CHAPTER 8

DISTINCTION BETWEEN JUVENILE COURT AND TRADITIONAL (ORDINARY) COURT
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The problem for the care protection, custody, training, education and rehabilitation of children is independent problem. This problem cannot be solved with the law applicable to adults. The age and understanding of the child is required to be taken into account while dealing with the delinquency of the children. The offence committed by an adult is with full understanding. The age of adult gives him maturity and matured person is expected to do things in the right way. But the age of the child and his capacity of understanding do not allow us to treat him as an adult. In this chapter we tried to show how and in what sense the juvenile court is distinct from the court of adults.

The ordinary court

Before British rule, during Hindu and Muslim period, there was no separate set of laws for children delinquents. It means that the children were treated in accordance with law which was applicable to the adults. When, no separate law for children was in existence, no separate treatment was given to the juvenile offender. The punishment was the same for the child and adult for the similar offence. Even death punishment was awarded to the child who was dealt in accordance with the similar law by the ordinary courts. There was no such distinction between juvenile and adult. The juvenile and adult were equally treated by law and by the criminal courts.

1 Chandana Sarkar: Juvenile Delinquency in India (1987) p.55
Historical background of the idea of separate treatment of juvenile delinquent

There was no separate set of law for treatment of the children before British Rule. But the Hindu ethical code laid down the nature of treatments as follows -
"A parent should not administer any punishment for any offence to a child who is under five years of age. The children of such tender age should be nursed and educated with love and affection only. After the age of five, punishment should be given in a suitable form such as physical chastisement or rebuke by parents. Towards the latter half of childhood, however punishment should be gradually withdrawn and replaced by advice. From the age of sixteen upwards, sons and daughters should be treated as friends by parents." \(^2\)

The attitude of English common law system was "special treatment to the child offenders." In 13 and 14th century the chancery court was emerged for protecting the interest of children from the stringent operation of legal process and its consequential rigidity in punishment. This court used to operate on the principle of "Parens Patriae" acting on the parental authority and the privilege for deviating from all due process of law and as a benevolent parent could exempt the children from the penalties imposed for criminal offences. \(^3\) It also could protect children involved in vagrancy, idleness, incorrigibility, ill-association.

In the eighteenth century the idea of dealing delinquents separately was new both in Europe and in America. Pope Clement XI brought for the first time this idea of "the correction and instruction of profligate youth." \(^4\) Germany was influenced by this idea and many institutions for the purpose were established in Germany.

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3. Dr. N. L. Mitra, Juvenile Delinquency and Indian Justice System (1988), p. 130
Effect of Industrialization and Urbanization

But in the late eighteenth and in nineteenth century, rapid industrialization and urbanization has brought about the changes in socio-economic structure of England, sweeping social changes followed. Child labour and exploitation of children brought tremendous increase of juvenile delinquency in England.\(^5\)

The children of five years of age, though few in number, were employed for work. The working hours for children were 14 to 16 hours a day excluding mealtime. The owners of the factories even used to beat and maltreat the child labourers. One Scottish manufacturer proceeded on horseback after an absconding 16 years old worker and lashed him all the way back to the factory.\(^6\) There was no security for the children. Engels says, “Insecurity is even more demoralizing than poverty.”\(^7\) This situation resulted in increasing the tendencies of delinquent acts in the children and adolescents.

Philanthropists Movement

Robert Owen, the father of British Socialism, around 1917, invited the attention of the authorities, in relation to the necessity of protecting the health of factory children by law.\(^8\) Sir Robert Peel and other Philanthropists supported him and consequently the English Parliament passed three Factory Acts of 1819, 1825 and 1831. This was the first law for emancipation from exploitation of children workers. But this law was insufficient and therefore Factory Act 1833 was passed. These Acts dealt with the problem of child workers but they did not make any provision for the nature of treatment for the juvenile misconduct.

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Reformatory School Acts

Even in the beginning of nineteenth century severe punishment even death sentence was in practice against petty offences. In about 1849, over 10000 children below 17 years of age were in the British prison. These circumstances drew the attention of Elizabeth Fry and Mary Carpenter to establish separate institution to deal with the juvenile delinquent. Mary Carpenter, specially, rendered service in the field of reformatory schools for juvenile offenders. Due to her persuasion the British Government enacted the reformatory school Acts of 1854 and 1855 for the separate treatment of young offenders and the Industrial School Act 1857 for neglected who might develop delinquent properties. Thereafter Reformatory School Acts of 1866, 1872, 1891, 1893 and Industrial School Acts of 1866, 1879, 1880 and 1891 were passed.

Separation of children from Adult offenders and setting up juvenile court

A reform movement with a view to separate children from adult offenders was started in many other Western Countries. The main object of this movement was to set up a separate court and separate place of detention during trial period only for the juveniles. The separate court for the purpose of trial of juvenile delinquents was first introduced by an American Act viz. "Juvenile offenders Act 1847" as amended in 1879. So separate court for young offenders is an American idea. But the first juvenile court was established in Australia. According to Ellington, Australia established the first juvenile court in 1890 and USA was the next country in the world to set up a juvenile court in Chicago in 1899. But "Chicago Juvenile Court" was regarded as first juvenile court in the world in its real sense because this juvenile court was established by law which was called "An Act to regulate the treatment and control of dependents, neglected and delinquent children with separate treatment by a

11 Ibid 7 quoted in Ibid p.58
specially designed judge. The idea of juvenile court philosophy got the public sympathy and support and by 1932 there were more than 600 juvenile courts in U.S.A. and by 1943 all the states of U.S.A. had juvenile courts.

In 1905, England established its first juvenile court.

The philosophy of separate treatment of juvenile offenders reflects that the juvenile court has to perform dual role i.e. the function of determining the reality in regard to innocence or guilt and that of decisions in relations to treatment following the individual study of the child, his family and his environment. Hence any juvenile court is supposed to be a combination of a court of law and a social service agency. The judge of juvenile court must have different skill and qualities to perform the above-mentioned two functions of the juvenile court. The judge must have the knowledge of legal procedure and at the same time he must have skills and aptitude in understanding problems of child and his family and he must be helping to solve them. Thus, the need for separate court for juvenile offenders was considered in the world to deal with the juveniles.

**Setting up of juvenile court in India**

The delinquents are to be dealt with by the juvenile court. The first juvenile court was established in Calcutta in 1922. In Bombay, it was established in 1927 and in Madras in 1930. Thereafter juvenile courts are established in many other states. Various states have passed children Acts and established juvenile courts. The methods used by the juvenile courts were qualitatively different from the methods used by the adult criminal courts. Police officers are not permitted in these courts in official uniform. Complete secrecy is maintained during trial. Members of public are not allowed at the trial of juvenile court except special permission. Lawyers have to appear with special permission of juvenile court only in the public interest and if his

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14 Dr M. I. Nitra, Juvenile Delinquency and Indian Justice System, (1988), p 131
15 Chandana Sarkar, Juvenile Delinquency in India (1987), p 59
16 Ramr Almu, Social Problems in India (1990), p 50
appearance is necessary. He has to appear in ordinary dress. The main features of juvenile courts are informality of procedure de-emphasis on deterrent or retributive justice, protection and rehabilitation of juveniles and use of social treatment measures.\textsuperscript{17}

The methods used for disposal of cases by the juvenile courts are restoring the child to guardian, release on admonition, imposition of fine, release on probation, commitment to reformatories, schools and borstals and imprisonment.\textsuperscript{18}

Joint Trial of Juvenile and Adult

Where the child is the accused of an offence, the child and adult have been tried together. The court taking cognizance of the offence shall direct separate trial of the juvenile and the adult. If the juvenile court is established the child shall be tried by the juvenile court and the adult shall be tried by the court having jurisdiction to try the offence.\textsuperscript{19} The corresponding provision is made in Juvenile Justice Act 1986.\textsuperscript{20} Previously the responsibility to separate trials of juvenile and adult was imposed by law on the court taking cognizance, but now the law has been changed and this duty is now imposed upon the Board\textsuperscript{21} (Juvenile Justice Board).

How would this provision be implemented? When there will be a joint criminal case against the juvenile and adult the police would take both to the magistrate and it would be the duty of the magistrate taking cognizance of an offence to separate trial of juvenile and adult. So the previous law appears to be more relevant than new law i.e. made u/s 18(2) of J. J. Act 2000 the expression "court" in the said section is more appropriate. Also the Board does not take the cognizance of the offence and therefore the expression "Board" in place of "Court" is the mistake on the face of it. These provisions make the

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\textsuperscript{17} Ram Anupa - Social Problems in India 2nd (1989), p.359
\textsuperscript{18} Ibid pp.359-360
\textsuperscript{19} Sec 10 of Bombay Children Act 1948
\textsuperscript{20} Sec 2(2) of J J Act 1986
\textsuperscript{21} Sec. 18(2) of J J Act 2000.
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difference between the juvenile court and the adult courts and separate treatment of juvenile and an adult for the same offences.

Salient features of Juvenile Court

The salient features of the difference between the juvenile court and adult court may be explained in the following aspects:-

1) *Parens Patriae*

The juvenile court has to operate the principle of *Parens Patriae*. This principle means acting of the juvenile court on the parental authority and the privilege in treating with the juvenile delinquent. When the principle is operated in treating with the juvenile delinquent, the court deviates from principle of 'due process of law' and act in place of parent to protect the interest of child and not to punish child. In adult court the object of law is carried out through 'due process of law' and the adult offender is dealt with law. Juvenile delinquency is a social problem. It matters the society. Sensitivity of the judge is decisive factor in the process of juvenile justice. The personality of the judge matters, his sensitivity is decisive and his 'unconscious' plays a decisive role in the exercise of judge power, particularly where it closely touches contemporary economic and social problems. The term juvenile justice has been used in the sense of social justice for children in need of care and protection and in the sense of juridical justice after the onset of delinquency. The care should be taken to ensure that only those Magistrate are selected as the Juvenile Court Magistrates who have special background or training in child psychology and welfare.

II) Constitution of Juvenile Court

The Judge of the adult court is appointed and he has to conduct the trial of the offences as per the procedure laid down in the criminal procedure code 1973. In the lower judiciary i.e. up to the rank of District and Session Judge.

23 Ved Kumari, Current Issues in Juvenile Justice in India, "Indian Law Institute" [Vol. 41 3 & 4, January-March 1999], p 401
24 Ibid p 400
the court is presided over by a single judge. The juvenile court is not presided over by a single judge. The juvenile court now (Juvenile Justice Board) consists of Metropolitan Magistrate or a judicial Magistrate of a first class as the case may be and two social workers of whom at least one shall be a women and this shall form the Bench and the Magistrate on the Board shall be designated as the Principle Magistrate. 25

iii) Exclusive Jurisdiction of Children Cases

The juvenile court is meant only for the cases of children. The adult courts cannot exercise the powers of juvenile court. In survey, it is found that full time judges are not appointed in the juvenile court. Magistrates are given special duty in the juvenile courts. In India the Chief Judicial Magistrate or any Court specially empowered under the Children Act 1960 or any law for the time being in force are the legal institutions for the treatment training and rehabilitation of youthful offender. This legal provision enables the court of Chief Judicial Magistrate to try the cases of juvenile offenders who commits an offence not punishable with death or improvement for life. 26 The question therefore arises as to whether the juvenile court has not exclusive power to try the juvenile offences? In Raghbir Singh -V- State of Haryana, 27, the Supreme Court held that Sec 27 of the Cr.P.C. 1973 being enabling provision does not affect the provision of any Children Act, which gives exclusive jurisdiction to juvenile court.

IV) Hearing in Juvenile Court

In the adult court the procedure for hearing is strictly followed. Sometimes procedural flaw may vitiate the trial. The juvenile court has to follow the procedure prescribed while holding inquiry under any of the provisions of Act. The juvenile court may follow the procedure laid down in the

25. Sec. 4(2) of J. J. Act 2000
26. Sec. 27 of Cr.P.C. 1973
27. (1981) 4 SCC 210
code of criminal procedure 1973 for trial in summons cases, subject to the rules of procedure under the Act.\textsuperscript{28}

V) Publication of report of Inquiry Regarding Juvenile

The report of the inquiry or trial of the adult court is published in the newspaper, magazine or visual media etc. The report of any inquiry regarding a delinquent juvenile (juvenile in conflict with law) shall not be published in any news magazine or visual media referring the name, address or school or any other particulars of juvenile calculated to lead to the identification of juvenile. The juvenile court holding an inquiry may grant permission for such disclosure if it is in the interest of the juvenile. Violation of this provision is penal.\textsuperscript{29}

VI) Appearance of Legal Practitioner in Proceeding

Sec 28(3) of J. J. Act 1986 provides that no legal practitioner shall be entitled to appear before Board (Juvenile Board not Juvenile Court) in case or proceeding before it. The Board may grant permission to legal practitioner to appear in the case.\textsuperscript{30} Also, the juvenile court or juvenile Board in the interest of juvenile or on good ground of decency or morality, may direct any person, including the police officer, legal practitioners, the parent guardian, or the juvenile himself, to withdraw at any stage during any inquiry.\textsuperscript{31} But now in J. J. Act 2000, this provision appears to have been deleted.

Under this provision the legal practitioner was not prohibited to appear in the juvenile proceeding. It was the competent authority to cause him to withdraw at any stage of inquiry in the interest of juvenile. The Act of 2000 deleted this provision.

\textsuperscript{28} Sec. 54 J. J. Act 2000
\textsuperscript{29} Sec. 21(1) (2) of J. J. Act 2000
\textsuperscript{30} Sec. 28(3) of J. J. Act 1986
\textsuperscript{31} Sec. 28(2) of J. J. Act 1986
VII) Sentence and Imprisonment

The Adult Court may sentence any offender and commit him to prison after his conviction.

But the juvenile is specially safeguarded under the juvenile law. No juvenile in conflict with law shall be sentenced to death or imprisonment for life or committed to prison in default of payment of fine or in default of furnishing security.\textsuperscript{32}

This law was provided in the Act of 1986 also. Thus the juvenile delinquent cannot be placed into jail. He can be placed into observation home during proceeding and after conclusion of proceeding, if he is found to have committed an offence, he is to place in special home.

Whether, juvenile court has jurisdiction in murder case?

In \textit{Raghuvir v. State of Haryana}\textsuperscript{33}, the Supreme Court held that the juvenile courts have jurisdiction in murder cases.

Judicial Attitude towards juvenile serious offences.

In \textit{Sano v. State of U.P.}\textsuperscript{34}, the fact of the case is that three boys of the age 10 to 14 committed rape on a girl of 11 years old when she was watching cattle in a village field. The trial court passed sentence of two years and sent the boys to the approved school and the sentence was confirmed by the Sessions Court. The Sessions Court observed that due to seriousness of the crime there is no justification to release on probation. The High Court agreed to the decision. The High Court observed that the delinquents chose a girl of 11 years to satisfy their lust and they spoiled her life. The Supreme Court released them on probation under parental care for the reasons of age factor and impulsive nature of the act.

The age factor of the boy of 10 years would be relevant to place him under the parental care. But the boy of 14 years was more responsible for the act of a rape and in more probability he must have taken the active part in

\textsuperscript{32} Sec. 16(1) of J. J. Act 2000
\textsuperscript{33} (1981) 4 SCC 210
\textsuperscript{34} (1979) 2 SCC 628
committing a rape. The action of lower court and High Court in placing them in certified schools does not appear to be wrong. The reason of their impulse while committing crime does not also appear pertinent and if it is so, then, any rapist below age 14 may take the ground of impulse to take the benefit in such serious offences. If they were kept under the care of parental authority, they would not get the repentance in the life. Also, the victim girl in the same village at her marriageable age would bend down her head due to shame. The Supreme Court is entirely unsatisfied with the condition of living in certified schools meant for the rehabilitation. If the apex court is unsatisfied with the living condition in certified school, the condition of certified school should be improved and be made suitable for living of juveniles so that they may get moral and social training. In *Supreme Court Legal Aid Committee v. Union of India*, the Supreme Court held that there can be no two opinions that these children of today are the citizens of tomorrows India and the country's future would be necessarily depend upon their proper hygiene, physical and mental condition. Ultimately, the obligation of improving the condition of juvenile justice and to remove the difficulties in the life of a juvenile is upon the Government. The problem is therefore, gigantic, at the same time there is demand for immediate attention and unless the importance of the matter is properly perceived and the response is adequate both in regard to sufficiency of action and immediacy of attention the purpose of the Act cannot be fulfilled. It is the paramount obligation of those who are in charge of Governance of the country today to attend to the children to make them appropriate citizen of tomorrow.

**Conclusion**

We found from the information gathered in this chapter that the distinction between juvenile court and traditional court is chiefly related to the

35. AIR 1989 SC 1278

treatment. The consideration for the lenient treatment of the delinquent children is their inability to understand the nature of the act. The view of the treatment machinery to award similar punishment for the same offence to the adult and child is against the principle of equality as it is against the principle "law should be equal amongst equals." Child and adult are not equal, considered their understanding towards the nature of the criminal act. The adult knows the nature and effect of criminal act. He also knows the punishment of his criminal act. The juvenile is considered to be having no knowledge of nature and effect of the criminal act and punishment for it.

Traditional Court punishes the adult offender as per provisions of law and act as the State's punishing authority. The juvenile court has to act as a parental authority and the parental authority possess the principle of forgiveness towards the children in their criminal behaviour and it is known as "Parens Partiae". No juvenile is sentenced to death, imprisonment for life or committed to the prison. This principle is not applicable to the adult offender. However an act like a rape by the juvenile boy of the age of 14 years cannot be considered to be the act of impulsive nature. The boy of 14 years knows the nature of forcible intercourse as he would not allow the same act on his nearest relative and will not forgive naming it as impulsive. This act is against the voice of the soul of the victim girl and the social normative standard. In such cases, special treatment to such boy is expected than his merely living under the care of his parents. The breakdown of respect for law and authority by 8 to 13 years olds in gangs is one of the most indicators of trouble ahead.\(^\text{37}\) Cohesiveness and exclusiveness are characteristics of children's groups in the 8 to 13 age range.\(^\text{38}\) The age group of 13-14 years contains the maximum number of vagrants hence the age of 14 years can be called the "peak vagrancy age"\(^\text{39}\) At age 14 years of the child being peak vagrancy age, parents, society and the state have the duty to pay more attention to the children of this age. If the child

38. Ibid.
of this age commits the offence like rape, is it healthy phenomenon for the society and state? To pay more attention to the child of 13 to 16 years is the duty of the parents, society and state.

If we have failed in our duty to the child, we have no business to stigmatize it as delinquent or anti-social.40

Considering the act of rape by the child of 14 years as impulsive nature would amount to the neglect towards welfare of the child, as, such type of forgiveness would not create repentance in his mind at the age of 14 to 18 and hence he requires more responsible treatment than his return to the custody of his parents for his well-being and development in his career. His treatment for some period in the special home with a trend staff having the knowledge of children's behaviour and treatment would be appropriate remedy. For this purpose the Juvenile Court will have to keep vigilance for the welfare of the child under such treatment in special home.

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40 Parijatanand Varma: Pathology of Crime and Delinquency. (1972), p.20