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Due Process Model: A Judicial Innovation In Juvenile Justice System

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Abstract
The Juvenile Justice System is a quest to do complete justice to young offenders who are in their formative stages. Different theory based models (philosophical approaches) have been developed to protect the child from get deep in the quagmire. The due process model, a judicial innovation in juvenile justice system, extend at procedural protections to juvenile which are otherwise available to their adult counter-parts. The question of extension of due process protection to young who otherwise get compensatory benefits has baffled the American and Indian Judiciary from time. The courts have extended and protect the procedural safeguards from all constitutional challenges from time to time. In this paper the author intends to traverse through different judicial pronouncement to ascertain that juvenile justice system without procedural safeguards (due process model) is going to make both worlds of young offenders worst that is neither they will get protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.

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I. Introduction

The juvenile justice system, like criminal justice system, is premised on different theoretical and philosophical approach. From inception it as existed on one or more model. No doubt rehabilitative model has shaped the juvenile justice system in every era but other models have equally played role to shape and reshape it. One such model has been the due process model (philosophical approach). Introduced through the court ruling it has protected the rights of young delinquents at every stage of trial. Earlier approach of legislators and that of courts too had been that there is no need to extend the due process protection to young delinquents because they are helped not punished. Further it were pleaded that waiver of rights by young delinquents in lieu of the compensatory benefits they get under the system. The fact remains that the juvenile justice, without due process protection, will ruin both worlds of young offenders. Neither they will get procedural protections not the reformative and rehabilitative benefits as a wide gap exist in law and practice about the institutional setups.

II. Due Process Model

Herbert L. Packer was the first to propound the two models of the criminal justice system- the crime control model and the due process model. The crime control model envisages processing of criminal cases swiftly without hurdles. It resembles an assembly line were cases are processed without obstacles in the form of due process protections. The due process, on the other hand, looks like an obstacle course intended that at every stage of the criminal process the accused must be given what is due to him. The ideology of the due process is more ingrained in the judicial judgements which recognised the protection and safeguards to alleged offenders from the inception of the criminal process to disposal of the case. The ideology of the due process is not in any way inverse to the ideology of the crime control. It acknowledges that crime should be repressed but not at the cost of individual rights of the alleged accused. The crime control model permits fact finding in an informal manner but the due process model questions its veracity for obvious reasons. Herbert L. Packer has put it as:

"The Crime Control Model heavily relies on the ability of investigative and prosecutorial officers, acting in an informal setting in which their distinctive skills are given full sway, to elicit and reconstruct a tolerably accurate account of what took place in an alleged criminal event. The Due Process Model rejects this premise and substitutes for it a view of informal, non-adjudicative fact-finding process that stresses the possibility of error: people are notoriously poor observers of disturbing events-the more emotion-arousing the context, the greater the possibility that recollection will be incorrect; confessions and admissions by persons in police custody may be induced by physical or psychological coercion so that the police end up hearing what the suspect thinks they want to hear not necessarily the truth; witnesses may be animated by a bias or interest that

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no one would trouble to discover except one specially charged with protecting the interests of the accused-which the police are not"[2].

This all leads to rejection of "informal fact-finding processes as definitive of factual guilt and to the insistence on formal, adjudicative, adversary fact-finding processes in which the factual case against the accused is publicly heard by an impartial tribunal and is evaluated only after the accused has had a full opportunity to discredit the case against him"[3].

The due process model emphasis that the case of every individual must satisfy all tests before an impartial forum. The model insists on preventing and eliminating miscarriage of justice by protecting the factually innocent and convicting the factually guilty. By putting primary stress on the rights of the individuals, the model intends to restrain power of officials because unbridled and unaccountable exercise of powers could lead to miscarriage of justice. This is to demonstrate to officials that nothing can be achieved by abusing power. It is also concerned with upholding moral standards as a matter of principle. It promotes equality in the criminal justice system and pleads for a fair hearing.

Both the models (crime control and due process) advance potent arguments, and *Packer* suggested "that anyone who supported one model to the complete exclusion of the other would be rightly viewed as a fanatic"[4].

Due Process Model in Juvenile Justice: A Judicial Innovation

The historical development of juvenile justice reveals beyond an iota of doubt that "welfare", not "justice", has remained the system's primary purpose from its inception. Rather it is "welfare" which is believed to amount to justice in case of young delinquents. The initial efforts of Child Saving Movements were based on humanitarian grounds to protect all children irrespective of the nature and extent of deviance. All salvageable children were considered to be the fit subjects of the juvenile justice system without digging into their innocence or culpability. It was only later, through judicial pronouncements of the Supreme Court of America, that the due process model found space in the juvenile justice system. In the Indian Juvenile Justice System, the due process model is a legislative innovation, and the judiciary has fully substantiated to this view. The latest Indian juvenile justice law does mention that a child alleged to have committed any offence is entitled to all natural justice. One glaring example is in the form of the principle of non-waiver of rights[5] , which reads as:

"No waiver of any of the rights of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver".

Due process in both criminal and juvenile justice systems ensures that "the basic constitutional right to a fair trial, to have an opportunity to be heard, to be aware of matters that are pending, to a presumption of innocence until guilt is established beyond a reasonable doubt, and to make an informed choice whether to acquiesce or contest and to provide the reasons for such a choice before a judicial officer. An important aspect of due process is that police officer must have probable cause to justify arrest of suspected criminals"[6].

The due process protections are inevitable to curb the powers of officials as certain categories of individuals become the victims of bias. According to due process the judicial trials and decision should be free of extra-legal considerations. The studies reveal that minorities especially blacks are treated differently and harshly from their whites young offenders[7].

The emphasis on due process requirements in juvenile offender processing stems, in part, from the important U.S. Supreme Court decisions during the 1960s and 1970s. With the establishment of a separate system for juvenile delinquents and status offenders, the higher courts, particularly the Supreme Court of America, were not entertaining the petitions challenging the orders of juvenile courts. A strong presumption was drawn that the juvenile courts are working on the principle of *parens patriae* taking all decisions in the child's best interest. The reformatory schools were considered, although wrongly, as places where delinquents learned morals, received vocational training and were restored back to society as civilised members. The reality of these

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2 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).

3 *Ibid*

4 *Ibid*

5 The Juvenile Justice (Care and Protection of the Children) Act, 2015, Section 3(ix)

6 Alida V. Merlo and Peter J. Benekos et al.,*The Juvenile Justice System: Delinquency, Processing, and the Law* 90 (Pearson, 8th Edn., 2016)

7 *Id* at 90-91

reformatory schools was otherwise. The parents of delinquents started contesting the decisions of sending the kids to these reformatory schools before higher adjudicating authorities. The first such case which successfully knocked on the doors of the Illinois Supreme Court was the case of *Daniel O'Connell*[8], but the decision had no immediate far reaching consequences as it applied to Chicago only. In the case, *Daniel O'Connell*, who had not violated any penal law, was committed to the School for the reason that he appeared to be in danger of growing up to become a pauper. Daniel was supposed to remain in the House until his 21st birthday. Daniel's parents objected to such a decision and filed a writ of habeas corpus. The case reached the Illinois Supreme Court, and Daniel was released in 1870. Four decades before, the Pennsylvania Supreme Court in 1838 had a similar case[9] , but then that court declined to release *Mary Ann Crouse*[10]. The courts arrived at two different decisions, although the arguments raised were similar. In the *Mary Ann Crouse*, the court said that she is being helped and not punished, but in Daniel's case, this reasoning was reversed as Daniel is being punished and not helped. The Court observed:

"Why should minors be imprisoned for misfortune? Destitution of the proper parental care, ignorance, idleness and vice, are misfortunes, not crimes…. This boy is deprived of a father's care; bereft of home influences; has not freedom of action; is committed for an uncertain time; is branded as a prisoner; made subject to the will of others, and thus feels he is a slave"[11].

Second, in *O'Connell case*, the court described the harsh realities of the Chicago Reform School, but it seemed to grant the benefit of the doubt to Daniel's parents, who were presumed to take care for the boy and want to provide good "home influences". The court compared the actual performance of the Chicago Reformatory School with the good intentions of Daniels parents. This change reflected that reform schools were now almost fifty years old, and much of the idealism had faded. As against this, the Pennsylvania Supreme Court has taken the opposite stance, describing the House of Refuge in ideal conditions and Mary Ann's parents in harsh ones.

To everyone's surprise, the Illinois Supreme Court did not subscribe to the much-cherished view that *parens patriae* is the basis for juvenile justice. The doctrine of *parens patriae* and the principle of the 'best interest of the child' did not found any place in the judgement. Holding *Daniel* imprisoned, the Court backed its decision on the legal doctrines related to criminal courts and criminal punishments. The court questioned the unbridled powers of the state for confining a boy who has no recourse to legal remedies.

Can the State, as parens patriae, exceed the power of the natural parent, except in punishing crime? These laws provide for the " safe keeping" of the child; they direct his "commitment," and only a "ticket of leave," or the uncontrolled discretion of a board of guardians, will permit the imprisoned boy to breathe the pure air of heaven outside his prison walls, and to feel the instincts of manhood by contact with the busy world. The mittimus[12] *terms him "a proper subject for commitment;" directs the superintendent to "take his body," and the sheriff endorses upon it, "executed by delivering the body of the within named prisoner." The confinement may be from one to fifteen years, according to the age of the child. Executive clemency cannot open the prison doors, for no offence has been committed. The writ of habeas corpus, a writ for the security of liberty, can afford no relief, for the sovereign power of the State, as parens patriae, has determined the imprisonment beyond recall. Such a restraint upon natural liberty is tyranny and oppression. If, without crime, without the conviction of any offence, the children of the State are to be thus confined for the "good of society," then society had better be reduced to its original elements, and the free government acknowledged a failure*[13].

These arguments paved the way for due process protection to young alleged offenders and status offenders before any forum. The court recognised due process protections in these words:

Even criminals cannot be convicted and imprisoned without due process of law—without a regular trial, according to the course of the common law. Why should minors be imprisoned for misfortune? Destitution

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8 People ex rel. O'Connell v. Turner, 55 Ill. 280 (1870), Sept. 1870 · Illinois Supreme Court, 55 Ill. 280 available at "https://cite.case.law/ill/55/280/" \l "p286" accessed on 12.07.2022

9 Exparte Crouse, 4 Whart. 9 (1839), Jan. 3, 1839 · Supreme Court of Pennsylvania, available at https://cite.case.law/whart/4/9/ accessed on 12.07.2022

10 Mary Ann Crouse had not committed any offence, but she was poor and appeared to be in danger of growing up to become a pauper. She was committed to House of Refuge on the complaint her mother. Her father objected and filed writ of habeas corpus but Pennsylvania Supreme Court rejected arguments and held that it was perfectly legal to send Mary Ann to the House.

11 People ex rel. O'Connell v. Turner, 55 Ill. 280 (1870), Sept. 1870 · Illinois Supreme Court, 55 Ill. 280 available at "https://cite.case.law/ill/55/280/" \l "p286" accessed on 12.07.2022

12 A warrant issued for someone to be taken into custody. Or a writ for moving records from one court to another.

13 People ex rel. O'Connell v. Turner, 55 Ill. 280 (1870), Sept. 1870 · Illinois Supreme Court, 55 Ill. 280 available at "https://cite.case.law/ill/55/280/" \l "p286" accessed on 12.07.2022

of proper parental care, ignorance, idleness and vice, are misfortunes, not crimes. In all criminal prosecutions against minors, for grave and heinous offenses, they have the right to demand the nature and cause of the accusation, and a speedy public trial by an impartial jury. All this must precede the final commitment to prison. Why should children, only guilty of misfortune, be deprived of liberty without 'due process of law'[14]?

The court further said that the children could not be deprived of their liberty without any charge or conviction. Holding the right to liberty as inalienable and inherent, the court noted that this is a right higher than the constitution and law and is available to all, including children.

Can we hold children responsible for crime; liable for their torts; impose onerous burdens upon them, and yet deprive them of the enjoyment of liberty, without charge or conviction of crime? The bill of rights declares, that "all men are, by nature, free and independent, and have certain inherent and inalienable rights—among these are life, liberty, and the pursuit of happiness." This language is not restrictive; it is broad and comprehensive, and declares a grand truth, that "all men," all people, everywhere, have the inherent and inalienable right to liberty. Shall we say to the children of the State, you shall not enjoy this right—a right independent of all human laws and regulations? It is declared in the constitution; is higher than constitution and law, and should be held forever sacred[15].

The judgment endorsed the due process protections for children for the first time. The court didn't pay attention that by virtue of extending the due process rights an informal agencies established on humanitarian grounds is going the become more formal and criminal. But this decision has territorial limitations because ruling came from the corridors of the Illinois Supreme Court instead of the Supreme Court of America. But it took almost another century to the Supreme Court of America to deliver a judgement[16] of far implications for the juvenile justice system. The decision of *Daniel O'Connell* had set a stage for due process, but it was not carried forward immediately. The fact is that "*O'Connell* set the stage for the first juvenile court in Chicago, in 1899. The judge had ruled that it was illegal to send poor children to reform schools unless they had committed a felony. Many people at time believed that sending poor children to institutions, even though they had committed no crimes, had been good practice and was best for the children themselves. The *O'Connell* ruling, therefore, outlawed a practice that was earlier thought good, just, and important. These people (*protagonists of House of Refuge*) looked for a new legal basis to continue this practice, even though the court had defined it as illegal"[17]. They created a new legal basis by founding the first juvenile court through the enactment of The Juvenile Court Act of 1987[18]. The court was empowered to remove any minor from the custody of parents when his or her safety or welfare or the protection of the public cannot be adequately safeguarded without removal[19]. Further, the Act maintained that in case "the court determines that parental custody is detrimental to the health, safety, and best interests of the child, then the parents' right to custody shall not prevail"[20]. In simple terminology the Act established the court with *parens patriae* doctrine as its legal basis to deal with alleged minor offenders as well as status offenders.

During the 1960s and the 1970s, certain developments substantially changed the procedural structure of juvenile justice. First, the new realism ascertained that juvenile justice courts did not treat or act in the best interest of the juveniles but rather punish them. Second, the Supreme Court of America led by Chief Justice Earl Warren, along with other liberal judges, extended the rights and privileges guaranteed

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[14] People ex rel. O'Connell v. Turner, 55 Ill. 280 (1870), Sept. 1870 · Illinois Supreme Court, 55 Ill. 280 available at "https://cite.case.law/ill/55/280/" \l "p286" accessed on 12.07.2022

[15] People ex rel. O'Connell v. Turner, 55 Ill. 280 (1870), Sept. 1870 · Illinois Supreme Court, 55 Ill. 280 available at "https://cite.case.law/ill/55/280/" \l "p286" accessed on 12.07.2022

[16] In re Gault 387 U.S. 1 (1967), https://tile.loc.gov/storage-services/service/ll/usrep/usrep387/usrep387001/usrep387001.pdf

[17] Thomas J.Bernard and Megan C. Kurlychek, *The Cycle of Juvenile Justice 62* (Oxford University Press, 2nd Edition 2010)

[18] The Juvenile Court Act of 1987 was enacted to establish first Juvenile Court. The legislation resulted in an informal separate institution for dependent, neglected, and delinquent children under the age of 16 years. The Act also specified that the new court focus on rehabilitation and treatment rather than punishment and it laid the foundation for the modern juvenile justice system. See https://onlinelibrary.wiley.com/doi/abs/10.1002/9781118524275.ejdj0204#:~:text=The%20legislation%20resulted%20in%20an,the%20modern%20juvenile%20justice%20system accessed on 13.07.2022

[19] The Juvenile Court Act of 1987, Article 1 General Provision, Section 1, Purpose and Policy, available at https://www.ilga.gov/legislation/ilcs/ilcs4.asp?ActID=1863&ChapterID=50&SeqStart=100000&SeqEnd=2300000 accessed on 13.07.2022

[20] Ibid, Section 3(c) The parents' right to the custody of their child shall not prevail when the court determines that it is contrary to the health, safety, and best interests of the child

under U.S. Constitution to alleged offenders[21]. Third, rehabilitative philosophy came under severe attack after *Robert Martinson's* reviewed work that *'Nothing Works'* demanded and witnessed changes in the juvenile justice system. A call for a 'get tough' approach (crime control model of juvenile justice) was adopted. It was amidst these developments that certain cases of juvenile offenders knocked the door of the highest adjudication forum in America. The Supreme Court had a chance to address the issue of the operation of the juvenile justice system in the country. From 1966 to 1975, the court delivered five judgments[22] of seminal importance, which permanently changed the procedural discourse of the juvenile courts in America for the future. Without holding that the juvenile justice system is illegal and unconstitutional[23], the Court extended the protections of the due process clause to all children. These judgments set the juvenile justice system in America tuned with the due process model.

The first case to reach this highest court was *Kent v. United States*. The admission and decision of the case served as a notice that SC would consider the cases of juvenile offenders, and for subsequent cases, it served as the catalyst. The stage for due process protection for juvenile offenders was set smooth in the case of *In re Gault*. Comparatively, *In re Gault* case deserves much more space than any other case under the due process model.

On September 5, 1961, when *Morris Kent* was on probation[24], he was arrested for housebreaking, rape and theft. He confessed to several such brake-ins and rapes. Her mother retained a lawyer who filed a motion for a hearing claiming that Kent was a victim of severe psychopathy and recommended hospitalisation. On September 8, a new report from a psychiatrist asserted "rapid deterioration of personality structure and the possibility of mental illness. The judge then entered a motion stating that 'after full investigation, I do hereby waive' jurisdiction over the case and order *Kent* be held for trial in adult criminal court". The lawyer appealed the waiver itself to the Municipal Court of Appeal. The court ruled that waiver was valid. On an appeal before the Supreme Court of America the lawyer asserted the Juvenile Court Act of Columbia had been violated by the police and the judges in handling the case. He also stated that there is dereliction of duty on the part of judge to fully investigate the case before waiving *Kent* to criminal court. The denied of due process rights has led to the violation of the U.S. Constitution, the lawyer alleged before the top court.

The court came to the conclusion that waiver in the case in hand has violated the District Columbia's Juvenile Court Act and endorsed that a juvenile is entitled to the protections of due process. In the words of the court:

The Juvenile Court Act requires "full investigation" and makes the Juvenile Court records available to persons having a "legitimate interest in the protection . . . of the child ...." These provisions, "read in the context of constitutional principles relating to due process and the assistance of counsel," entitle a juvenile to a hearing, to access by his counsel to social records and probation or similar reports which presumably are considered by the Juvenile Court, and to a statement of the reasons for the Juvenile Court's decision sufficient to enable meaningful appellate review thereof[25].

On the issue of the right to representation, the court observed in the following strong terms:

"The right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is of the essence of justice. Appointment of counsel without affording an opportunity for hearing on a "critically important" decision is tantamount to denial of counsel. There is no justification for the failure of the Juvenile Court to rule on the motion for hearing filed by petitioner's counsel, and it was error to fail to grant a hearing".

Quoting *Pee v. United States*[26], the court observed that

"We do not mean by this to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment".

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[21] Two important decisions were *Mapp v Ohio (1961)* which pertained to Fourth Amendment prohibition of "unreasonable searches and seizures" and *Miranda v. Arizona (1965)*, which concerned with the Fifth Amendment privilege against self-incrimination.

[22] *Kent v. United States* (1966), *In re Gault* (1967), *In re Winship* (1970), *McKeiver v. Pennyslvania* (1971), and *Breeds v. Jones* (1975)

[23] Illinois Supreme Court in *O'Connell* case has held that Refuge House is illegal.

[24] The 14 year old Morris A. Kent was arrested and charged with several housebreakings and an attempted purse snatching.

[25] *Morris A. Kent, Jr. V. United States*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 available at https://njdc.info/wp-content/uploads/2013/11/Kent-v-United-States-slip-opinion.pdf accessed on 13.07.2022

[26] 107 U. S. App. D. C. 47, 50, 274 F. 2d 556, 559 (1959)

This case raised a constitutional issue involving the equal protection clause of the Fourteenth Amendment[27]. In the past, the Supreme Court had interpreted this clause to mean "that people could receive 'less protection' from the law only because they receive some '**compensating benefit**' that they could not obtain without sacrificing that protection. Juvenile Courts provide juveniles less protection than the criminal courts provide adults, but juveniles were supposed to receive a 'compensating benefit', in that the juvenile court looked after their "best interests" so that they were being helped and not punished'.[28]

The Supreme Court raised the question of whether this benefit under the juvenile justice system exists. The court found a wide gap between the good intentions of pioneers and the actual performance and observed that the juveniles not only fail to receive special care and treatment, but they actually received the "worst of both worlds".

While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guarantees applicable to adults. There is much evidence that some juvenile courts, including that of the District of Columbia, lack the personnel, facilities and techniques to perform adequately as representatives of the State in a parens patriae capacity, at least with respect to children charged with law violation. There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children[29].

Thus, the court endorsed the fact that juveniles are receiving the worst of both worlds. The due protection under the garb of compensating benefits is denied at the trial stage, while the actual performance of the reformatory schools is no more reformatory and rehabilitative. Since the case was based on the District of Columbia's statutes, the decision applied only to the District of Columbia. The subsequent case, famously known as *In re Gault*, vehemently enjoined due process protections for juvenile before and at the trial stage, reaching all states and all children because this time, the decision was based on the Constitution of U.S.A.

In re Gault Case: Setting Controversy at Rest

The 1967 U.S. Supreme Court decision forever changed the landscape of juvenile justice. No longer could judges or probation officers use good intentions as a substitute for procedural protections. No longer could a child face the "awesome prospect" of confinement without a fair presentation of the facts. And no longer could youth be processed through a "kangaroo court" system—absent the rights and protections guaranteed by the Due Process Clause— simply because of their status as children[30].

Gerald Gault, 15-year-old, was taken into custody for making lewd telephone calls along with his friend Ronald Lewis to their neighbour *Mrs Cook*. The judge committed *Gerald* to the State Industrial School for Boys until his 21st birthday. That means confinement up to six years, but if Gerald had crossed the age of minority, as an adult, the maximum penalty would be a fine of $5 to $50 and imprisonment for not more than two months.

The lawyer of *Gault* argued, in the lower court, that *Gault's* treatment had violated both Arizona Statutes and the U.S. Constitution. But before the Supreme Court, the lawyer raised only constitutional issues viz., the right to notice of the charges, the right to counsel, the right to confront and cross-examine witnesses, the privilege against self-incrimination, the right to have transcript of the proceedings.

The Supreme Court, referring to the decision in *Kent v. the United States*[31], "that the [waiver] hearing must measure up to the essentials of due process and fair treatment" and held that:

"*the above right is reiterated here in connection with a juvenile court adjudication of "delinquency," (the above right) as a requirement which is a part of the Due Process Clause of the Fourteenth Amendment of our Constitution. The holding, in this case, relates only to the adjudicatory stage of the juvenile process, where commitment to a state institution may follow. When proceedings may result in incarceration in an institution of*

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27 Clause says, *"No state may deny any person, under its government, equal protection of the Law".*

28 Thomas J.Bernard and Megan C. Kurlychek, *The Cycle of Juvenile Justice 100* (Oxford University Press, 2nd Edition 2010)

29 *Morris A. Kent, Jr. V. United States*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 available at https://njdc.info/wp-content/uploads/2013/11/Kent-v-United-States-slip-opinion.pdf accessed on 13.07.2022

30 In re Gault 387 U.S. 1 (1967), 50th Anniversary of the Supreme Court decision guaranteeing a child's right to a lawyer in juvenile court, available at https://njdc.info/wp-content/uploads/2016/10/NJDC-Pocket-Gault.pdf accessed on 14.07.2022

31 383 U. S. 541, 562 (1966)

confinement, it would be extraordinary if our Constitution did not require the procedural regularity and exercise of care implied in the phrase due process."[32] *(Emphasis added)*

The Supreme Court ruled that in an adjudication hearing which could result in incarceration of a young being sent to an institution, the juvenile had four of the six rights, viz., right to adequate, written, and timely notice; the right to counsel; the right to confront and cross-examination witnesses and the privilege against self-incrimination.

This time the decision extended throughout the nation because the decision was exclusively based on the US Constitution.

Why Court Deviated from Earlier Judgements

The court took notice of early judgments and included in its judgment the logic behind the *O'Connell* decision and the equal protection logic in the *Kent* decision. The court came to the following conclusion with reasons apprehended.

a) That Gerald was being punished and not helped:

"It is of no constitutional consequence and of limited practical meaning that the institution to which he is committed is called an Industrial School. The fact of the matter is that, however euphemistic the title, a 'receiving home' or an 'industrial school' for juveniles is an institution of confinement in which the child is incarcerated for a greater or lesser time. His world becomes 'a building with whitewashed walls, regimented routine and institutional hours…' Instead of mother and father and sisters and brothers and friends and classmates, his world is peopled by guards, custodians, state employees, and 'delinquents" confined with him for anything from waywardness ' to rape and homicide".[33]

b) The court reached the conclusion that *Gerald* is being punished which is based on actual performance of juvenile justice system rather than on good intentions.

"…it is important, we think, that the claimed benefits of the juvenile process should be candidly appraised. Neither sentiment nor folklore should cause us to shut our eyes, for example, to such startling findings as that reported in an exceptionally reliable study of repeaters or recidivism conducted by the Stanford Research Institute for the President's Commission on Crime in the District of Columbia"[34].

The judgment referred to the Commission's Report, which stated as follows: "In fiscal 1966, approximately 66 percent of the 16- and 17-year-old juveniles referred to the court by the Youth Aid Division had been before the court previously. In 1965, 56 percent of those in the Receiving Home were repeaters. The SRI study revealed that 61 per cent of the sample, Juvenile Court referrals in 1965 had been at least once and that 42 per cent had been referred to at least twice before."[35]

c) The court came heavily on the meaning and legality of *parens patriae* as a basis of the juvenile justice philosophy in American Juvenile jurisprudence. The court observed:

"The Latin phrase proved to be a great help to those who sought to rationalize the exclusion of juveniles from the constitutional scheme; but its meaning is murky and its historic credentials are of dubious relevance. The phrase was taken from chancery practice, where, however, it was used to describe the power of the state to act in *loco parentis* for the purpose of protecting the property interests and the persona of the child….But there is no trace of the doctrine in the history of criminal jurisprudence. At common law, children under seven were considered incapable of possessing criminal intent…Juvenile Court history has again demonstrated that unbridled discretion, however, benevolently motivated, is frequently a poor substitute for principle and procedure"[36].

d) The court also analysed the approach of the juvenile justice court towards young alleged offenders. Noting that young are denied due process protection only because they are persons below a certain age. The court observed:

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[32] In re Gault 387 U.S. 1 (1967), https://tile.loc.gov/storage-services/service/ll/usrep/usrep387/usrep387001/usrep387001.pdf

[33] In re Gault 387 U.S. 1 (1967), https://tile.loc.gov/storage-services/service/ll/usrep/usrep387/usrep387001/usrep387001.pdf

[34] In re Gault 387 U.S. 1 (1967), https://tile.loc.gov/storage-services/service/ll/usrep/usrep387/usrep387001/usrep387001.pdf

[35] In re Gault 387 U.S. 1 (1967), https://tile.loc.gov/storage-services/service/ll/usrep/usrep387/usrep387001/usrep387001.pdf

[36] In re Gault 387 U.S. 1 (1967), https://tile.loc.gov/storage-services/service/ll/usrep/usrep387/usrep387001/usrep387001.pdf

"The essential difference between Gerald's case and a normal criminal case is that safeguards available to adults were discarded in Gerald's case. The summary procedure, as well as the long commitment, was possible because Gerald was 15 years of age instead of over 18. If Gerald had been over 18, he would not have been subject to Juvenile Court proceedings." For the particular offence immediately involved, the maximum punishment would have been a fine of $5 to $50, or imprisonment in jail for not more than two months. Instead, he was committed to custody for a maximum of six years. If he had been over 18 and had committed an offense to which such a sentence might apply, he would have been entitled to substantial rights under the Constitution of the United States as well as under Arizona's laws and constitution".[37]

Thus in this manner, the arguments and logic behind the judgment of *O'Connell* was reinforced after a long period in *In re Gault case*. Further, the argument raised in the *Kent* case that juveniles are required to give up some protection of equal clause in lieu of compensating benefits, the court replied that juvenile alleged offenders are entitled to these protections without giving up any other laws protection. It was held:-

"*It is claimed that juveniles obtain benefits from the special procedures applicable to them which more than offset the disadvantages of denial of the substance of normal due process. As we shall discuss, the observance of due process standards, intelligently and not ruthlessly administered, will not compel the States to abandon or displace any of the substantive benefits of the juvenile process… the features of the juvenile system which its proponents have asserted are of unique benefit will not be impaired by constitutional domestication"*[38].

The court, in absolute terms, concluded that the denial of due process to juveniles violates the equal protection clause and that constitutional domestication of juvenile court does not render children less eligible for compensatory benefits. The court laid down: -

"…it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase "due process." Under our Constitution, the condition of being a boy does not justify a kangaroo court"[39].

The dissenting view of *Justice Stewart* (*conservative by ideology*) is worth noting in this case. He described the juvenile justice court as the public social agencies rather than the criminal court and implicitly accepted the *parens patraie*[40] doctrine. He said that although the juvenile justice system has not lived up to expectations of the courageous pioneers, the intention should be retained rather than rejected:

"There can be no denying that in many areas the performance of these agencies has fallen disappointingly short of the hopes and dreams of the courageous pioneers who first conceived them. For a variety of reasons, the reality has sometimes not even approached the ideal, and much remains to be accomplished in the administration of public juvenile and family agencies-in personnel, in planning, in financing, perhaps in the formulation of wholly new approaches. I possess neither the specialized experience nor the expert knowledge to predict with any certainty where may lie the brightest hope for progress in dealing with the serious problems of juvenile delinquency. But I am certain that the answer does not lie in the Court's opinion in this case, which serves to convert a juvenile proceeding into a criminal prosecution"[41].

Justice Stewart further insisted on the modest infusion of the due process instead of wholesale injunction of the due process clause, which will have the implications of changing this informal adjudication forum into a more formal adjudication forum nowadays criticized as the youth criminal court, second grade criminal or second class criminal court.

This way, the due process model of the criminal process has become a permanent feature of juvenile justice to be recognised as the due process model juvenile justice.

The Supreme Court of America admitted more constitutional issues pertaining juveniles and extended more constitutional protection to the juveniles at the adjudication level. In *Samuel Winshps* case[42], the court had to answer a narrow question of whether proof beyond a reasonable doubt is among the "essentials of due process and fair treatment" required during the adjudicatory stage when a juvenile is charged with an act which would

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

38 In re Gault 387 U.S. 1 (1967), https://tile.loc.gov/storage-services/service/ll/usrep/usrep387/usrep387001/usrep387001.pdf. By constitutional domestication the court meant extension of due process protection to juvenile offenders before the juvenile courts.

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

40 Thomas J.Bernard and Megan C. Kurlychek, *The Cycle of Juvenile Justice 105* (Oxford University Press, 2nd Edition 2010)

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

42 397 US 358 (1970)

constitute a crime if committed by an adult. The court said that not preponderance of the evidence but the proof beyond reasonable standard must be the parameter in all adjudications- criminal or juvenile adjudications. "We conclude, as we concluded regarding the essential due process safeguards applied in Gault, that the observance of the standard of proof beyond a reasonable doubt will not compel the States to abandon or displace any of the substantive benefits of the juvenile process…In sum, the constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in Gault-notice of charges, right to counsel, and the rights of confrontation and examination, and the privilege against self-incrimination"[43].

Justice Stewart, along with new *Chief Justice Warren Burger* again expressed their apprehension in their dissenting opinions and argued that due process protections were not required as it would not make things worse:

"*The original concept of the juvenile court system was to provide a benevolent and less formal means than criminal courts could provide for dealing with the special and often sensitive problems of youthful offenders. Since I see no constitutional requirement of due process sufficient to overcome the legislative judgment of the States in this area, I dissent from further strait-jacketing of an already overly restricted system. What the juvenile court system needs is not more, but less of the trappings of legal procedure and judicial formalism; the juvenile court system requires breathing room and flexibility in order to survive if it can survive the repeated assaults from this Court. My hope is that today's decision will not spell the end of a generously conceived program of compassionate treatment intended to mitigate the rigours and trauma of exposing youthful offenders to a traditional criminal court; each step we take turns the clock back to the pre-juvenile-court era"*[44].

In *McKeiver v. Pennsylvania*[45], again an essential constitutional matter came up before the Supreme Court of America. This time court replied in negative and in a different manner than that it responded to the same question in *In re Gault* case. The question was whether the due process clause of the Fourteenth Amendment assures the right to trial by jury in the adjudicative phase of a state juvenile court. The court ruled that the constitution did not require trial by jury at the adjudication stage of juvenile court proceedings.

The *Chief Justice Burger* who delivered the fifth judgement was joined by other conservative majority, focused on preserving the ideals of the original juvenile court. The issue was whether the prosecution of respondent as an adult, after Juvenile Court proceedings, which resulted in a finding that the respondent had violated a criminal statute and a subsequent finding that he was unfit for treatment as a juvenile" violated the double-jeopardy clause of the U.S. Constitution. In other words, court has to determine whether the proceeding at juvenile court is criminal. The Court replied in affirmative and held:

"We believe it is simply too late in the day to conclude, as did the District Court in this case, that a juvenile is not put in jeopardy at a proceeding whose object is to determine whether he has committed acts that violate criminal law and whose potential consequences include both the stigma inherent in such a determination and the deprivation of liberty for many years"[46].

The court concluded that "we therefore conclude that respondent was put in jeopardy at the adjudicatory hearing. Jeopardy attached when the respondent was 'put to trial before the trier of the facts,' that is, when the Juvenile Court, as the trier of the facts, began to hear evidence."[47]

This way, the juvenile court was fully fleshed with the due process protections both by the liberal and conservative judges at the Supreme Court of America. The liberals extended due process rights to juveniles with an intention to give the "best of both worlds to juveniles", the conservatives tried to retain the good intention of courageous pioneers of the juvenile justice system. Full extension of due process protections to juveniles before juvenile courts could, what conservatives believed change it into a criminal court. It is the reason that in the last case, the court held that proceedings before juvenile courts are criminal in nature.

Due Process Model in the Indian Juvenile Justice System

The Juvenile Justice laws in India has been imbued with the due process model from the very inception. The protection under the Juvenile Justice (Care & Protection of Children) Act, 2015 is blended with

[43] In re Winship, 397 US 358 (1970) available at https://tile.loc.gov/storage-services/service/ll/usrep/usrep397/usrep397358/usrep397358.pdf (last visited on 14.07.2022)

[44] *Ibid*

[45] 403 U.S. 528 (1971) available at https://www.law.cornell.edu/supremecourt/text/403/528 (last visited on 14.07.2022)

[46] *Breed v. Jones,* 95 S.Ct. 1779 available at https://www.law.cornell.edu/supremecourt/text/421/519 (last visited on 14.07.2022)

[47] *Breed v. Jones,* 95 S.Ct. 1779 available at https://www.law.cornell.edu/supremecourt/text/421/519 accessed on 14.07.2022

the due process principle in no uncertain terms. The first principle[48] mentions that every child below age 18 shall be presumed innocent of having any malafide and criminal intent. This principle makes a sense that the state shall not pitch its criminal justice apparatus against a child to prove that he had acted with a criminal act. This is further substantiated by the principle of the "best interest of the child"[49], which states that every decision must be taken keeping into consideration the best of the child. Further, the issue, which has consumed the precious time of the Supreme Court of America, has been reflected in the Act in lucid and crystal clear terms. The Act gives every child the right to participation at every stage of adjudication. The JJ Act mentions that "Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child"[50]. In absolute terminology, the JJ Act invalidates the waiver by a child of any of his rights before any board or committee[51] and insists on the adherence of the principle of natural justice by stating that the "basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act"[52].

The Indian judiciary found an occasion to decide on issue (right) pertaining to the procedural protection to child offenders at the time of adjudication of a case. The issue had a significant ramification. Precisely, the issue before Gujarat High Court was whether the accused, who were arrested for the commission of an offence and were admitted to bail has got a fundamental right guaranteed under Article 22(1) of the Constitution of India[53] to be defended by a counsel of their choice. The issue reached the court because, except for the Children Acts of Madras, East Punjab, Hyderabad and West Bengal, all other Children Acts passed by various states prior to 1960 did not permit the presence of a lawyer before the Children's court[54]. The Children Act, 1960, enacted by the Parliament, also prohibited the presence of a lawyer before the Competent Authority. In 1969, the provision prohibiting presence of a lawyer in the Children's court in the Saurashtra Children Act[55] was challenged in *Kario alias Mansingh Malu v. State of Gujarat*[56]. The petitioners raised an important point that "If the prosecution is permitted to conduct the case by a police prosecutor, the accused should also be permitted to defend themselves by an advocate"[57].

The court, after scrutinising the various provisions of the constitution, Criminal Procedure Code and Saurashtra Children Act reached the following conclusion:

"…though a juvenile delinquent cannot be awarded death penalty, sentence of transportation or imprisonment, he can be directed to be kept in a certified school. He can be fined in the specified circumstances. Merely because the juvenile Court has no power to award a sentence of imprisonment, it cannot be said that the provisions of Article 22(1) of the Constitution of India cannot be pressed into service… It is atleast clear that when our Constitution lays down in absolute terms a right to be defended by one's own counsel, it cannot be taken away by ordinary law and it is not sufficient to say that the accused who was so deprived of this right, did not stand in danger of losing his personal liberty. If he was exposed to penalty, he had a right to be defended by

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48 The Juvenile Justice (Care & Protection of Children) Act, 2015, Section 3 (i): Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years. The Juvenile Justice (Care & Protection of Children) Act, 2015, Section 3 (i)

49 The Juvenile Justice (Care & Protection of Children) Act, 2015, Section 3 (iv) : Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

50 The Juvenile Justice (Care & Protection of Children) Act, 2015, Section (iii) Principle of participation

51 The Juvenile Justice (Care & Protection of Children) Act, 2015, Section 3, (ix) Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver

52 The Juvenile Justice (Care & Protection of Children) Act, 2015, Section 3, (xvi) Principles of natural justice

53 Article 22 (1): No person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice

54 Ved Kumari, *The Juvenile Justice (Care and Protection of Children) Act, 2015: Critical Analysis* 194 (Universal Law Publishing, 2016)

55 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.

56 (1969) 10 Gujarat LR 60 available at https://indiankanoon.org/doc/173867/ accesed on 14.07.2022

57 *Ibid*

counsel…. The framers of the Constitution have well thought of this right and by including the prescription in the Constitution, have put it beyond the power of any authority to alter it without the Constitution being altered. A law which provides differently must necessarily be obnoxious to the guarantee of the Constitution"[58].

The court concluded by holding that "the accused juvenile delinquents are entitled as a matter of right to obtain legal assistance of their choice".

Anticipatory Bail and Due Process Protection

The question of extension of due process protection to young offenders came once again before the judiciary in a catena of cases in form of entitled to benefit of anticipatory bail to them. The broad question before the courts was whether a juvenile is entitled to benefits of anticipatory bail under section 438 Cr.P.C. The different High Courts have expressed opposite views giving different reasons. This controversy has emerged because of the JJ Act, 2015 is silent on the grant of anticipatory bail. It only mentions bail to be granted after apprehension. The Chhattisgarh High Court[59] and Madras High Court[60] had taken the view that child cannot approach for grant of anticipatory bail under section 438 Cr.P.C as same is not applicable to them because of non obstante clause[61] in the JJ Act, 2015. The Madras High Court observed:

"…***there are lot of safeguards*** (emphasis) provided to the child in conflict with law in the event the child is apprehended by the police. In the light of these safeguards, and in the light of the legal position that the child in conflict with law cannot be arrested, the child in conflict with law need not apply for anticipatory bail. The legislature has consciously did not empower the police to arrest a child in conflict with law. Thus, it is manifestly clear that an application seeking anticipatory bail under Section 438 Cr.P.C. at the instance of a child in conflict with law is not at all maintainable. Similarly, a direction to the Juvenile Justice Board to release the child in conflict with law cannot be issued by the High Court in exercise of its inherent power saved under Section 482 Cr.P.C."

The Kerala High Court[62], however, has allowed the child to avail benefits under Section 438 Cr.P.C because same is not inconsistent with the objectives of JJ Act, 2015 and held that JJ Act, 2015 does not, either directly or indirectly, rule out the applicability of section 438 Cr.P.C in case of children in conflict with the law. The Allahabad High Court in *Shahaab Ali (Miner) and Another v. State Of U.P.*[63] on 20 January, 2020, accorded an extraordinary explanation to the question in these words:

"It must consequently be held that once first information is registered or information otherwise recorded by the SJPU or the CWPO with regard to a child in conflict with law, the provisions of Section 438 stand impliedly excluded. In such a situation it is the provisions made in Sections 10 and 12 of the 2015 Act which alone must be permitted to operate and recognised in law to be applicable."

The Bombay High Court in *Raman & another v. State of Maharashtra*[64], giving precedence to liberty over institutionalisation observed that "When a child in conflict with law is apprehended, his liberty is curtailed. Section 438 of the Cr.P.C. affords a valuable right to a person, who is likely to be arrested or in other words, whose liberty is likely to be curtailed. Section 438 of the Cr.P.C. does not make any distinction between different persons."

The Division of the Chhattisgarh High Court in *Sudhir Sharma v. State of Chhattisgarh*[65], gave a more pragmatic explanation to the availability of benefits to a child under section 438 Cr.P.C by holding that JJ Act, 2015 does not contain any provision which excludes general application of Cr.P.C. The Court said:

"…We fail to see how the beneficial provision for grant of bail to CICL could be interpreted to the utter prejudice of a CICL to say that he would not be entitled to say that important statutory scheme of seeking anticipatory bail provided under Section 438 of the Code of Criminal Procedure, 1973 is not available to him. On rational construction of the non obstante clause in Section 12, it only seeks to put a ClCL in a better position as compared to any other person who is not a CICL by providing that ordinarily a CICL has to be granted bail and it could be rejected upon existence of three specified grounds…"

The court answered the reference by upholding the right of bail to CICL before the High Court or the Sessions Court in the following words:

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[58] *Ibid*

[59] *Sudhir Sharma v. State of Chhattisgarh*, 2017 SCC OnLine Chh 1554

[60] *K. Vignesh v. State*, 2017 SCC OnLine Mad 28442

[61] Section 12 "…not withstanding anything contained in the Code of Criminal Procedure, 1973…"

[62] *Gopakumar v. State of Kerala*, (2012) 4 KLT 755*; X. v. State of Kerala*, BA No. 3320 0f 2018

[63] available at https://indiankanoon.org/doc/44292418/ (last visited on 28.08.2022)

[64] *Raman & another v. State of Maharashtra*, available at https://drive.google.com/viewerng/viewer?url=https://www.livelaw.in/pdf_upload/ordjud-1-426029.pdf (last visited on 28.08.2022)

[65] 2017 SCC OnLine Chh 1554

"The application for grant of anticipatory bail under section 438 of the Code of Criminal Procedure, 1973 at the behest of CICL before the High Court or the Court of Sessions is maintainable under the law and the said remedy is not excluded by application of section 12 of the Act of 2015."

Holding earlier view erroneous, the Division Bench of Allahabad High Court has held that it is incorrect to say that a child in conflict can seek anticipatory bail before FIR is lodged against him/her is incorrect. Further holding that a child has a "equal and efficacious right" to seek his remedy under section 438 that laid down:

"A juvenile or a child in conflict with law can be arrested and/or apprehended if such a need arises, but he cannot be left remedy-less till the time of his arrest and/or apprehension. He can explore the remedy of anticipatory bail under Section 438 Cr.P.C. if a need arises…"[66]

In order to set this controversy at rest the Centre has approached the Supreme Court of India with a plea to decide if child can apply for anticipatory bail[67]. "The government has urged the Supreme Court to give authoritative decision on whether a child or juvenile accused of a crime can apply for anticipatory bail. It said the question of law has been a dilemma with courts giving opposing judgements over the years." An in-depth analysis leads one to conclusion that this controversy has taken us back to question involved in In Re Gault case about extension of due process rights to juvenile offenders. The court in that has reached that conclusion that children are punished and not help in the reformatories schools. On similar analogy, in India one need to understand are juvenile offenders helped or punished within the four walls of the special homes/observation homes. The juvenile justice system is still in infancy when the question of helping, reformation and rehabilitation of juvenile is considered practically. Unless and until Juvenile Justice (care and Protection of Children) Act, 2023 is implemented in right spirit the question of denial due process (rule of law) protection shall not arise. Further, the Supreme Court of India shall settle the question keeping in consideration the object of the JJ Act, 2015 and the principle that institutionalisation shall be the measure of last resort. A conjoint reading of international principles that "all decisions shall be taken in the best interest of the child" and "institutionalisation shall be a measure of last resort" with the objectives and principles of JJ Act, 2015 and other constitutional norms will take us to the conclusion that child shall be allowed to available the benefit of anticipatory bail. The anticipatory bail can be denied to the child only on the three grounds of denial of bail for his welfare under section 12 of JJ Act, 2015.

III. Conclusion

The due process model is a judicial recognition under the juvenile justice system to safeguard the rights of young delinquents who otherwise receive the "worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children". The Juvenile Justice system does no more exist in its pure and pristine form as established by early child saving movement pioneers. Likewise, in India the Juvenile Justice System has not observed its golden era when question of reformation and rehabilitation of juvenile is taken in consideration. Other institutional mechanism is also fragile. Further, police exercise powers in colonial style and juvenile justice boards serve as second grade criminal codes. This makes it inevitable to retain and extend the due process protection in letter and spirit to juvenile in conflict with law. It is only means to serve them the proper justice in the juvenile justice system, the nuances of which are yet beyond the comprehension of policy makers and stakeholders.

[66] Mohammad Zaid v State of U.P, 2023 SCC OnLine All 230...

[67] Centre urges SC to decide if children can apply for anticipatory bail, The Hindu, April 02, 2022, available at https://www.thehindu.com/news/national/centre-urges-sc-to-decide-if-children-can-apply-for-anticipatory-bail/article65285154.ece (last visited on 28.08.2022)