeping watch on the child and tried to establish contact with it by gaining his or her entry in its home. After becoming friendly with the child the respondents were able to commit crimes on the child. Some Respondents shared that they were paying guests in the child's home and lured the child with gifts before exploiting the child. 24.27% of the respondents have found the child in a public place like a guest house, hotel, bus stop, beach or a park. This also indicates that the respondent first got friendly with the child and then started contact with the child by meeting it in a public place. 18.44% of the respondents have found the child in a remote place or places unknown to the child. This may indicate the respondent might have not known the child and kidnapped the child and taken it. It could also be that the respondent knew the child and the child voluntarily went along with the accused to a remote

place. For e.g. it was found that one respondent was a driver of the child and had taken the child to a remote beach to commit sexual offence. 14.56% of the respondents have picked the child from its school. This clearly indicates the respondent knew the child. Hence the Researcher concludes that the abuser could be a teacher or someone employed in the school or someone known to the school authorities or maybe even the driver or maybe someone who kept watch on the child and picked it from the school.

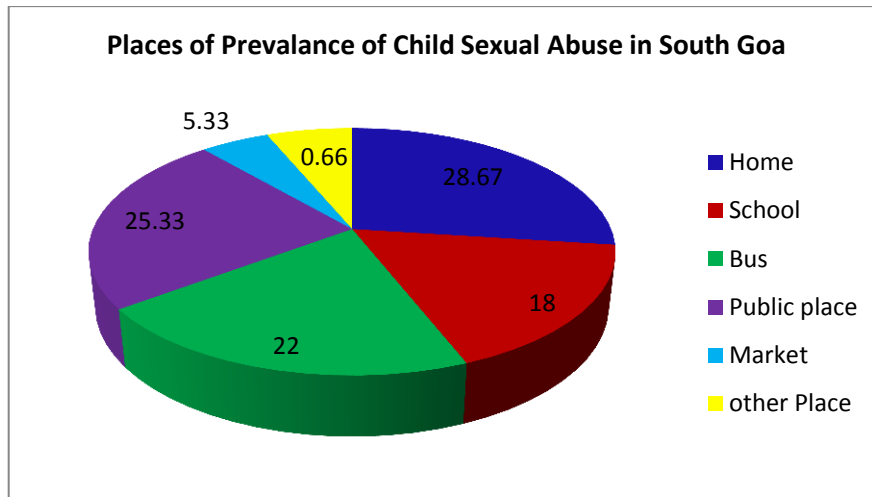
7.20.2.Places where there is high prevalence of Child Sexual Abuse in South Goa¹³⁵

Table No 81 shows where there is high prevalence of Child Sexual Abuse

Total No of Respondents	Home	School	Bus	Public place	Market	Other Place
Responses (150)	43	27	33	38	8	1
Percentage	28.66	18	22	25.33	5.33	0.67

¹³⁵ See Appendix 7 – Questionnaire for Accused in Sada Jail Question No 1 and Question No .2

Figure No 78 shows where there is high prevalence of Child Sexual Abuse



In South Goa in 28.66% of the Respondents have found the child in its home. In 25.33% of the Respondents have found the child in a public place. In 22% the respondent has found the child in the bus. This shows that the respondent was keeping a watch on the child and might have been even stalking the child. In 0.67% the respondent has found the child in some other place like maybe a dance class or when the child had gone for sports practise.¹³⁶ This could also indicate that the Respondent was stalking the child. In 5.33 % the respondent have found the child in the market. The Respondents shared that in the market the child who is a victim of poverty like children of migrant parents or children found selling items in the market had been their targets. They used to buy gifts for them and their parents and lure them.

¹³⁶ Data obtained from interview with NGO's

Conclusion - As seen from the figures above in North and South Goa the accused find the children from their own homes or in schools. Thus proving that Goa is not able to provide a safe environment for the children as envisaged by the object of the Act.

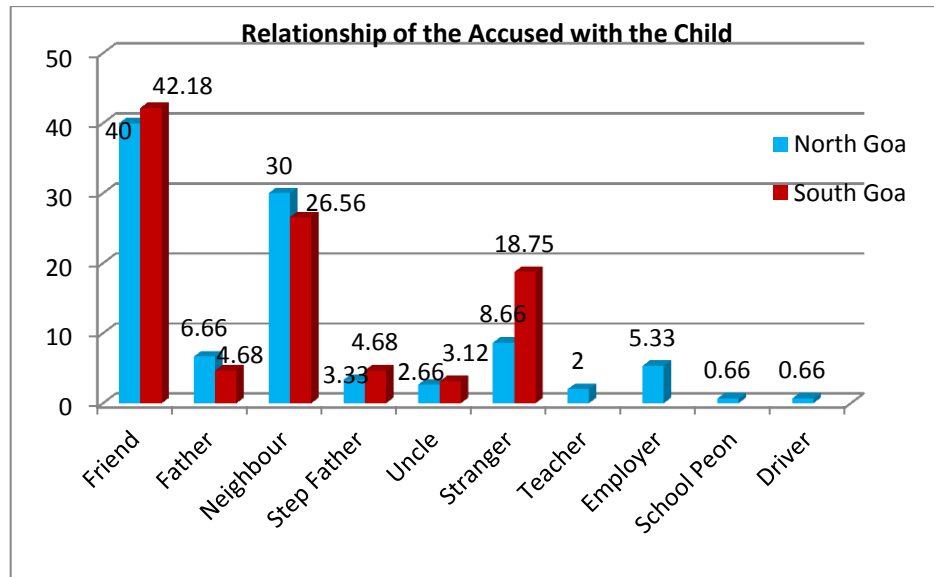
7.20.3. Relationship of the Child Victim with the Accused North Goa¹³⁷

Table No 82 shows the relationship of the child victim with the accused

Relationship	North	South	North %	South %
Friend	60	27	40%	42.18%
Father	10	3	6.66%	4.68%
Neighbour	45	17	30%	26.56%
Step Father	5	3	3.33%	4.68%
Uncle	4	2	2.66%	3.12%
Stranger	13	12	8.66%	18.75%
Teacher	3		2%	
Employer	8		5.33%	
School Peon	1		0.66%	
Driver	1		0.66%	

¹³⁷ See Appendix 7 – Questionnaire for Accused in Sada Jail Question No 4 and 5

Figure No 79 shows the relationship of the child victim with the accused



In North Goa 40% of the respondents were friends of the victim. In South Goa 42.18% of the respondents were friends with the Victim.¹³⁸ The next category is Father. In 6.66% of respondents in north Goa the father committed incest. 4.68 % respondents in South Goa the father committed incest. The next is the neighbour, 30% of the respondents were neighbours in North Goa and 26.56% of the Respondents were neighbours in South Goa. The neighbour abused or committed an offence on the child. The next category is Stranger committing offence. In North Goa there were 8.66% respondents who were strangers and in South Goa was 18.75% of the respondents were strangers committing offences on the child.

¹³⁸ In many cases a casual love affair with mutual consent involved in sex has landed the accused in jail as the law prescribes the age for the girl as 18 years and hence consent of the girl is irrelevant. Thus putting the accused in jail who may be as young as 19 -22 years in some cases and turning him into an hardcore criminal by the time he gets released from jail. Data obtained from the inmates of Sada Jail.

The Step Father category 3.33% of the respondents belonged to this category in North Goa and 4.68% of the respondents were Step fathers who committed offence in South Goa. In the category of Uncle there were 2.66% respondents who committed offence in North Goa and 3.12 % respondents committed offence in South Goa.

The following categories were found only in North Goa Teacher 2% of the respondents were teachers and committed offences on a child. Employers 5.33% of the respondents were employers and committed offences on a child. School Peon 0.66% of the respondents was peons and committed offences on a child. Drivers 0.66% of the respondents were drivers and committed offences on a child.

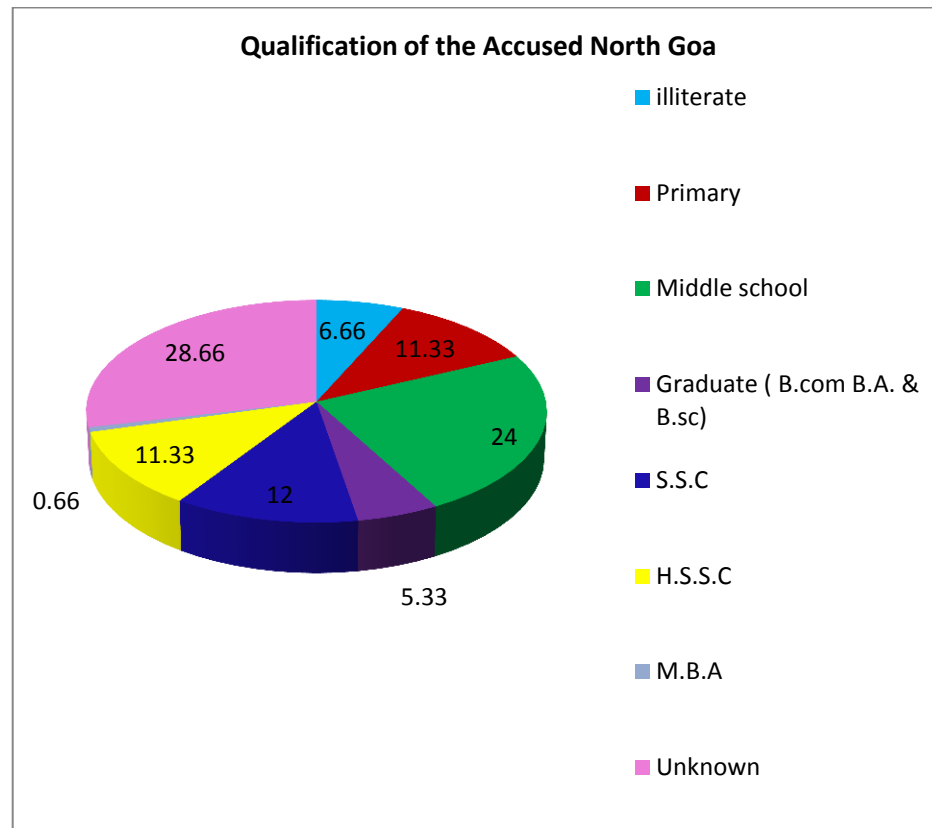
7.20.4. Qualification of the Accused North Goa¹³⁹

Table No 83 shows qualification of the Accused

Qualification	No	%
Illiterate	10	6.66%
Primary	17	11.33%
Middle school	36	24%
Graduate (B.Com B.A. & B.Sc)	8	5.33%
S.S.C	18	12%
H.S.S.C	17	11.33%
M.B.A	1	0.66%
Unknown	43	28.66%

¹³⁹ See Appendix 7 – Questionnaire for Accused in Sada Jail Question No 6,7,8

Figure No 80 shows qualification of the Accused



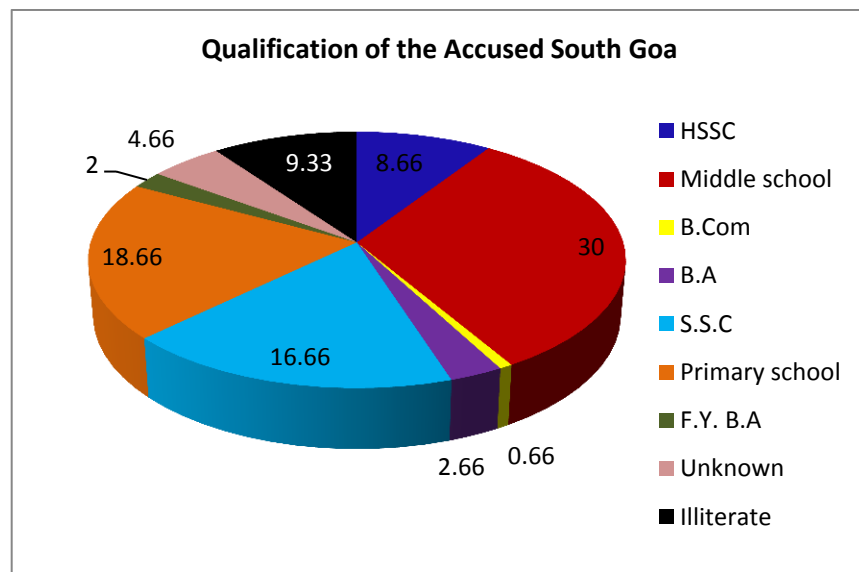
In North Goa only 6.66 % of the respondents were illiterate. Hence indicating that most of the Respondents were educated. 11.33 % of the respondents have studied primary education. 24% of the respondents have completed education uptill Middle School. About 12% of the respondents shared that they have passed the SSC exam. About 11.33 % of the respondents had passed the HSSC exam. 5.33% are Graduates. It was found in this group there were accused who had completed B.Com, B.A and B.Sc degree. 0.66% had an MBA Degree. In 28.66% of the respondents did not know if they were educated. They felt they know to read and write their name and sign. Thus one can conclude that in North Goa most accused are educated who commit offences on children.

7.20.5. Qualification of the Accused South Goa¹⁴⁰

Table No 84 shows qualification of the Accused

Qualification of Accused	No	%
HSSC	13	8.66%
Middle school	45	30%
B.Com	1	0.66%
B.A	4	2.66%
S.S.C	25	16.66%
Primary school	28	18.66%
F.Y. B.A	3	2%
Unknown	7	4.66%
Illiterate	14	9.33%

Figure No 81 shows qualification of the Accused



¹⁴⁰ See Appendix 7 – Questionnaire for Accused in Sada Jail Question No 6,7,8

In South Goa 9.33% of the respondents were illiterate. 18.66% of the respondents had completed a primary education. In 30% of the respondents had completed Middle School. In 16.66% of the respondents had passed the SS.C Exam. In 8.66% of the respondents had passed HSSC exam. 0.66% of the respondents have a B.Com degree, while 2.66% respondents had a B.A Degree. 2% of the respondents had completed their F.Y.B.A. In 4.66% of the respondents did not know if they were educated. They felt they know to read and write their name and sign. Thus one can conclude that in South Goa most accused are educated who commit offences on children.

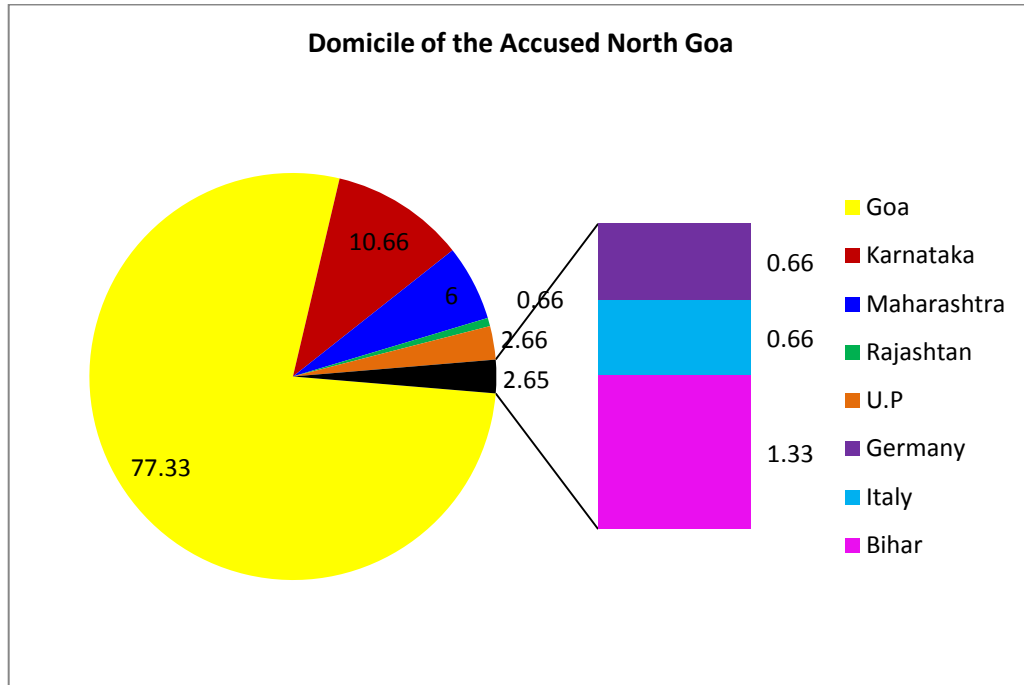
7.20.6. Domicile of the Accused North Goa¹⁴¹

Table No 85 shows the domicile of the Accused

Domicile	No	%
Goa	116	78.33%
Karnataka	16	10.66%
Maharashtra	9	6%
Italy	1	0.66%
Germany	1	0.66%
Rajasthan	1	0.66%
U.P	4	2.66%
Bihar	2	1.33%

¹⁴¹ See Appendix 5 – Questionnaire for Accused in Sada Jail Question No 9,10

Figure No 82 shows qualification of the Accused



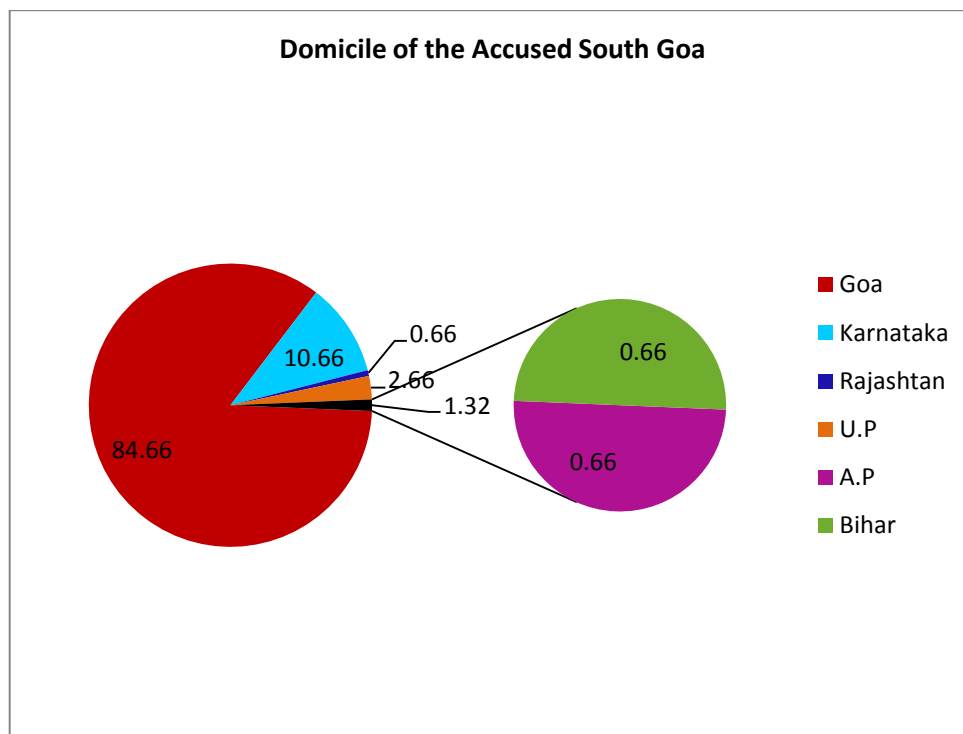
In North Goa 77.33% of the respondents are of Goan Origin. 10.66% of the respondents are from Karnataka. 6% of the respondents are from Maharashtra. 2.66% of the respondents are from Uttar Pradesh. 0.66% of the respondents are from Rajashtan. 1.33% of the respondents are from Bihar. Only 0.66% of the respondents are from Germany and Italy. Hence The Researcher concludes that only a few foreigners commit offences on children. Thus one can safely conclude that most offenders who commit crimes on Children in North Goa are of Goan Origin.

7.20.7. Domicile of the Accused South Goa¹⁴²

Table No 86 shows the domicile of the Accused

Domicile	No	%
Goa	127	84.66%
Karnataka	16	10.66%
Rajasthan	1	0.66%
U.P	4	2.66%
A.P	1	0.66%
Bihar	1	0.66%

Figure No 83 shows the domicile of the Accused



84.66% of the respondents are of Goan Origin. 0.66% of the respondents are from Karnataka. 2.66% of the respondents are from Uttar Pradesh. 0.66% of the respondents are from Rajasthan. 0.66% of the respondents are from Andhra

¹⁴² See Appendix 7 – Questionnaire for Accused in Sada Jail Question No 9,10

Padesh and Bihar. Hence one can conclude that most accused who commit offences against children are of Goan Origin.

Conclusion

The Study has brought out a very glaring aspect of the criminal justice system through its special laws namely the Juvenile Justice (Care and Protection of Children) Act, 2000 or the Goa Children's Act, 2003 is not able to control crimes against children and by children. The Indian society more especially the Goan society is not equipped to deal with child delinquency or the child victim in any of its forms. The common trend of materialism and the consumerist nature of the society have in fact exposed children to unnecessary risks consequently resulting in the enhancement of child related crimes.

The Last Chapter presents the findings of the study. It also analyzes the various child friendly aspects of the law in for force in Goa for children who enter the criminal justice system. The chapter also provides useful suggestions which can be implemented for better implementation of the law for children.

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Appendix 1

Country Wise Juvenile Delinquency¹

Sr.No	Country	Maximum- Minimum Age
1.	Egypt	18 In the justice system youths are segregated by age: 12 & under, 12-15 & 15-18.
2.	Singapore	7-12 Islamic law set the minimum age of criminal responsibility at puberty
3.	Cuba	6-16
4.	United States	7-15 The upper age limit varies from state to state
5.	India	18
6.	Philippines	9-18 Youth offenders, 15-18 suspended sentence. 18-20 criminally responsible but entitled to leniency
7.	Australia	10-17/18 years
8.	Canada	12-18 years
9.	England	12-18 years
10.	Netherlands	12-18 years
11.	France	13-18 years
12.	Israel	13-18 years
13.	Poland	13-17 Criminal responsibility based on mental and moral ability. 16-17 years old can be held criminally responsible
14.	New Zealand	14-17 Criminal responsibility begins at the age of ten but unless 'mensrea' can be proved till the age of 14, they are not convicted. Exception to the rule is murder or manslaughter

¹Dr.Chakraborty T, *An International Comparison of Juvenile Justice Systems*, The Indian Police Journal, LV No.3, July-Sept,2008. In most States 11 or 12 years. For Federal crimes age is 7 years. Age is determined by State, minimum age is 7 in most states under common law and others. For Girls minimum age is 9 and 15 is maximum age of criminal responsibility for boys. Official age for criminal responsibility starts from 12 when children's actions are subject to legal proceedings.

15.	Germany	14-17 18-20 may be transferred to juvenile
16.	Hungary	14-18
17.	China	14-25 Partially responsible officially till 18. Law requires limited punishment.
18.	Italy	14-18 years
19.	Japan	14-20 years
20.	Norway	15-18 years
21.	Russia	14-18 years
22.	Austria	14-19 years
23.	Sweden	15-20 Youth between the age of 15-17 years are given special Consideration.
24.	Finland	15-19 They have three important age limits: 15, 18 & 21. Under 15 are not liable to be punished under the Penal Code. Those under 18 are recommended lighter sentences.
25.	Switzerland	15-18 7-15 are considered children, 15-18 are considered adolescent and 18-25 are considered young adults and treated less severely.
26.	Hong Kong	16-20 years

Appendix 2

Legal Age of Majority under the Indian Laws

Legal Provision	Prescribed age
Apprentices Act, 1961	Majority above 14 years
Bidi& Cigar Workers Act, 1966	Majority above 14 years
Factories Act, 1948	Majority above 14 years
Child Labour (Prohibition & Regulation) Act, 1986	Majority above 14 years
Merchant Shipping Act, 1958	Majority above 14 years
Mines Act 1952	Majority above 14 years
Motor Transport Workers Act, 1961	Majority above 14 years
Compulsory Education	Up to 14 years
Marriage Laws	Majority above 21 years for boys & 18 years for girls (generally)
Prohibition of Child Marriage Act 2006	Majority above 21 years for boys & 18 years for girls
Sexual Consent under sec. 375 of Indian Penal Code	Majority above 16 years for girls
Sec. 82 of Indian Penal Code (criminal responsibility)	No liability up to age of 7 years. Liability above 7 and up to 12 years of age liability arises if child has attained sufficient maturity.
Juvenile Justice (Care and Protection of Children) Act, 2000	Majority above 18 years of age. (Juvenile is a person below age of 18)
Contractual capacity	Majority above 18 years
Sec. 118 of Indian Evidence Act	Child is competent to testify before a Court, irrespective of its age, provided its understands the questions and gives rational answers
Guardianship	- Majority above 18 years. - 21 years in case guardian is appointed by the Court

Appendix 3

Goa Children's Act, 2003 v/s Prosecution under Indian Penal Code 1860

Sr.No	Topic	Indian Penal Code	Goa Children's Act
1.	Age of victims in sexual assault	Section 375(6) states age of consent is 16 years for girls	Age of consent is 16 years for girls but not for boys. A child is below 18 years
2.	Kinds of abuse	Rape as defined in Section 375(6) of IPC and Sodomy Section 377	Sexual assault, grave sexual assault and incest
3.	Adjudicatory body	Sessions Court (Section 9) of Criminal Procedure Code	Children's Court Section 32
4.	Bail	Bailable offence under Section 2(a) of the Criminal Procedure Code	Offences to be non-cognizable and non-bailable under Section 2(a) of Criminal Procedure Code
5.	Victim	Interest of the child along with the general provisions of law. No mention of best interest.	Specifically enacted keeping in mind the best interest of the child. Act defines a child in need in Section 2 (i) and child in difficult circumstances Section 2 (ii)
6.	Time limit for inquiry	In every inquiry or trial the proceedings shall be expeditiously as possible Section 309(1) of the Criminal Procedure code	Delay in proceedings in the court are to be reduced Section 32(2) (d)
7.	Appeal/ Revision	Article 227 of the Constitution –Every High Court has superintendence over all courts. Article 134 which states that An appeal shall lie to the Supreme Court from any judgment, final	Section 34 states no other court, civil or criminal shall have jurisdiction to deal with any offence or any question or any dispute or any which under this Act is to be decided by the Children's Court except in cases of

		order or sentence in a criminal proceeding of a High Court	Appeal. An Appeal lies to the High Court or Supreme Court
8.	Role played by police	No specific provision	Police stations to be child friendly. Sensitization programmes to be done for police.
9.	Role played by community	Section 39 of Criminal Procedure Code Every person, aware of the Commission of, or of the intention of any other person to commit, any offence punishable shall give information to the nearest Magistrate or police officer of such Commission	Onus on hotels and other establishments in Section 8(10). Responsibility of photo studios/film processing units Section 8(14). State to frame Child Friendly Tourism Code Section 8(22). Balpanchayats to be set up. The Commission for Protection of Child Rights has set up Village Child Committees.
10.	Right to Privacy and confidentiality		Section 32 (i) states that the privacy of the victim child has to be by all means and at all stages.
11.	Linkage and coordination		Act provides for rehabilitation of victims and assistance to victims in courts. NGOS to be appointed to facilitate child in the legal process.

Appendix 4**Emotional Intelligence Test**

1. I can motivate others to work in unfavorable situation.
 - i. Fully Agree
 - ii. Agree
 - iii. Uncertain
 - iv. Disagree
 - v. Fully Disagree

2. People said that I am inspiration for them.
 - i. Fully Agree
 - ii. Agree
 - iii. Uncertain
 - iv. Disagree
 - v. Fully Disagree

3. I am capable to motivate people to take initiative in work.
 - i. Fully Agree
 - ii. Agree
 - iii. Uncertain
 - iv. Disagree
 - v. Fully Disagree

4. I am able to take right decision by maintaining the right balance between feelings and logic.
 - i. Fully Agree
 - ii. Agree
 - iii. Uncertain
 - iv. Disagree
 - v. Fully Disagree

5. I am not dependent upon others for doing my own work in a right manner.
 - i. Fully Agree
 - ii. Agree
 - iii. Uncertain
 - iv. Disagree
 - v. Fully Disagree

6. In spite of strong criticism I can do the work which I believe.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

7. I am able to assess a situation and behave accordingly.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

8. I can concentrate on my work in spite of problems.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

9. I am concerned about worries and difficulties.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

10. I can intently listen to anyone without any desire to speak.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

11. I am considered as talented and loving.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

12. My priorities are clear.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

13. I can handle difference around me.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

14. I do not mix unnecessary feelings in any matter.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

15. I try to see the view of others.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

16. I can be steadfast on my beliefs.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

17. I can see the bright part of any situation.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree
- vi.

18. I believe in myself.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

19. I am capable to be calm and composed in good and bad situation.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

20. I am capable to concentrate under pressure.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

21. I can maintain the standard of honesty and unity.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

22. I am capable to face the immoral work being done by others.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

23. I am able to keep my promises.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

24. I am organized and active in my work.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

25. I am able to handle the demands self and others.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

26. I am liberal to new thoughts and ideas

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

27. I fulfill my objectives/goal beyond the expectation.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

28. In spite of obstacles and difficulties I remain determined to achieve my goals.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

29. With the help of my friendly attitude I make friends and maintain relationship.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

30. I can identify my feelings and categorize them.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

31. I think emotion should be controlled.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

32. I am aware of my weakness.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

33. I believe that I should self-development myself even if my work does not demand it.

- i. Fully Agree
- ii. Agree
- iii. Uncertain
- iv. Disagree
- v. Fully Disagree

Appendix 5**Questionnaire for Juveniles In Conflict With Law****Tick Mark One Option Only****1. Juveniles come in conflict with law due to**

- a. Peer Pressure
- b. Parental Neglect
- c. Easy money and lifestyles
- d. Poverty

2. Remedies available to the juvenile after arrest?

- a. Legal Aid
- b. Counseling
- c. Bail
- d. Medical Relief

3. During the juveniles stay in the Observation home they are taught

- a. Education
- b. Life skills

Any other please specify**4. Time taken for the trial of a juvenile is:**

- a. 3 months
- b. 6 months
- c. 1 year
- d. 2 years

5. Reasons why children escape ApnaGhar

- a. Dissatisfaction of children with services provided
- b. Involvement of Staff in escape
- c. Contact of children with outside world
- d. Lack of security systems at ApnaGhar

Appendix - 6**Questionnaire for Child Victims****Tick Mark One Option Only**

1. Most cases in the children's court are filed by :

- a. Police
- b. NGO'S
- c. The Victim
- d. Commission for Protection of Child Rights

2. Are the police provided with special training?

- a. YES
- b. NO

3. The police are trained in which area

- a. Child psychology
- b. Dealing with needs of the child
- c. Child Laws
- d. Recording child's statement

4. Who conducts the Training? Please Specify?

5. What kind of assistance is provided to the child in the court?

- a. Familiarizing the child to court proceedings
- b. Legal Aid
- c. Using video conferencing
- d. Conducting cross examination in simple language

6. The child responds to the questions put to it by:

- a. Answering by nodding its head
- b. The parent answers for the child
- c. The NGO answers
- d. Answers given by relative / neighbor

7. Efforts made to reduce trauma of the child are

- a. Counseling of child
- b. Medical Treatment
- c. Counseling of family members
- d. Refer the child to specialized NGO's

8. The response of parents to Child Abuse cases is

- a. Blame the Child
- b. Deny the incidence
- c. Report to Police
- d. Hesitate to Act

9. Are you aware of the special law in force in Goa the Goa Children's Act, 2003

- a. Aware of the law
- b. Not Aware of the Law
- c. Maybe
- d. Can't Say

Questions for Hotel Owners Photo Studios**10. Are you aware of the special law in force in Goa for children?**

- a. Aware of the law
- b. Not Aware of the Law
- c. Maybe
- d. Can't Say

11. Would you report any violations of child rights if it happened in your presence

- a. YES
- b. NO

Questions for Photo Studios**12. Are you aware of the special law in force in Goa for children?**

- a. Aware of the law
- b. Not Aware of the Law
- c. Maybe
- d. Can't Say

Appendix - 7

Questionnaire for Accused

Name-

Resident of –

Age –

Arrested by which Police Station-

1. Children are mostly picked up from

- a. Home
- b. School
- c. Remote Area
- d. Public Place

2. Any other place Please specify

3. Are you related to the child

- a. Yes
- b. No

4. If related you are the

- a. Father
- b. Step Father
- c. Uncle
- d. Other

5. If unrelated how do know the child

- a. Friend
- b. Neighbour

c. Teacher

d. Employer

6. Are you educated?

a. Yes

b. No

7. What is your education?

a. Primary school

b. Middle school

c. SSC

d. HSSC

8. If you have any other qualifications please specify?

9. You are a resident of which place?

Goa

U.P

Karnataka

Maharashtra

Bihar

Assam

Andhra Pradesh

West Bengal

Rajasthan

Kerela

10. If you are a foreigner you are from which country?

Germany

Italy

Canada

Portugal

Spain

Appendix 8

Standing Orders

1. GOA POLICE WOMEN AND CHILDREN PROTECTION UNIT

Police being the prime mover of the Criminal Justice System , has played a vital and crucial role in the process. Considering the sensitivity and seriousness of the matter and to guarantee enforcement of these legal provisions in their true spirit the “Goa Police Women and Children Protection Unit” was been created with its Headquarters at PHQ building complex, Panaji- Goa. The unit is headed by a Woman Police Inspector who will work under the administrative control of SSP, CID/ CB. The Goa Commission for Women and Child Development and Tourism besides designated social workers/ NGOs, legal, medical, psychological experts will also function in the integrated partnership in this unit to achieve the objectives for which it has been set up. By passing a Standing Order² the Goa Police are governed by the provisions of the said Standing order.

Objectives

To ensure professional, scientific and meticulous investigation and successful prosecution of such cases with proper sensitivity. To monitor the implementation of the Juvenile Justice (Care and Protection of Children) Act 2000 and the Goa Children’s Act 2003 and other laws relating to children and woman particularly in the matters pertaining to police. To help in providing a support structure to the victims of rape and child sexual abuse, victims of domestic violence, child victims of various other crimes, the children in need of care and protection and juveniles in conflict with law, in order to facilitate care, protection, rehabilitation an reintegration and to help in extending socio-economic , medical, legal and counselling services to them. To facilitate urgent care and protection, long term counselling, security, development and rehabilitation support to the victims of such crimes.

² Standing Order No. 10/2004 No. MISC-I / 7674/2004

Components

a. Women Police Station

A Woman police inspector assisted by other subordinate staff and social workers shall be responsible for the efficient functioning of this unit in association with the “Women and Child Protection Unit”. It shall deals with the crimes against women as per the Government of Goa Notification issued vide no-1/51/88/HD (G) dated 17th August 2000.

b. Special Juvenile (Child) Police Unit

As provided under Section 63 of the Juvenile Justice (Care and Protection of Children) Act 2000, a Special Juvenile Police Unit was created as part of “Women and Children Protection Unit.” Apart from Woman Police Inspector, the Unit consist of One Police Sub- Inspector (Male) Assisted by W/ASI, other staff and social workers. In order to enable the police officers who frequently or exclusively deal with juveniles or are primarily engaged in the prevention of juvenile crime or handling of the juveniles of children under this Act to perform their functions more effectively they are specially trained and selected.

In every police station, the Government of Goa has passed a notification³ to appoint an officer with aptitude and appropriate training and orientation is designated as a Juvenile or the ‘Child Welfare Officer’, who will handle the juvenile or the child in coordination with the police. The Special Juvenile Police Unit and ‘Juvenile or the Child Welfare Officer’, shall deal with ‘Juveniles in conflict with law’ and ‘Children in need of care and protection’. They are to be assisted by atleast two social workers, one who shall be a woman and other preferably a child expert. In Goa the Special Juvenile Police Unit consists of Police officers only. The Central Special Juvenile Police Unit will supervise and coordinate with the police officers selected and designated as Juvenile or Child/Welfare Officers at Police Stations.

³³ Notification No. 2-167(18)-2002/DW7Cd/2021 dated 13th November, 2002

Voluntary Doctors, Psychologists , Lawyers Counsellors

A panel of Doctors, psychologists, lawyers and counsellors offering their voluntary services are kept available in this Unit and their services are utilized from case to case basis.

Functions Of The Women And Child Protection Unit

1.To take up investigation of rape, sexual harassment, women and child abuse and exploitation, domestic violence and other cases of violence against Women and children.

2.To monitor or take up investigation of crimes under Provisions of the Indian Penal Code such as culpable homicide and murder Section 299 – 302 IPC, Abetment to suicide (305- 306 IPC) , Miscarriage and infanticide (312 – 318 IPC) hurt and grievous hurt (319- 324 IPC) , Outraging Modesty of Women (354 IPC) Kidnapping and abduction (359 – 374 IPC) , Rape and Sexual offences (375- 377 IPC) Deceitful marriage and bigamy (493 – 494) IPC , Cruelty to wife by husband and his relatives (498-A IPC) Dowry Deaths (304 – B IPC).

3.To monitor or investigate crimes under Indecent Representation of Women (Prohibition) Act 1986, Dowry (Prohibition) Act 1961, Child Marriage (Restraint) Act 1929 , Special Marriage Act (1954), Immoral Traffic (Prevention) Act 1986, Juvenile Justice (Care and Protection of children) Act 2000 and Goa Children's Act, 2003.

4.To provide counselling in matters of marital discord and to the trauma victims and also refer suitable cases to family counselling centers.

5.To work as coordinating link between police department and Goa Commission for Women, Goa Commission for children, juvenile Justice Board, child Welfare committee , Department of Women and Child Development and Tourism, besides the NGOs/ Social workers and other associated with the Unit.

6.To maintain close liason with all the Police Stations and collect all data and relevant information pertaining to crimes against women and children analyse them and suggest measures to prevent and control them.

7. To conduct sensitization workshops and other related training programmes for the police officers and the concerned Government and Non-Governmental agencies and to circulate copies of various laws, provisions, procedures and directions to higher Courts on the issues related to women and children.

8. To monitor implementation of various provisions of the Juvenile Justice (Care and Protection of children) Act 2000 such as punishment for cruelty to juvenile of child Section 23 of Juvenile Justice (Care and Protection of children) Act 2000, employment of juvenile or child for begging Section 24 Juvenile Justice (Care and Protection of children) Act 2000, penalty for giving intoxicating liquor/narcotic/drug /psychotropic substances to juvenile or child Section 25 Juvenile Justice (Care and Protection of children) Act 2000, exploitation of juvenile or child employee Section 26 Juvenile Justice (Care and Protection of children) Act 2000 and the provisions of Goa Children's Act, 2003 such as Child abuse Section 8, Child sexual trafficking Section 9 and child labour against employer for employment Section 7 .

9. To maintain contact and list out all NGOs working in the field of women and children related issues and also the details of various shelter homes for children and women run by the Government and NGOs.

10. To work as Multi Task Force for monitoring and locating missing minor girls/children and women laid down by the Supreme Court in Writ Petition (Criminal) No. 610 of 1996 (*Honrilal v/s Commissioner of Delhi Police*) and to perform all the duties as laid down in this respect vide order No. PA/SP/CID/478/2003 dated 18/12/2003 of DGP, Goa.

Duties Of Police

The setting of Women and Children Protection unit is ancillary to the primary responsibilities of the Police. It will help to initiate action on all relevant matters pertaining to women and children. Whenever a woman or child victim of crime approaches them or any information about such crime is received for assistance they will promptly register, enquire and investigate all such complaints, information and cases themselves. They must extend necessary help to Women and Children Protection Unit for successfully dealing with such matters and cases. No case can be

transferred to the Women and Child Protection Unit directly by any Police Station without the approval of the DGP of Goa.

Whenever a rape case or a case of child abuse is reported at the Police Station it is mandatory for the respective Control Rooms and the Duty Officers of the Police Stations to record the same and telephonically inform the In-charge, Women and Child Protection Unit and the dy.SP/CB about the case. No child under the age of fifteen or woman shall be called to the police station for any investigation and such investigation shall be carried out at the place where such child nor woman resides. A copy of the FIR in each case shall be sent to the 'Women and Children Protection Unit' by the concerned Police Inspector In-charge Police Station at once for follow up action.

In-Charge 'women and Children Protection Unit' shall depute a social worker attached to the unit to visit the residence of the victim of rape and child abuse, who will prepare a detailed 'Social Investigation and Assessment Report' covering social, economic, medical, legal and counselling needs.

As provided under the Juvenile Justice (Care and Protection of Children) Act 2000 and other statutory requirements the cases relating to children and women shall be dealt with by the Juvenile or Child Welfare officers or the Women Police Officers as the case maybe. They maybe associated by the Social workers, NGOs and experts in social investigations, counselling and handling the victims.

Mass media is used for creating awareness and due sensitivity in matters pertaining to women and child. Every Police Officer and other functionaries who are involved in any task are required to play important roles. Every Police Officer and all other functionaries under no circumstances disclose the name and identity of the victim to the media and always respect the privacy of the victim. For reasons of confidentiality press briefing are done at the level below District SP, AddlS Crime /SSP (CID) Crime.

Supervision of Women and Child Protection Unit

A Full time Woman Police Inspector shall be In-Charge of the 'Women and Children Protection Unit.' It functions under the direct supervision and control of dy.SP/Crime Branch under the overall supervision of Addl.SP/Crime and SSP/CID Crime Branch.

The local Police Stations shall maintain close liason with this unit in respect all incidents of crimes against women and children. Women Police Inspector In-Charge of 'Women and Children Protection Unit' shall furnish the progress report in cases and other matters dealt by the Unit directly and also data/information about the crimes against women and children to the Reader to DGP who shall put up the same to DGP, DIGs Range/CID and SSP/CID Crime Branch.

Sr. Superintendent of Police CID, Crime Branch will coordinate and review the functioning of the Women and child Protection Unit and shall act as Nodal Officer for the Goa Police. The District superintendent of Police will send fortnightly reports containing figures of crimes against women and children and any other relevant information to the Reader Branch. SSP/CID will prepare quarterly reports about the activities and functioning of this Unit.

Police Stations

By Notification no.1/51/88-DD (G) dated 17th august, 2000 government of Goa passed a notification under the powers conferred under Section 2 of Criminal Procedure code, to make Goa Medical College a Police Station and can deal with crimes against women and children specially those pertaining to kidnapping and abduction, dowry death, molestation, harassment, offences under Immoral Traffic Prevention act, Indecent Representation Act , Dowry Prohibition Act. Similarly Room no1 and Room no 2 of Panaji Police Station to be a Police station for Women and Children.

2. CHILD HELPLINE

According to Section 32(iii) of the Juvenile Justice (Care and Protection of Children) Act 2000 in order to produce the children in need of care and protection before the Child Welfare Committee and to give them timely support, a "Child Help Line" on toll free No.1098 exists in Goa. The Women and Child Protection Unit to maintain liason and work with this Help Line.

In Goa the Child Helpline is directly connected to the Police Stations. This enables the Police to reach to the children in need of care and protection the minute a call is made to childLine. It is housed in Nirmala Institute Altinho.

8.2 PAEDOPHILIA AND GOA TOURIST POLICE

A Large number of foreign and domestic tourist visit Goa seeking pleasure and enjoyment. The mode of seeking pleasure of these foreigners differs from person to person. Some of the foreigners are found indulged in paedophilia activities. Although paedophiles may be among the Indian and foreign tourists and even the local people. Foreigners appear more prominent and hence there is a need to keep a watch on them. While most of the foreign tourist are genuine and deserve respect. There are some people who abuse the warm hospitality of the host and in order to satisfy their sexual lust, abuse the innocent vulnerable children. There are also certain gay organizations and individual paedophiles who share such information among themselves.

A large number of poor people from the States of Karnataka, Maharashtra, Andhra Pradesh, Kerela, Tamil Nadu migrate to Goa in search of their livelihood. Some of them are able to gain employment working in construction sites, mines, ports, factories etc. Some people who are not able to earn sufficient to make their ends meet even allow their children of tender age to beg or to sell petty items in the market or on the beaches. These children are often lured by the paedophiles who make them their victim of lust.

The word 'paedophilia' has been defined in the oxford dictionary as "condition of being sexually attracted to children." In general parlance paedophile is considered to be a person, who is sexually abusing the children. These paedophiles, particularly target the children coming from the lower strata of the society. The children who are targeted by the Paedophiles in the garb of being benevolent. These children are beggars, street children, children doing odd jobs on the beaches, children who do not have a proper place to live.

The Government of Goa has issued the Standing Order No2/2005 to curb paedophilia and rules for the Tourist Police. A child refers to the person as defined in Section 2(d) of Goa Children's Act, 2003 and also Juvenile Justice (care and Protection of Children) Act 2000 a child is a person who has not

completed eighteen years of age. In case of child labour a child is a person who has not completed fourteen years of age.

Role of Police

Section 22 of Goa Children's Act provides that any police officer who sees a person committing any violation against any of the provision of this Act or any Rules may arrest that person. According to Section 8(15) of the Goa Children's Act 2003, any police officer is empowered to detain for questioning at the nearest police station any person suspected to be involved in trafficking of children. If it is found that a person is living with a child not related to them and has not obtained permission and acquired a certificate within three months of obtaining such child from the Department of Women and Child. Although all police are competent and empowered and duty bound to take action under the relevant laws there is a special responsibility cast on Tourist Police to curb paedophilia. Goa Tourist Police have to work along with the Women and Child protection Unit at Police Head Quarters and the Child/Juvenile Welfare Officers at police stations besides the Child Help Line and other NGOs.

Strategy

It is the primary duty of the Tourist Police to control sexual related crimes against children. To achieve this goal the children who are vulnerable have to be identified and protected. The places from where the children could be easily be picked up by the paedophiles have to be identified

Ministry of Tourism, Government of India has launched the Code of Conduct on Safe and Honourable Tourism aimed at registered service providers and tour operators. Though it is not a legally binding code of conduct, the registered service providers and tour operators are supposed to adopt it at the time of application/renewal of licenses/ classifications.

Role Of Tourist Police

1. The children in need of care and protection like abused children, street children, mentally/physically challenged, destitute and orphans have to be produced before the Child/Juvenile Welfare Officer at the Police Station who will in consultation with NGO's conduct enquiry and if necessary such children to ApnaGhar as last resort.

2. A large number of children are seen begging at the beach/tourist houses. They flock around foreigners for gifts or alms. These children have to be produced before the Child Welfare Officer at the police station, who will conduct necessary enquires with the help of NGO's and take action accordingly thus fulfilling the objective of Section 32 of the Juvenile Justice (Care and protection of Children) act, 2000 and Section 10(2) of Goa Children's Act, 2003.

3. A large number of children below fourteen years of age are also seen selling petty items on the beaches. These children are vulnerable to exploitation. These children should be picked up under Section 7 of the Goa Children's Act and produced before the Child/Juvenile Welfare officer at the concerned police station. The Child/Juvenile Welfare officer will conduct enquiries and send such children to children's home.

4. The shacks and hotels are employing minors under fourteen years of age for doing odd jobs like massaging, sale of liquor etc which are prohibited under the law. Action has to be initiated against these shack owners/hotels under Section 7 of the Goa Children's Act, 2003. Such children will also be taken to the nearest police station and handed over in custody of the Child/Juvenile Welfare officer at the Police Station who will act according to the provisions of law.

5. Foreigners seen moving with the Indian children have to be immediately questioned and if suspected to be paedophiles they have to be taken to the nearest police station for further verification according to Section 8(15) of the Goa Children's Act 2003.

6. If an Indian child is seen going to any hotel or establishment which provides boarding/lodging accompanied by a foreigner, the local police should be informed and the foreigner be taken to the nearest police station under Section 10(b) of the Goa Children's Act for enquiry.

Any person assisting a child to gamble or assist in gambling trade are liable for punishment under Section 13(21) of Goa Children's Act. Co-ordination among local police, tourist police, excise department, tourist department, public in general and the people who are associated with the tourist business such as hoteliers, travel agencies, tourist guides, taxi operators, shack and restaurant owners should be maintained. Police have to collect intelligence about the shacks and other joints indulging in the sale of narcotic drugs and prostitution activities. They have to keep watch on the suspicious looking persons for criminal activities such as pick pocketing, bag lifting, snatching and gambling activities. Lifeguards have been posted on the beaches to avert deaths due to drowning. To extend help to the needy the police is providing advice and guidance.

As soon as a Juvenile in conflict with law is arrested by the police he should be placed in the custody of the Child/Juvenile Police Officer at the police station or the women and child protection unit at the police head quarters. Goa Tourist Police work along with the women and child protection unit at police head quarters and the Child/Juvenile Welfare officer at police stations besides the Child HelpLine and NGOs.

3. CODE OF CONDUCT FOR SAFE AND HONOURABLE TOURISM

To position India as a global tourism brand the Ministry of Tourism has strategically outlined in its policy the central principle of ‘AithiDevoBhava’ (Guest is God). To meet this objective and at the core of the National Tourism policy of 2002 the seven pillars of tourism Swagat (Welcome), Sochana (Information), Suvidha(Facilitation) Suraksha (Safety) Sahyog(Cooperation) Samrachanam (Infrastructure developmet) and Safai (Cleanliness).

Safe and Honourable Tourism aims to strengthen the critical pillars of Suraksha(Safety) and ensure that Indian tourist follow international standards of safe tourism practices applicable for both tourists and local residents. i.e local people and communities. Its central objective is to ensure that tourism activities are undertaken integrating the need to protect the dignity, safety and the right of freedom from exploitation of all tourists and local residents involved in or impacted by tourism.

Applicability

This Code of conduct is applicable to all owners, suppliers, contractors, employees of the travel and tour sector including hotels, restaurants, lodges, guest houses, tour agents, entertainment establishments etc. It is applicable to service providers like event management organizations, entertainment providers, transport operators like axis, buses, tour guides and other services or agencies associated with the tourism sector. This is not a legally binding instrument but a set of guidelines for the tourism industry.

GUIDELINES FOR SAFE TOURISM

1. Information and training of personnel

Management will take measures to build awareness and train staff on the guidelines of this code and appropriate legal provisions to enhance vigilance and to ensure that personnel act in a manner that promotes the safety of tourists, local residents and their own staff.

All hotels and tour operators shall train and maintain two persons as focal points to ensure that all safety norms and guidelines of the code are adhered to. The officers shall provide correct information for tourists like information on Child Line, 1098, Women Help Line 1091, local police helpline 100 and also act as a liaison officer with agencies such as the local police stations, immigration authorities, civil society partners working in this area, child and women welfare committees.

In case of an incidence of exploitation, personnel shall be sensitized to report correct information to the appropriate authorities act in cooperation with law enforcement agencies other agencies providing care and support and take necessary action to protect the interest of the individual whose rights are violated.

Organizations will promote awareness on the code among service providers affiliated to their business such as vendors, contractors, taxi drivers, tour guides, event management companies etc.

In case of misconduct by a staff member or personnel of the service provider signatories of the code will commit themselves to act in an unbiased manner reporting the incidence to the appropriate authority and protecting the interest of the individual whose rights are violated.

Identified victims shall not be treated as criminals. They should be identified persons in need of care and protection and should be provided with legal, medical, psycho-social and any other assistance without delay.

1. Public Awareness and guest notification

Messages of intolerance to any form of exploitation must be made evident in appropriate places visible to guests/clients, employees and other visitors . Guests and clients must also be provided information through the company's website, brochures, ticket bills, in-room/in-flight communication etc on issues

related to commercial sexual exploitation such as sex tourism, prostitution, pornography forms of sexual assaults, molestation and key messages.

In order to enhance tolerance for social and cultural norms, signatories of this code must take action to provide information available to the best of their knowledge on local and social and cultural beliefs and norms. Knowledge and tolerance for different social and cultural norms will allow the tourist to dress, conduct themselves and respect local beliefs helping them to adjust and thereby reducing the vulnerabilities they might face as foreigners to a particular destination.

Signatories of the code are encouraged to assist the tourists with guidance on safety tips applicable to specific city/ place like places to visit timings for visit, night dressing and precautions against moving alone and against accepting eatables and favors from unknown persons etc. Guests and clients shall be cautioned against solicitations from touts, non-regulated tourism operators and encouraged to consult the website of Tourism Ministry and other authorized websites.

Signatories will ensure that a clause is included in registration papers seeking commitment of the tourist to act in a manner that respects the dignity and rights of local residents and also to conduct themselves in a manner that shall aid the tourist's own protection against exploitation.

2. Regulated use of premises and official equipment

Management/ owners are encouraged to prohibit usage of the organization premises for the use or abuse of illicit substances, sexual violations and of company equipment for viewing , storage , distribution, promotion or use of material which could increase vulnerability to exploitation of the nature mentioned in the code.

Individuals under the permitted age shall not be allowed permission in to restricted areas like bars and pubs.

Tourism service providers shall verify and maintain a record of details pertaining to tourists, personnel and service providers like address, contact details and also commit themselves to maintaining confidentiality.

Internet usage that promotes seeks any contacts for sex tourism and other sexual services for search of pornographic material and /or to solicit the sale and purchase of illicit substances shall be prohibited.

3. Ethical business practices and marketing

Management owners shall ensure that all contact with business partners, suppliers and franchise agreements bear a clause seeking commitment to provisions of the 'Code of conduct for Safe and Honourable Tourism' in their business.

Any tourism enterprise or service provider found to compromise the safety of individuals shall not be used for marketing purpose. An unambiguous company policy shall be set up to ensure that marketing and advertising does not support the promotion of sexual exploitation or promotion of sexually explicit messages.

Signatories are encouraged to patronize vendors and service providers who are committed to adhering to the provisions of the code.

Implementation and Monitoring

All signatories are required to maintain an annual report on 'Code of Conduct for Safe and Honourable Tourism' and submit it to the designated authority.

Management / owners shall report on training and capacity building initiatives carried out for personnel staff. Means adopted to raise awareness on safety among guests, personnel and service providers.

4. RESTRICTIONS ON CYBERCAFÉS

The District Magistrate of North Goa in exercise of powers conferred under Section 144 of the Criminal Procedure Code 1973 made a Written Order for strict compliance by the owners of the Cyber Cafes in the entire North Goa District. By virtue of a notification restrictions were passed for cyber cafes in Goa.⁴

Restrictions Under Section 144 Of Cr.P.C Of 1973

1. Prohibiting the use of cyber café by unknown person and whose identity has not been established by the owner of the café.
2. Maintaining a register for identity of the visitor/user.
3. Make and entry in the handwriting of the visitor/ user mentioning name, address, telephone number and identity proof. The visitor /user shall also sign the register kept for this purpose.
4. The identity of the visitor /user shall be established through identity card, voter card, ration card, driving license, passport and photo credit card. (Any one of them).
5. Activity server log should be preserved in main server and its record should be preserved for atleast six months.
6. If any activity of the visitor is of suspicious nature the owner of cyber café will immediately inform the police

Record will be maintained about the specific computer used by the person. This order to be effective within 60 days. Any person contravening this order is punishable under S.188 of IPC.

⁴ No. 4/1/92-MAG(IV)340/873 Dated 12th April 2012