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## **NAVIGATING JUVENILE JUSTICE: A CROSS COUNTRY COMPARATIVE ANALYSIS OF YOUTH LEGAL SYSTEM**

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### **ABSTRACT**

This article deals with the comparison of the juvenile justice system of different countries i.e. India, USA, Scotland, and England. It gives a brief idea of the Juvenile Justice System of the countries and it also talks about the development of the juvenile justice system of the above-mentioned countries. This article talks about the juvenile justice system of different countries but this is a very vast topic and it is not possible to give a detailed description and comparison of juvenile justice systems of different countries. So this article tries to explain the Juvenile Justice System in brief and covers all the relevant and important parts of the Juvenile Justice System. Understanding the juvenile justice system involves recognizing its historical context, acknowledging its challenges, and embracing innovative approaches to promote the well-being and rehabilitation of young offenders. Continued research, collaboration, and advocacy are essential in ensuring that the juvenile justice system fulfils its mandate to serve both the needs of youth and the interests of society. There is a need for detailed information on all juvenile justice systems in the world. This descriptive information should be presented in a systematic manner whereby comparisons can be made on a point. This article tries to make things clear briefly and simply.

## **1. Introduction**

The term “Juvenile” refers to a young person who still shows and has child-like qualities. “Delinquency” means that someone is not following and failing to fulfill social responsibilities, which can include committing crimes or doing wrong. “Justice” relates to fairness, equity, and genuine respect for the people. It is about seeking moral righteousness and fair treatment against any unfair behaviour.

Juvenile justice relates to the area of criminal law applicable to persons not old enough to be held responsible for criminal acts in most countries, typically those under 18 years of age. The systems and approaches in juvenile justice aim to address the legal processing of juveniles who have committed offenses while also considering their developmental needs, with an emphasis on rehabilitation and steering them away from a life of crime. Various measures exist to handle young offenders, including formal justice or court systems, social protection systems, and, for minor offenses, administrative systems. These methods can function within the adult criminal justice system or operate through separate child-focused entities.

Additionally, the notion of children's rights within juvenile justice is significant, as it argues that within certain contexts—such as at the entry and exit points of the justice system—the rights of the individual as a child should take precedence. This perspective advocates for treatments that support children's rights and well-being, such as intensive fostering programs, community-based alternatives, and support for transitioning out of custody.

The Juvenile Justice System falls within the ambit of criminal law and aims to address the needs of young individuals who are not yet old enough to be held fully responsible for their criminal actions.

Juvenile delinquency mostly happens when young children engage in acts that go against society. The Juvenile Justice system was established to provide just, fair, and equitable treatment for children and young individuals to shape their personalities within society.

The Juvenile Justice System aims at dealing with the challenges faced by children as well as society. Its primary objective is to protect children by providing appropriate treatment and creating an environment that fosters positive human development.

Almost all civilized countries have implemented Juvenile Justice Laws to treat young offenders reasonably, allowing them to lead a peaceful, moral, and happy life. These laws are only applied to individuals who are under the age of eighteen. Juvenile Justice is governed through child-friendly Juvenile courts.

The main focus of the juvenile justice system is to work on rehabilitation rather than punishment. When a child or young person commits an act that is a crime in the eyes of law, in that case, the Juvenile court takes steps to provide care and gentle treatment through specialized institutions. This way, juvenile offenders can be re-shaped to lead a decent life.

In recent developments, there is growing interest in models like the Transatlantic 'Positive Youth Justice' which focuses on strength-based, family-focused support designed to improve the quality of life for young offenders and enhance community involvement in their rehabilitation. In addition to these models, restorative justice approaches have gained traction in the juvenile justice system. These approaches emphasize repairing the harm caused by an offense, holding the offender accountable, and providing opportunities for the victim to be directly involved in the process.

The juvenile justice system is ever-evolving, with developing interests in models that support a positive and integrative approach to dealing with young offenders. This includes the 'Positive Youth Justice' model and restorative justice approaches that emphasize a strength-based and family-focused support system. Moreover, trauma-informed care is increasingly recognized as essential in addressing the underlying issues that lead to delinquent behavior, which aids in providing a holistic approach to the rehabilitation of young offenders.

Overall, juvenile justice seeks to balance accountability and rehabilitation, ensuring that the developmental needs of young offenders are met while also upholding public safety and justice.

## **2. Reasons Behind Juvenile Crimes**

Growing up, the social and financial conditions of a child affect their behaviour. Children need help and guidance to make a difference between good and evil. If a child is guided and corrected on their mistakes then they will develop an attitude and perception of what is right. Children develop emotions like love, affection, rudeness, anger, hatred, compassion, sympathy, and empathy during their upbringing and experiences. Parents play a very

important role in this aspect.

There are many examples where couples face many problems and in the end, they decide to part ways. This affects children in many ways. Quarrels, domestic violence, dowry death, economic havoc, and lack of education are various aspects that impact children in more than one way.

Some of the reasons that could stray a child's behaviour include the following conditions.

Family conditions:

- Nuclear family
- Lack of understanding, affection, and care.
- Lack of friendly relations between parents and children.
- Unhappy and unsatisfied relations with siblings.
- Lack of responsibility and discipline.

Social conditions:

- Loneliness, lack of people to interact and share feelings.
- Influence of friends and bad company.
- Communal influence
- Overstimulating films and shows.

When there is a loss of socialization and family support, children seek out different ways to be seen and get noticed. But, unfortunately, sometimes their ways end up inflicting harm on themselves or others.

### **3. Juvenile Justice System of Different Countries:**

The juvenile justice systems vary greatly between different countries, reflecting divergent legal

philosophies, cultural values, and societal priorities. Here's a brief outline of how juvenile justice operates in different regions:

1. **United States:** The U.S. has a separate juvenile justice system designed specifically for individuals under the age of 18. This system tends to focus on rehabilitation but varies by state. Some states allow for juvenile offenders to be tried as adults for serious crimes.
2. **Europe:** Many European countries have juvenile justice systems aimed at social reintegration and education, rather than punishment. The age of criminal responsibility varies among countries, and restorative justice practices are widely endorsed.
3. **Canada:** In Canada, the Youth Criminal Justice Act governs the treatment of young offenders, focusing on rehabilitation, accountability, and fair treatment, with an emphasis on preventing future offenses through community-based interventions.
4. **Asia:** Countries in Asia have diverse approaches, often influenced by cultural norms and legal traditions. While some countries may have specific juvenile courts, others may not have distinct systems for juveniles. The rights of institutionalized children and those in conflict with the law are recognized as critical by various international standards, but implementation may vary.
5. **Latin America:** Juvenile justice systems in many Latin American countries are in a state of transition, moving away from punitive approaches to more rehabilitative and restorative ones. There is an increasing focus on aligning with international standards on child rights.
6. **Africa:** In many African countries, the juvenile justice system is less formal and may blend traditional community-based practices with formal legal processes. The emphasis is often on the reintegration of the juvenile into society.

In all regions, international documents like the United Nations Convention on the Rights of the Child, which advocates for the separate handling of juvenile offenders and focuses on their rehabilitation, have influenced changes and reforms within juvenile justice systems. However, the implementation of these principles depends on each country's legal framework, cultural contexts, and available resources.

## **Juvenile Justice System in India**

### **1. Historical background:**

The history of the juvenile justice system in India goes back to the period when the Indian Constitution tried to protect its citizens through Fundamental Rights and it also imposes duties on the state through the DPSP i.e. Directive Principles of State Policy. One of the primary aims that needed to be achieved after independence in India was a law to protect children and juvenile offenders.

The Children's Act of 1960 was enacted as a result. This was an excellent Act as it kept youngsters out of prison and offered welfare, education, mentoring, and training to those in need. Furthermore, the Act's features included the development of observation homes, special educational systems, and so forth. Also, juvenile courts in India had a broader definition of criminality i.e., minor crimes, and extended the age of girls which is upto eighteen years.

The juvenile courts in India are confined by the Code of Criminal Procedure 1973 for the juvenile court jurisdiction to the youth less than 16 years old whosoever not committed the crime/offense punishable with death or life imprisonment. The juvenile court in India has to deal with very sensible and careful steps that need to be taken for a juvenile.

The Juvenile Justice Act of 2000 was an attempt to follow the principles outlined in United Nations Conventions. This Act was primarily concerned with minors' rehabilitation. In addition, the Juvenile Justice Board is established under section 4 of the Juvenile Justice Act of 2000.

We might see a reformatory attitude in addressing juvenile criminals until the Nirbhaya event which is commonly known as Delhi Gang Rape Case. The Juvenile Law in India required to be amended due to an increase in the number of adolescents committing severe crimes. As a result, a punitive attitude was taken in dealing with the situation. The above discussion covers the history of the juvenile justice system in India and the historical background of juvenile delinquency in India.

The main role of the juvenile justice system in India is that children should not be tried in regular courts, and laws for juveniles are made in a way that corrects them in all possible ways.

Most of the children who commit any crime come from poor or illiterate families. Juvenile justice in India focuses mainly on the education of children instead of punishing them. The trial of the children is based on non-penal treatment through social control agencies such as observation homes, special homes, and special schools.

## **2. Present situation**

The juvenile justice system in India is primarily governed by the "Juvenile Justice Act" which was most recently amended in 2015. This law provides a legal framework for the protection and well-being of children below the age of 18.

Under this law:

1. **Age of Juvenile:** The Act classifies anyone under the age of 18 as a child. This is in line with the United Nations Convention on the Rights of the Child.
2. **Juvenile Welfare Boards and Juvenile Courts:** The juvenile justice system in India consists of Juvenile Welfare Boards for children in need of care and protection, and Juvenile Courts for juveniles in conflict with the law (those accused of crimes).
3. **Special Homes and Shelter Homes:** Special homes are established for the rehabilitation and reformation of juveniles in conflict with the law, while shelter homes provide immediate care and relief to children in need of protection.
4. **Emphasis on Rehabilitation:** The system emphasizes the care, protection, development, and rehabilitation of juveniles over punitive measures. This reflects a child rights perspective in the Indian legal system.
5. **Juvenile vs. Adult System:** Generally, juveniles are not tried as adults. However, in certain cases where the juvenile is aged between 16 and 18 and has committed a heinous offense, the Act allows for the possibility of trying the juvenile as an adult after a preliminary assessment by the Juvenile Justice Board.
6. **Adoption and Foster Care:** Provisions regarding adoption and foster care are also outlined, with a focus on the best interests of the child.

7. Protection of Rights: The Act lays out the principles of safety, privacy, and the right to be heard. It also incorporates penalties for cruelty against children and offers measures for the adoption, education, and vocational training of juveniles.

The juvenile laws of India are characterized by the following: (1) separate trials for juveniles and adults; (2) strictly confidential court proceedings and hearings about juvenile cases; (3) no disqualification to be attached to the juveniles convicted under the Children Act; (4) provision for the protection of young girls who are subject to seduction, or being induced into prostitution, and for children who are without visible means of subsistence or shelter; and (5) legal protection for probation officers in that they are defined as public servants. Juvenile offenders are apprehended either by the police or by a probation officer and are brought before the juvenile court. An apprehended child is detained for safe custody for up to twenty-four hours. As soon after apprehension as possible, the case is presented before the juvenile court. The court registers the case and calls upon a probation officer to submit an assessment report on a specified date for which the hearing is fixed. Until that time, the juvenile is either detained or released on bail. Bail is used only if parental or home conditions are found satisfactory. Oftentimes, the court utilizes a medical officer's report, clinical studies, and other information provided by the police, in determining the case disposition. "Any delay on the part of any of the personnel involved, whether police, probation officer, medical officer, or mental health specialist, can mean the postponement of disposition and unnecessary pro-elongation of the juvenile's remand stay" (Gokhale and Sohoni. 1976:21).

After the hearing, the court issues a disposal order that discharges the juvenile offender after a fine or admonition or releases him on bond. The court may also order that the juvenile be placed under custody or be committed to an institution. The court can decide to commit non-offenders to intuitions or to place them under suitable custody.

In cases assigned to supervision, a written bond is attained from the guardian to ensure that the conditions of supervision are honored by the juvenile (failure to do so could lead to revocation of the court order). In some cases are released on probation officer lose all contact with the juvenile when he walks out of court. The Indian juvenile system tends to emphasize immediate discharge, restoration or transfer and release after fine and admonition, rather than commitment to institutions or probation.



Juveniles who are committed to institutions are involved in educational and vocational training programming, which is designed for the juvenile's age, educational background, and aptitude. The progress of the juvenile is assessed on an ongoing basis. After two-thirds of the juvenile's sentence is complete, his case is reviewed and he usually is released on "license." While on the license, the juvenile works with his probation officer in the reintegration process. If a juvenile does not have a suitable home to which to return, he may be referred to the Aftercare Home in Madras and the Aftercare Hostel in Bombay.

Although the Indian system focuses on individualized handling of juveniles, individualized justice is inhibited by the following factors: (1) limited resources necessitate comingling of offenders and non-offenders at various stages of the system; (2) dispositions are based on an assessment of the juvenile's personality and correctional needs; (3) definition of a juvenile as an offender is determined by the police without the consultation of experts; and (4) social workers, child welfare workers, and mental health workers are not involved in the juvenile justice decision-making process.

The Indian juvenile justice system also faces challenges. Despite the focus on reformation, there are concerns about the effectiveness of the system and its implementation. For example, there are critiques that the system sometimes fails to protect the rights of juveniles during legal procedures and while in custody. Moreover, there have been criticisms related to the care and rehabilitation of juveniles, often due to limited resources and inadequate training of professionals in the system.

The system is continuously evolving, with legal amendments and new policies being put into place in response to the changing needs and challenges faced by children in India, and is under continuous scrutiny and reform to better serve the needs of children and to align with international standards of juvenile justice.

### **3. Important sections of the Juvenile Justice Act of India**

The Juvenile Justice Act, 2015 of India has several key sections covering various aspects of juvenile care and judicial procedures. Some of the important sections include:

1. **Section 2:** This section contains definitions, including the critical definitions of "child," "child in conflict with the law," and "child in need of care and protection."

2. **Section 4 and Section 5:** These sections discuss the constitution of the Juvenile Justice Board, which is the competent authority to deal with juveniles in conflict with law.
3. **Section 14:** This section details the constitution of the Child Welfare Committee, which deals with children in need of care and protection.
4. **Section 15:** This is a significant section that discusses the preliminary assessment of whether a child aged 16 to 18 years involved in a heinous offense should be treated as a child or tried as an adult.
5. **Section 19:** This section addresses the procedure for the CWC to deal with children needing care and protection.
6. **Section 21:** Prohibits the disclosure of the identity of children, aiming to protect their privacy and reputation.
7. **Section 24 and Section 25:** Pertain to the establishment of special homes and observation homes for rehabilitation and sheltering of juveniles.
8. **Section 39:** Describes the process of rehabilitation and social reintegration, emphasizing that it should be undertaken based on the individual needs of the child.
9. **Section 40:** Talks about the registration of Child Care Institutions and the requisite standards and measures required for their functioning.
10. **Section 41:** Gives the criteria and procedure for the declaration of a Child Care Institution as fit for housing children for a specific purpose.
11. **Section 53:** Provides for the adoption procedure and mandates that the adoption is final only after the court issues an order.
12. **Sections 82 to 87:** Set out offenses against children in the Act and penalties for those offenses, which include punishment for cruelty to a child, employment of a child for begging, and use of a child by militant groups.

These sections cover a broad range of procedures and protection measures within the Indian system, providing a legal foundation aimed at ensuring the care, protection, and rehabilitation

of children within the purview of the juvenile justice system. The Act seeks to balance the needs for care and protection with legal safeguards and interventions for children in different circumstances.

### **Juvenile Justice System in USA**

Like other nations, Juvenile delinquency is a very serious problem in the USA. According to a report in the United States, 2.1 million youth who are under the age of 18 are arrested for juvenile crimes. In the past few years, approximately 1.7 million delinquency cases have been disposed of in juvenile courts.

During the era of 1880 - 1920 in an urban area, a large number of people increased and as a result of this dramatic increase in those areas, many poor and needy children aimlessly walking in the streets. Some of them were getting involved in criminal activity. Initially, the children who were convicted of the offences were sent to the same jail as adults but soon lawmakers and social activists realized that those jails were not fit for children. It is becoming a training institute for criminals and training children for careers in criminality. To avoid those negative influences, separate institutions(jails) were made to keep those convicted children. In the early period, juvenile institutions were based on the English Bridwell institutions. Those institutions were used for teaching life as well as trade skills. The main aim behind establishing this institution was to teach how to survive in society after being released from juvenile institutions. Afterward, a few other types of institutions emerged in the USA.

1. House of Refuge
2. New reformatories
3. Separate institution for juvenile females

House of Refuge aimed at the reduction of youth and used indeterminate sentencing, religious activity, and apprenticeships in various trades. These houses were treated like a military model in order to improve order and discipline, but the houses were often overcrowded and youth were overworked.

New reformatories, which were established later in the year 1800s, were cottages and foster residences that were often placed on farms. The family-type institutions were widespread in

the large area, and hard physical labor was stressed. New reformatories were also going through the same problem as the House of Refuge was facing. Different juvenile institutions for girls came up in the mid-1880s.

In 1944 in *Prince vs. Massachusetts* for the first time, juvenile courts were regulated under the supervision of the doctrine of “*parens patriae*” which says that the state could act as a parent and juvenile courts have the power to intervene whenever court officials felt the intervention was in the favorable interests of the juveniles. Any offense committed was secondary to the offender. Several serious cases filed under the juvenile justice system helped the juvenile justice system evolve. In earlier times, juveniles did not have the same rights as adults in court proceedings. A very limited range of rights was provided to them and few constitutional rights applied to them but now things started to change. The rights of a juvenile vary from state to state but the U.S. Supreme Court has ruled some rights which must be followed by every state.

## **HISTORICAL BACKGROUND**

The history of the juvenile justice system in the USA is complex and has seen significant changes over time. The juvenile justice system in the United States has undergone significant changes over the past century. Initially, the system was designed to provide rehabilitation and support for young offenders, but over time, it became more punitive. In recent years, there has been a renewed focus on evidence-based practices and diversion programs.

Here is a more detailed overview of its evolution:

1. **Early 19th Century:** Prior to the development of a separate juvenile justice system, children were often treated the same as adult criminals. They were incarcerated in adult facilities and subjected to the same punishments as adults. Reformers began to advocate for a different approach to dealing with juvenile offenders, emphasizing rehabilitation and protection rather than punishment.
2. **19th Century Reforms:** In the 19th century, reformers like reformer Charles Loring Brace and the Children's Aid Society in New York began to establish programs and institutions to support and reform juvenile delinquents. These efforts laid the groundwork for the development of a distinct juvenile justice system.

3. **Establishment of the First Juvenile Court:** The first juvenile court in the United States was established in Chicago, Illinois, in 1899. This court, founded by Judge Julian Mack and social reformer Jane Addams, aimed to provide a more compassionate and rehabilitative approach to addressing juvenile delinquency. The court focused on the best interests of the child and sought to address the underlying causes of delinquent behaviour.
4. **Progressive Era Reforms:** During the Progressive Era (late 19th to early 20th century), there was a push for juvenile justice system reforms across the country. States began to establish their own juvenile courts with a focus on rehabilitation rather than punishment. The creation of separate courts for juveniles allowed for more individualized attention and tailored interventions for young offenders.
5. **Due Process Rights for Juveniles:** The mid-20th century saw significant legal developments regarding the rights of juvenile offenders. In the landmark case of *In re Gault* (1967), the U.S. Supreme Court ruled that juveniles have many of the same due process rights as adults, including the right to notice of charges, the right to an attorney, the right to confront witnesses, and the privilege against self-incrimination.
6. **Modern Era Reforms:** In recent decades, there has been a shift towards evidence-based practices, diversion programs, and community-based alternatives to incarceration for juvenile offenders. Many states have raised the age of juvenile court jurisdiction, expanded access to mental health and substance abuse treatment, and implemented restorative justice approaches to address juvenile delinquency.

Overall, the history of the juvenile justice system in the USA reflects a gradual transition from punitive measures towards a more rehabilitative and individualized approach that seeks to address the underlying causes of juvenile delinquency and support positive youth development.

**Key points on which juveniles are judged in USA:**

It is difficult to present a description of "Juvenile Justice in the United States," because the United States includes fifty-one political jurisdictions (fifty states and the District of Columbia) which have legal authority to define "delinquency". In addition, each state includes counties and each county includes cities, villages, and townships. Each of these entities has:

1. Legal authority which may affect the nature of the juvenile justice system; and
2. Resource which may or may not be committed to juvenile justice system.

The juvenile justice system in the United States is governed by various laws, statutes, and acts at both federal and state levels. While there isn't a single "Juvenile Justice Bare Act" in the US, the framework typically includes several key sections or provisions found in federal legislation and state laws. Here are some important sections commonly addressed in juvenile justice laws:

1. **Delinquency Proceedings:** This section outlines procedures for dealing with juveniles who commit delinquent acts, which are offenses that would be crimes if committed by adults. It may cover aspects such as arrest, detention, and adjudication.
2. **Diversion Programs:** Many jurisdictions have provisions for diverting juveniles away from formal court proceedings and into alternative programs such as counselling, community service, or rehabilitation.
3. **Confidentiality and Records:** Laws often address the confidentiality of juvenile records to protect the privacy of the minor. They may dictate who has access to juvenile records and under what circumstances they can be disclosed.
4. **Sentencing and Disposition:** This section covers the range of dispositions or sentences that can be imposed on juveniles found delinquent, including probation, community service, restitution, placement in residential facilities, or incarceration in juvenile detention centres.
5. **Rights of Juveniles:** Similar to adults, juveniles have rights within the justice system, including the right to legal counsel, the right to confront witnesses, and protection against self-incrimination.
6. **Waiver to Adult Court:** Some laws outline the circumstances under which a juvenile's case may be transferred to adult court for prosecution, usually based on factors such as the seriousness of the offense or the juvenile's age.
7. **Rehabilitation and Treatment:** There may be provisions for providing rehabilitation services and treatment to address the underlying issues that contribute to juvenile

delinquency, such as substance abuse or mental health disorders.

8. **Juvenile Detention Standards:** Laws often establish standards for the operation and management of juvenile detention facilities to ensure the safety and well-being of detained youth.
9. **Restorative Justice Programs:** Some jurisdictions incorporate restorative justice principles, which focus on repairing harm caused by the offense through dialogue, mediation, and community involvement.
10. **Prevention Programs:** Legislation may allocate resources for prevention programs aimed at addressing risk factors associated with juvenile delinquency, such as family support services, educational support, and mentoring programs.

These sections provide a broad overview of the key components typically addressed in juvenile justice laws in the United States. However, specifics can vary significantly between states and jurisdictions, as each state has its own statutes and regulations governing juvenile justice.

### **Juvenile Justice in Scotland**

The Scottish Juvenile Justice system is administered, to a great extent, by a person who is commonly known as a "reporter." This individual makes important decisions regarding the processing of juvenile cases. A juvenile under age 16 may be referred to the juvenile justice system by:

1. The reporter,
2. The person or agency that believes the juvenile needs compulsory treatment and care.

The police do not refer each offender they apprehend to the reporter. As in many countries, the Scottish police have a latitude of discretion in the processing of first offenders and offenders who commit minor infractions.

The Lord Advocate is the government's chief law officer and he is responsible for all public prosecutions. The Lord Advocate scrutinizes certain serious cases (e.g., serious cases of crimes

against the person) to decide if prosecution is appropriate. If prosecution is not appropriate, then the reporter will not take any further action.

The reporter has three alternatives for disposing of referrals that come to his attention:

3. decide that action is not required by the panel system;
4. refer the case to the social work department;
5. decide that the child needs compulsory care (in this case, the child would be brought before a children's hearing).

In other words, the reporter has the major decision-making function of whether a child will be brought before a child's hearing (the reporter is the final authority in this situation). The reporter operates in the following manner:

- The reporter receives a referral;
- The reporter makes whatever investigation he deems as necessary (social workers, the school, the police, other reporters, and other relevant agencies may be involved in the investigation process);
- The reporter decides on three major categories:
  - (a) no further action is necessary;
  - (b) referral to the social work department;
  - (c) order a hearing for the child.

If the reporter decides that no further action is needed, this usually means that the reporter believes that compulsory measures of care are not necessary. Some alternative explanations of a 'no further action' decision are as follows:

It may be clear from reports that the home is supportive and firm and that the offense will not be repeated; that reparation is being made; or that family difficulties have not been picked up



by the social work department. Or, less cheerfully, the child may already be under supervision but the situation does not merit residential supervision (Jones and Murray, 1978:95).

A referral to the social work department usually means that the reporter is asking for the social work department's assistance in making voluntary arrangements in the best interests of the child and his family. The assistance provided by the social worker department would be similar to that required under statutory supervision although it would be voluntary. The workload of the social work department is such that voluntary arrangements are used infrequently. If compulsion is deemed necessary, most likely the case would go to court for the children's hearing."

To schedule a hearing, the reporter must believe that one or more of the following conditions exist (Social Work Act, 1968 chapter 49, as amended by the Criminal Procedure Act, 1975 and the Children Act, 1975, section 31):

1. He is beyond the control of his parents; or
2. He is falling into bad associations or is exposed to moral danger; or
3. lack of parental care is likely to cause him unnecessary suffering or seriously impair his health or development; or
4. Any of the offenses mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1975 has been done in respect of a child who is a member of the same household; or
5. The child is, or is likely to become, a member of the same household as a person who has committed any of the offenses mentioned in Schedule 1 of the Criminal Procedure (Scotland) Act 1975; or
6. The child, being a female, is a member of the same household as a female in respect of whom an offense that constitutes the crime of incest has been done by a member of that household; or
7. He has failed to attend school regularly without reasonable excuse; or
8. He has committed an offense; or

9. He is a child whose case has been referred to a children's

10. hearing in pursuance of Part V of the Act.

Before the hearing, the child and his parents must accept the grounds for referral, or the hearing must discharge the referral or refer the case to the sheriff, who will be responsible for establishing the facts of the case (this is necessary in about 10% of the cases). If and when the facts are established, the case would be returned to the "children's hearing." The official participants at the children's hearing are: (1) the reporter, (2) the social worker; and (3) the three-person panel which has the ultimate decision-making power. Members of the public are not admitted. The reporter guides the hearing's procedure and the social worker presents the child's background and makes a recommendation to the panel. "The Children's Act of 1975 requires a chairman of hearing to consider whether a child requires a separate representative, and, if so, to appoint one for him" (Jones and Murray).

The children's hearing is not concerned with the establishment of the facts, but rather, with the treatment of the juvenile. Parents have a duty and a right to attend the hearing; however, the child may be excluded if the panel feels that this is appropriate. Usually, the parents and child are involved actively in the discussion of the case at the hearing.

During the hearing, the panel chairman plays a very important role. The panel chairman must indicate the substance of the background report (except when he considers it to be detrimental to the interest of the child). The Chairman must also record reasons for the disposal, and he can be asked to send these recorded reasons to the child (primarily for appeal purposes). The chairman must inform both parents and children of their rights of appeal (Jones and Murray, 1978:101).

As a result of the hearing, three alternative decisions can be made:

- (1) decide that compulsory measures are not required, and therefore, the referral is discharged;
- (2) decide that the child may be supervised in the community, and require such supervision or
- (3) decide that residential supervision is necessary.

If requested by the child or his parents, a review of the panel's decision can be conducted six months after the hearing. Also, there is an annual review. The annual review may result in a

discharge of the case, continuance of the supervision, or change in the supervision requirement.

A decision of the hearing may be appealed to the Sheriff's Court. The child and/or his parents may be represented by legal counsel at this appeal hearing. The case also may be appealed from the Sheriff's Court to the Court of Session on a point of law or with respect to any irregularity in the conduct of the case. This appeal can be made by the child, the parent, or the reporter. (Gandy and Spencer).

## **JUVENILE JUSTICE SYSTEM IN ENGLAND**

In 1969, Great Britain enacted an Act which is known as the Children and Young Persons Act. This Act states that the Juvenile Offenders shall be dealt with outside the court and this act gave rise to the new form of proceedings known as "care" proceedings. This "care" proceeding became the alternative to criminal proceedings against juvenile offenders who are between the ages of 14 years and 17 years. The specific intentions of this act are:

1. Criminal prosecutions other than for homicide would no longer be brought against those under fourteen;
2. Criminal offenses committed by youths under fourteen could provide grounds for taking care proceedings, but it would be necessary to provide that the child needed care and control which he or she would be unlikely to receive unless the court made an order; and
3. Criminal charges against those over fourteen would no longer be brought unless the prosecutor considered a non-criminal response inappropriate, had sought views of a statutory welfare agency, and could satisfy a court that a prosecution was necessary ( Marshall 1978 ).

In England, a juvenile court may take action against a juvenile when they consider that one or more of the following conditions is satisfied :

1. His proper development is being avoidably prevented or neglected or his health is being avoidably impaired or neglected or he is being ill-treated; or
2. It is probable that the condition set out in the preceding paragraph will be satisfied in the case of another child or young person who is or was a member of the household to which

he belongs; or

3. It is probable that the conditions set out in paragraph 1 of this subsection will be satisfied in case, having regard to the fact that a person who has been convicted of an offense mentioned in Schedule 1 of the Act of 1933 is, or may become, a member of the same household as the child; or

4. He is exposed to moral danger; or

5. He is beyond the control of his parent or guardian; or

6. He is of compulsory school age within the meaning of the Education Act 1944 and is not receiving efficient full-time education suitable to his age, ability, and aptitude;

The following individuals may bring a child (through age 17) to the juvenile court; if they have reason to believe the child needs care and control: social workers, police constables, officers of the National Society for Prevention of Cruelty to Children (Gandy, 1975). However, the police are most likely to become aware that a juvenile has committed a criminal offense. The police usually conduct a thorough investigation of the juvenile before referring the juvenile to court. For example, the Juvenile Bureau for the Metropolitan Police for London screens all cases referred to them by visiting the juveniles and their families, and by checking school progress and previous referrals to social service agencies. Based on these inquiries, a decision is made which reflects the police's view of the likelihood of the juvenile's future deviant behaviour. If the likelihood of future deviant behaviour is great, then, referral to court usually results. However, if the child denies the offense the case must go to court (Power, 1976:308).

The following options guide the decisions of the juvenile justice system: (1) if the child is under the age of ten, criminal proceedings cannot be brought, however, the police may initiate care proceedings if other evidence is available to show that the child needs care or control; (2) between the ages of ten and fourteen, criminal proceedings may be brought if there is evidence to "rebut doli in capis"; and (3) between the ages of fourteen and sixteen, there are no specific legal restraints which inhibit criminal proceedings (Marshall, 1978:73)

A child between the ages of twelve and seventeen may be transferred to criminal court. If a

juvenile is jointly charged with an adult then in that scenario the case is heard in the adult court. If the juvenile is found guilty in criminal court and he is not discharged or fined, the juvenile is sent to juvenile court for disposition (Gandy. 1975).

If a juvenile defendant denies that he has committed the criminal or delinquent act with which he is charged, then the safeguards of criminal trial as to the admissibility of evidence and the burden of proof are retained. Thus, in a contested case, there are two stages. The first is conducted as if it were a criminal trial. The second is civil with civil rules of evidence and proof (Greene, 1976).

Juvenile court proceedings are conducted before one to three magistrates drawn from a panel. The following dispositions are available for criminal cases in the juvenile court:

1. fines up to about \$125;
2. compensation to the victim;
3. required attendance at an "attendance centre";
4. up to 6 months in a detention centre;
5. commitment to Borstal training;
6. conditional discharge; and
7. unconditional discharge.

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