

---

# REHABILITATION MODEL OF JUVENILE JUSTICE: SOME REFLECTIONS

---

Dr. Hilal Ahmad Najar, Sr. Assistant Professor, School of Legal Studies, Central University of Kashmir

## ABSTRACT

The juvenile justice system is premised on two-fold belief that juveniles in conflict with law are immature and salvageable. Different theoretical explanation has been extended for crime causation of young offenders. Likewise, different theory based Models (approaches) have been devised to best address the deviance among the young offenders. Among all models, the rehabilitation model has been affirmed as the most suitable to redeem the childhood among the young deviants. The present juvenile justice system is not exclusively premised on the rehabilitation model but it is also equally true that devoid of it, it will remain a “youth criminal justice” in action. This paper is an attempt to trace the trajectory of rehabilitative model and its inevitable importance in the juvenile justice system.

**Keywords:** Rehabilitation Model, Juvenile Justice, Progressive era, juvenile delinquents, models

## **Introduction**

The juvenile justice system has never existed in a vacuum. It was well premised on one or another model/s from its inception. Each model is driven by a particular view about juvenile delinquency and its possible causes. The cause of juvenile delinquency and response to it are entwined as action and reaction in every model. However, the models don't exist exclusively to one another –some overlap also. A model is a reaction to an action. Action, in turn, is the cause of delinquency among juveniles. To understand the model (approaches) and their relevance it becomes inevitable to have knowledge about the theories of crime causation. Keeping in view object of this paper a brief sketch in broad terms has been drawn ahead. Focus on understanding rehabilitative model although many models (approaches) operate simultaneously almost all desiring to protecting the best interest of the child.

Models serve as a guide to different decisions made for the specific juvenile offender. Those dealing with juvenile offenders are not convinced that a particular model can be applied to every kind of juvenile offenders, to the exclusion of all other models. Some interventionists are dealing with juvenile offenders on their intuition, without paying any attention to these models. However, their intuition may, in reality, turn up as a mixture of different models. As Already mentioned above, the models of juvenile justice are based on the theories of juvenile delinquencies. The theory of juvenile justice represents a cause and a model represents a response. No model of juvenile justice banks on a single cause to be accepted as a comprehensive therapeutic remedy. For understanding the object of juvenile justice legislation one need to understand all the theories and models as they form basis of differential treatment of juvenile delinquents. It is only based on a theoretical understanding of delinquencies in young that differential treatment is devised towards all kinds of juveniles in conflict with the law. Every juvenile justice model emphasises juvenile delinquents' treatment on different scales as compared to their adult counterparts. However, theories simply stress the causes of crime, irrespective of age, sex or gender. This paper concentrates on a single model called rehabilitative model of juvenile justice which premises of the juvenile justice system. In this paper rehabilitative model has been discussed mostly in the light of developments in American Criminal and Juvenile Justice Systems for obvious reason that it present rehabilitative model has been influence by these systems.

## Theories of Juvenile Delinquency

For centuries, social scientists, criminologists, sociologists, physiologists & scientists have developed several theories as an explanation as to why human beings commit crimes. Those researching deep in this area are still wondering what could be the perfect justification to satisfy the policymakers. The question “why human beings commit a crime” could be reframed should be reframed under the juvenile justice system as - what causes the juvenile to deviate from the set social and legal norms. The word “social” in the above question is intentional, although deviation from social norms does not invite legal sanction. But social deviance among the young is considered as a *twilight zone*, a signal for maturing into adult criminals. It is only for this reason that socially deviant juveniles are put under the category of “*Status Offender*” or “*Juveniles at Risk*” in many jurisdictions treating them differently from juveniles in conflict with the law. However, in many jurisdictions, the status offenders are left untouched, grounded on the belief that state intervention stigmatises them and reduces their chances of rehabilitation and re-socialization (labelling theory of delinquency). Deviance in relation to legal norms is universally accepted as a violation of any law which prescribes the punishment or fine if committed by the adults. The question is what makes juveniles to commit a crime or why a juvenile commits the crime. It is highly daunting and challenging to answer it in quite clear terms. The researcher believes that it is much more perplexed than the same question regarding adults. Those who attempt to explore juvenile delinquency's aetiology (cause) have chosen a difficult task<sup>1</sup>—the children's behaviour changes like the chameleon's colour.

The modern scientific and psychological sub-classification of age from zero to eighteen, into childhood, preadolescence, mid-adolescence, late-adolescence, and also emerging adults, has made the already existing tough and challenging task for theorists and policy framers more challenging. The theories of delinquency vary horizontally as well as vertically. Fundamentally, theories of crime (classical and positivistic) fall into several categories which differ because of differing human nature (free will versus determinism). Classical theorists advocate that human beings are rational and exercise their free will to commit crimes, hence must be punished severely.

---

<sup>1</sup> Pamela Tontodonato & Frank E. Hagan, *What causes Delinquency? Classical and Sociological Theories of Crime*, Peter J. Benekos and Alida V. Merlo, *Controversies in Juvenile Justice and Delinquency* 27 (Anderson Publishing; 2<sup>nd</sup> Edn.; 2009)

The positivists believe that certain deterministic factors beyond the control of human beings become the compelling reasons for them to commit crimes and thus should be treated to overcome those difficulties. The theories have been proposed, tested, adopted, retested and modified. The on-going scientific research makes one more optimistic about the reason behind child delinquency. The latest psychological, scientific and brain research about a child has affirmed the conventional belief that a child is a child who must be treated differently from adults.

The theories of crime causation are important tools to determine the inter-relationship between variables like drugs and crimes, peer pressure and gang violence, and family instability and antisocial behaviour. Numerous theories have been proposed, elaborated and tested to explain individual delinquency and delinquency as a phenomenon. No theory has succeeded in explaining comprehensively all kinds of delinquencies. In view of immaturity and formative stage of young offenders, the rehabilitative theory and model has been adopted passionately. This is also because juvenile offenders are salvageable as they respond to the reformatory and rehabilitative techniques.

### **Models of Juvenile Justice System**

It is almost impossible to sketch an all-comprehensive single juvenile justice system. The juvenile justice system has been influenced mainly by the ideas and thought processes of conservative and liberal blocks. Both have failed to draw a consensus on a particular model. Conservatives plead for a crime control model and liberals for a rehabilitative model. These divergent views have dominated the discourse on the juvenile justice philosophy. The philosophical foundations of juvenile justice system are diverse. It has started from the “welfare model” and the “justice model” to more recent typologies, including the “participatory model”, the “modified justice model”, the “crime control model”, the “corporatist model”, the “minimum intervention model”, the “restorative justice model” the “neo-correctionalist model”<sup>2</sup> and the “developmental model”<sup>3</sup>. The changes in the theoretical basis from time to time show that none of the juvenile justice systems is based on a particular theory. This makes it difficult to categorise the juvenile justice systems. Every

---

<sup>2</sup> Pruin, I., “*The scope of juvenile justice in Europe*”, in: Dünkel, F., Grzywa, J., Horsfield, P. and Pruin, I. (eds.), *Juvenile Justice Systems in Europe*, Vol. 4, 2nd ed. (Forum Verlag Godesberg: Mönchengladbach, 2011), pp. 1546-1547, as quoted in *Justice in Matters Involving Children in Conflict with the Law: Model Law on Juvenile Justice and Related Commentary*, UNITED NATIONS OFFICE ON DRUGS AND CRIME Vienna, United Nations, 2013 available at [frontandback.cover.indd\(unodc.org\)](http://frontandback.cover.indd(unodc.org)) retrieved on 05.07.2022

<sup>3</sup> Elizabeth S. Scott and L. Steinberg; *Rethinking Juvenile Justice*; Harvard University Press, 2008

juvenile justice system is based on different models. “Even if only the ‘welfare model’ and the ‘justice model’ are taken as the classical models for distinction, in practice, these two models have to a great extent merged over the years in many countries around the world due to developmental processes, making it almost impossible to identify either a pure welfare model or a pure justice model in any one State.”<sup>4</sup>. However, the rehabilitative model has remained a master piece throughout the development of the juvenile justice.

### **Rehabilitation Model: An Introduction**

The juvenile justice system can safely be called as the “Youth Criminal Justice System” in absence of rehabilitation approach. The juvenile justice system and the rehabilitation model are entwined in such a manner that they form the two sides of the same coin. The pioneers conceived the juvenile justice system with a plea that the delinquent, wayward and neglected children can be and shall be reformed, rehabilitated and socialized. This way the rehabilitation model became the bases of the entire structure of the juvenile justice system from its inception. The rehabilitation philosophy of juvenile justice was challenged and criticized in America in 1970 and India in 2012<sup>5</sup>, but it survived every jolt across the jurisdictions. The protagonists of rehabilitation philosophy advocate that a child is different from others who require child-oriented treatment. The entire jurisprudence of juvenile justice focuses on rehabilitation, reformation and restoration. The gamut of international instruments about juvenile justice fully endorses the fact that we must handle children in a fashion that does not alienate, belittle and stigmatize them. The principle of child's best interest, institutionalization as a last resort, and establishment of reformatory schools, observation homes, special juvenile police units, juvenile justice boards (courts), and proper but regular counselling and education within the homes are different facets of rehabilitation philosophy within the juvenile justice system.

The rehabilitation approach holds that the wrongdoing is the product of social and environmental factors for which the criminal or delinquent can't be held responsible personally and individually.

---

<sup>4</sup> Pruin, I., “*The scope of juvenile justice in Europe*”, in: Dünkel, F., Grzywa, J., Horsfield, P. and Pruin, I. (eds.), *Juvenile Justice Systems in Europe*, Vol. 4, 2nd ed. (Forum Verlag Godesberg: Mönchengladbach, 2011), pp. 1545 as quoted in *Justice in Matters Involving Children in Conflict with the Law: Model Law on Juvenile Justice and Related Commentary*, UNITED NATIONS OFFICE ON DRUGS AND CRIME Vienna, United Nations, 2013 available at Front and back cover.indd (unodc.org) retrieved on 05.07.2022

<sup>5</sup> After the famous rape and murder case in Delhi commonly known as Nirbhaya Case

Society is responsible for such behaviours and must bear the responsibility for addressing the problem. Accordingly, the primary focus is to provide appropriate help or treatment of offenders rather than punishment. From the rehabilitation perspective, the goal is to intervene and change the factors that embolden offenders to break the law. The assumption is that, at least partially, crime is determined by factors like antisocial attitudes, bad companies, and dysfunctional family life. Unless these criminogenic risks are targeted for change, crime will continue<sup>6</sup>. Rehabilitation is a utilitarian justification for the use of punishment (treatment) because it seeks to use punishment (treatment) as a means to an end for controlling lawlessness. Unlike the utilitarian approach, it does not specify that crime is committed purely out of free will. Like determinists, it does subscribe to the view that crime is the product of some factors beyond the control of human beings. Thus, it does not subscribe to the view that people make choices to break the law. Even if choices are made, as per the model, they are not a matter of pure “free will”<sup>7</sup>. According to this model, when people are characterized by various “criminogenic risk factors”- they have great chances of getting involved in deviant behaviour than those who don’t confront such a criminogenic environment. The model thus advocates for different treatment to individuals based on their specific needs and criminogenic risk factors that contributed to their criminality. This perspective thus stresses for individualization of treatment, which is almost a norm in the present jurisprudence of punishment, particularly for youth offenders.

### **Genesis of the Rehabilitation Model**

Unlike other models, the rehabilitation model was not developed as a special model with all niceties and then tested and implemented by policymakers in the juvenile justice system. Instead, it had already made its place in the system when social workers and philanthropists struggled to tackle the rise of delinquencies due to immigration, industrialisation and breaking down of social norms. The rehabilitative model in the adult criminal justice system developed when crime began to be viewed not as a result of natural depravity but as a consequence of the social disorder. Individuals living at the beginning of the nineteenth century began to believe that social chaos was contributing to the breakdown of families and communities, failing to instil citizens with the moral

---

<sup>6</sup> Francis T. Cullen & Cheryl Lero Jonson; *Correctional Theory: Context and Consequences* 11 ( Sage Publication, 2012)

<sup>7</sup> *Ibid*

values to resist the criminal temptations that had become prevalent in society<sup>8</sup>. To respond to this lawlessness and normlessness, the reformers sought to alter the environmental factors that created such a situation. Thus reformers devised the penitentiary<sup>9</sup> form of punishment to counter the challenge.

Till this time, criminals were banished to other communities, fined, given corporal punishment, or subjected to public humiliation and execution, in short, for every offence or delinquency, punishment was harsh and unjustified<sup>10</sup>. The penitentiary represented significant development, signalling a change in the attitude of policy makers toward criminals and delinquents. They also subscribed to the growing view that crime is not simply a matter of free will but external factors play a pivotal role. Thus, the prison was not meant to scare the criminal straight or merely to incapacitate him, but it must have the purpose of transforming him morally and ethically. This view has been dubbed by radical criminologists as the beginning of a process that envisaged the production of obedient labour class from these prisons.

With the end of the Civil War, it appeared that the penitentiary had failed to achieve its noble ends. The penitentiary faced the problem of over-crowding and created a compelling situation to control and straighten criminals rather than putting any emphasis on rehabilitation. Reformation and rehabilitation, though the prime object of the prison system, couldn't be carried on in view of the rising number of criminals. However, despite the fragile perspective at that moment, it still survived as it remained the fundamental theoretical belief that factors beyond the control of criminals are forcing them to commit a crime. With rehabilitation remaining the core object, the reformers met in 1870 in Cincinnati, Ohio, at the National Congress on Penitentiary and Reformation Discipline, where they reasserted the principle that:

*“The supreme aim of prison discipline is the reformation of criminals, not the infliction of vindictive suffering”.*

---

<sup>8</sup> David Levinson (Ed.), *Encyclopaedia of Crime and Punishment* 1361 (Sage Publications, vol. 3; 2002).

<sup>9</sup> The reformers had chosen term penitentiary purposefully. It represented the view that prisons might be more than conduits for inflicting retribution, terrorising to deter, or restraining to incapacitate. Alexis de Tocqueville, who travelled France in 1831 to visit these institutions, was aware that penitentiaries reflected a fresh way of thinking.

<sup>10</sup> Stephen E. Brown, Finn-Aage Esbensen et al., *Criminology: Explaining Crime and its context* 138 (Anderson Publishing, 7<sup>th</sup> Edn., 2010)

The fact that the penitentiary system had not brought about reform was blamed as it failed to create a conducive ambiance required for isolation and penitence to transform a criminal. A new model for offender change- a “new penology” was developed that emphasized the importance of motivating offenders to change and to secure early release from prison. To encourage the inmates to take rehabilitative techniques seriously and to secure early release, they were given the bait in the form of indeterminate sentences. It was thought that it would inspire every prisoner to behave properly to secure an early release. This way, term of imprisonment or every release was subject to the sweet will of the inmates, at least on paper.

### **Beginning of Progressive Era**

The basic principle set out at the “National Congress on Penitentiary and Reformation discipline” was refined further in the early 1900s, during the progressive era. This era was called “the age of reform because of the diverse social and governmental reforms undertaken during this time”<sup>11</sup>. Social science emerged during this time, offering new insights into sources of human behaviour. The crime came to be understood as a function of individual offenders' psychological, biological and social backgrounds. For some, the underlying reason for a crime could be psychological pathology, while for others, crime might be the result of childhood characterized by family breakdown, normlessness in society and poverty. The logic of this view of crime led to the rise of the “medical model” of correctional treatment, which alleged that crime is analogous to illness. Accordingly, it was argued, “that, like illness, crime should be diagnosed and treated on a case-to-case basis”<sup>12</sup>.

The legacy of the Progressive Era was a rehabilitative ideal based on a solid belief in offender treatment, the indeterminate sentence, and individualized interventions that guided the direction of corrections in the United States for the next seventy years. Within prisons, inmates were to receive psychological counselling, education, and vocational training. Offenders were given indeterminate sentences, and parole boards were created to assess the performance of criminals and return them back to society whenever deemed fit. Offenders could be released on probation,

---

<sup>11</sup> Francis T. Cullen & Cheryl Lero Jonson; *Correctional Theory: Context and Consequences* 31 (Sage Publication, 2012).

<sup>12</sup> David Levinson (Ed.), *Encyclopaedia of Crime and Punishment* 1362 (vol. 3; Sage Publications; 2002).



and probation allowed offenders to be supervised and rehabilitated, while they remained in the community<sup>13</sup>.

During this time, there was a staunch belief that the state could resolve a range of social problems, including crime. The impact of rehabilitation was such that during the progressive era, “all but three states *in America* (emphasis added) had a special court for hearing juvenile cases, and every state permitted probation for youths”<sup>14</sup>.

### **The Rehabilitation Model under Attack**

As said earlier, the rehabilitative model of justice has faced many challenges but stood fast to every challenge. It dominated the correction system for about 200 years from its inception. The juvenile justice system's dominance of rehabilitative approach has never faded, although it came under severe attacks. It has to some extent yielded to crime control model for certain specific categories of offences for youth of particular age groups. Like the period after American Revolution, “The mid-1960s to the mid-1970s was a decade of enormous social turbulence and, in turn, thinking about many things changed. This period was marked by the Civil Rights Movement, urban riots, the Vietnam War and accompanying protests, the shootings at Kent State and Attica, Watergate and related political scandals, and escalating crime rates. In this social context, the criminal justice system came under careful scrutiny as the central state agency for controlling crime and disorder. It was often seen as part of the problem- as doing too much, too little, or the wrong thing”<sup>15</sup>.

Conservatives vehemently criticized the rehabilitation perspective of the criminal justice system for undermining the deterrent value and toughness of the criminal justice system. It was argued that rehabilitation coddled criminals by providing them access to valuable social resources such as education. The conservatives also maintained that the rehabilitative model made excuses for criminals and provided insufficient attention to the offender's responsibility for the crime. The correctional system, according to conservatives, was teaching that crime pays. The criminals were coddled, judges put dangerous offenders on probation, and parole boards released predators

---

<sup>13</sup> *Ibid*

<sup>14</sup> Francis T. Cullen & Cheryl Lero Jonson; *Correctional Theory: Context and Consequences* 31 (Sage Publication, 2012).

<sup>15</sup> *Ibid*

prematurely from prison. Conservatives blamed rehabilitation for allowing the victimization of innocent citizens. Thus, conservatives advocated for restoring the deterrent philosophy in criminal justice.

This time the liberals too criticized the system but other way around. They blamed the government for the non-implementation of rehabilitative programmes and for keeping inmates in inhumane and degradable conditions with no respect for their rights. The liberals also criticized the idea that offenders should be coerced to participate in treatment programmes. The crime, which was envisaged in the medical model as a result of individual pathology, also came under a sharp attack because now crime was considered as a normal response to poverty, inequality, and urban decay. Further, prevailing events cast a shadow of doubt on the state's authority. It was observed that the assumption of the progressive era that the state could be trusted was erroneous, and so government officials couldn't be trusted- "whether that was to advance civil rights, to be truthful about why the nation was at war, to act with integrity while in political office, or to rehabilitate the wayward. The judges and correctional officials were redefined as "state agents of social control" whose motives were suspected. Thus, judges were portrayed as purveyors of unequal justice, using their discretion not to individualize treatments wisely but to hand out harsher sentences to poor and minority defendants. Similarly, correctional officials were accused of using the threat of indeterminate incarceration not to achieve the noble goal of offender reform but to compel offenders to comply obediently with institutionalization rules that had little to do with their treatment; maintaining prison order thus displaced rehabilitation as the real goal of indeterminate terms"<sup>16</sup>.

This state of apathy which created social normlessness and criticism against the rehabilitative model of the justice system was further fuelled by the writing of Robert Martinson and his colleagues in 1974. They published a review of 231 evaluations of correctional programs in which it was concluded that:

*"...with few & isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism."*

---

<sup>16</sup> *Id* at 33-34

The review became famous with a critical heading that “Nothing Works”. It was an apparent and direct attack on the rehabilitative perspective of the justice system. Martinson then proceeded to ask a question:

*“Do all these studies lead irrevocably to the conclusion that nothing works, that we haven't the faintest clue about how to rehabilitate offenders and reduce recidivism?”*

Martinson's study was accepted as an “unassailable truth” as it told people what they already believed to be accurate. This time the critics did not seek to bring more effective reformatory programmes as they did in the 1870s but instead pleaded for abolishing rehabilitation theory and substituting it with a more effective utilitarian perspective of the criminal justice system called retributive or deterrent theory. However, the liberal criticism was for bringing the paper into practice.

Critics of the rehabilitation model agreed that offenders should not be reformed but punished for their crimes. Whereas liberals hoped to create a system of corrections that emphasized due process, inmate rights, and short determinate sentences, conservatives wanted to raise the cost of crime. Three decades later, the conservative model has come to dominate corrections. The rehabilitative ideal has been replaced by what Todd Clear (1994) has referred to as “the penal harm movement”- an effort to exact retribution and increase the painfulness, length, and scope of criminal sentences<sup>17</sup>.

### **Impact of Rehabilitation Model**

The core philosophy of rehabilitation was the individualization of treatment. Three decades after the Cincinnati meeting, the individualized treatment of offenders was pleaded more forcefully. This was for a reason that science of psychology and sociology started endorsing the logic of new penology. The scholars believed that reason for commission of a crime by an individual could be revealed scientifically. The science of criminology developed with a promise that for any given offender, the causes would likely be multifaceted. Individuals might commit the same offence, but

---

<sup>17</sup> David Levinson, (Ed.), *Encyclopaedia of Crime and Punishment* 1363 (vol. 3, Sage Publications, 2002).

underlying reasons could differ, which eventually demands different treatment or treatment on a case-by-case basis.

The moment individualisation of treatment and rehabilitation was embraced, it led to the following important developments in sentencing philosophy:

- a. the discretion was given to the officials to pronounce the correctional interventions keeping criminals and not crime into consideration.
- b. indeterminate sentencing was introduced to enable the release of prison inmates once they have reformed.
- c. the parole system was introduced, which mandated that every parolee must be supervised, counselled and those who failed to go straight must be put together with hardened criminals.
- d. the probation system was introduced as reformers believed that many offenders were not the proper subjects of incarceration.
- e. the “pre-sentence report” or “social investigation report,” along with the concept of a pre-sentencing hearing, was introduced to orient the treatment as per the needs of each offender.
- f. because juveniles differ from adults that justifies creating separate juvenile courts which is in harmony with ideal of individualized treatment.

### **Rehabilitative Model in Juvenile Justice System**

A strong rehabilitative orientation of the juvenile justice legislations is found across all the juvenile justice systems. The emphasis is on serving “the best interest of offending youth and delivering individualized services to them based on their need. The origin of this emphasis”<sup>18</sup> has roots in the doctrine of *Parens Patriae* which justifies the intervention of the state for the welfare of delinquents and juveniles at risk. The state intervenes where parents fail or are unable or unwilling

---

<sup>18</sup> Alida V. Merlo, Peter J Benekos *et. al.*, *The Juvenile Justice System: Delinquency, Processing and the Law* 91 (Pearson Education, USA, 8<sup>th</sup> Edition, 2016).

to look after their children. According to this model, “when the state intervenes, it acts to further the offender's best interests rather than to punish the offender: youthful offenders are not regarded as criminals but as wayward children in need of help”<sup>19</sup>. The juvenile justice system's rehabilitative model has yielded much more benefits than the traditional criminal justice system. The model rests on two assumptions; first, that juveniles can become hardened criminals if left untreated; and second, that juveniles are salvageable. The model completely focuses on the “needs” of the young rather than their “deeds”.

Some notable features of this approach are that it emphasises on “deinstitutionalization and makes little difference among children in need of care and protection and those in trouble with the law. A second notable feature is that it does not care only for kids involved in criminal offences but also encompasses so-called 'status offences' including behaviour such as truancy or sexual precociousness. One consequence of this wide-ranging jurisdiction is that the welfare model/*rehabilitation model* (emphasis supplied) does not wait until an offence has been committed. A second consequence relates to a preference for informal procedures free from technicalities and legality of procedural laws. A third characteristic feature of the welfare approach relates to the use of social science 'experts' in the form of social workers, psychologists, psychiatrists, and those trained in pedagogy, either as decision-makers in their own right or, more commonly, as advisers and report-writers to assist judges. Another closely related feature is that decision-makers are given wide-ranging discretion when determining and providing for the 'best interests of the child. This often involves the use of 'custody' (or at least compulsory removal from home) both for diagnostic purposes and to remove the child from its harmful environment. And there is also a marked preference for court orders and disposals that are flexible, individualized, open-ended or indeterminate in duration”<sup>20</sup>. “When the first correctional institutions were established for juveniles in the 1820s, only “salvageable” offenders were committed to them”<sup>21</sup>. The youth offenders involved in serious offences were dealt with under the adult criminal justice

---

<sup>19</sup> Anna Louise Simpson, *Rehabilitation as the justification of a Separate Juvenile Justice System*, 984, California Law Review, July 1976, Vol. 64, No. 4 available at <http://www.jstor.org/stable/3479922> (lasted visited on June 15, 2022)

<sup>20</sup> James Dignan, *Juvenile Justice Systems: A Comparative Analysis*, available at [https://www.oijj.org/sites/default/files/documentos/documental\\_1263\\_en.pdf](https://www.oijj.org/sites/default/files/documentos/documental_1263_en.pdf) (last visited on 15.07.2022)

<sup>21</sup> Anna Louise Simpson, *Rehabilitation as the justification of a Separate Juvenile Justice System* 985, California Law Review, July 1976, Vol. 64, No. 4 available at <http://www.jstor.org/stable/3479922> (lasted visited on June 15, 2022)

system. The first juvenile court was established in Illinois in 1899 with jurisdiction on both juvenile and status offenders. The entire process before the court was non-adversary, non-stigmatizing and informal. The due process rights available to adult offenders in the criminal justice system were not extended until 1967 in a famous case *in re Gault*<sup>22</sup>. The object was not to deny what was due but to keep the system informal. The rehabilitative model was severely attacked in the 1970s because it has not achieved large-scale rehabilitation and reduced the crime rate. “In 1973, 23 percent of all persons arrested for violent crimes and 51 percent of those arrested for major crimes against property were under age 18”<sup>23</sup>. Several reformatory measures were introduced in the juvenile justice system to overcome these challenges with the rehabilitative approach as a focal point. These measures were procedural protections before juvenile courts, treatment granted to juveniles and pre-judicial disposition of cases.

The question of extending procedural protections to juvenile delinquents before the juvenile courts was raised before Supreme Court of America first time *In re Gault case*<sup>24</sup>. The court allowed the juvenile delinquents to exercise the due process protections before the juvenile courts. In subsequent series of cases<sup>25</sup>, with the extension of various other procedural protections, the nature and functioning of the juvenile court as an informal, civil and non-adversarial changed and become more adversarial and accusatory in nature. The intention of judges of the Supreme Court, who then belonged to the liberal block, were crystal clear not to make it a criminal court but to extend due process clause protections to these juveniles.

The liberals countered the criticism that the rehabilitation model has failed to deliver by criticizing the lackadaisical approach of authorities towards rehabilitative techniques in the treatment centres. The lack of proper staff, trained counsellors, formal vocational training and the lack of zeal among the working staff were vehemently highlighted. It was widely acknowledged that the care and treatment in juvenile facilities were inadequate. In the earlier cases “recognising a right to

---

<sup>22</sup> *In re Gault* 387 U.S. 1 (1967), <https://tile.loc.gov/storage-services/service/ll/usrep/usrep387/usrep387001/usrep387001.pdf>

<sup>23</sup> 1974 FBI UNIFORM CRIME REPORT 187 as reported in Anna Louise Simpson, *Rehabilitation as the justification of a Separate Juvenile Justice System* 984, *California Law Review*, July 1976, Vol. 64, No. 4 available at <http://www.jstor.org/stable/3479922> last visited on June 15, 2022

<sup>24</sup> *In re Gault* 387 U.S. 1 (1967), <https://tile.loc.gov/storage-services/service/ll/usrep/usrep387/usrep387001/usrep387001.pdf>

<sup>25</sup> *In re Winship* (1970), *McKeiver v. Pennsylvania* (1971), and *Breeds v. Jones* (1975)

treatment for juvenile offenders, courts grounded jurisdiction for their inquiry into the adequacy of care on statutory “promises” of treatment or rehabilitation. Legislation that mandated custody, care and discipline for young offenders similar to that parent should provide was construed as being rehabilitative and giving rise to a legal right to treatment”<sup>26</sup>. In more recent cases, the right to treatment has been held to be a constitutional and a statutory right.

The other reform in the juvenile justice system has cropped up in the form of pre-judicial dispositions of cases. “The large number of cases now handled through pre-judicial dispositions is partly due to doubt about the juvenile justice system's ability to rehabilitate offenders. But the continued focus on the characteristics and circumstances of the individual offender and the preference for the informal and flexible procedure in the pre-judicial dispositions of cases evidence the continued belief in the appropriateness of the rehabilitation model of justice for juvenile offenders”<sup>27</sup>. “Police and juvenile court officials have the discretion to settle juvenile cases informally at several points in the juvenile process”<sup>28</sup>.

Thus the rehabilitation approach has retained prominent space in the juvenile justice system in each era. The recent scientific research and psychological developments about the brain and behaviour of children have substantiated the fact the young are in the formative stage and should be treated lenient and carefully with the object of rehabilitating them back into society.

### **Rehabilitation Model with Juvenile Justice Laws in India**

The Indian juvenile justice philosophy is more oriented towards the rehabilitative approach than any other approach. The preamble to the Juvenile Justice (Care and Protection of Children) Act, 2015 envisages in broad terms that rehabilitation of children in conflict with the law and children in need of care and protection is the main and only purpose of this enactment. The rehabilitation

---

<sup>26</sup> Goodman, *Right to Treatment: The Responsibility of the Court*, 57 GEO. L.J. 680, (1969) as quoted in Anna Louise Simpson, *Rehabilitation as the justification of a Separate Juvenile Justice System*, P. 996, *California Law Review*, July 1976, Vol. 64, No. 4 available at <http://www.jstor.org/stable/3479922> last visited on June 15, 2022

<sup>27</sup> Goodman, *Right to Treatment: The Responsibility of the Court*, 57 GEO. L.J. 680, (1969) as quoted in Anna Louise Simpson, *Rehabilitation as the justification of a Separate Juvenile Justice System* 999, *California Law Review*, July 1976, Vol. 64, No. 4 available at <http://www.jstor.org/stable/3479922> last visited on June 15, 2022

<sup>28</sup> *Id* at 1000

approach is perceived at every stage, from apprehension to release of juvenile. The preamble reads as:

*“An Act to consolidate and amend the law relating to children alleged and found be in conflict with law and children in need of care and protection by catering to their basic need through proper care, protection, development, treatment, social re-integration, by adopting the child-friendly approach in the adjudication and disposal of matters in the best interest of children for their rehabilitation through processes provided, and institutions and bodies established....”*

The general principles laid down in section 3 of the Juvenile Justice (Care and Protection of Children) Act, 2015 also emphasis that juvenile justice laws in essence follow the rehabilitative approach. The principles of “dignity and worth”, “best interest”, “family responsibility”, “positive measures”, “equality and non-discrimination”, “privacy and confidentiality”, “institutionalisation as a measure of last resort”, “repatriation and restoration” and “fresh start” form the premises of juvenile justice systems’ reformatory and rehabilitative approach in India. Further, under the Act the institutional mechanism and exercise of powers has been devised in such a manner as to give complete effect to rehabilitation and reformation of young delinquents. The police is bound apprehend a child in civils and keep him in observation home unit produced before juvenile justice board. The Juvenile Justice Board shall be of three members different social and psychological background to devise best method for rehabilitation and restoration of the juvenile delinquents. The Observation Homes/ Special Homes for juvenile justice system is all focus on the welfare and rehabilitation of the young offenders. The Act has a noble object but its implementation is infancy more when rehabilitation and reformation is taken in account.

## Conclusion

The juvenile justice is a unique idea and represent the belief that young offenders are different from their adult counter-parts and thus envisages for different treatment to them at every stage. The judicial<sup>29</sup> affirmed jurisprudence that “children are different”, based on latest scientific brain

---

<sup>29</sup> US Supreme Court has endorsed this jurisprudence by of its recent judgements viz., *Roper v. Simons*, 543 U. S.(2005), *Graham v. Florida*, 560 U.S. (2010), *Miller v Alabama*, 567 U. S. (2012). The Hon’ble Supreme Court of India has also discussed scientific immaturity and impulsivity of young delinquents in *Subramanian Swamy v. Raju*,



research further gives impetus for retention of rehabilitation model under the juvenile justice system. It is the popular belief that juvenile justice system devoid of rehabilitation model can be purely and properly called as youth criminal justice system. Rehabilitation of young delinquents, who mostly are the by-product of different circumstances, is all imbued in the juvenile justice legislation but least implemented on the ground. The establishment of different institution as envisaged under the Act are not going to yield desire results unless the stakeholders work with all zeal and enthusiasm to implement it in letter and spirit. At the same the state must extend all support without absconding from discharging its duties to make this noble piece of legislation a great success to protect and rehabilitate the “future of the nation” (children).

---

*through JJ Board* (2014) 8 SCC 390 and denied render Juvenile Justice (Care and Protection of Children Act) unconstitutional and void.