A. Juvenile Delinquency: Conceptual Conflicts

I. Introductory

Juvenile delinquency is a multidisciplinary concept and has invited the attention of a variety of professional groups - the criminologist, the law enforcers (Police, lawyer, Judges), educators, administrators, psychologists, social workers, sociologists and psychiatrists. Almost every professional group has viewed the "delinquency" on occasion, perhaps in describing someone they know or in discussing the problem of delinquency in society. Thus, the term has been viewed differently by different people not only in terms of its contents but also in the context of its causation and cure. One person (educator) may refer to youngster who are chronically truant from school as delinquent; other (law enforcers) employ the term in reference to adolescents who commit minor or serious breaches of law; still others (sociologists) may use the term to describe socially handicapped children like "destitute", "vagrants" or "children in risk of moral danger", or "street children". Similarly a psychologist may describe an emotionally disturbed child as delinquent and for him delinquency is a sign of mentally sick child. That way, the term juvenile delinquency embraces many diverse forms and shades of "antisocial" or "non confirmst" behaviour of the young generation. All these meanings may not convey the same sense but they do have overlapping under-currents - "that the behaviour of the young person violates the accepted social and legal norms".

Thus the word delinquency has no standard or commonly accepted precise meaning; although delinquency, in its broad sense, is understood to apply to acts covered within the general range of child misbehaviour. The term has been referred to under different names by different writers depending upon the specific
needs of the discipline to which they belong. Generally the writers with legalistic approach towards the problem describe it under the branch names like "delinquency" or "youth crime", while the writers with sociological and psychological background describe the problem as "socially maladjusted", "problem child", "deviant" or "anti-social". On the other hand a psychiatrist would prefer to address the delinquent child as "sick" or "sub-normal". But there is no compartmentalization in the use of these terms and all these terms are used almost interchangeably with a preferred sense of describing the "non conforming" behaviour of the child below a certain age which may run from the mild naughtiness of the child to a most violent crime. Despite the conceptual vagueness inherent in these descriptions one common quality these terms reflect is that the bearers of these descriptions demonstrate a condition which falls outside the latitude of social tolerance or acceptance. However, such descriptions, because of broadness involved in the terms used, have the merit that it does not presuppose the origin or the legitimacy of the designation, and covers every possible shade of delinquent behaviour, irrespective of time and place.

In view of the conglomeration of legal, sociological, psychological approaches in the analysis of the problem of "delinquency" and "delinquent", no single, unique definition of juvenile delinquency could be possible to the satisfaction of all the disciplines, otherwise also, the problem of juvenile delinquency in respect of "cut-of age" and "questionable behaviour" is invariably viewed in the context of social, economic and cultural background of particular country and region. Thus, even from the angle of purely one discipline the approach is "country-specific" and no universally valid meaning of the term "juvenile delinquency" can be perceived without serious reservations. The issue becomes further clouded by attempting to use jurisprudence and theology in defining delinquency, specially in the context of moral values and codes of conduct.
of different societies which differ widely from society to society and time to time in contents and concepts.

In brief, it can be noted that juvenile delinquency is a broad generic term which embraces many diverse forms and shades of antisocial behaviour of the child and is defined somewhat differently by different societies, though a common converging tendency may be noted in these forms —"socially unacceptable tendency of the child at any given time".

The problem of diversity of shades and forms in looking at the problem of juvenile delinquency is not confined to any single country as is seen from the following statement:

In many countries the meaning of juvenile delinquency is so broad that it embraces practically all manifestations of juvenile misbehaviour. Under the influence of certain theories, juvenile delinquency is identified either with maladjustment or with forms of juvenile behaviour which actually is more a reflection of poor living conditions or inadequate laws of regulations than a delinquent inclination. Thus, disobedience, smoking without permission, collecting cigarette butts, hawking and the like are considered juvenile delinquency. Every often these "forms of delinquency are hidden in statistical data under the vague term "other offences". More often than would be desirable, these "offences" are lumped together with real ones not only because services and institutions for them are not available but also because according to some policies and practices, all of them are considered "maladjusted" and sent to the same institutions. The result is artificial inflation of the juvenile delinquency problem and its forms.  

II. Diverse Conceptual Explanations

Although some stirring of interest in the welfare of children may be discovered in the deep shadows of both religious and secular history of almost all nations but it was only with the dawn of the present century that

scientific and systematic approach towards the problem was initiated. The pioneering works of Burt (1935), Healy (1915), Shaw and McKay (1942), Aichhorn (1935), led many researchers with varied professional backgrounds to extensively and intensively investigate the multifarious aspects of the problem posed by juvenile unrest. Considerably inspired by the writings of these authors, later on the problem was explored scientifically from many different directions. Shaw and Lucas (1970), pointed out that psychiatry has come to exert increasing influence in matters of policy in the enforcement, hence, psychiatry has a major responsibility for carrying out careful research in the field of troubled children. Durkheim and Shaw and McKay emphasize the fact that the environmental system has significant bearing on producing strain and, ultimately, deviant behaviour. On the same line of thinking Cohen, Cloward and Ohlin describe delinquent behaviour as one of reactive nature against dominant middle-class system and its social institution. Miller, on the other hand, feels that delinquents identify with lower-class values and concerns. Matza, in his

8. For detailed discussion, see Chapter III, titled, *Juvenile Delinquency: Causes and Compulsions*.
10. Supra note 5.
analysis has described delinquent conduct as a "drift" which is a gradual process of movement, unperceived by the actor, in which the first stage may be accidental or unpredictable from the point of view of any theoretical perception. Similarly some authors have tried to examine the problem from biological aspect and are of the opinion that criminality is born with the person and can be identified from the physical features of the body.

1) Variable Societal Reactions

Besides the multidisciplinary conceptual explanations, "Country specific" responses towards the problem of delinquency is another basic consideration which makes universally appreciated exactification of the concept of delinquency more complex and difficult. At the very outset we are faced with the twin questions directly disseminating from the problem of juvenile delinquency. What is a delinquent conduct? Who is juvenile? In regard to the first question Haskell and Yablonski have offered five explanatory assessments to the issue, which with a careful examination can be substantiated in the Indian setting also. These include (I) the definition of a specific community regarding deviance; (II) the specificity of the law in a particular area; (III) the personality background and conceptual acquisition (acquiescence) of the juvenile court judge in a particular jurisdiction; (IV) the quality and practice of law enforcement in a given jurisdiction; and (V) parental care and control and reaction about child behaviour. In the context of these issues societal reaction cannot be uniform to the child misbehaviour. Moreover, toleration level of society varies along with cultural

16. In India, during British rule, Criminal Tribes Act, 1871 was passed. Under this Act Government was authorised to declare any tribe as a whole as criminal tribe and subject such tribe to certain restrictions. The Act was repealed in 1952 on the recommendations of Criminal Tribes Act Inquiry Committee, 1949.
and social developments. Thus conceptual diversity is bound to be there at the transnational level and even at national level.

This assertion is supported by a renowned criminologist West, who states that "the definition of a delinquent varies according to community attitudes, the state of the law and the policies of the law enforcement agencies, and the kind of behaviour which leads to delinquency label depends upon the kind of society in which one lives."

61) Different Maturity Levels

Secondly, an adequate definition of juvenile delinquency necessarily involves the concept of age appropriateness of the behaviour. As generally conceived, an act considered as delinquent would partly depend upon the age of the individual whose behaviour is in question. A given act may be quite acceptable at one age and may be an indication of anti-social tendencies at a later age. As juvenile is not merely a term to identify an age-group but one that refers to the period between childhood and adulthood and relates primarily to a process of personal development and self-realization. Thus the question, central to the concept of juvenile delinquency can never be given in exact chronological formative, applicable to all the societies generally and individual involved specifically. But in the age of "individualized treatment" and "scientific justice" the "transitionary period of maturation" must be ascertained in order to focus attention on the problem of juvenile delinquency in its proper perspective.

17. Supra note 15.
At a first glance the chronological age as a criterion of delinquency may seem oddly arbitrary and out of place in the era of individualization of justice. Maturity does not come with age alone and always. How can we hold a dull or emotionally unstable first offender with a mental age of 14 or 15 years criminally responsible if he is a young adult and on the other hand why should we treat more leniently or with greater care habitual, sophisticated, intelligent and tough recalcitrant of 15 or 16 years. From psychiatric or casework point of view the individual's diagnosis and treatment should depend not on his years per se but numerous more individual factors, such as emotion, temperament, experience and physical conditions.  

These divergent approaches widened the scope of the problem to an extent that the term embraced within its fold all kinds of child misbehaviour irrespective of the causation justifications offered and its consequential effects upon the society. These conceptual conflicts provided a very confusing outlook to the problem of delinquency and thus posed very hard choices for juvenile justice system's jurisdictional scope and limits. It was perhaps because of these reasons that many vague terms like "vagrant", "uncontrolled" ,"in moral danger", "incorrigible", "destitute", involving a very high degree of subjectivity, found their place in the legal definitive scope of the term "delinquency" and consequently children falling within the scope of these terms were made to be processed through the same juvenile justice system.

(III) Need For Definitive Certainty

Despite all these difficulties posed by the complexities of conceptual approaches, varied societal reactions and differential chronological age criterion, in dealing with the problem of juvenile delinquency, law must rely

upon some definite classification of juvenile delinquent to cover a set of cases. As one of the quality of law is maximum certainty, both at procedural and normative levels for effective operation and better output.

In the background of such a confusing situation concerning delinquency, most of the writers have offered explanations of the term delinquency than to define it in strict legal sense, which stresses upon exactness and certainty. Since a clear understanding of the fundamental concepts of a problem is a prime requisite of all research, therefore, any study of delinquency must first establish the meaning of the term. As Mack\textsuperscript{21} has put it, "it is impossible to undertake any such research without having to decide first of all what you mean by delinquency. This is a condition which most text books and researchers acknowledge in their first paragraph and then go on to ignore". Clarity of the concept and specific area of research must be identified before any worthwhile study of any problem can be undertaken. Tappan too stresses the same and observes:

Certainly there is no more central question in this study and probably none more difficult to answer. Yet it is important to see the nature of delinquency as clearly as possible and to understand the problems that have impeded efforts at definition..., because on the interpretation of the term depend all those vital differences which set off the juvenile delinquent from the adult criminal at the one extreme and from the non-offender at the other.\textsuperscript{22}

The threat posed by "ungovernable youth" has provoked multitude of reactions and led to variety of explanations.\textsuperscript{23} In order to approach the "phenomenon" on the basis of scope and impact, a definition of juvenile delinquency is necessary. Needed or not, there are virtually no adequate legal

\textsuperscript{22} Tappan, Paul, W., Juvenile Delinquency, McGraw Hill Pub.: New York (1949) p.3.
definition of the term. Few areas of knowledge have been defined as often and in as many different ways as has juvenile delinquency. As Jessup has pointed out, an old and possibly apocryphal Chinese proverb is said to counsel, "one should always have in the background of one's mind a multiplicity of definitions covering the subject at hand in order to prevent oneself from accepting the most obvious." In the spirit of that advice the following definitions and explanations of the concept of juvenile delinquency are offered.

III. Expositions of Delinquent Conduct

In developing a definitive concept of juvenile delinquency, Gibbens and Ahrenfeldt cite three stages of cultural change. The first stage is the tribal culture which had little delinquency. In this setting crime was defined in terms of adult behaviour. The norms of the community and community-based social control agencies dealt with most of delinquency cases. The second stage of cultural change relates to the rapidly developing countries where urbanization is disrupting the stability of the family, the most important and basic social control unit. This also took place in the United States and England where rapid industrialization precipitated the growth of large urban centres. It is during this stage that separate juvenile laws usually originate and are reinforced. In the third stage, a preventive approach becomes more prevalent and the definition of delinquency becomes ambiguous. In addition to juvenile law, which originates in the second stage, great emphasis is placed on determining the psychological and sociological factors that contribute to delinquency and crime causation. The countries of Western Europe and the United States could be considered as being in the midst of third stage of cultural development in the context.

of delinquency problem. Though there is no definite yardstick for determining at which stage of cultural development any particular country is, but broadly speaking the responses of any particular country are reflections of the maturity of its cultural and social values.

In view of the uncertain and shifting ground on which the concept of juvenile delinquency is based, cultural interpretations do influence every stage of the process by which the fact of delinquency is established. It is perhaps due to this reason that Gibbens stresses that "irrespective of the legal definition, child might be regarded as delinquent when his anti-social conduct inflicts suffering upon others, or when his family found him difficult to control, so that he becomes a serious concern of the community." It seems to be a floating definition that can fit any society's reaction to the problem of delinquency, irrespective of the stage of its cultural development. Thus inherent weakness inbuilt in the explanation of delinquent conduct (too much of broadness) fails to meet the requirements of legal definition of the concept, which needs certainty as its first qualification.

(1) Social Meanings of Delinquency

In the broad sociological sense, Dr. Cyril Burt defines the term juvenile delinquency as: "a child is to be regarded technically as a delinquent when his anti-social tendencies appear so grave that he becomes or ought to become the subject of official action." In his definition Burt has covered not only the child who commits some offence but also the category of children who are in need of care and protection because of the surrounding circumstances and familial situations in which they are found. The theoretical coverage of both the categories

(offender and non-offender juvenile delinquents) within the scope of definition of juvenile delinquency further led to the processing of both under the same law and same legal system — juvenile justice system. Thus the theory paved the way for official recognition to the fact that "whatever may be the immediate factor that brings a child into juvenile court, the issues presented are, in essence, problems involving understanding, guidance and protection rather than criminal guilt or punishment".29 This clubbing of the two broad categories of delinquent conduct within the scope of same legal treatment appears to have been motivated by the basic understanding that the non-confirmist conduct of both the categories has the same or almost similar causation factors at the background and thus need similar treatment and protection.

Similarly James S. Plant30 emphasises certain personality factors in the context of delinquent conduct of young persons. These personality factors have been shaped by the situational factors in which child is brought up. According to him "juvenile delinquents are young people who habitually respond to serious and prolonged frustration in an aggressive way". On the other hand Glueck has generalized the concept by describing it as "behaviour disappointing beyond reasonable expectations".31

The broad based meanings normally attributed to the concept of juvenile delinquency by various authors perhaps moved Alan Coffey32 to describe "juvenile delinquency as a "blanket term which obscures rather than clarifies our understanding of human behaviour". He continues,"it describes a large variety of youths in trouble or on the verge of trouble. The delinquent may be any thing from a normal

31. Supra note 29.
mischievous youngster to a youth who gets into trouble by accident. Or he may be a vicious, assaultive person who is proud of his antisocial behavior. As a blanket term, delinquency is like the concept of illness. A person may be ill and have polio or measles. The illness is different, the cause is different, and the treatment is different. The same is true of delinquency. Like illness, delinquency describes many problems that develop from varied causes and require different kinds of treatment. The concept of delinquency described by Alan Coffey is reflective of a need for "individualized justice" and multi-pronged treatment strategies to meet the challenge of the problem.

In view of the vagueness and vastness implied in the definitions of juvenile delinquency it is not possible to effectively neutralize the demands of the various segments of juvenile delinquency problem. Laments Masud Haghughi, "many of our uncertainties and difficulties are related to the variable ways in which we interpret the term "delinquent and delinquency" and shift our focus of attention from one to the other." He further adds, "delinquent is a person who breaks the law habitually or persistently. But the term is not purely descriptive. It also connotes or implies other deviation in such areas as motivation, moral development, personality, social class, parenting and future risks. Therefore, what may start as a simple designation of law breaking may end up as a wide-ranging attribution of complex difficulties which warrant disproportionate intervention."

Musud Haghughi thus started with stress upon certainty for effective treatment of the problem of delinquency but ends up with the same uncertain conclusion regarding the definition of delinquency. His description of juvenile delinquency is biting its own tail, leading us to nowhere, so for the

identification of the problem for legal processing is concerned. While it is undisputed that for proper treatment strategies within a legal framework we must have a clear understanding of the problem and its various implications. Paul Tappan34 has expressed his belief in a scientific and detached approach to the problem in order to formulate effective policy and legal framework to deal with this complex social problem. He observes "however strong may be one's sentiments towards children, the analysis of juvenile delinquency by sociologists, social workers or lawyers should be clear-sighted and unsentimental. For an understanding of delinquency, or an effective method of dealing with it through social action, critical detachment will serve better than mauldin involvement that is so easy a substance for thinking where children are concerned".

The foregoing account shows the generally diffuse manner in which the concept of juvenile delinquency has been explained by various writers. Although every one of them has stressed upon certainty and clear identification of the problem for effective treatment, almost everyone ended up with the same uncertainty so far the definition of the concept of delinquency is concerned. Many of the activities specified as delinquent are no different from those activities engaged in, at one time or another, by all children. Since either all or the vast majority of children at one time or another engage in these activities, and only a small proportion of these children are either socially labelled or officially processed as delinquents. Thus, something more than the mere engaging in these activities is required for the social and legal identification of a child as a delinquent. The second U.N.Congress on Juvenile Delinquency, while acknowledging the complexities of the concept, has tried to device a very convenient alternative solution to shed the ambiguity concentrated around the concept.

34. Supra note 22.
It states:

Juvenile delinquency cannot be considered independently of the social structure of the state. It retains its fundamental characteristic in many countries as a resurgence of its traditional manifestation or in the appearance of new forms. Its recorded increase is partly due to the fact that today a large number of cases are recognized because of a better organization of prevention and treatment and moreover, to the fact that certain countries include in juvenile delinquency a series of minor acts of indiscipline or social maladjustments. The new manifestations of juvenile delinquency, the importance of which has often been exaggerated, take such characteristic forms as gang activities, purposeless offences, acts of vandalism, joy-riding and like which can be serious from the point of public order without necessarily being an indication of serious anti-social behaviour. It is recommended (a) that the meaning of juvenile delinquency should be restricted to violation of criminal law, (b) that even for protection, specific offences which should penalise small irregularities of mal-adjusted behaviour of minors, for which adults would not be prosecuted, should not be created. As such this definition has been divided into two parts, viz., legal and non-legal.35

The second U.N. Congress on the same subject discussed the feasibility of a universal definition of this term. It was agreed that "if the term is restricted to those juveniles in each country who have committed criminal offences, it would seem that no universal definition is needed. Allowances could be made for the wide variations found in the legal systems of the many countries of the world, but the inclusion under the term "juvenile delinquents" of acts which are not serious and which can be classified as behaviour problems could be ruled out. If a clear and restricted definition of juvenile delinquency is established would it not be possible to focus more attention on the kinds of behaviour which need to be prevented".36 Thus the conferences stressed upon the need of a clear identification of the target-group in order to formulate effective legal and non-legal framework for the treatment and rehabilitation of the delinquent children. This is possible only if the various categories described

by the names like "maladjusted", "incorrigible", "uncontrolled", "destitute", "immoral danger", are excluded from the scope of delinquent conduct. By "juvenile delinquency" as per the UN Conference consensus "should be understood the commission of an act which if committed by an adult, would be considered a crime".37

Originated out of pure humanism, the protective treatment for children embraced within its fold all socially handicapped children. Since no discrimination was made between offender and non-offender delinquents in the beginning so all of them were required to be dealt under the same legal system. But if present social reaction is any indication then we can say that the word delinquent originally coined to cover all categories of socially handicapped children, has now come to stay with the meaning reflective in the sense of offender delinquent only. By this reason also it is necessary to exclude the non-offender delinquents from the definition of juvenile delinquency though not necessity from the juvenile justice system.

(ii) Legal Meanings of Delinquency

(a) Delinquent Conduct

Legally speaking, then, a juvenile delinquent is a child (age fixed by statute) who commits any offence (or act which if done by an adult would constitute a crime) and who is adjudicated as such by an appropriate court. Children who are incorrigible, ungovernable, destitute, etc., and who require active community care and treatment are considered a separate category from the strict legal sense. Conversely, delinquency means a specified kind of conduct of a juvenile which is prohibited by a statute having criminal over-

37. Id., p. 52.
tones. Thus every conduct prohibited by statute should not be taken as an act of delinquency. It is only that formative conduct which tends to constitute an offence, not only from legal point of view, but also from the angle of a prevalent social-value-system. Acts like smoking, begging, and aimless wandering etc., though prohibited by law and attract legal action should not be taken as delinquent conduct within the legal sense for the purpose of juvenile justice system. This, of course, does not mean that such acts should not be subjected to social control. It is only desired that such a harmful conduct of a child should be controlled by any social agency other than the juvenile justice system.

Before we have a look at the legal definitions adopted by the children statutes it is profitable to discuss the most important factor so commonly used in the legal expressions dealing with the problem of delinquency, i.e., juvenile age.

(b) Juvenile Age

It has now been universally acknowledged that age has a direct and determining corelation with the criminal responsibility. This assumption of relaxation from criminal liability has been predicated on the understanding that the child's immaturity and the conditions inherent in his immature state make it impossible for him to act as a responsible adult. This basic assumption is perhaps one of the fundamental factors upon which the philosophy of juvenile justice system has been developed. The use of coronological maturity as a basis of discriminating between criminal and non-criminal conduct as evolved into modern statutory law, reflects the acceptance of the principle of a corelation between crime and age.
As soon as this assumption was established there followed the need for some instrument which could determine the nature and the extent of the maturity or immaturity in the child for the purpose of criminal liability. Logically, this led to the demand that each child should be looked upon as an individual and that his responsibility could be determined only in the context of his own level of maturity. Since it is not practically possible to fix cut-off age for fixing responsibility upon all persons irrespective of their social, cultural, physical and mental state, so it was thought that some line must be drawn somewhere in order to introduce jurisdictional clarity in the operation of the criminal justice system as well as juvenile justice system. To accomplish this very basic requirement of the working of any law or legal system, different states have fixed different ages for the purpose of determining the level of maturity in order to differentiate between juvenile and adult, keeping in mind the background social, economic, and cultural developments of that particular society. Although the sharp lines of chronologically clear age between child and adult are necessary for administrative convenience and expediency but any arbitrary division cannot meet the scientists requirement which stresses upon mental, emotional, and social maturity as the basic consideration for that purpose.

Despite the universal acceptance of the principle of maturity in relation to crime, there is no unanimity among the nations regarding levels of maturity in terms of age for absolute immunity from penal implications; conditional immunity from penal liability, and differential treatment to the target-group known as juvenile delinquents. In the broad sense, even in the presence of a lack of consensus among social scientists on the social boundaries of contemporary adolescence, the clearest maker for entry into adolescence is "the transition from primary to secondary school.....entry into one or more adult roles
(marriage, parenthood, full-time employment, financial independence) is commonly regarded as upper boundary".38

In the area of criminal law although the nations differ with each other regarding the cut-off age in the chronological order for determining adult and juvenile conduct (See Table 2.1) but one thing is agreed upon almost universally that the period of transition from childhood to adulthood is a period of danger, and opportunity. The society must both protect the young and discourage them from committing crimes, because criminal act by the young is not less dangerous so far its physical and social consequences are concerned.

Table 2.1

<table>
<thead>
<tr>
<th>Name of the country</th>
<th>Age of absolute immunity from criminal liability</th>
<th>Age for differential Treatment as Juvenile Delinquents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. U.S.S.R. 1.</td>
<td>Below 16 years</td>
<td>(a) 14-16 years(for serious offences only)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) 16-18 years in other cases.</td>
</tr>
<tr>
<td>2. Poland</td>
<td>Below 13 years</td>
<td>(a) Juveniles below 18 years.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) Young offenders below 21 years.</td>
</tr>
</tbody>
</table>

(conted.)


### B. Civil Law System

<table>
<thead>
<tr>
<th>Country</th>
<th>Age Range</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Republic of</td>
<td>Below 14 years</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td>(a) Juvenile 14-18</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) Adolescents 18-21</td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>15 years</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) 15-17 years</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) Youthful offenders 18-20 upto 23 in some cases.</td>
<td></td>
</tr>
<tr>
<td>Japan</td>
<td>14 years</td>
<td>Under 20 years.</td>
</tr>
</tbody>
</table>

### C. Common Law Countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Age Range</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>England</td>
<td>10 years. Upto 14 years conditional,</td>
<td>(a) Under 17 years and (b) 15-21 years for some offences.</td>
</tr>
<tr>
<td>Canada</td>
<td>Under 7 years.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>7-14 years</td>
<td>(a) Under 16 years.</td>
</tr>
<tr>
<td></td>
<td>conditional.</td>
<td>(b) 16-18 years depending upon province to province.</td>
</tr>
<tr>
<td>U.S.A.</td>
<td>7 years to 12</td>
<td></td>
</tr>
<tr>
<td></td>
<td>years(different in different states)</td>
<td>16 to 18 years varies from State to State, but mostly 18 years.</td>
</tr>
</tbody>
</table>

### D. Some Asian Countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Age Range</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>16 years</td>
<td>Child 9-13 Juveniles 14-25.</td>
</tr>
<tr>
<td>Korea</td>
<td>14 years</td>
<td>(a) 14-18 years.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) under 20.</td>
</tr>
<tr>
<td>India</td>
<td>7 years</td>
<td>16 years to 18 years varies from State to State and Male to Female</td>
</tr>
<tr>
<td></td>
<td>12 years conditional.</td>
<td></td>
</tr>
<tr>
<td>Malaysia</td>
<td>10 years</td>
<td>(a) Child 14 years.</td>
</tr>
<tr>
<td></td>
<td>12 years conditional.</td>
<td>(b) Juvenile 10-18.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) Young Person 14-18.</td>
</tr>
</tbody>
</table>

(conted)

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40. Id., pp.90-146.
41. Id., pp.46-84, except U.S.A.
43. Source, Basic Matters of Juvenile Justice Systems, compiled by U.N. Institute for Asia and Far East, Thailand.
In view of the wide variation from country to country, the working paper prepared by the Secretariat of the United Nations, while commenting upon "youth crime" expressed its inability to evolve any universally acceptable definition of "youth" and "youth crime". In turn in a most generalized manner the paper describes that "there is no universally agreed definition of "youth". Age-based definitions of a child, juvenile, youth or adult vary from country to country and from culture to culture." It further observes that "youth is not merely a term to identify an age group but one that refers to the period between childhood and adulthood and relates primarily to a process of personal development and self-realization... for operational purposes and in accordance with the purposed rules a "juvenile" or "a child" or "young" is a person who under the respective legal system, may be dealt with for an offence but is not yet criminally responsible as an adult." 44

In the midst of diverse approaches and absence of universalization regarding the concept of juvenile delinquency comparative study of the magnitude of delinquency problem appears to be unrealistic and unproductive. It becomes imperative to examine the problem and its various aspects, so far as the treatment and rehabilitation within the legal framework of juvenile

justice system is concerned, within the social boundaries of that specific
country. For that purpose legal definitions of the concept of delinquency
is most essential and in fact a starting point.

(ii) Definition of Delinquency

(a) From Theoretical Point of View

Given these indelicate and somewhat vague views regarding the delin­
quency problem, it is necessary to consider the legal definition of juvenile
delinquency as put up by some theorists and also by statutes, dealing with the
juvenile justice system. The basic line of thought of these definition is
guided by the fact that all juveniles contacted by the police, arrested,
charged or even processed through the juvenile justice system are not delin­
quent in the legal sense of the term, as we understand it; nor conversely,
are all juveniles without such a history, non-delinquent, as good number of
them are capable of avoiding arrest and prosecution for inexplicable reasons.
It is in that spirit and sense that some of the non-statutory and statutory
definitions of the term juvenile delinquency, are mentioned here.

Robert Wirt and Peter Briggs describe juvenile delinquent as a "person
whose misbehaviour is a relatively serious legal offence, which is inappro­
priate to his level of development(offence); is not committed as a result of
extremely low intellect, intracranial organic pathology, or severe mental or
metabolic Dysfunction ; and is alien to the culture in which he has been
reared. Whether or not the individual is apprehended or legally adjudicated
is not crucial".

45. Wirt, Robert, D. and Briggs, Peter F., "The Definition of Delinquency" in
Cavan, Ruth S. (Ed.), Readings in Juvenile Delinquency, J.B. Lippicott and
Similar line of thinking is reflected by the definition of the term given by Edward Eldefonso,\textsuperscript{46} who observes:

Delinquency refers to acts of children of a specific age range, acts that are forbidden by law. In other words, juvenile delinquency refers to behaviour which society does not accept and which, therefore, justifies some kind of admonishment, punishment, or corrective measures in the public interest. Sometimes these acts lead to arrest and/or court appearances on a delinquency charge; often they do not.

These definitions of delinquency are indicative of the developed countries approach towards "delinquency" and "delinquent" where minors below the age of 14 years or around are ordinarily excluded from the jurisdiction of the juvenile court and are treated and rehabilitated through non-judicial social control agencies, like, Welfare Boards (Denmark Norway); family courts (Japan). This approach is not only confined to non-offender delinquents but is applicable to substantially large portion of offender delinquents within that age-group range.\textsuperscript{47} The efforts are towards shrinking the jurisdictional scope of juvenile justice system, as a judicial body and to keep it confined to only most adversely affected group of juveniles (offender delinquents) who are in need of coercive intervention of the state sponsored juvenile justice system.

In India also legislative efforts are being directed towards limiting the scope of juvenile court's jurisdiction. The first major step towards that direction was made when non-offender delinquents were excluded from the jurisdiction of juvenile court and were required to be treated by a Child Welfare Board.\textsuperscript{48}

That way almost consensus has merged towards the exclusion of non-offender delinquents from the ambit of juvenile court and stress is towards non-penal


\textsuperscript{48} See Children Act, 1960, Sec. 4 (As amended in 1978) (Applicable to Union Territories alone) and Juvenile Justice Act, 1986 (which has come into force with effect from Oct. 2, 1987 replacing different Children Acts applicable in States before the coming into Force of Juvenile Justice Act, 1986.)
treatment of such juveniles through community-based social control agencies like Juvenile Welfare Boards. Venugopal Rao, a well-known Indian criminologist, too favours this option for a restricted approach towards delinquency problem for better output. He says that "it is safe to restrict our study of juvenile delinquency to all violations of penal law committed by children whose adjudication, custody and treatment have to be imbued with a philosophy of protection".49

(b) From Statutory Point of View

In the light of definitions enlisted above which have theoretical legal overtones in their contents it will be most appropriate to discuss some of the statutory definitions of the term delinquency as adopted by various Children Acts specially in the Indian Social setting. Although after the coming into force of Juvenile Justice Act, 1986 all these State Children Acts and Children Act, 1960 have been repealed but they have not lost their importance with minor changes and additions as yet. Moreover, the new Act is largely a reproduction of Children Act, 1960 as amended in the year 1978. Thus the legal connotation of juvenile delinquent continues to be same as it was there before the new enactment. The first to mention here is the Children Act, 1960 a central enactment, though limited to Union Territories in its jurisdiction. It defines the term juvenile delinquent as:

I. 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.50

II. Delinquent child means a child who has been found to have committed an offence.51

50. Section 2(e), The Children Act, 1960.
51. Id., Sec.(2).
III. Offence means an offence punishable under any law for the time being in force.\textsuperscript{52}

The Act, thus, does not include within the scope of "delinquent conduct" any other objectionable behaviour of the child except the commission of an offence. For the treatment and rehabilitation of a separate category, described as "neglected children"\textsuperscript{53} in the Act, separate dispositional agency has been constituted. The much desired requirement of separating delinquent children from non-delinquent children for the purpose of their rehabilitation was accomplished with the establishment of Child Welfare Boards. Similar provision of separate treatment at dispositional level existed in West Bengal Children Act, 1959. Bombay Children Act 1978, and Haryana Children Act, 1974, Bihar Children Act, 1982, The Orissa Children Act, 1982, etc.

On the other hand the East Punjab Children Act, 1949, nowhere uses the term "juvenile" or "delinquency" in its framework. It defined certain terms which are intended to cover the meanings of juvenile delinquency and laid down elaborated procedure in dealing with the children falling within the scope of these definitions:

I. Child means a person under the age 16 years and when used with reference to child sent to certified school applies to that child during the whole period of his detention,

\textsuperscript{52} Id., Sec.2(n).

\textsuperscript{53} Neglected child means a child who:

I. is found begging; or

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

III. has a parent or guardian who is unfit or unable to exercise or does not exercise proper care and control over the child; or

IV. lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life. \textit{Id.} Sec.2(e).
notwithstanding that the child may have attained
the age of 16 years.\footnote{Sec.3(c), The East Punjab
Children Act, 1949.}

II. "Youthful offender" means any child who has been
found to have committed an offence punishable with
transportation or imprisonment.\footnote{Id., Sec.3(m).}

So for the non-offender delinquents were concerned, the Act had provided
for a separate category under the name of "a child in need of care or protec-
tion"\footnote{Id., Sec.8(1)(a) to Sec.8(1)(g).} Section 8(1) defined this category as:

Sec.8: Children found homeless, destitute etc:(1)
Any police officer or such other person authorised
in this behalf in accordance with rules made by the
State Government may bring before a court any person
who in his opinion is a child and who:

(a) has no home, place of abode or visible means
of subsistence, or is being willfully neglected
by his parent or guardian; or

(b) is found destitute and his parents or surviving
parent or other guardian or in the case of an
illegitimate child his mother or other guardian,
are or is, as the case may be, undergoing
transportation or imprisonment; or

(c) is under the care of a parent or guardian who by
reason of criminal or drunken habits is unfit to
have the care of such person; or

(d) frequents the company of any reputed thief or
prostitute; or

(e) is lodging or residing in or frequenting a house
used by a prostitute for the purpose of prostitu-
tion; or

(f) is made or allowed to beg or receive alms; or

(g) is being grossly overworked or ill-treated by his
employer.

However, the Act had not made any distinction between the two categories
(offender child and non-offender child) so for the dispositional agency for
these categories is concerned. Both were being processed through the juvenile court.57

In other States the Children Acts defined child offenders and non-offenders in almost the similar sense with small variations in terminology used to convey these two categories of delinquents. However, the age of child covered by these definitions was not uniform and varied considerably from state to state.58

All the definitions in these statutes included several characteristics which must be present in the child for a child to be labelled or adjudicated as delinquent, in the broad sense of the term. First, the age of the child determines whether he or she will come under the jurisdiction of juvenile justice system. Secondly the conduct of the child or the situation in which the child is being reared up was material to attract the jurisdiction of Children Acts. Minor infractions of law such as traffic offences, smoking, and non-attendance of school etc., do not involve any serious penal reprimand nor the violaters are classified as delinquents in the legal sense or for the application of Children Acts. Some Children Acts excludes some specific offences from the purview of Children Acts because of the seriousness of the offence committed.59 But as a general rule Children Acts described delinquent conduct to mean an act which would amount to an offence if committed by an adult.

57. For detailed analysis of the definitions and legal framework, see Chapter four.
58. All states and Union Territories except W.Bengal Gujarat, and Tamil Nadu had adopted double standard in fixing the age for males and females which is 16 and 18 years respectively. These three states had prescribed uniform age of 18 years. State of U.P., Punjab and Maharashtra had fixed 16 years for both malesand females.
In the light of the legal definitions presented here, it is clear that the juvenile court used to handle a wide variety of prescribed juvenile conduct. Because legal definitions of delinquent conduct, so far it referred to non-offenders, was quite broad and often vague, the enforcement agency (police) had been given considerable leeway in deciding how and when to intervene in youngster's life. These guidelines, which were originally intended to facilitate the ability of the juvenile court to offer help to children in need, was being used by the court to exercise virtually unlimited powers, over the lives of socially handicapped children. An appraisal of the actual treatment they receive has raised a very pertinent question - whether the original humanitarian goals of the juvenile justice system are in fact being met? The literature of juvenile justice is replete with examples of punishment in the name of rehabilitation and the establishment of "training school" that operate on punitive and supervisory principles and even worse than that.

In India the concept of delinquency and delinquent are looked at from two angles. The first being those acts of young children which would not amount to an offence and such acts have been described under various headings like "persons in need of care" or "uncontrolled children" or "destitute". In more simple words all these descriptions can be put under one name i.e., "non-offender delinquents" also commonly known as neglected juveniles. The second category of children treated under the children Acts is that of those children who are charged for the commission of an offence i.e., offender delinquents. Though.

literally it is not true, but in legal sense and also in common use the word delinquent is ordinarily used to describe offender children. Except Children Act, 1960 and West Bengal Children Act, 1959, Haryana Children Act, 1974, Bombay Children Act, 1978 and few other newlyenacted Children Acts, all other children Acts provide a single-channel processing of both the categories of juveniles i.e., juvenile court. Under the Children Act, 1960 and West Bengal Children Act, 1959 and few other Children Acts there is a provision for the establishment of Child Welfare Board for the non-offender juveniles in order to rehabilitate and treat them. From the conceptual angle atleast Indian approach is more realistic than in some other societies where following the omnibus theory all kind of child misbehaviour is described as "delinquent conduct". But the dispositional mechanism that existed under most of the statutes dealing with children was especially problematic for non-offender juveniles (status offenders) since these youngsters were often processed exactly in the same manner as off­ender juveniles i.e., through juvenile court. However, after the coming into force of Juvenile Justice Act, 1986 this single processing system for both delinquent and neglected children, as it existed under most of the Children Acts in the States, has come to an end. Now two separate agencies i.e. Juvenile Court and Juvenile Welfare Board respectively, have been created for dealing with their cases in a uniform manner at all India level.

One line of thought, however, that underruns throughout all the statutory handlings of juveniles, is reflective of a clear philosophical conception, that youngsters deserve and need a humane, preferential and supportive handling the whatever may be / situation necessitating intervention in their lives through social control agencies.

An overview of the various children Acts that were in force immediately

before the Juvenile Justice Act, 1986 in different States and Union Territories make the following consensus clear:

(a) Child means any person below a certain age that varies from 16 to 18 years.

(b) There are two separate broad categories of children who require protective social control i.e., non-offender juveniles and offender juveniles.

(c) That disposal Agency for both the categories is the same i.e., juvenile court with the exception of Children Act, 1960, Haryana Children Act, 1974, Bombay Children Act, 1978, W.B. Children Act, 1959 and other Children Acts where a provision for the establishment of Child Welfare Boards is there for non-offender juveniles.

(d) All the States acknowledge the need for a differential and protective handling of young persons in comparison to adults.

With the coming into force of Juvenile Justice Act, 1986 uniformity on all India basis with regard to the age of juveniles falling within the jurisdictional scope of juvenile justice system has been made. The Act has fixed the age of juvenile at 16 and 18 years for boys and girls respectively. Besides this, dual system of processing agencies to deal with the cases of delinquent and neglected juveniles too has been introduced on all India level. Now Juvenile Court deals with the cases of delinquent juveniles and Juvenile Welfare Board handles the cases of neglected juveniles.
IV. Differential Treatment: Why?

The above discussion makes it clear that younger age-group must be offered with preferential treatment in handling them in the various spheres of social life. Although there are small variations in the nature and kind of treatment and necessary processes for that purpose depending upon different social setting, but no one denies the fact of providing different treatment to the "youngsters in trouble" in comparison to adults in the same or similar situations. The natural question that troubles the mind in this context is: why should the society treat adolescents, who have violated or who are most likely to violate the social norms, differently from other adolescents? Another related question, in the context of differential treatment, that comes in mind and needs pointed answer: why should the society treat young delinquents differently from other offenders? So for the category of neglected and destitute juveniles is concerned there is almost universal consensus that such marginalised juveniles must be treated properly by the State and put on the path of honest life. If they are not cared during this crisis span of their life there is every possibility of such juveniles drifting towards the life of crime and delinquency. So it is in the ultimate interests of the state and society to offer every care, protection, guidance and treatment to such "street children". However, the category of juvenile offenders has not so far succeeded in creating the same benevolent feelings in the processing and disposal of their cases. But this does not mean that they deserve the same or similar treatment as an adult offender. Differential treatment in their case has been accepted. But the response concerning nature and contents of preferential treatment to be given to this category is not uniform and constant. The importance of these questions becomes more demanding because of the inherent social policy conflicts in dealing with youth crime, specially in its violent form. Social policy towards youth
calls for help, protection and wise supervision, while social policy toward crime calls for suppression, control and elimination. Some of the valid justifications in favour of positive answers to these questions can be discussed under the following headings.

(a) Diminishing Responsibility

What distinguishes the young offender from other adolescents is the gravity of the specific offence that he has committed and its implications for the physical safety of the community, for the offender's life chances, and for a social order in which adults expect obedience from the young.\(^63\)

There are many considerations that prompt us to formulate one social policy incorporating principles of differential treatment, both procedural and normative in dealing with youth in comparison to adult who has committed the same offence. Immaturity is widely held to limit an individual's responsibility for his action.\(^64\) The concept of diminishing responsibility on account of immaturity led to the lenient and protective treatment philosophy towards young offenders not because their acts are less dangerous but because they are less capable of controlling impulses, resisting peers, or thinking in the long-range terms that characterize mature decision making.\(^65\) This, certainly, does not mean absolute legal protection to the young offenders because they may ultimately become "the enemy of the good". It only emphasises that placing the same scale of legal and penal requirements for his delinquent conduct will not be fair and reasonable, looking into his mental, physical and social

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64. Id., pp. 120-122.
development and unstable emotional setting.

The implications of diminishing responsibility are not new and only in the case of young offenders. Precedents for this type of penal policy appear in the criminal law relating to insanity, intoxication and tender age group (below seven). Considerations of diminishing responsibility have more pronounced effects on sentencing even for the very serious offences that normally mandate the most awesome of criminal punishments. Thus immaturity influences in favour of soft and protective treatment not only at the hands of legislature while making substantive and procedural laws but also at the judicial level while determining sentence involving a young offender. The concept of curtailed criminal responsibility for children, resting upon the child's presumed incapacity to form the necessary criminal intention remains a living force in the law.

(b) Delinquency: A Passing Phase

For substantial majority of juveniles delinquency is just a passing phase of life which will come to an end of its own by sheer passing of couple of years. Regardless of age, most first offenders are not reconviced, and the majority of young offenders who are convicted repeatedly nevertheless have a strong tendency to cease being convicted in their early twenties. Hence,

66. Indian Penal Code, 1861, Sec. 84.
67. Id., Sec. 85, 86.
68. Id., Sec. 82, 83.
71. See, Crime in India-1982, p. 110. (86.4 per cent of juveniles apprehended during the year 1982 were new offenders).
as far as records of convictions go, it would appear that delinquent habits are for the most part only very sporadic, and that the great majority of young people grow out of them. The long term criminal career is a statistical freak in comparison with common place delinquency of an occasional and not very serious kind. In spite of the publicity given to atrocious or brutal crimes by the mass media, largely because of sensationalism, the fact is that the great majority of the offence committed by young persons are not very serious, not carefully planned or pre-mediated, and not part of a professional commitment to crime.

(c) Potential For Reforms

If on one side youth is a very vulnerable group, unable to effectively and successfully withstand the adverse effects of socio-economic circumstances and physical, intellectual and emotional deprivities than on the other hand youth possesses great potentials for recovery and reform, provided he gets proper guidance, help, supervision and protection. This is a fact that most of the juvenile offences are concentrated upon economic gains and most people who commit such offences during adolescence cease to commit them upon attaining adulthood. In order to provide a fair chance to the juvenile offender to outgrow his developmental stage, that is peculiarly vulnerable to pressures towards criminality, without a major sacrifice of his liberty, he must be offered with reasonable opportunity to learn from his misdeeds, through a least, if possible, but favourable under all circumstances, intervention by the criminal justice agencies. Thus, it is much easier, far more hopeful and infinitely more urgent, to reform, or to at least seek to reform, the transgressor while he is

73. Supra note 71, p.86. (Most of the juveniles apprehended during the year 1982 were charged under offences like theft, burglary, gambling or violation of Prohibition laws.)
young. During the susceptible years of infancy and youth, the delinquent is still under the supervisory influences of his parents, teachers, and other community elders. This is more so in the Indian social setting, where community life still maintains some traditional respect for these primary social control agencies. His habits are not yet fixed and he differs from the rest of the population only in the accidental misfortune that he has been caught and prosecuted. He is aware of this and is sentimental about it. If treated properly he can be very easily made to join the main stream and lead an honest life. But mishandling at this stage will permanently induct him into criminal career because that would perhaps be the only choice left for him.

Additionally, in case of a young person searching inquiries are less difficult and more penetrating and make diagnosis of his delinquent conduct easier and near to truth. The facts are recent and accessible. Information about his birth, his family history, his early childhood and his subsequent development, can, as a rule, be readily got from his parents, neighbour and companions. His intellectual power and moral tendencies can be determined from his teacher besides the child himself. In childhood the mind can be more easily analysed; character is less complex; motives simpler to unravel. Child psychology, as a science, is further advanced and more fully understood than the psychology of adults. Moreover, the young person himself is not resistive to examination and questioning. With youthful cases, we are, in every direction, nearer to verifiable beginnings; and the whole case history is shorter and less involved. All this makes the criminal justice agencies, at every stage of the case, to explore the possibility of reform to the nearest exactness. It may not be possible to be successful in all the cases involving juveniles. But mere failure in few cases should not deter the experimentation in the right direction.

It will certainly have better results in overall assessment if rich potentials of reform in the young are properly explored and exploited for a better end. It is a traditionally deep-rooted general belief that juveniles, just because of their youth and related capacity to learn, are more likely to respond favourably educational and vocational treatment measures than adult. It is this belief that justifies a differential treatment in cases involving juveniles.

(d) Misplaced Fault

Although it will be wrong to totally absolve the young from their culpable conduct, but basically the juvenile delinquency is by-product of socio-economic marginality and disadvantage. His physical, intellectual and emotional immaturity further contributes to his non-conformist behaviour. All these factors, which contribute towards his criminal tendencies and ultimately push him into life of crime, are largely beyond his control. Thus, delinquents constitute a special and separate group among the youth who, due to reasons beyond their control, succumb to these pressures, being not prepared by social agencies to face these challenges of life.

In developing and under-developed countries where youth crime is basically the result of economic adversity, there is a fundamental duty of the society to compensate for its failure to control crime generating situations and to provide adequate openings for the youth for an honourable living. In such a situation the child finds himself in a miserable position and is ultimately diverted, by sheer compulsions of survival, towards life of crime or

75. In India 52.8 percent and 62.9 per cent of the total juvenile apprehended in 1982 and 1983 respectively belong to income group with less than Rs 150 per month. See Crime in India-1982, p.110 and Crime in India-1983, p.111.
child labour. Since it is not possible even with the best economic management
and social development to eliminate the causal effects of delinquency, so a
preferential and humanitarian handling of this age-group becomes a moral,
social, and constitutional imperative. The society in no way is justified in
punishing others for its own failure in social management. The differential
treatment thus provides an opportunity to mitigate the sufferings of this
unfortunate group. Commenting upon youth misbehaviour in the present social
set-up, the President's Commission has made the remarks which have universal
validity:

On the whole it is a rebellious oppositional society, dedicated
to the proposition that the grown-up world is a sham. At the
same time it is conforming society; being inexperienced, unsure
of themselves, and, in fact, relatively powerless as individuals,
adolescents to a far greater extent than their elders conform
to common standards of dress and hair style and speech, and act
jointly, in group or gangs.  

So it becomes more imperative upon the present generation not to expect
absolutely confirmist behaviour from the younger generation, in tune with their
own standards of ethics and living. In keeping with the pace of development all
around, we must not judge the conduct of the young from the standards of the adult world. We must accordingly
adjust our toleration level and respect the legitimate aspirations of the coming
up generation with a reasonable margin for error and wrong.

(v) Stigma and Detrimental Effects of Ordinary Criminal Law

There is almost consensus that premature and unnecessary intervention
by the criminal justice agencies (including juvenile justice) has detrimental
effects on the young person who may be caught in its net accidently or otherwise.
Juvenile justice intervention in the life of the young takes place at a stage

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76 Supra note 63, pp. 12-16.
when the other societal based operative factors had already caused a damage
to the child's personality which cannot be wholly repaired. Intervention at
this stage reinforces and strengthens delinquent potentials in the juvenile's
personality on one side and suppresses the recovery and treatment responses
considerably on the other. The increasing tendency to remove juvenile offenders
from the scope of regular criminal justice system has to a great extent been
conditioned by the endeavour to spare juveniles from that stigma and those
detrimental effects which obviously may result from criminal procedure, includ­
ing also the association with adult offenders in various respects. The often
made assertion that to a considerable extent, adult offenders have also ap­
peared as juvenile offenders or delinquents and that we therefore, have no "save
the youth of today from becoming the criminals of tomorrow." As it cannot be
denied that juvenile offenders as a group run a statistically greater risk of
becoming recidivists than adult offenders. It is now a well established fact
that contacts with the criminal justice system has many undesirable effects
upon young children. It tends to encourage them to remain emotional children;
it tends to deny their individuality and impose one "correct" mode of behaviour
on all children; it tends to lead the child to deny facts they know to be true;
it tends to encourage future delinquency.

The various influencing factors for the differential treatment in favour
of juvenile delinquents and also for the determination of upper-age limit for

79. In 1982, there were 13.6 per cent juvenile recidivists in comparison
to 6 per cent adult recidivists. See Crime in India-1982, p. 110 and 132;
See also Report on Swedish Parliamentary Investigations (S.O.U.) Report
No. 56, Appendix, (1956), pp. 35-36.
(1978), Chapter 6, pp. 82-96.
them can be summed up in the words of Ola Nyquist as under:

(a) Humanitarian factors;

(b) Consideration of the special psychological, mental, physical, educational and social characteristics of adolescence and the following years;

(c) the recognized inception of adult criminality in juvenile delinquency crime;

(d) the frequent occurrence (in relation to sense) of serious crimes and other forms of anti-social conduct in a special age-group;

(e) observation of ineffective crime prevention and also the possible detrimental effects of certain procedures and treatment measures when applied to offenders in special age-group.

(f) Consideration of the age of full civil majority and the demand on the part of the individual to decide and act on his own account.

(g) financial and practical ideological objections, and objections in the interest of public law obedience or from other public points of view, to expanding the age range of special procedures and treatment programmes;

(h) consideration of the age-group of application or already existing special procedures and treatment programmes.

81. Supra note 42, pp. 172-173.
An additional legal antecedent that worked in favour of protective
differential treatment to juvenile delinquents was the doctrine of "Parens
Patrae" (the state as the guardian of its ward - the child) by which the
state intervenes in the life of the child assuming parental rights. This
document developed out of appeals for justice on behalf of neglected and
dependent children of the King's chancellor in feudal England. The doctrine
of "parens patrae" which technically is a doctrine of equality, and is often for
this reason held to be non-criminal, extended its jurisdiction to delinquents
as well. The English concept of the King in the role of parent was the basis
of the preferential treatment to the young person and ultimately served as the
foundation of the juvenile justice system. Mismanagement and dehumanising
treatment meted out to the juveniles placed in the corrections further streng­
thened the voice for humane and protective justice system for the children.

VI Child Saving Movement

Another major development that played a positive part in shaping the
enlightened and compassionate response towards the "problem children" was the
"child saving movement". Initiated in England in the middle of the eighteenth
century by Sir John Fielding and on the continent by August Hermann Francke
in the German states about a half century earlier. 82 The child savers were
reformists who were concerned with rescuing those who were less fortunately
placed in the social order. 83 The movement gained momentum with the pace of

82. See for details, Cadbury, G.S., Young Offenders, Yesterday and Today, London,
(1938), pp. 18-21; see also, Teeters, N.K. and Reinemann, J.O., The Challenge

time and became powerful enough to influence legislature to begin juvenile courts. The important factor that helped in the precipitation of child-saving movement and juvenile court legislation have been summarized by Faust and Brantingham as; (1) increased concern about the treatment of children under the criminal law; (2) increased concern about the effects of urban life and the threat it posed to middle-class rural values; and (3) the rise of feminist movements.

Furthermore, the advancement of civilization, better and scientific knowledge of human behaviour, and indepth study in the field of crime causation and its control, inducted more humanism in the administration of criminal justice in general and juvenile justice in particular.

All these factors, collectively and individually, ultimately culminated in the establishment, and later on in the improvements, of a separate and protective criminal justice system for the juveniles in trouble with law. These developments greatly promoted the individualization of treatment and socialization of procedures in relation to both, adult and juvenile offenders. Thus, a marked departure from punitive and deterrent criminal justice towards social justice and welfare became more and more accentuated. The juvenile court and the child welfare movements were apparently a response to what has been called "the modern spirit of social justice" and "the idea of social jurisprudence was about to become a reality." The goals of this new justice system were prevention of future delinquency and treatment of those juveniles who had already committed delinquent act. The humble efforts of some socially conscious individuals and other contributing factors ultimately became a worldwide


movement for the creation of a better and protective treatment to children in all walks of life, specially the administration of criminal justice. Some of the above assertions supporting special treatment for young offenders may be debatable. Yet they all play a certain role in shaping dispositional decisions and thus effect the lives of young offenders.  

V. Juvenile Justice

(1) An Historical Perspective

Almost whole of the present Indian history relating to crime and delinquency is tied to the English judicial and legal system. No distinction was made between adult crime and juvenile delinquency in either early English or Indian history. If the youngster was involved in the commission of a criminal act, he was tried in an adult court and was usually subjected to the same criterion for processing and determining guilt. There were "young criminals" but no "delinquent children". Thus, juvenile justice in its present form is a twentieth century's baby.

However, the legal history of handling of children is characterized by a comparatively early recognition and gradual development of a distinction in the disposition of young and adult offenders, chiefly because of minority considerations. Humanitarian and religious features in the handling of juvenile offenders can also be identified by a close examination of legal and non-legal literature of almost all the communities.

(a) In Ancient India

Before the Britishers politically settled in Indian Sub-continent after the battle of Buxsur and battle of Plassay, both the Hindu and Muslim customary

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laws were in operation in India, although criminal law was almost totally based upon the religious notions of the Muslims. We do not have any specific reference to the juvenile delinquency or child offenders in the legal system in operation immediately before the introduction of English legal system in India. However, some traces of preferential treatment concerning the children can be found in early Hindu ethical codes:

A parent should not administer any punishment for any offence to a child who is under five years of age; children of such tender age should be nursed and educated with love and affection only. After the age of five, punishment may be given in some suitable form, such as physical chastisement or rebuke by the parents. Towards the later half of childhood, however, punishment should be gradually withdrawn and replaced by advice. From the age of 16 years upward sons and daughters should be treated as friends by the parents.87

Similarly regarding punishment to some specific categories, including children, a comparatively lenient attitude was shown in ancient Hindu codes. Manu prescribed simple whipping or rebuke for insane, women, infants, the poor and the sick.88 The Matsya Purana granted concessions for the old and invalid, pregnant woman and children in fixing punishments.89

Yajnavalkya in the same way repeated that before inflicting any punishment strength, age, time and place should be taken into consideration.90 The Mahabharata emphasised that until a boy reached fourteen years he should not be considered sinner even if he committed a sin.91 Kautilya also favoured exemption to children.92 These measures reserved for child misconduct were based upon corrective and reformatory philosophy. Many of the salient features of ancient Indian legal system were lost for a few thousand years following the

88. Manu, IX, 230 (Manu Simriti)
89. Matsya, 227, 177 (Matsya Purana)
90. Yajnavalkya I, 367, II 75 (Yajnavalkya Simriti)
decline of Hindu era. Certain political developments including the invasion of India by Muslims brought about a total change in the concept of justice, and law and justice became subservient to Muslim religious philosophy.

But it is to feudal England and the English legal system that the present Indian judicial system, including juvenile justice system, must trace its heritage.

(b) In Pre-Roman and Greek Law

In Pre-Roman and Greek Law some fragmentary references to the handling of juvenile offenders can be pointed out. Of course, these references are not comparable, in their contents and application, to the prevailing approach towards minors on legal and social matters. The relationship between children and their parents is touched upon both in the Code of Hammurabi and in the Mosaic Code. Later stipulated severe punishment, including death, for a child who broke the commandment to honour his parents. In Rabbinic Law we seem to meet the conception of discernment for the first time in the observation that a child nine years and one day old would not be sentenced to death for a capital crime because it was exclusively presumed that "child has no discretion".

(c) In Early Chinese Law

In early Chinese Law also some distinction was maintained, based upon age, for the purpose of penal liability. An offender under seven years of age was completely exempt from punishment. Offenders between seven and ten were recommended for the Emperor's clemency and in the case of non-capital offences an offender between ten and fifteen were subjected to fine only.  

95. Id., p. 13.  
96. Supra note 42, p. 114.
(d) In Roman Law

So far Roman Law is concerned there are many detailed reference in connection with the legal position and capacity of the juveniles pertaining to civil rights and liabilities. But in the area of criminal law the legal provisions are scanty and not very specific in nature and contents.

In the Twelve Tables we can find two references in two sections dealing with the distinction between the handling of juvenile and adult offenders. The difference was probably due to the distinction recognized by the law of the Twelve Tables - between intentional and unintentional violation of legal norms. In cases of juveniles linient consequences usually followed in comparison to adults. Although the Roman Law(Twelve Tables) did not recognize the concept of absolute irresponsibility from crime on the part of the juveniles but gradually the idea of considering juveniles under puberty gained acceptance. According to Labeo and Ulpianus there was no criminal liability for any damage done by a child, and in cases of those juveniles who had not obtained puberty, liability was conditioned with requirems of sufficient intelligence to commit a legal offence. Justinian observes:"my decision is, since theft depends upon intent, that one under the age of puberty is liable only in case he is near puberty and, for that reason, knows that he is doing wrong". In this way the Roman Law on criminal responsibility between infancy and puberty came to depend on a combination of three factors:

100. Supra note 42, p.114.
101. Supra note 99.
102. Supra note 42, p.115.
chronological age and its proximity to either infancy or puberty; nature of the offence; and mental capacity of the offender.\textsuperscript{106}

\textbf{(e) In German Law}

In the medieval German Law the approach towards children, both in civil and criminal law, differed more or less not only from state to state but also from time to time. Various upper age limits of penal minority were recognised in different states which ranged from 7 to 15 years.\textsuperscript{107} However, penal minority did not necessarily mean exemption from all sanctions of punitive or compensatory nature.\textsuperscript{108} The basis of exemption of children from punishment was their presumed incapacity to distinguish between "right and wrong" between "good and evil" in other words their inability to understand the nature of their acts.\textsuperscript{109}

\textbf{(g) In Anglo Saxon and Early English Common Law}

During the early Anglo-Saxon period some (fragmentary) isolated instances of criminal responsibility of children and criterion for fixing criminal responsibility of children can be traced.\textsuperscript{110} Children of ten and twelve years were ordinarily held responsible for theft and robbery depending upon the period of rule of a particular King.\textsuperscript{111} Infancy, accordingly, was no defence among the Anglo-Saxons but pardon might be granted to a juvenile under twelve years of age who robbed.\textsuperscript{112}

\textsuperscript{106} Id.,pp.14-15.
\textsuperscript{107} Supra note 42, p.116.
\textsuperscript{108} Id.,p.117.
\textsuperscript{109} Id.,p.117.
\textsuperscript{110} Supra note 105, p.15.
During the period followed by Norman Conquest there was no rule of absolute immunity to children from criminal conduct but pardon and exemption from punishment were being used as a matter of course for juveniles under seven.\textsuperscript{113} As a matter of rule there were no definite principles with regard to relationship between the age of an offender and his penal liability and it was discretionary with the judge to decide whether the child is old enough to be punished or not.\textsuperscript{114} Later it became settled that juveniles in the sub-adolescent period should be presumed not to have attained full power of discrimination and punishment was limited only to those cases which involved malice.\textsuperscript{115}

This is how, in England, broad division was settled between absolute and relative(qualified) penal immunity on the part of children. It was only in the 117th century that strict boundary lines surfaced when the different periods were fixed for the purpose of criminal liability of a child in English Law.\textsuperscript{116}

\textbf{(11) Modern Perspective}

It is clear from the perusal of above discussion that differential and comparatively lenient legal approach towards children has always been reflected, in one form or the other, by almost all societies, although by any standards it cannot be compared with the modern concern and approach towards the problem of juvenile delinquency and treatment of young offenders.

\textsuperscript{113} Id., pp.364-366; supra note 111, p.16.
\textsuperscript{114} Id., p.366.
\textsuperscript{116} Id., pp.369-70.
(a) Development in England

In English law, which can rightly be described as a mother of present Indian legal system, the rules relating to the age of relative and absolute immunity from criminal responsibility (7 years and 14 years) were adopted as early as the 17th century and have been upheld since then. (With a modest change in 1933 when the maximum penal age of 7 was raised to 8, and again in 1963, it was raised to 10 years.)

Inspite of these statutory provisions for a differential treatment for children, the punishment meted out to young offenders was often very severe and disproportionate to their age and level of maturity. There are instances of death sentences passed on children of eight, even for petty thefts and flocking of thousands of young children to jails along with hardened adult prisoners. These circumstances and maltreatment destined for the young offenders in jails moved certain socially spirited individuals to voice for reform in the administration of criminal justice to the young. It was due to the efforts of individuals like Elizabeth Fry and Mary Carpenter, to mention a few; that led to the establishment of Reformatory School for young offenders under the Reformatory School Act of 1854 and 1855. Industrial School Act of 1857 was passed few years later for neglected children who might turn into delinquents. Then followed the chain of many statutory enactments in the later half of the 19th century, introducing further improvements in the existing statutes. Of these some most important are Reformatory School Acts of 1866, 1872,

117. Children and Young Person Act, 1933, Sec.50 and Children and Young Person Act, 1963, Sec.16(1).
119. Id., p.208.
1891, 1893 and The Industrial School Act of 1866, 1879, 1880, 1891. 122

Another personality, who contributed towards better treatment for the juvenile offenders at the hands of law, was Sir William Harcourt. He, for his efforts and support for a protective treatment to the young offenders, was relentlessly attacked by Press and the Queen, but he ultimately succeeded in the abolition of imprisonment as a preliminary condition for going to a Reformatory School in 1899. 123 Thus the reformatory movement was given statutory recognition and strengthened further by the establishment of first juvenile court in England in 1905, although the legal provision for juvenile courts throughout the country was made by the Children Act of 1908. 124

The concept of juvenile court as a separate jurisdictional agency for dealing with juvenile offenders was relatively new in the 19th century and was preceded by certain developments in the area of reformative philosophy towards young children. The innovative use of probation as a most common method of non-institutional treatment was one of them. 125 Besides this, as has already been noted, correctional facilities for juveniles too were a new idea in the later half of the 19th century as introduced in England and many other countries. 126

124. Children Act, 1908, H.M.S.O., (The Act abolished death punishment in cases of children, Sec. 103).
125. In U.S.A., the first law dealing with probation of juvenile offenders was passed in 1878 and England followed suit in 1887. See supra note 123.
126. Pope Clement XI was the first who introduced the idea of "the correction and instruction of profligate youth". See U.N. Comparative Survey on Juvenile Delinquency, Part IV, Asia and Far East, New York (1953), p.5.
The idea of special and protective treatment to juveniles is a British legacy in India and was introduced during the British Rule.127

(b) Development in India

The Law in India, following British precedents, has developed from the purely primitive and retaliatory approach of the rigid criminal courts towards a gradual acceptance of the humanitarian concept of re-education and protection of "the child is reed" as a ward of the state.128 The march of civilization from the age of foregone jurisprudence of retributive and deterrent justice to rehabilitative, individualized, and scientific justice, as reflected by the present juvenile justice system (at least in the statute books) is not sudden development but a slow and steady progress in the field of criminal jurisprudence. Now, the Goddess of justice has not only unfolded the cloth traditionally tied around its eyes from the time immemorial, but has also developed many legal and extra-legal instrumentalities to look beyond the crime and the criminal, in order to meet the demands of ever increasing individualized justice. Pre-sentence reports, social inquiry report, age, chance to reform (probation, suspended sentence, parole etc.) are some of the concepts which are now having legal recognition, and can be traced in the historical perspective for their roots and development almost in all legal system.

The first legislative measure in India reflective of rehabilitative philosophy towards children, though incidently, was the Apprentices Act of 1850 (the Act has since been repealed by the Apprentices, Act 1961 which does not contain any such provision). Primarily this Act was with the purpose of regulating the relations between employers and employees. But it also provided


128. Id., p. 4.
for the placement with the employer of such child, between the ages of ten
and eighteen years, who had been held guilty of committing a petty offence
or who was a destitute.\footnote{The Apprentices Act, 1850, Sec. 1.} Such child could be committed as apprentices to
the employers for training. The Magistrate who could commit the child under
the Act was also having the supervisory powers for controlling the relation­
ship between the child apprentice and the employer and used to act as guardian
of such child.\footnote{Id., Sec. 3.} The provision in the Act was with the underlying idea of
properly channelizing the misdirected energies of a juvenile towards the learn­
ing of some trade or craft in order to equip him with proper training for
earning honest living.\footnote{Id., Preamble.}

Though enacted with the best of motives the Act failed in its objectives
because of some inherent defects in its framework. Neither it was obligatory
for the Magistrate to entrust the child for apprenticeship with the employer
nor the employer was under any legal obligation to accept the child even if
offered for placement by the magistrate. Also, the magistracy trained in the
dogmatic theories did not care to make use of these ameliorating provisions.\footnote{Dhillon, M. K., The Problem of Juvenile Delinquency in India - A Ph.D.

The major development, making the beginning of differential treatment
in India in favour of the child, was the passing of two basic enactments in
the field of criminal justice. Indian Penal Code 1860 and Criminal Procedure
Code 1861 (later on amended in 1884, 1898, and 1973) are the two important sta­
tutes which not only codified substantive and procedural laws (criminal) in India
but also made a new beginning in the administration of criminal justice by
introducing clarity and uniformity in its (criminal law) contents and application.
The Indian Penal Code (Act XLV, of 1860) exempts all children under the age of seven from criminal responsibility. It also exempts from all penal responsibility, children between seven and twelve, who have not attained sufficient maturity of understanding the nature and consequences of his act.

The Criminal Procedure Code was enacted in 1861 and later amended in 1884 and 1898. Sections 29-B and 562 of the Code related to the treatment of young children. These sections of the code carried with them the lofty ideals of "social justice" and "reformative philosophy" and thus made the beginning of a progressive approach towards young offenders in the field of procedural law. Section 29-B provided for the trial of any person under 15 years of age for any offence not punishable with death or transportation by a District Magistrate or any magistrate empowered under the Reformatory Schools Act, 1897. This section restricted the jurisdiction of ordinary courts in the trial of juvenile offenders. Section 399 provided that when any person under the age of 15 years was sentenced by any criminal court to imprisonment for any offence, the court might direct that such person instead of being imprisoned in a ordinary jail, should be confined to any reformatory established by the State Government as a fit place for confinement in which there were means of suitable discipline and training in some branch of useful industry. Section 562 also made a specific provision for offenders under the age of 21 years for release on probation of good conduct, under certain conditions.

133. Indian Penal Code, 1860, Sec. 82.
134. Id., Sec. 83.
136. These sections under the new Code of Criminal Procedure, 1973 correspond to sections 27, 360 respectively.
137. This section was incorporated in the Criminal Procedure Code in 1923 in order to cut short the lengthy committal proceedings in cases involving juveniles, which followed in every case triable by a Session Court. With the coming into force of the Criminal Procedure Code 1973 committal proceeding have practically been abolished in all cases.
instead of sentencing such person to imprisonment. The provision thus provided a fair chance to the young offender to reform himself. Unfortunately this provision has not been liberally used because of the vindictive nature of the police as well as the non-positive attitude of the judiciary.\textsuperscript{138}

In chronological order the next major development that was directly and solely devoted towards the treatment and socialization of juvenile offenders without undergoing the rigorous pangs of imprisonment, was the Reformatory Schools Act of 1897. It was an all India measure, which remained in operation in all those States which were having no Children Act.

The Act deals with delinquent boys under 16 years of age in Bombay State and under fifteen years elsewhere. The Act made a detailed provision for the setting up and management of Reformatory Schools; a distinctive machinery with the spirit of reformation of youthful offenders. Under the Act "a youthful offender" means 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. Such youthful offender, at the discretion of sentencing court, could be sent to a reformatory school instead of jail.\textsuperscript{139} The Act also provided for the licencing out of boys over fourteen years of age if suitable employment could be found for him.\textsuperscript{140}

Another salient feature of the Act is the provision to facilitate inter-state transfer of youthful offenders.\textsuperscript{141} For minor offences the court has the discretion to discharge the offender after due admonition or hand him over to

\begin{itemize}
\item \textsuperscript{139} The Reformatory Schools Act, 1897, Sec.4(a).
\item \textsuperscript{140} Id., Sec.18( )
\item \textsuperscript{141} Id., Sec.16.
\end{itemize}
his parents, guardian or nearest relative, on such person's executing a bond as per the requirements of the sentencing court.\(^\text{142}\) Though in its operation the Act was applicable only to male youthful offenders because under the Act provision for reformatory school was limited only for male delinquents and there was no such provision for girls or destituents. But only for a limited purpose, the Act was applicable to female youthful offenders, as a girl offender could also be discharged by the court after due admonition or delivered to her parents.\(^\text{143}\)

In the history of juvenile justice in India, the Reformatory School Act was a landmark development, though it covered only post-sentence juvenile justice. Despite the fact that the working of reformatory schools was punitive in nature,\(^\text{144}\) it was an appreciable advance in the field of juvenile legislation. It opened a new era towards the establishment of separate correctional facilities for young offenders in India.

Another allied development in supplementing the Reformatory Schools Act was the Criminal Tribes Amendment Act, 1897, which has a very limited operation. It provided for the establishment of industrial, agricultural and reformatory schools for children, between the age of four and eighteen years, of members of any notified criminal tribe.\(^\text{145}\) The local government, under the Act, was empowered to remove such children from Criminal tribes settlements and place them in a reformatory under the charge of a superintendent.

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\(^{142}\) Id., Sec. 31(1).
\(^{143}\) Id., Sec. 31(2). For the purpose of this section, "Youthful offender" includes "a girl".


\(^{145}\) Under the Act, the Government by notification could declare any tribe as criminal tribe, the members of which live on crime and the Act imposed certain regulatory conditions upon any such notified tribe members.
In the smooth, though slow, legislative development in the evolution of juvenile justice in India a retrograde twist was taken by the passing of The Whipping Act of 1909. It was a dent in the humanitarian approach towards young offenders and was probably the result of prevalent deterrent philosophy of that time in the field of criminal justice. It was an all India legislative measure providing that a juvenile who abetted, committed, or attempted to commit an offence punishable under certain sections of the Indian Penal Code might be punished with whipping in lieu of or in addition to any other punishment to which he might be liable.

To sum up, the characteristic feature of the period before 1919 was limited only to one aspect of the juvenile justice system i.e., avoiding the juvenile offenders from being sent to jail and reformation through imparting training while in custodial facility. All these legislative measures, besides giving a legal recognition in clear terms to the special status and rights of the child offenders, were insulated with the embryonic ideals of preferential and socialized treatment of youthful offenders. These legislative measures served as the basis for the further development of child welfare legislation in India and ultimately culminated in the establishment of special courts for the socially handicapped young delinquents. And that is the beginning of an era of new philosophy which later on came to be known by a specific term, "Juvenile justice system". It (system) not only embraces within its fold the already operative fragmentary variables of juvenile justice (like Probation services, separate correctional facilities) but also formally launched the apex body of the system - juvenile court. This made the beginning of major departure from the traditional penal approach to juvenile offenders.

146. For details, See Chapters VII, VIII & IX.
147. For detailed discussion, see Chapter V.
Another major development towards providing a differential and preferential treatment towards the youthful offenders was the enactment of Borstal Acts by different states. The Punjab Borstal Act, 1926 was enacted by the legislature for the purpose of detaining and training of adolescent offenders in a separate institution named Borstal Institute. The object of the Act was to provide for the segregation of adolescent prisoners from those of more mature age, and their subsequent training in a separate institution. This has been based on the experience gained in England of "Borstal system", and basically consists of separate and individual training of these youths. The Act empowers the court to pass a sentence of detention in a Borstal Institution in the case of a male convict under 21 years of age in lieu of transportation (now life imprisonment) or rigorous punishment. The Act provided for the conditional release to such youthful offenders as appeared to have deserved this due to their past conduct in order to enable them to enter the service of any individual or in order to enable them to enter the service of any individual or institution.

Some stray protective provisions can also be found in certain other State legislations which tend to save the child from certain bad influences. In Punjab sale or delivery of any liquor to any person under the age of 16 years (before 1949, now after 1949 amendment 25 years) is prohibited and punishable by a fine of Rs 500.00. Similarly in order to prevent the special pernicious effect on the health of the juveniles the Punjab Juvenile Smoking Act, 1918

150. Punjab Borstal Act, 1926, Sec. 5.
151. Id. Sec. 15.
152. The Punjab Excise Act, 1914, Sec. 62(a).
prohibits the sale of tobacco to a child below the age of 16 years whether for his own use or not.\(^{153}\) However, these enactments more or less remained on papers, and were respected more by violation than by obedience.

The landmark development in the area of juvenile justice system was the Report of the Indian Jails Committee(1919-20). The Committee strongly recommended major correctional reforms in the administration of criminal justice in general and specific observations were made for toning up the juvenile justice system in India. The Report pointed out that the child was mainly a product of environment in which he happens to be or is forced to be. He has a natural right for fresh opportunities to grow and live under more congenial conditions. The Committee observed that the juvenile and youthful offender was more amenable to re-education and treatment since his attitude not being fixed can be more conveniently changed.\(^{154}\)

The committee made many recommendations directly dealing with the improvement in the working of juvenile justice delivery system. Some of the recommendations are:

(a) The Committee favoured separate trial and treatment of youthful offenders. It observed the commitment to a prison of children and young persons, whether after conviction or while on remand or under trial, is contrary to public policy and sentences of imprisonment should, in cases of children and young persons, be made illegal.\(^{155}\)

(b) Liberal use of non-institutional treatment was other recommendation of the committee. The Report read: "It is often

\(^{153}\) Sec.3. Similarly, Sec.4 also provides for the seizure of any smoking material from a person below 16 years by village Lamberdar, Zaildar, Teacher, Member Municipal Committee etc.


\(^{155}\) Id., para 367.
desirable to leave a child offender to his parents, if the home is at all a decent one. 156

(c) The committee favoured the creation of a separate children's court for the hearing of all cases against children and young persons and adoption of informal and elastic procedure in such courts. 157

(d) Specially trained Magistrates to deal with the cases of children and young persons was another observation of the committee. The Report did not favour the appointment of one Magistrate for a large jurisdiction as it causes more harm than good because of resultant inconvenience to children because of long distance from their homes. 158 In areas where the number of children to be dealt with is small and the establishment of a children's court with special magistrate is not feasible, the most experienced local Magistrate should sit at special hours and, if possible, in a separate room to hear charges against child offender. 159 Such Magistrate should have the clear understanding of the fact that he is dealing with a case of special character, in which he is expected to assume different role, from different standpoint and with a more potential attitude. 160

(e) A pre-sentence report was an other main recommendation of the Committee. In order to arrive at a decision the magistrate should have before him information regarding child's home,

156. Id., para 374.
157. Id., paras 369, 370.
158. Id., para 371.
159. Id., paras 370, 371.
160. Id., para 370.
his habits and circumstances, which led him into crime.
Before a final order is made there should be an adjournment
for the collection of such information about the child
offender. In the meanwhile, the child should be released
on bail or sent to a remand home but in no case he should be
sent to jail.\textsuperscript{161}

(f) Institution of Probation system and its extensive use both
for collecting information regarding children and also to
superwise them after release was another major recommendation
of the Committee.\textsuperscript{162}

In view of the spate of legislation that immediately followed the submi-
sion of Jail Committee's Report (1919-20), it can be said that this Report made
a significant contribution in the introduction and development of juvenile
justice system in India. Madras Children Act, 1920\textsuperscript{163} was the first legislative
in this direction in point of time, though it took almost two decades (19 years)
to establish a juvenile Court under the Madras Children Act, 1920.\textsuperscript{164} On the other
hand in Bengal the juvenile court was established in Calcutta eight years ahead
of passing the Bengal Children Act, 1922. Next to follow was Bombay Children Act
1924.\textsuperscript{165} All these Children Acts were by and large corresponding to Children Act
of 1908 of England.\textsuperscript{166} All these provincial Acts made provisions for juvenile
courts, probation services and institutional treatment in order to secure the
ends of juvenile justice. No difference was made between delinquent and neglected

\textsuperscript{161} Id., paras 373, 375.
\textsuperscript{162} Id., paras 373, 375.
\textsuperscript{163} Later on this Act was renamed as Tamil Nadu Children Act, 1920.
\textsuperscript{164} United Nations, Comparative Survey of Juvenile Delinquency, Part IV, Asia and
The Far East (1953), p. 5.
\textsuperscript{165} Later on renamed, West Bengal Children Act, 1959.
\textsuperscript{166} Sarkar, Chandana, Juvenile Delinquency in India (An Etiological Analysis)
children so for their legal processing, care, protection and rehabilitation under the Children Acts was concerned.

As is traditional to Indian political and social set up the impact of Jail Committee Report was short lived and it just faded within just five years of its life. This is quite clear as no children Act was passed in India after the Bombay Children Act 1924.\footnote{Later on named Bombay Children Act,1948.} It was long after independence that a revival of juvenile justice philosophy took place which was more tangible long after the Constitution of India came into force as most of the Children Acts were either passed or enforced by the States only after a long gap. After independence East Punjab Children Act 1949\footnote{Juvenile Delinquency: A Challenge, Central Bureau of Correctional Services, New Delhi,(1970).} (came into force on 27.9.1969) was the first legislative initiative in this direction to be followed by U.P. Children Act, 1951\footnote{Statistical Survey of Passing and Enforcement of Children Acts in different States. Social Defence, Vol.XXII, No.88(April 1987),p.55.} (came into force in 1958). But in these cases also it took 20 and 7 years respectively to enforce these enactments and that too without any necessary infrastructure. There was no juvenile court either in Punjab or U.P. to implement the Children Acts in its proper perspective. No juvenile court or children home was established in these two states till 1970. In 1960 (Central) was passed which governs the Union Territories in India. It also met with the same fate so for its implementation was concerned. Its enforcement was delayed from two years to more than two decades. The same indifferent attitude was adopted by other states in passing and implementing the Children Acts. In most of the other states Children Acts were either passed or enforced around 1975.\footnote{Act 15(3); Act 39, Constitution of India.} Thus, inspite and despite of constitutional mandate juvenile justice system had been given a very low priority consideration by States and Union Territories of India.
A look at the various Children Acts regarding their dates of passing, dates of enforcement and facilities created under the Children Acts indicates that Indian political system has been criminally negligent towards the actual implementation of the juvenile justice (See Table 2.2). Sometimes, Children Acts are passed by the states but not enforced for years together. If enforced, Children Courts are not established or special Magistrates are not appointed to deal with children cases. If all that is there juvenile Homes/Institutions are not established. Probation services specially meant for children are almost non-existent. With all this background infrastructure, even if we believe all the statistics given as correct, which in my opinion cannot be, the quality of juvenile justice system can be any body’s guess.

It was only in response to the impact of many decisions of the Apex Court\textsuperscript{171} concerning the rights of prisoners specially the child delinquents that a serious thought to this aspect of social welfare developed and some other states passed/enforced Children Acts with some seriousness. This is pertinent from the thought provoking observation of Justice V.R. Krishna Iyer in the case of Inder Singh v. Delhi Admn.\textsuperscript{173} The judge observed:

\begin{quote}
Instead of bolting young men behind the high walls of a prison and forgetting about them, humanising influences must be brought to bear upon them so that a better sense of responsibility, a kindlier attitude, behavioural maturity and values of good life may be generated under controlled conditions.
\end{quote}

Though the response was not very encouraging at the administrative level which adopted a luke-warm approach towards the establishment of infrastructure essential for providing necessary support-system to the juvenile


\textsuperscript{172} 1978 Cr.L.J.766(S.C.)p.768.
Statement showing the position of the implementation Children Acts in the Country: Immediately before the Juvenile Justice Act 1986

<table>
<thead>
<tr>
<th>Sr. State/U.T. No.</th>
<th>Name of the Children Act</th>
<th>Date of Enforcement</th>
<th>No. of Distts. Covered</th>
<th>No. of Juveniles Courts &amp; Magistrates</th>
<th>No. of Children Institu-</th>
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*** The information relates to year 1986-87, Source, Social Defence, Vol.XXII, No.87, April, pp.55-56.
justice system and the result is as it ought to be - a complete failure of the system.

The passing of Juvenile Justice Act, 1986 is landmark development towards the implementation of juvenile justice system in a uniform manner at all India level. But passing of the Act is not the end, rather it is the beginning towards a long and tardy path of social welfare which is devoid of any political dividends. Rather it may have negative political consequences in view of the gross ignorance of the system, its philosophy and its achievements at the grass-root level. It may not be possible to make a correct assessment of the new system in such a short span of its life, yet, if past experience is any indication the result well depend upon how our administrative set-up responds to this afresh effort in revamping the juvenile justice system in India.

(iii) Juvenile Justice System

Before getting involved in the sophisticated philosophical complexities of juvenile justice system, it is worthwhile to try and understand what the term "System" and "Justice" means in the context of administration of criminal justice to juveniles.

(a) What Is System?

The following general comment about "system" seems appropriate in the juvenile justice background:

Any time we assemble people and things and arrange for them to go about performing a task, we have designed a system. It may be an abysmally inferior system. The system's engineering may be rated as of low quality, in some instances hardly recognizable as engineering. But it is still a system.172-A

Directly in relation to juvenile justice system, Alan Coffey describes that "a system can be thought of as a means of organising and processing input

in order to attain specific ends. Input in the case of juvenile justice, is certain law violators defined as delinquents; process is the activities of police, probation, juvenile court and juvenile corrections; and output is the collective (and, therefore, systematically related) success of these processes. 173

In the most simple terminology, a system can be stated as an arrangement of certain things in systematic manner with the primary purpose of attaining certain pre-desired objectives through its working. In the system designing efforts are concentrated upon the maximum output with minimum cost and low wastage. The level of achievement, may be high or low, in terms of the efficiency of any system's working, can be useful only in its rating as a system — very good, good, bad, but cannot be concluded to deny it the status of a system in case of its poor output. Certainly in such a situation a system needs improvement, innovation or total change. But so long it operates, it will continue to be known as a system. In the context of juvenile justice a system can be defined as "legal infrastructure designed for the purpose of transmitting "justice" in the cases involving juvenile offenders". It includes all the related agencies through which it operates, starting from the police organization, including juvenile courts, juvenile welfare boards, probation services and institutional and non-institutional correctional setup.

Juvenile justice system has been described by commentators "as being so unsystematic as to be a non-system"; 174 a "poorly functioning system that has suffered from lack of attention to system design and engineering"; 175 "too much

174. Ibid.
175. Supra note 80, pp. 19-20.
fragmented in its operation", inspite of all the functional and philosophical shortcomings the juvenile justice system continues to be known as a system, and rightly so. It begins with and includes the primary system designer's (legislature) legal framework (Juvenile Acts and other institutional agencies) and subsequently its renovator's (courts) improvements and innovations through judicial pronouncements. Defective design-setting or operational problems or absence of a single system-manager cannot be considered as sufficient justifications to treat juvenile justice system as a non-system. At the most we can describe it as poorly co-ordinated system with lot of scope for improvement in its design and out-put efficiency.

(b) What is Justice?

Justice has been perhaps the most frequently used term in legal literature of the present as well as of the ancient societies. It has been described by various names (like Dharma in the ancient India) and has been interpreted in a different manner by different societies and at different times. Even in the same society different people interpret the term from different angles with altogether different meanings in similar and not so similar situations.

The Oxford English Dictionary gives many historical meanings for "Justice" but its essence in common usage seems to be "fairness" and "exercise of authority in the maintenance of right". In the context of criminal law "justice" has always been weighed with appropriate punishment to the person found guilty.

176. There is a lack of coordination and cooperation between various agencies of the juvenile justice system like Juvenile Court, Corrections and Probation system. See for details about fragmentation in the working of Juvenile Justice System. The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency & Youth Crime, Washington D.C., (1967), Ch. I & II.

177. In Punjab the various operating variables of Juvenile Justice are working under different departments of the State Government: Juvenile Courts, under High Court; Juvenile Welfare Boards, Social Homes & Observation Homes, under Social Welfare Dept.; Borstal Jail and Probation service under Jail Department.
And the concept of punishment and quantum of sentence has its own philosophical justifications in support of choice of a particular type of punishment for a specific offence and specific accused. This has varied from time to time and person to person. For instance in the case of a person found guilty of an offence, "justice", from the angle of victim of the offence means retribution; from the angle of society it means deterrence of the potential criminals; from the angle of an accused it means punishment keeping in view the compelling crime-causation situation in which the accused was placed at the time of the commission of an offence. In the eye of a reformist "justice" means reformation and reinduction of the accused in the society. In the same situation if the accused is a child the scale of justice shall be tilted towards mitigation of punishment in favour of the child. In each case the result so arrived at shall be considered "justice" from the angle of one person and may not convey the same sense from the angle of another person depending upon who he is in the context of that offence.

In the early stages of social development the authority of the "strongest" and the "most dependable" men may have represented the entire range of justice. Thus the definition of "what is just and right probably remained in the hands of the strongest and most dependable, as he alone had the power to uphold whatever form of justice existed. At that time the most consistent aspect of justice was most likely harsh punishment for transgression of social or group norms. It has the growth and organization of the tribes that introduced greater degree of documentation which in turn permits a more tangible interpretation of the development of justice as a concept. 178

Without unnecessarily bothering about the historical context and development

178. Supra note 173, p. 34.
of the concept of "justice" we directly pass on to "justice" in the context of juvenile offenders in the present social setting. Because of the peculiarities of children, their minor status, claims to protection and sustenance, and ever-increasing demand of personal autonomy from the adult value system, the implication of what is "fair and just" in the context of child misbehaviour has become more daunting and complex.

Inspite of the consensus that children deserve a protective, humane and supporting processing in the hands of criminal justice agencies, there are wide conceptual conflicts between various commentators in the use of the term "justice" in administering criminal law to young offenders. Firstly, the sense of "treating the children fairly". The advocates of this line of thought are primarily concerned with showing that our present system diverges significantly from the principles and cannons of justice, and that because justice is worth pursuing, both for its own sake and for the sake of having a better society, we ought to change our traditional system and practices accordingly.

The most visible learning of "justice" in the writings of these commentators is the "protective and humane" aspect, which, according to them, must be the most important part of juvenile justice system arrangement. The focus of attention here is the welfare of offender than the offence and its consequential effects upon the society.

The second sense, in which the term "justice" has been explained in the context of juvenile justice, emphasises the injustice of letting children get


away" with the damage they cause to the society. The stress here is protection of the interests of the society from the ever increasing juvenile crime by orientation of the whole juvenile justice process from that angle. 181 This is the sense most frequently used by the police, magistrates and all those who are not persuaded by "liberal" and "reformative" views of what should be done with young offenders. The supporters of this approach also include the writers who describe juvenile justice system as full of "structural and procedural faults" which has failed to provide desired output. 182

Combining these two basic, though somewhat divergent, meaning of term "justice" we can come to the conclusion that "justice" besides being an attempt at maintenance of order has much wider scope and implications, specially in its application to young offenders. It is a fundamental value in itself and most constructive means of creating a better society. On one hand order demands that the offender should be dealt in a manner appropriate to the protection of the society and consolatory to the feelings of the victim. On the other hand civilized and better social living demands protective and reformative approach in dealing with juvenile offenders. In each case it is taken as "justice" by different sections of the society. This apparent conflict between "justice" in the sense of order and justice in the sense of "social welfare" must be balanced in order to formulate an efficient juvenile justice delivery system. Since social situations provoke new thoughts, leading to the establishment of more meaningful and effective system in almost every field of life, so juvenile justice system must always keep its doors open to new thoughts in order to reach at

the desired output level. In that manner "justice" is a progressive and living concept. It must strive for a better and more civilized society without losing its touch with the prevalent social realities.

(c) Juvenile Justice System

As a natural response to the comprehensive and broad based meaning of the terms "system", "justice" and "juvenile delinquency", the juvenile justice system has encompassed ideals of care, concern treatment and rehabilitation, as its predominant theme for all categories of socially handicapped children - offender delinquents and non-offender delinquents. Thus "the juvenile justice system implies the administration of laws - by judicial or administrative authorities - related not only to persons under 21 years of age who are alleged or found to have committed crime or to have shown other delinquent(anti social) behaviour, but also pertaining to neglected and dependent children in need of care and protection. For the administration and execution of these lofty aims and objectives, juvenile justice embodies various branches, each of which may be a special, more or less, integral part of a particular principal system of criminal or social justice. In other words, various procedural and treatment branches of a particular national system of juvenile justice (juvenile court, juvenile corrections, juvenile welfare Boards, juvenile police Bureau and juvenile probation services) have the ultimate purpose to provide support, care, training to persons on the exclusive basis of their social and personal needs with the welfare of the child always as a primary goal. The system has its basis in the protective and assisting, "parens patrae" philosophy which is the main internal characteristic of all institutions, laws and procedures providing for

183. Supra note 42, p.1.
differential handling of juveniles falling under its jurisdictional scope - be they neglected or delinquent (offender). Apparently, from philosophical angle, the juvenile justice system is a unitary process, a combination of many variables with a common goal of rehabilitation and reintegration of the delinquent juvenile without endangering the safety of the society. The process begins with the primary law enforcement agency's (police) first contact with the deviant youth and passes through many other variables like juvenile court/Welfare Board, probation service and may ultimately end up with institutionalized or non-institutionalized treatment. In that manner the whole process is moved at and guided by the dual aims, maximum welfare of the child in trouble with the minimum sacrifice of social safety - a task which cannot be achieved to every body's satisfaction.

In the words of Dr. Hira Singh, "Juvenile justice system represents an organised effort on the part of the State to restore for children in situations of social maladjustment, their basic rights to grow and develop as healthy individuals. While the concept of juvenile justice, in its wider perspective, implies the provision of the welfare and well-being of all the children in need of care and protection, the formal system of juvenile justice actually deals with those who are already in conflict with law or are likely to be so for various reasons". 184

From the above observation and its implications we can conclude that juvenile justice system means and includes within its fold all those legal and extra-legal processes methods, institutions, individuals, who work/operate towards the end of juvenile justice philosophy.

(iv). Juvenile Justice Philosophy and Its Broad Contours

(a) Introduction

The Central body around which whole of juvenile justice system functions is juvenile court and lately Juvenile Welfare Board - a new addition. The underlying philosophy of the juvenile court is based on the idea of chancery or equity jurisprudence in early English Common Law.\(^{185}\) Chancery jurisdiction arose from concern over the estates of children, lunatics, and idiots. The King(Crown, State) has supreme guardianship over these minors and stands in "loco parents". In other words the essential element of chancery is welfare or the proper balancing of social and economic interests. It is not only the philosophy of the juvenile court but also the idea of the Child Welfare Board is based on a "parens patriae" doctrine.\(^{186}\) In addition to this the motives and preparatory reports of the laws leading to the creation of first juvenile court the plight of children and youth in criminal courts and penal institutions had a deep motivating impression.\(^{187}\) Thus, "parens patriae" doctrine just set the ball rolling, the further development of juvenile justice philosophy depended on many other factors.

In the words of Tappan, the juvenile court and its methods "have emerged largely from the philosophy and techniques of modern case-work and more particularly, the ideologies of the child welfare movement concerning the rights of children and the devices that should be used to meet their needs". In fact, "the operations of the specialized juvenile court reflect the contemporary impact of casework oriented probation officers, administrative social agency procedures, and other non-legal forces for more than they do the influence of either chancery

\(^{186}\) Supra note 42, p.144.
or common law, modern or ancient". Thus, the creation of a altogether new system to deal with children is the result of variety of factors. The new sub-system (Juvenile Justice System) born out of the criminal justice system reflects the philosophical thoughts of social welfare and social justice concerning the children. Its apex body (juvenile court and to some extent Juvenile Welfare Board) while still retaining its judicial character has acquired a new image of a welfare service agency - a vehicle of social justice.

The basic juvenile justice philosophy revolves around two pivotal points and whole of the infrastructure of the juvenile justice system in built up in an effort to achieve these goals which are supplementary as well as conflicting with each others: Ring of protection to the child at war with social normative standards; and the ring of protection from the delinquent child to the society striving for peace and order. Which out of the two is most dominant depends upon how a person or an agency look at the functioning of the system as a whole. The same outlook is reflected in that person or agency's efforts to explain and apply the conceptual contents of the system. Any person who is dispositioned towards the guiding philosophy of the "best interest of the child" will subscribe to the requirement that the whole system must be so oriented in its legal framework and functioning that tends to help, protect and resocialize the "troubled child" and avoids stenuously any action which tends to harm the child.

Those juvenile justice system agents who are inclined towards the philosophy that juvenile justice is a set-up which seeks to control juvenile crime in a humane way in order to protect the society, particularly in its more violent and costly manifestations, always favour the notion of "getting tough on crime" without losing its humane element. With this primary operating principle as the basis, they stress that the whole juvenile justice system should be made to

revolve around the best interest of the society as a dominant consideration. This line of thought has already surfaced in most of the juvenile justice systems currently in operation in the developed countries, both at primary system designer level (legislature) and operational levels (juvenile courts). The general mood of "getting tough" on violent and persistent juvenile offenders is visible in the legal framework of these countries. At operational level this philosophical conflict is most apparent at the dispositional hearing when the judge is considering institutionalisation of the child. The presiding officer with a favourable bent of mind towards the delinquent child's welfare will ordinarily favour non-institutional treatment as the best treatment alternative and will demand strongly convincing reasons to go for the institutionalisation of delinquent child. The reverse may be the consequence in case a presiding officer of the juvenile court is guided by the philosophy of the "best interest of the society". The same conceptual conflict exists in the selection of procedural options for processing juvenile cases. Some favour too informal procedure devoid of strict legalism as was favoured in United States before the decision of the Supreme Court (US) in Re Gault's case. Others may opt for a bit flexible but still legalistic procedure with all the elementary rights of fair trial as available to an adult offender. The basic juvenile justice philosophical problem is the bastardisation of these two guiding principles into two divergent battle cries of various juvenile justice system agents and concerned commentators. The resultant confusion in thoughts and practices leads to devaluation of the system as a whole and public suspicion is heightened regarding its effectiveness to meet the either end. As the extremely pro-child approach reflects "idealism" and "fancism", so the too favourable pro-society approach

190. Supra note 80, p.53.
reflects "hatred, anti-humanistic motivations, and shallow thinking". Extremism of any sort will not serve the child or the society.

The problem is complex, the approaches are diverse, the solution cannot be simple and acceptable to all concerned or connected with juvenile justice system's functioning. Generalization of any concept with so much of complexity and diversity as is there in the case of juvenile justice system is a very hard task. It becomes specially difficult when the generalization is undertaken in the context of its philosophical contents and functional approaches.

However, it appears that the following are the fundamental characteristics of the juvenile justice philosophy:

(b) Parens Patriae Doctrine: (The State as The Guardian of its Ward - The Child)

State is the super parent of the child within its jurisdiction. In the absence of proper parental care, state has not only duty but right to intervene in the interest of the child. That way parental rights are not absolute but are subject to the legal intervention of the state sponsored agencies if the best interests of the child so demand. The doctrine of "parens patriae" therefore is technically a doctrine of equity, and it is often for this reason that juvenile courts have been held to be non-criminal, similar to civil courts of equity, with jurisdiction extended through the delinquent as well as the dependent and neglected child.

(c) Scientific Justice

Since all human beings are different in their physical, emotional and
intellectual setting thus their actions and reaction are never similar in
propensity and contents even in seemingly similar situations. Social, economic
and cultural environments in which a person is brought up shape the personality
of each individual and provides it with peculiar characteristics. The basic
principle of juvenile justice philosophy is the due recognition of this fact.
Thus the whole system is oriented to meet the individualized justice by adapting
its actions on scientific basis to the circumstances of the individual case. This
means the balancing of the interests in an equitable manner by administrative
rather than adversary methods within a flexible procedure, described as "individu­
alized justice" by Dean Pound. 192

(d) Non-Criminal Status of Delinquency and Delinquent

The juvenile justice system is designed to treat the juvenile offenders
not as criminals but as reflectives of the failure of traditional social control
agencies through the non-confirmist behaviour of the young delinquent. In order
to remove the presumptuously harmful tag of criminality the juvenile laws
substituted the word "criminal" by a newly coined and milder term of "delinquent"
which certainly has lesser criminal content, if not non-criminal. The central
idea of the juvenile justice system is to treat delinquency as a disease, diag­
nose it scientifically, and accordingly prescribe treatment measures to cure
and control it. However, some advocates of juvenile justice have objected even
to the use of term "delinquent" to describe juvenile misconduct, which they claim
is just another harmful label. They assert that delinquency acts have no signi­
ficance except as symptoms of conditions that demand investigation by the court. 192

in Rose Giallombardo (Ed.), Juvenile Delinquency, John Willey & Sons: N.Y. (1976),
p.400.
The objection, of course, has some validity, as with the passage of time the term "delinquency" has almost acquired the meanings which convey the sense of "young criminals".

**Remedial, Preventive and Non-preventive Purposes**

Another basic objectives of juvenile justice is resocialization of young offender as a productive member of the society through penal humanitarianism. The measures adopted for his reinduction in the society as its useful and productive member are always curative and non punitive.\(^ {194}\) Juvenile justice, therefore, is an effort to provide for the necessary "care, protection, education, training, treatment and welfare of the delinquent child",\(^ {195}\) and to make all possible attempts to put him on the road of productive citizenry.\(^ {196}\) Whatever small punitive element the treatment alternatives have, are all tailored to meet the best interests of the child. And the whole system seeks to provide him with about the same or at least similar care and protection that his parents should have given him. Such a correctional approach takes him away from the life of crime and reinducts him in the community as its productive member without any stigma of crime that accompanies a criminal charge.\(^ {197}\)

**Balancing of Social Interests vis-a-vis Special Needs of Delinquent Child**

In view of the peculiar position of the child in the social set-up due to emotional and intellectual immaturity and strongly influencing socio-economic factors in which he is brought up, and which are beyond his control,\(^ {198}\) Iyer,V.R.K.(Justice),"Sentencing Alternatives, Correctional Administration, Juvenile Justice and Community Participation in Crime Control"Criminal Law Journal(Journal Section) (1980),p.1.


there is a necessary of special skill to strike a proper balance between the two conflicting interests - social and of the child. This is possible only if a pro-child oriented and protective approach is the guiding principle in the formulation of legal framework to deal with this balancing operation. It is perhaps the influence of this philosophical approach that, inspite of indifferent public attitude, succeeded in the creation of a system, fundamentally different in policy, legal framework, and operational set-up from the criminal justice system. The system and its related agencies are in fact an attempt (though not yet succeeded) towards securing social justice for the unfortunate delinquent population.

(g) Flexible and Informal Procedural Approach

For the proper execution of the lofty ideals for which juvenile justice system stands there was a necessity of liberating its procedural framework from the rigidity of criminal trial procedures. As parental like care and protection is possible only through parental attitude and approach, so the procedural framework in cases involving juveniles has also been guided by the primary consideration of the interests of the child. In general the procedure of the juvenile court is not criminal in nature since its purpose is not to convict the child but to protect, aid and guide him therefore much more flexibility and informality has been incorporated in the procedure to be followed by juvenile court. The juvenile court has been aimed with wide discretionary powers in order to make the court reach at the roots of delinquency causation factors and find out appropriate remedial measures.

(v) Juvenile Justice System versus Criminal Justice System

In order to infuse further clarity in the concept of juvenile justice as a "system", it is most appropriate to distinguish the juvenile justice
system from the criminal justice system, which is fast coming up as a separate system.

The philosophy and the underlying idea behind the juvenile justice system presents a radical departure from the criminal court philosophy of retributive justice and "an eye to eye". Although basic functional approach of both the systems is the same, and follows same sequence of procedural formalities for the flow of justice: Firstly, there is violation of certain accepted social norm leading to contact with the law enforcement agency in the form of apprehension. Then follows similar judicial process of investigation, inquiry and trial, ultimately resulting into guilty or not guilty; and in case of unfavourable disposition, institutional or non-institutional correctional efforts follow. Both justice systems use the same basic tone though literal terminology used differs considerably without much change of intent involved in their use. Even then there is a marked difference in the functioning and philosophy of two systems.

The significant difference between the two is the degree of emphasis on treatment and rehabilitation option, with juvenile justice system attaching more attention to individualized treatment and welfare of the young offender. The age-old supposition that juveniles are more malleable than adults still pervades the juvenile justice process and encourages a greater emphasis on correctional efforts.198 This fact has been reflected by the careful selection of words with a non-punitive tone in the statutes dealing with children.199

199. Certified School or Special Schools, Children Homes etc., in place of Jails; Delinquent Child in place of offender; Orders in place of punishment has been used in the Children Acts; See East Punjab Children Act, 1949; Children Act, 1960; Juvenile Justice Act, 1986.
Besides the basic philosophy the most significant feature of the juvenile justice system are characterized by distinctive procedures and methods of treatment of children. One of the ways of defining the basic characteristics of the system is to compare the juvenile justice system with the criminal justice system.

Ordinarily, as Tappan has explained, there has been a tendency to do this comparison by contrasting the most favourable picture that can be presented of the juvenile justice system with a most dismal and unrealistic one of the adult criminal court. At present, the actual functional aspect of the juvenile courts is practically devoid of juvenile justice philosophy and hardly even statutory requirements of juvenile laws are met. That way there is not much different between juvenile courts and ordinary criminal courts so far their real practices are concerned.

This question involves two aspects, firstly, what the juvenile justice system is expected to achieve (philosophy) and what structural and procedural framework for that purpose has been created, which is different from the criminal justice system. Secondly, how the juvenile justice system actually operates and how much successful it is to achieve what it is expected to achieve? The first question can be partially answered here by presenting a broad comparison between the two systems. The sustained comparison of what are considered to be fundamental characteristics of juvenile justice and conventional criminal courts should provide an additional understanding of basic juvenile justice philosophy.

One of the fundamental difference between the two systems, if they can be called two separate systems, is that criminal justice broadly proclaims and meticulously tries to protect a fundamental right to liberty and ordinarily

201. For details, see Chapter V.
non-interventiorist approach in the life circle of an adult individual is the rule unless it is absolutely necessary otherwise. Conversely, the juvenile justice system is founded on a fundamental duty of the state to provide parental care and protection if for some reason it is not being offered by the natural parents. Thus juvenile justice system assigns an active and positive role to the state to act as super parents of the child in need, while adult system requires the state to play a passive and negative role in order to confine the adult offender within certain predetermined limits. It means that adults have a fundamental legal right to be free of governmental intervention in their life activities except in certain circumstances. On the other hand children have a fundamental right to receive governmental intervention in their life unless they are being properly cared by their natural parents.\textsuperscript{202}

Secondly, strong adversary nature of the criminal court proceedings make it a battle ground, where "belligerents meet to try their strength".\textsuperscript{203} In a war of words between prosecution and the defence, in their efforts to prove or disprove the guilt of the accused, the court acts more or less like a referee. The trial is characterised by contentiousness or what has been described as an "adversary combative proceedings".\textsuperscript{204}

On the other hand in case of the child offender the "attention of the court is directed primarily towards the understanding the meeting of the child's needs.\textsuperscript{205} The purpose of the juvenile court is to see "what he is(juvenile), how he has become what he is, and what could best be done in his interest and in the


\textsuperscript{203} Mennheim, Hermann, Dilemma of Penal Reform, George Allan Pub.:London, (1939),p.171.

\textsuperscript{204} Blumberg, Abraham,S.,"The Practice of Law as Confidence Game", in Sociology of Law, Ed.by Aubert, Vilhelm,(1969),p.321.

\textsuperscript{205} Nutt, Alice Scott,"The Juvenile Court in Relation to The Community-An Evaluation", Social Service Review,Vol.26,March,1943.
interest of the state to save him from a downward career”.\textsuperscript{206} So the approach of the court in the whole process is clinical and its hearing characterised as scientific method of investigation.”\textsuperscript{207}

Thirdly, the criminal court is guided by the fact of finding whether the accused has committed the alleged offence, and if so, the ascertain punishment appropriate to the gravity of the offence. But in case of proceedings before the juvenile court the object is not limited only to find out whether the child is delinquent or not but goes even beyond that, at all the stages of the proceedings. The court has to find out why he is delinquent and what kind of treatment shall be necessary to put him on the right track of life circle. The fixing of blame is not considered to be as important as it is in the criminal court. The primary purpose is to find out whether intervention of the social control agencies is necessary and if so what kind of treatment alternative shall be most suitable in the case before the court.

Fourthly, while a criminal trial is public and represents action of the state against the offender; a juvenile court hearing is nearly always private proceeding to which only interested parties may be admitted.\textsuperscript{208} Additionally a ring of protection from wide publicity has been provided by prohibiting the publication of names, address of a school or any other particular calculated to lead to the identification of the child.\textsuperscript{209}

In criminal trial strict evidentiary rules are adhered to in the conduct of proceedings by the courts and sharp actions and reactions from prosecution and defence follow throughout the recording of evidence. Thus the court plays

\begin{itemize}
  \item \textsuperscript{206} Mack, Julian, W.,"The Juvenile Court", Harvard Law Review,Vol.23 (1909) pp.119-120.
  \item \textsuperscript{207} Ibid.
  \item \textsuperscript{208} See _the Children Act,1960, Sec.28; East Punjab Children Act,1949,Sec.61; Juvenile Justice Act,1986, Sec.8.
  \item \textsuperscript{209} Id., Sec.36, Sec.62 and Sec.36 respectively.
\end{itemize}
a very passive role and meticulously follow the prescribed procedural rules. But in case of the proceedings before the juvenile court lot of flexibility is permitted and the atmosphere is informal and friendly. Although no separate standard of proof is prescribed for the proceedings involving juveniles but in keeping with the object and purpose of the juvenile laws it is generally lower than required in the adult criminal court. The specific conduct is relevant more as symptomatic of a need for the court to bring its healing power to bear than as pre-requisite to exercise jurisdiction. For the selection of appropriate treatment alternative for the child in need, emphasis is placed upon a scientific investigation of social and other factors which induced the child into life of crime.

In view of the strong reaction the public ordinarily has towards criminal and criminality in general and adult crime in particular, deterrent and retributive philosophy still dominates in the determination of the punishment and proportionality between crime and punishment is ordinarily maintained, both at legislative level and judicial dispositional level. But in the cases involving juveniles special consideration is given at both the levels to the specific needs of the child and accordingly same rationality does not prevail in fixing punishment for offences involving young offenders. Death punishment or imprisonment of young offenders is totally forbidden and only in most appropriate cases institutionalized treatment is offered as a last resort only. Thus gravity of the offence, if any, under the penal court seldom bears nexus with the treatment-plan offered by juvenile justice system.


211. Children Act, 1960, Sec.22; East Punjab Children Act, 1949, Sec.27; Juvenile Justice Act, 1986, Sec.22. Similar provisions were there in all other Children Acts which were applicable in different states in India before The Juvenile Justice Act, 1986.
In order to effectively achieve the objectives for which juvenile justice system exists, many structural, jurisdictional, procedural and normative changes have been introduced in the administration of criminal justice to the section of the society consisting of young offenders. That way an independent sub-system of criminal justice system is in the making, yet to achieve a full status and recognition. Separate juvenile court, separate probation service, separate police service, separate correctional facilities are strong moves towards that end.