

Juvenile Justice: Philosophical Discourse

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Abstract: *The quest for “justice” to juvenile delinquents has baffled the jurists, scholars and researchers almost from last two centuries with onset of industrialisation and modernization which led to migration and breakdown of social norms which in turn gave genesis to juvenile delinquencies. Around same time, the philosophical discourse on reasons of criminality was shifting from free will to determinism. It was realised that a deviant is the product of societal pulls and pressures than an exercise of free choice. Determinism became discourse for criminal tendencies among deviants leaving least scope for free will. Different theories developed and so the theory based models to explain deviance among young and means to overcome. The shifts in philosophical approaches continued in each era, almost all premised on the evolving jurisprudence that “children are different from adults” and hence “justice” to juvenile require different parameters. This paper is a modest attempt to navigate through these philosophical approaches to understand what really “justice” to juvenile means.*

Keywords: Juvenile justice, philosophical discourse, rehabilitation, models, due process and crime control

1. Introduction

The Juvenile Justice System is a great shift in the philosophical approaches towards the treatment of young deviants¹. Until recent past, the young offenders were treated almost similarly as their adult counter-parts with certain concessions. Also many young offenders falling within the age bracket of twelve to eighteen were excluded from such subjective judicial assessments and were treated as adult offenders to be punished with severe sentences like imprisonment and death penalty. The juvenile justice system, tuned with new jurisprudence, marks a paradigm shift from deterrent to rehabilitative approach. It is not a single approach rather multiple approaches have shaped and reshaped the juvenile justice system. Fundamentally, the juvenile justice is rehabilitative and reformatory in nature, premised on two interrelated factors viz., “lower cognitive and decisional abilities of children and adolescents, and children’s greater ability to reform and corrective actions²”. The juvenile justice envisages the creation of a system that is markedly different from the ordinary criminal justice system. It guarantees rehabilitation and non-stigmatization of young offenders now called as “children in conflict with law”. Emphasizing on non-stigmatization and reformation, the juvenile justice laws envisage the establishment of child friendly mechanism with the help of different institutions viz., Juvenile Justice Board, Special Juvenile Police Unit, Observation Homes, Special Homes etc. premised on the principle of “best interest of the child”. The object is to provide proper care, protection, development, treatment, and social re-integration³.

¹Throughout this paper different terms has been used for ‘children in conflict with law’ like young deviants, youth delinquents, young offenders, juvenile delinquents, juveniles in conflict with law. These terms must read as synonymous.

² B.B. Pande, 'Bad' Juveniles and the 'Worst' Juvenile Justice Law? The Second Challenge to Juvenile Justice Law in "Darga Ram" v. "State of Rajasthan", *Journal of the Indian Law Institute*, January-March 2015, Vol. 57, No. 1 (January-March 2015), available at <https://www.jstor.org/stable/44782489> (last visited on 30.02.2020)

³ Preamble to Juvenile Justice (Care and Protection of Children) Act, 2015

Development of Philosophical Approaches

The juvenile justice system did not develop overnight. It is the result of early efforts of child saving movements⁴ who toiled hard to reinvent childhood⁵ among the paupers and criminals⁶ and depraved and deprived⁷. It was based on one or other philosophical belief since its inception. The rehabilitation and socialization has remained prominent in every era despite some slow shifts⁸ in philosophical approaches towards certain kinds of offenders or offences. The various approaches (models) of juvenile justice are itself based on the different rationales as to why people are committing offences. The reasons have been ascribed to free

⁴ Anthony Platt, *The Rise of the Child-Saving Movement: A Study in Social Policy and Correctional The Annals of the American Academy of Political and Social Science*, Jan., 1969, Vol. 381, *The Future of Corrections* (Jan., 1969), available at <https://www.jstor.org/stable/1038229> (last visited on 24.12.2021), see also Susan Magarey, *The Invention of Juvenile Delinquency in Early Nineteenth-Century England*, *Labour History*, May, 1978, No. 34 (May, 1978), available at <https://www.jstor.org/stable/27508306> last visited on 13.12.2021; Joseph Whitehill, Platt: *The Child Savers: The Invention of Delinquency*, *Michigan Law Review*, Volume 68 Issue 4 1970, available at <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=4796&context=mlr> (last visited on 23.12.2021)

⁵ See John Muncie, *Youth and Crime* 54-56, (Sage Publication, 4th Edition, 2015). The author has discussed the efforts of various societies and philanthropists for reclaiming the childhood among depraved. The words “reinventing childhood” has been taken by the researcher from the title of book “Reinventing Childhood & Teaching Children in the Changing World” authored by David Elkind.

⁶ Thomas J. Bernard and Megan C. Kurlychek, *The Cycle of Juvenile Justice* 52, (Oxford University Press, 2nd Edition 2010)

⁷ John Muncie, *Youth and Crime* 56, (Sage Publication, 4th Edition, 2015)

⁸ James C Howell; *Preventing and Reducing Juvenile Delinquency: A Comprehensive Framework* 18; Sage Publication, 2nd Edition, 2009

will⁹, determinism¹⁰ or sandwiched in between free will and determinism¹¹.

Different theories have given different reasons for crime causation among young. The broad consensus that delinquency among young is the product of society and society must intervene to reinvent the ideal childhood among deviants. The theoretical discourse on “why juveniles commit crimes?” and what methods should be adopted to address the problem has given birth to different models (approaches) to deal dealing with juvenile delinquency.

The early child saving movements were in one or other way based on rehabilitative model which is still prominent in the jurisprudence of juvenile justice. The present juvenile justice system mostly represents a conglomeration of different models which made inroads in the system in different periods. The review work of Robert Martinson's that “nothing works¹²” and Prof. John Dilulio and his associates prediction of “superpredatory theory¹³” along with media portray of young delinquents as adults by using adages as “adult crime, adult time¹⁴” paved the way for the crime control model of juvenile justice system after 1970's in America. Similarly, in India, the coverage of media¹⁵ of Nirbhaya case¹⁶ induced the “get tough on crime¹⁷”

approach by incorporating provision of waiver¹⁸ in the new law despite objections and against recommendations from various quarters¹⁹.

Coincidentally, when scholars, conservatives and media in India were pressurizing the government to toughen their approach towards young, the Supreme Court of America was mulling to extending the due process protections to the juvenile delinquents before the juvenile courts. The Supreme Court of America reinforced the due process protection for juvenile offenders in a catena of cases²⁰ beginning with *In re Gault*²¹. The court observed that juvenile court cannot work as “kangaroo courts²²” and due process protection²³ must be extended to young alleged offenders. This judicially developed due process model and the crime control model finally found place in the juvenile justice. The incorporation of these two models of criminal process, earlier propounded by Herbert Spencer,²⁴ changed the very foundations of the juvenile justice courts making them more formal and adversarial. The constitutional domestication²⁵ of juvenile courts has attracted the attention of critics of juvenile courts who labeled them as second grade criminal courts²⁶ or kiddie criminal courts²⁷. Back in India, the intervention of court

⁹ Steven M. Cox and Jennifer M. Allen et al., *Juvenile Justice: A Guide to Theory, Policy, and Practice* 157, (Sage Publication, 9th Ed., 2018)

¹⁰ Charles W. Thomas and Donna M. Bishop, *Criminal Law: Understanding Basic Principles* 82-82, (Sage Publication, 1987)

¹¹ Dr. Rial-ul-Hassan Gilani, *The Reconstruction of the Legal Thought in Islam* 369, (MarkaziMaktab Islamic Publishers, 2006) Muslim jurists say that “man earns his behaviour by employing his free will with the limited choice of alternatives at his disposal...the phenomenon of crime is explained by the theory of *Kasb* which is neither creation (free will) nor predetermination”.

¹² Robert Martinson, *What Works: Questions and Answers about Prison Reform*, available at <https://www.gwern.net/docs/sociology/1974-martinson.pdf> (last visited on 28.07.2022)

¹³ James C. Howell, *Preventing and Reducing juvenile delinquency: A Comprehensive Framework* 4 (2nd edn., 2009, Sage Publication).

¹⁴ Linda J. Collier, *Adult Crime, Adult Time*, (Washingtonpost, Sunday, March 29, 1998), available on <https://www.washingtonpost.com/wp-srv/national/longterm/juvmurders/stories/adultcrime.htm#:~:text=It's%20not%20a%20new%20or,by%2060%20percent%20since%201984.> (last visited on 24.09.2022)

¹⁵ Print Media Coverage of the Amendments to the Juvenile Justice Act, 2015, By Media Development Foundation, available at <https://www.asianmedia.org/acj/wp-content/uploads/2020/08/print-media-coverage-of-the-amendments-to-JJ-act-2015.pdf> (last visited on 22.09.2022); (Between 15th June, 2014 and 15th January, 2016 featuring 228 news items on the subject of juvenile justice legislation, the two English newspapers comprised 85 percent of the total coverage. The Times of India and The Hindu's total coverage stood at 40 and 45 percent respectively.

¹⁶ Mukesh&Anr.V. State for NCT of Delhi &Ors., available at <https://indiankanoon.org/doc/68696327/> (last visited on 24.09.2022)

¹⁷ Politicians want to be re-elected, so they promote “get tough on crime” and have an easier ride to re-election in the next

cycle. See Richard Charles Gehrke, "Get Tough on Juvenile Criminals": An Assessment of Punitiveness and Punitive Attitudes, Cornerstone, 2016, available at <https://cornerstone.lib.mnsu.edu/cgi/viewcontent.cgi?article=1601&context=etds> (last visited on 12.10.2021)

¹⁸ Section 15, Juvenile Justice (Care and Protection of Children) Act, 2015

¹⁹ Justice Verma Committee on Amendment to Criminal Law, Government of India, 25. The Committee observed “assuming that a person at the age of 16 is sent to life imprisonment, then he would be released sometimes in his/her mid-30s. There is very less assurance that the convict would emerge as a reformed person, who will not commit the same crime for that he was imprisoned or for that matter, any other crime.

²⁰ *In re Gault* 387 U.S. 1 (1967), *In re Winship*, 397 US 358 (1970), *Breed v. Jones*, 95 S.Ct. 1779, 387 U.S. 1 (1967),

²² Oxford Dictionary defines term kangaroo court as an unofficial court held by a group of people in order to try someone regarded, especially without good evidence, as guilty of a crime or misdemeanour.

²³ *In re Gault* 387 U.S. 1 (1967)

²⁴ Herbert L. Packer, Two Models of the Criminal Process, taken from “The Limits of the Criminal Sanction” by Herbert L. Packer, Stanford University Press available at https://www.academia.edu/36721847/Two_Models_of_the_Criminal_Process accessed on 11.07.2022

See also Herbert L. Packer, Two Models of the Criminal Process, *University of Pennsylvania Law Review* 14, (Nov., 1964, Vol. 113, No. 1) (Nov., 1964) available at <https://www.jstor.org/stable/3310562> (last visited on 06.06.2022)

²⁵ Barry C. Feld, *Bad Kids: Race and the Transformation of the Juvenile Court* 79-108, (Oxford University Press, 1999)

²⁶ Barry C. Feld, *Abolish the Juvenile Court: Youthfulness, Criminal Responsibility, and Sentencing Policy*, *The Journal of Criminal Law and Criminology* (1973-), Autumn, 1997, Vol. 88, No. 1 (Autumn, 1997), available at <https://www.jstor.org/stable/1144075> (last visited on 25.07.2019)

²⁷ Robert O. Dawson, *The Future of Juvenile Justice: Is It Time to Abolish the System?*, *The Journal of Criminal Law and*

was sought to address the issue whether juvenile delinquents are entitled to be represented by a lawyer, as model law Children Act, 1960 and the Saurashtra Children Act, 1954 banned the same²⁸. The affirmative response of the court²⁹ set at rest the question of great importance once for all. The due process rights (rights of adult accused) were recognized to be available to young offenders before any forum. Besides, the minimum-intervention model³⁰ or hand off approach³¹ extensively curbed the jurisdiction of all stakeholders in particular law enforcement agencies and juvenile justice courts.

The developmental model³² based on child psychology and neuroscience is likely going to change the discourse of juvenile justice in coming years. The neurosciences revelation about brain of juvenile has quite considerably altered the judicial³³ and legislative mood³⁴ in America. The juvenile delinquents are recognized as a class which is immature, impulsive, reckless and having least cognitive faculties to understand the long term consequences³⁵. The brain of young keeps on growing through the process of myelination and synaptic pruning³⁶ which may last upto 25 years of age³⁷. This scientific research first found its space in

a court decision in 2005 in case of *Roper v Simmons*³⁸. The court held, based on new scientific and psychological research, that death sentence to juveniles aged 16 to 18 is constitutional. Justice Anthony Kennedy highlighted that adolescent are immature and have diminished criminal culpability. He wrote:

First, as any parent knows and as the scientific and sociological studies respondent and his amici cite tend to confirm, “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.” . . . The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. . . . The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. . . . These differences render suspect any conclusion that a juvenile falls among the worst offenders. (*Roper v. Simmons*, 2005, pp. 15–16)³⁹

Criminology (1973-) , Spring, 1990, Vol. 81, No. 1 (Spring, 1990), available at <https://www.jstor.org/stable/1143781>, (last visited on 17.08.2022)

²⁸ Section 22 of the Saurashtra Children Act, 1954 (Act No. XXI of 1954) : Notwithstanding anything contained in any law for the time being in force, a legal practitioner shall not be entitled to appear in any case or proceeding before a Children's Court unless the Children's Court is of opinion that in public interest legal assistance is necessary in such case or proceeding and authorises, for reasons to be recorded in writing, legal assistance to be obtained.

²⁹ *Kario alias MansinghMalu v. State of Gujarat*,²⁹ (1969) 10 Gujarat LR 60 available at <https://indiankanoon.org/doc/173867/> accessed on 14.07.202

³⁰ Alida V. Merlo, Peter J. Benekos et al., *The Juvenile Justice System in India: Delinquency, Processing and the Law* 87; Pearson Education, USA; 8th Edition, 2016

³¹ Hand-off approach seeks non-intervention with the juvenile delinquents. The proponents of the labeling theory believe that intervention by officials make young offenders as hardened criminals.

³² Elizabeth S. Scott and L. Steinberg; *Rethinking Juvenile Justice* 223-224, (Harvard University Press, 2008)

³³ *Roper v. Simons*, 543 U. S.(2005), *Graham v. Florida*, 560 U.S. (2010), *Miller v Alabama*, 567 U. S. (2012), *JDB v North Carolina* (564 U.S.)(2011)

³⁴ 2017 Campaign Report; *The National Campaign to Reform State Juvenile Justice Systems*; https://www.modelsforchange.net/publications/863/National_Campaign_to_Reform_State_Juvenile_Justice_Systems_2017_Report.pdf

³⁵ *Reforming Juvenile Justice: A Developmental Approach*; National Academies of Sciences, Engineering, and Medicine, 2013; Washington, DC: The National Academies Press; available at <https://nap.nationalacademies.org/read/14685/chapter/6>

³⁶ Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, *Issues in Science and Technology*, SPRING 2012, Vol. 28, No. 3 (SPRING 2012), available at <https://www.jstor.org/stable/43315672> (last visited on 6.7.2021)

³⁷ The rational part of a teen's brain isn't fully developed and won't be until age 25 or so. See “Understanding the Teen

Again in 2010 in case of *Graham v. Florida*⁴⁰, the United States Supreme Court held *Graham v. Florida*⁴¹ the court held that sentencing non-homicide youthful offenders to life imprisonment without possibility of release is unconstitutional. This time banking on *Roper*, the court observed that “it is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption” and that “developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”⁴². Again in *Miller v. Alabama*,⁴³ the Supreme Court rendered the state laws imposing mandatory life without possibility for parole in homicide cases committed by juveniles as unconstitutional because these laws “run afoul of our cases” requirement of individualised sentencing for defendants. In *Montgomery v. Louisiana*⁴⁴ the court extended the benefits of *Miller* “retroactively to all juvenile offenders so sentenced (approximately 3,000 at the time), allowing a resentencing hearing or for immediate parole eligibility”⁴⁵.

Brain”, University of Rochester Medical Science, available at <https://www.urmc.rochester.edu/encyclopedia/content.aspx?ContentID=1&ContentID=3051#:~:text=Good%20judgment%20isn't%20something,cortex%2C%20the%20brain's%20rational%20part.> (last visited on 20.9.2022)

³⁸ 543 U. S.(2005)

³⁹ Laurence Steinberg and Elizabeth Cauffman et al.; *Are Adolescents Less Mature Than Adults?*, available at <https://www.apa.org/pubs/journals/releases/amp-64-7-583.pdf>, (Last visited on 21.08.2022)

⁴⁰ 560 U.S. (2010)

⁴¹ 560 U. S. ____ (2010)

⁴² 560 U.S. 48

⁴³ 567 U. S. ____ (2012)

⁴⁴ 577 U.S. 2016

⁴⁵ *The History of Juvenile Justice and Today's Juvenile Courts*, 28, Sage Publication, 2018, available at <https://us.sagepub.com/sites/default/files/upm->

In India, the emerging science about diminished culpability of the young offenders was brought to the notice of Hon'ble Supreme Court in *Subramanian Swamy v. Raju, through JJ Board*⁴⁶. The court made the following observation about the developing brain of the adolescents and age of criminal responsibility in the light of latest scientific revelations:

Both sides have laboured to assist the Court with elaborate and detailed scientific and medical literature in support of their respective stands... The works and opinions placed goes to show that studies of adolescent brain anatomy clearly indicate that regions of the brain that regulate such things as foresight, impulse control and resistance to peer pressure are in a developing stage upto the age of 18. These are normative phenomenon that a teenager cannot control and not a pathological illness or defect. An article by Laurence Steinberg & Laura H. Carnell titled "Should the Science of Adolescent Brain Development inform Public Policy" is relied upon. On the basis of the above it is contended that there is no answer to the question when an adolescent brain becomes an adult brain because the structural and conventional changes do not take place on a uniform time scale. It is further argued that intellectual maturity of an adolescent is different from emotional or social maturity which makes an adolescent mature for some decisions but not for others, a position also highlighted by the Act which pre-supposes the capacity of a child under 18 to consent for his adoption under Section 41(5) of the Act. On the said materials while the petitioners argue that the lack of uniformity of mental growth upto the relevant age i.e. 18 years would justify individualized decisions rather than treating adolescent as a class the opposite view advanced is that between the lower and the upper age, the age of 18 provides a good mid-point of focus which may result in some amount of over-classification but that would be inevitable in any situation and a mid-point reduces the chances of over-classification to the minimum. These are the varying perceptions alluded to earlier.

The court didn't agree to issue any direction to render the Juvenile Justice (Care and Protection of Children) Act 2000 as unconstitutional and void even to the extend it puts a blanket ban on the power of the criminal courts to try a juvenile offender for offences committed under the Indian Penal Code, 1860.

Children are Different: The Jurisprudence

The growing recognition of young as a class different from adults has led to the development of different jurisprudence that "children are different"⁴⁷, and hence requires a different treatment. The unanimous quest of almost all models for justice to juveniles delinquents under juvenile justice system

and recognition of childhood as a social construct⁴⁸ than biological construct⁴⁹ extending at least up to 18 years of age has impacted the development of international and national legal frameworks pertaining to children. The high infant mortality rate and large number of children in primitive societies marked with poverty left least scope for recognition of childhood as a different stage from infancy and adulthood⁵⁰. The recognition of adolescent as a stage of stress and storm⁵¹ with tumultuous character further led to changes in the laws.

The League of Nations adopted Geneva Declaration on the Rights of the Child, 1924, recognized the child as an entity entitled to rights⁵². This shift from purely welfaristic approach to justice approach⁵³ gave an impetus to the consensus on international declarations and convention on the rights of the children and child offenders. These documents recognized that the principle of primary importance is that all decisions must be taken in the best interest of the children⁵⁴. The implementation of International Convention on the Rights of the Child, 1989 is also governed by the principle of the best interest of the child⁵⁵. These international documents and principles find place in the preamble⁵⁶ and provisions⁵⁷ of the Juvenile

⁴⁸ Barry C. Feld, *Bad Kids: Race and the Transformation of the Juvenile Court* 18, (Oxford University Press, 1999); see also John Muncie, *Youth and Crime* 48, (Sage Publication, 4th Edition, 2015): The idea that childhood is socially constructed refers to the understanding that childhood is not natural process rather it is society which decides when a child is a child and when a child becomes an adult. The notion of childhood cannot be seen in isolation. It is deeply intertwined with other factors in society.

⁴⁹ The biological construction of child means that he becomes the mature with the development of certain physical features
⁵⁰ Barry C. Feld, *Bad Kids: Race and the Transformation of the Juvenile Court* 19, (Oxford University Press, 1999)

⁵¹ J J Arnett, *Adolescent Storm and Stress, Reconsidered*, National Library of Medicine, available at <https://pubmed.ncbi.nlm.nih.gov/10354802/> (last visited on 16.08.2022); G.S. Hall's (1904) viewed that adolescence is a period of heightened "storm and stress".

⁵² Kumar AskandPandey, *Juvenile Justice: A Commentary* 1, (Eastern Book Company, 1st Edition, 2019)

⁵³ VedKumari, *The Juvenile Justice System in India: From Welfare to Rights* 49, (2nd Ed., Oxford University Press, 2004); VedKumari, *The Juvenile Justice (Care and Protection of Children) Act, 2015: Critical Analysis* 2, (Universal Law Publishing, 2017),

⁵⁴ Article 3, UN Convention on the Rights of the Child, 1989

⁵⁵ Cynthia Price Cohen, United Nations: Convention on the Rights of the Child, *International Legal Materials*, Vol. 28, No. 6 (NOVEMBER 1989), available at <https://www.jstor.org/stable/20693385> (last visited on 10.08.2022)

⁵⁶ Preamble to the Juvenile Justice (Care and Protection of Children) Act, 2015 "...and Whereas, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child

AND WHEREAS, it is expedient to re-enact the Juvenile Justice (Care and Protection of Children) Act, 2000 to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and

assets/95059_book_item_95059.pdf visited on 28.07. 2022
last visited on 28.07.2022

⁴⁶(2014) 8 SCC 390

⁴⁷ Elizabeth Scott, Thomas Grisso et al., *The Supreme Court and the Transformation of Juvenile Sentencing*, available at <https://www.modelsforchange.net/publications/778/> (last visited on 23.06. 2022)

Justice (Care & Protection of Children) Act, 2015, giving a vivid picture that the juvenile justice law in India is highly child-friendly, seeking rehabilitation and socialization without stigmatization of children in conflict with law.

The entire gamut of international and national legal frameworks seek to protect the fragile childhood of immature young delinquents with an object to achieve their successful transition from childhood to adulthood. The robust legal framework with emphasis on rights of delinquents envisages the creation of child-friendly environment giving due recognition to the children as a class different from adults. The criminal procedural laws⁵⁸ and juveniles justice laws extending due process protections to children serve as checks and balances on the powers of the stakeholders under the juvenile justice laws. The juvenile justice law is a special benevolent law excluding operation of laws adversarial to the child interests. The Courts in catena of cases⁵⁹ has upheld the supremacy of juvenile justice laws over all other laws, except beneficial provisions in the interest of children in conflict with the law. This judicially recognized supremacy of JJ Act, 2015 and stress on observance of "procedure established by law" i.e., rights of accused delinquents, serves as a complete check on justice dispensing agencies and also makes them accountable.

Reflections in Juvenile Justice Legislation

Aforementioned discourse and development of different theories and models has impacted the development of juvenile justice till present day. The broad consensus is on the point the young delinquents are in formative stage and hence shall be treated with care and caution to reform and rehabilitate them without any stigmatisation. Thus rehabilitation model has remained prominent in all eras of juvenile justice development. The other models like due process, crime control, non-intervention and developmental has made their space in different times with intervention of judiciary and media and later scientific developments. All such philosophical approaches (models) are reflected in the entire juvenile justice legislation especially in different principles laid down under section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Act has an object to restore the child back without any stigmatisation by extending due process protection at every stage from apprehension to trial. The process of juvenile delinquent

protection, taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993), and other related international instruments."

⁵⁷ Section 3, The JJ Act, 2015 incorporate various principles recognized under international documents.

⁵⁸ Michael J. Allen and Ian Edwards, *Criminal Law* 3, (15th Edition, 2019, Oxford University Press)

⁵⁹ *Rohtas v. State of Haryana*, AIR 1979 (SC) 1839, *Ragbir v. State of Haryana*, 1981 Cri LJ 1497, *Devi Singh v. State of Madhya Pradesh*, 1978 Cri LJ 585, *JagdishBhuyan v. State*, 1992 Cri LJ 3194 (Gau), *AntariyamiPatra v. State* 1993 Cri LJ 1908 (Ori), *In re Sessions Judge Kulpetta*, 1995 Cri LJ 330 (Ker)

under the juvenile justice system commence with the apprehension and production of child before the Juvenile Justice Board. However, much of the research revolved around the Juvenile Court and Observation Home or Special Homes as rehabilitation and socialization process are deemed to begin from these institutions. The oblivious approach of researchers and policy makers towards police and juvenile confrontation and its long term consequences has been probably for reason that this police-child confrontation is for shortest time as police is supposed to make apprehension in exceptional cases. This may also be probably for a strong belief that the criminal justice system is much accused centric and juveniles get sufficient protection. The fact is that the due processes rights extended to juveniles never got the same recognition and observance by the law enforcement agencies. They keep on exercising wide discretion resulting in violation of the rights of juvenile offenders. The custodial torture and deaths⁶⁰ of young delinquents is not still alien to our justice system. The Supreme Court has cautioned the Juvenile Justice Boards not to act as mute spectators⁶¹. The inhumane and extra-judicial methods of treatment of juveniles by law enforcement agencies ruin the young of their childhood and innocence. The situation becomes grim when the law enforcement agencies (police) operate on a military operation model while dealing with the juveniles in conflict with law. The children develop as adverse image of system and conceive police as foes rather friends.

Generally, police are charged with preventing crime and enforcing the law. They are given the authority to make

⁶⁰ India: Annual Report on Torture, *National Campaign Against Torture*, available on <http://www.uncat.org/wp-content/uploads/2021/03/IndiaTortureReport2020.pdf> (last visited on 28.08.2022)

Poor Account for 71% of custodial deaths in India, *The Hindu*, 10 December 2020, available at <https://www.thehindu.com/news/national/poor-account-for-71-of-custodial-deaths-in-india/article61940135.ece> (last visited on 29.08.2022)

India 2021 Human Rights Report, Country Reports on Human Rights Practices for 2021 United States Department of State, Bureau of Democracy, Human Rights and Labor, available at https://www.state.gov/wp-content/uploads/2022/03/313615_INDIA-2021-HUMAN-RIGHTS-REPORT.pdf (last visited on 08.08.2022).

The UP Police accused of Stripping Cleric; *The Telegraph Online*; 29 December, 2019; <https://www.telegraphindia.com/india/uttar-pradesh-police-accused-of-stripping-cleric/cid/1731127> (last visited on 07.07.2022)

How detainees were denied legal counsel, medical help at the Daryaganj police station; *The Caravan*; 25 December, 2019; available at <https://caravanmagazine.in/politics/detainees-denied-legal-medical-help-daryaganj>, (last visited on 07.07.2022)

Eighty eight (88) custodial deaths have been reported in 2021, Crime in India, available at https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%203.pdf (last visited on 25.09.2022)

⁶¹ *Re Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India & Ors.*; Writ Petition No. 102/2007; available at <https://indiankanoon.org/doc/139894183/> (last visited on 07.07.2022)

arrests, to use reasonable physical force when necessary, and to take alleged offenders into custody. Society entrusts a great deal of authority to police but also expects a lot from them. Police are expected to provide public order and safety; to prevent crimes from occurring, find and apprehend offenders when crimes occur, and to perform a variety of law enforcement functions without violating constitutional rights. Police, which is supposed to provide the security, operates on the military operation model. This approach is antithesis to the very premises on which the juvenile justice system is founded.

The first and foremost agency, which is recognized as the gatekeeper of criminal justice, is the law enforcement agency. The law enforcement agency (police) introduces the offender with the juvenile justice system. The nature and circumstances of police contact or confrontation with the children in conflict with law⁶² are likely to have a significant and everlasting impression on young offenders. For juveniles, the police role is considered important, because their views and attitudes towards law enforcement are shaped by their first encounter with a police officer.

The Juvenile Justice (Care & Protection of Children) Act, 2015 is stressing for using non-stigmatising approach. It incorporates the principle of use of non-stigmatising semantic to give effect to the labelling theory and non-intervention model of juvenile justice. Further, it requires that a juvenile delinquent must be dealt by Child Welfare Police Officer or by Special Juvenile Police Unit. It insists on the non-registration of First Information Report against young offenders and investigation in a time bound manner.

Under the Juvenile Justice Law the cases are to be conducted by a forum of three members which is called as Juvenile Justice Board. The proceedings are to be conducted in a simple manner without compromising the due process protection available to adult criminals under the conventional criminal justice. Both statutory and constitutional protections much extend to juvenile offenders at every stage. The principle of innocent until proved guilty has been given an extended interpretation to consider a child free of all malafide intention even if proved guilty.

In the custody for rehabilitation in Observation Homes or Special Homes, the child's best interest governs all the measures. The reformation and rehabilitation of juvenile in conflict with law is the ultimate goal of this legislation. From preamble to Act and throughout provisions dealing with apprehension to treatment, the rehabilitation remains an uncompromised approach.

2. Conclusion

The Juvenile Justice System is an answer to the question as to what is "justice" for the juvenile offenders. The divergent philosophical approaches intend to protect and safeguard the

tender age of young in its formative stage by help him a safe transition from murky adolescent to adulthood. Only a few approaches differ from the main jurisprudence and advocate a different approach for certain kinds of young offenders so as not to compromise the security of the public as envisaged under the conventional criminal justice system. Despite this still variation, the model holds firm the basic evolving jurisprudence about young offenders that "children are different than adult" and thus requires approach which gives due recognition to this philosophy. The present piece of legislation all embraces this philosophy and envisages that "justice" for juvenile offenders require a different treatment keeping in consideration the best interest of the child. New evolving philosophical approach/sis/are expected to not deviate from the set basic principles established under different approaches till date.

⁶² The JJ Act, 2015 has used the terminology "children in conflict with law". In the thesis the words like "juveniles in conflict with law, juvenile delinquents, child delinquent, young delinquent and youth delinquent has been used which connote the same meanings as children in conflict with law.