

Juvenile Justice in Different Cultural Contexts: A Comparison of India and Germany

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I. Introduction

Comparing the juvenile justice systems of two countries which do not share a common cultural background is a difficult and demanding enterprise. A comparison of two legal systems in general and of juvenile justice in particular, however, is at the same time a challenge and an opportunity for research. It is obvious that some social problems are very similar all over the world, irrespective of the particular cultural context, deviant behaviour being one of them. In a situation like this, it is of major interest to see in which way a given society reacts to these problems and what consequences follow. From an academic point of view the situation can be compared to a large-scale sociological field experiment, because the similarity of the problems allows us to study the outcomes of the specific forms of intervention and their assessment in the respective cultural context. A comparison of the juvenile justice systems of two countries as culturally different as India and Germany thus offers the chance to gain a better insight into the mechanisms of social control and the way deviant and illegal behaviour can be responded to by society.

To observe that India and Germany are two very different countries comes near to a platitude. India, an independent nation since 1947, is the second-most populous country of the world with over 1.1 billion people, its share of the world population amounting to more than 17 %. About 30 % of the Indian population is in the age group 0 to 14 years, around 5 % older than 65 years. Until today, life in India has been shaped by its rich cultural traditions including a strong religious influence, about 80 % of the population being Hindus. According to the CIA World Factbook, the share of the urban population is 29 %, the literacy rate 71 %, and life expectancy at birth 66 years. Due to its colonial past India belongs to the common law system. Germany, on the other hand, is one of the biggest and richest countries of the European Union, but has a mere population of 82 million, which is slightly more than 1 % of the world population. Germany's demographic structure is considerably different from India's: Only about 13 % of its people belong to the age group 0 to 14, whereas 20 % are 65 years or older. By religion, Germany is a Christian country, about 1/3 of the population being protestant, 1/3 Roman Catholic and 1/3 unaffiliated or other. The share of the urban population is 74 %, the literacy rate 99 %, and life expectancy at birth 79 years. Germany's legal tradition is clearly shaped by the civil law system.

It might be deduced from these figures that juvenile delinquency and juvenile justice play a major role in India whereas the low percentage of young people and the high literacy rate in Germany might be indicators that these topics are of minor importance only in Europe. However, the opposite is true. Germany like most Western states has a relatively high amount of juvenile delinquency registered by the police, illegal behaviour of young people being considered a major

social problem which must be responded to by the state in a determined way. India, on the other hand, with its different sociodemographic structure (median age in India 25.9 years, in contrast to 44.3 years in Germany) has a relatively low level of juvenile delinquency, young people not playing a major role in the criminal justice statistics. In the following, we would like to contribute some observations on the obvious disparities and similarities between the legal concepts which have been enacted to respond to young persons' illegal behaviour in both states. The objective of the article is a comparison of the two juvenile justice systems in their respective historical and cultural contexts. The comparison, however, can be a snap-shot of the present day situation only, since India is a dynamic and fast developing country; the social situation as well as the legal framework may change rapidly.

II. Juvenile Delinquency in India and Germany

1. Facts and Figures

For a comparison of crime and delinquency in different states the use of police statistics is an established instrument in criminology. There is hardly any doubt that the recourse to police data is confronted with numerous methodological problems and that these problems multiply, if the data are used for international comparisons.¹ The registration of an offence by the police, for instance, requires that the illegal act is reported to the police by someone, typically by the victim or his/her family. The victim's decision to report, however, is shaped by a large number of individual and social variables, the most prominent of which are that the victim decides not to report, because the infraction is of a minor nature only and the report may not be worth it, that there are alternative ways to restore peace and order after the offence, or that the victim is in some way too intimidated to address the police. It is evident that all of these factors may vary between two countries considerably, namely because the socio-legal traditions of police contacts are different. Correspondingly, what is true for the victim probably is true for the offender as well. There may be culturally different ways in which a delinquent may react to the detection of an illegal act by the victim or the police, among which bribery may be a highly effective strategy.² A second independent set of methodological problems originates from variations in the legal framework. What is considered a criminal offence here may be seen differently there, murder, rape or assault being examples. For instance, it may come as a surprise to the European reader that the Indian Penal Code has a concept of dowry death (s. 304B Indian

¹ Meier, *Kriminologie*, 4th ed. 2010, pp. 310 ff.

² Cf. Home Office, UK Border Agency, *Country of Origin Information Report*, 2010, pp. 31 ff.; Transparency International, *Global Corruption Report*, 2007, pp. 214 ff.

Penal Code) and that an astonishing high number of these cases is reported to the police each year (8,383 cases in 2009). Another example is the age of criminal responsibility which may vary and thus influence the number of cases registered by the police: the lower the age limit, the larger the proportion of young people who may be charged with an offence and thus enter the statistics. A third group of variations may result from factual differences. For instance, the infrastructure and efficiency of the police may be different: more and better educated policemen may produce higher rates of registered delinquency, while less efficient police work may lead to lower numbers. Finally, one point which must always be kept in mind concerns the validity and reliability of the data collection process: In a large country like India the difficulties of collecting the statistical data properly may be of greater importance than in a small country like Germany.

Although these and many other factors may confine the use of police statistics when it comes to international comparisons, most criminologists agree that sometimes there is no alternative to this approach. This is especially true for the comparison of juvenile delinquency in India and Germany, because for this specific purpose there are no survey data available for India, which might be drawn upon as an alternative. In the following, we are therefore bound to have a closer look at the police data. The police data, however, must not be seen as true reflections of social reality, but should be merely considered as indicators for the distribution of the particular variables (cf. *table 1* on p. 500).

As can be seen by *table 1*, India has a very low offence rate if compared to Germany: 571 registered cases per 100,000 inhabitants is less than 1/10 of Germany's offence rate of 7,383 cases per 100,000 inhabitants. It must be noted that the Indian figure includes all cases registered under either the Indian Penal Code (IPC) or Special and Locals Laws (SLL). On the other hand it cannot be excluded that the distinction between cleared and uncleared cases, which is one of the core characteristics of the Germany police data, is not applied by the National Crime Records Bureau of India in the same way. A similar reservation must be made when the rates of the suspects are compared: A rate of 663 police suspects per 100,000 inhabitants is roughly 1/4 of the suspect rate in Germany, which amounted to 2,477 persons per 100,000 inhabitants in 2009. The legal concepts of "established suspect" on the German side and "arrested under IPC and SLL crimes" on the Indian side, however, are not the same and differ in important aspects.

The methodological aspects left aside, what is striking in *table 1* is the clear-cut difference in the indicators for juvenile delinquency. Although India is about 14 times more densely populated than Germany and the share of the young people is considerably higher, Germany had an absolute number of 10 times more suspects in 2009 than India. Rates with respect to age group cannot be calculated, but it can safely be assumed that the difference would be extreme if the calculation were feasible. This assumption is affirmed, when the percentage of the suspects below 18 years is calculated. Whilst in Germany 15.8 % of the established suspects were below 18 years in

2009, the corresponding percentage was only 0.4 % in India.³ In other words, although the Indian society is stamped by its large number of young people, registered juvenile delinquency appears not to be a major problem in India.

2. Cross-cultural Explanations

The attempt to explain this result which may come as a surprise to many readers requires some preliminary remarks. Cross-cultural explanations of crime and delinquency are seldom found in criminology, which is mostly because it is difficult to assess reliably the significance of particular criminological concepts in a specific cultural context. If, for instance, crime and delinquency are to be explained by reference to theoretical models like self-control or strain,⁴ this attempt is highly problematic, because in most cases it is unknown in which way the particular items are distributed in each country. Intercultural research therefore typically applies broader concepts like *Hofstede's* concept of cultural dimensions⁵ or open concepts more closely linked to traditional criminological theory like socialization or social control.⁶ In the following, we take up the latter approach because it enables us to structure some observations on the cultural differences between India and Germany in a way which is more familiar to criminologists. Besides, this approach has been applied before to describe the specific situation of juvenile delinquency in India in comparison to other countries in the Non-Western world.⁷

a) In India, youth grows up in a society strongly influenced by a wide variety of informal social controls. Indian society operates on a comprehensive set of norms based on religion, culture, social institutions, customs, practices and their observance for ages. This integrated set of social norms has drawn a boundary between desirability and undesirability of human behavior for the preservation of basic values. The compliance of these operative norms in the society is ensured with social sanctions. If, for example, a son/daughter from an upper caste marries somebody who belongs to a lower caste then that entire family is cast out; this has no equivalent in European society. So, while finding reasons for the low level of juvenile delinquency in India due consideration must be given to those factors which are primarily responsible for the shaping and holding of juvenile behavior to social desirability.

³ Cf. *Kumari*, *The Juvenile Justice System of India, From Welfare to Right*, 2nd ed. 2010, pp. 27 ff.

⁴ *Gottfredson/Hirschi*, *A General Theory of Crime*, 1990; *Agnew*, *Criminology* 30 (1992), 47.

⁵ Cf. *Hofstede*, *Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations across Nations*, 2nd ed. 2006.

⁶ E.g. *Kemme*, *Jugenddelinquenz in westlicher und islamischer Welt, Interkulturell vergleichende Dunkelfelduntersuchung bei Studierenden in Gießen, Madison und Izmir*, 2008, pp. 105 ff.

⁷ *Vincentnathan*, in: *Friday/Ren* (eds.), *Delinquency and Juvenile Justice Systems in the Non-Western World*, 2006, pp. 30 ff.

One of these factors is family life in India. Family and kinship are still visible in India, mostly in rural India, often with more than 20 people sharing common resources and staying under a common roof. A *Karta*, the head of the family, has to discharge heavy responsibility to manage the entire affairs of the family. A guideline is given by *Mahabharata*, an ancient religious text, which speaks about rules for the ideal way of life. The *Mahabharata* declares that ‘*Samvibhaga*’ is an important rule of *Dharma*, the religious code of righteous conduct. *Samvibhaga* means sharing the wealth earned by *karta* with others, namely members of the family or employees, and maintaining dependents in the family, who have no source of income, such as children, widows, non-earning brothers and sisters, the aged, and those who are physically or mentally handicapped.⁸ The social security produced by these beliefs is still a ground reality in India.

The most important textual work is *Manu Smritis*. It is regarded as the oldest codification of rules of *Dharma* which is a comprehensive term for all rules of righteous conduct in every sphere of human activities. According to *Manu Smritis* (X-63):

“Not indulging in violence against anyone, truthfulness, non-stealing and not acquiring any wealth through immoral/illegal methods, control of senses and cleanliness of mind and body i.e. conformity in thought, word and deed [Trikarana Shudhi] are the five rules of Dharma to be followed by all.”⁹

Similarly, CH-II-9 of *Manu Smritis* says that:

“A man who conforms to the rules of Dharma in his day to day life, not only gains fame in this world, but also attains eternal bliss after death.”¹⁰

The way that religious teaching and standards of conduct are imparted to juveniles through the family unit plays a crucial role in transition from the institutionalized family life to the social life. Moreover, social taboos, a strong social prohibition for certain actions or omissions, also work as a centripetal force to bind the behavior around social desirability. Till today for a juvenile in India, smoking or drinking at public places, or having relations with a girl/boy without marriage, or marrying outside the caste is a taboo. Disobedience to these taboos would sometimes attract severe sanctions either from family or society. It is evident from the fact that every year at least 1,000 instances of honor killings are recorded in India (The Asian Age, March 8, 2011). Sometimes, the ‘social image’ of an individual plays a vital role in Indian society because all social transactions are dependent upon it, e.g. arranged marriages are mostly associated with status of an individual in general and family in particular. So in order to build a sound social image, the individual behavior is supposed to be always in line with socially acceptable norms.

b) In contrast to India, German minors grow up in a society which is characterized by a plurality of lifestyles, value

systems and personal aims. Individualization and anonymization of social relations can be considered important features of the Germany society. As *Ulrich Beck* puts it, in an individualized society identity is no longer “given” but it is considered a “task”, charging the actors with the responsibility for performing and for the consequences of their performance; determination of social standing is replaced with compulsive and obligatory self-determination.¹¹ A typical representation of *Beck’s* observation can be found in the legal principles for the exercise of parental custody: “In the care and upbringing of the child the parents take account of the growing ability and the growing need of the child for independent responsible action. They *discuss* questions of parental custody with the child to the extent that, in accordance with the stage of development of the child, it is advisable, and they *seek agreement*” (sec. 1626 German Civil Code). Another representation can be found in the general principles for the work of the public child and youth services: “Every young person has a right to assistance in his or her development and to an appropriate upbringing so that he or she can become a *responsible and socially skilled personality*” (sec. 1 Child and Youth Services Act).

In an individualized society like Germany the concept of family differs from the Indian concept. Although the institution of family has similar functions, namely securing reproduction, socialization and economic cooperation, the variability of household and living arrangements is by far greater. Single-parent families and families with only one child are a common phenomenon in German society: In 2009, nearly one quarter of all families (22.1 %) were single-parent families; more than half of the families (51.8 %) had only one child. Marriage is still a concept, but marriage is not expected to last for a lifetime; there are second and even third marriages as well, which can be seen by a high statistical mean of the marriage age: On the average, women marry in the age of 33 years, men in the age of 37 years in Germany. The percentage of divorces is high, although the figures have decreased in the last few years. Nearly half of the couples which were divorced in 2009 (49.2 %) had at least one minor child in their family.¹² The consequence is that many children grow up in a setting which is colloquially called “patchwork family”, meaning a setting in which formal ties are replaced by informal relationships. The change does not necessarily imply less stability for the child or less commitment on the parents’ side. It reflects, however, that the socio-cultural context in which children grow up has changed considerably since World War II and that kinship and family have acquired connotations quite different from the traditional understanding in India.

A similar pluralization can be found with respect to religious bonds. While Germany defines itself as a Christian country with God even referred to in the preamble of the Constitution (“Conscious of their *responsibility before God and man ...*”), official religion plays a minor role only in

⁸ *Jois*, Ancient Indian Law: Eternal Values in Manu Smriti, 2007, p. 46.

⁹ *Jois* (fn. 8), p. 46.

¹⁰ *Jois* (fn. 8), p. 46.

¹¹ *Beck/Beck-Gernsheim*, Individualization, 2002, p. XV.

¹² Statistisches Bundesamt, Statistisches Jahrbuch, 2010, pp. 47, 57, 61 f.

everyday life. The bible, which might be the equivalent of *Manu Smriti* in Christian countries, does not serve as a guideline for most people, not even for those officially affiliated as members of the Catholic or protestant church. Most people do not attend church services and have only a narrow knowledge of the holy scriptures and their meaning. Many have learned the ten commandments by heart and the Sermon of the Mount is known by most. On the other hand, many Christians select those instructions which fit into their everyday life, while they leave out others (e.g. “Thou shall not murder”: yes; “Thou shall not commit adultery”: no). The consequence is that many people adhere to some form of “private religion”, which consists mainly of some commonsense ethical standards and which is only loosely connected to the official views of the church. The Shell Youth Study 2010, a representative survey of 2,604 young people aged 12 to 25, identifies three different religious cultures in Germany: In East Germany with its socialist past religion is completely irrelevant; in the groups with a migrant background (especially from Turkey or Russia) the religious beliefs attended to by the forefathers are cultivated; while in the third group, which is representative for the mainstream of young people in West Germany, religion plays only a moderate role. Even in the third group less than half of the young people believe in the existence of God or some other transcendental power.¹³

c) The different rates in juvenile delinquency may, at least in part be explained as a result of the divergent socio-religious-cultural setups, in which the developmental processes of youth take place. Although it can hardly be overlooked that there are factors like the media or the use of the internet stimulating developments which might lead to a greater convergence of attitudes and lifestyles worldwide. The concepts of socialization and social bonds are at bottom still very different in India and Germany. The considerably higher level of juvenile delinquency in Germany may therefore be understood as a consequence of the process of individualization which has pervaded most facets of social life. A higher esteem for self-determination and a weakening of traditional social bonds may have shifted the responsibility for control from the social institutions like parents and family to the formal institutions of juvenile justice, namely the police. If this observation is true, the higher rate of juvenile delinquency in Germany mainly reflects the differences in the cultures of control, as has been claimed by criminologists like *David Garland*.¹⁴ Support for this consideration comes from a view at the legal concepts for the reaction to juvenile delinquency in India and Germany, which we will deal with in the following. It can be seen that both juvenile justice systems are at bottom quite similar.

III. The Juvenile Justice Systems

1. Scope of application of the juvenile justice laws

a) In India, the Juvenile Justice (Care and Protection of Children) Act, 2000 – hereinafter referred to as JJ(C&P)A – came to be realized on 30th December, 2000 by replacing the earlier Juvenile Justice Act, 1986 (JJA). The terminology “Juvenile in conflict with law” was newly added under section 2 (l) of JJ(C&P)A by replacing “Juvenile Delinquency” of the earlier law and is defined as ‘a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence’. The inherent incapacity to have required mens rea or culpability is now presumed by law in India till 18 years of age, by respecting Article 1 of the UN Convention on the Rights of the Child; earlier under JJA 1986 it was presumed to be 16 for boys and for girls 18 years.¹⁵ The issue of minimum age for culpability for a juvenile is dealt with under section 82 and 83 of the Indian Penal Code, 1860 (IPC). A complete immunity is granted from criminal liability to anything done by a child below 7 years of age and it is subjective for a child above 7 years of age and under 12 depending upon sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. So the age band for the applicability of the JJ(C&P)A is 7 to 18 years subject to section 83 of IPC.

A juvenile can be apprehended for an offence punishable not only under the principle criminal law but also special and local laws (SLL). According to the report of the National Crime Records Bureau, in 2009 there were 23,926 juvenile crimes registered under IPC and 4,321 under special and local laws. A total of 33,642 juveniles were apprehended during 2009 under IPC and SLL crimes (cf. *table 1*), out of which 31,550 were boys and 2,092 were girls.¹⁶ The percentage of girls to total juveniles comes to 6.2%, which is negligible. Reason for this extreme picture must be the protective environment in which girls grow up and are little exposed to the world.

b) While in India the two issues of juveniles in conflict with law and children in need of care and protection are combined in one act, the JJ(C&P)A, 2000, in Germany the two issues have been settled in two different laws: the Youth Courts Act (YCA) and the Child and Youth Services Act (CYSA). There are many reasons for the split, which was introduced as early as 1923 and has never been changed since then. The main reason probably is that the two issues are handled by two different institutions in Germany: the YCA addresses the juvenile justice institutions which are special branches of the criminal justice institutions (police, prosecution, criminal courts etc.) and which are therefore part of the organizational structure of the German Laender (states). The CYSA on the other hand addresses the youth welfare institutions which are a branch of the social services, which are – within the framework of the general laws – organized and

¹³ *Albert et al.*, Zeitschrift für Jugendkriminalrecht und Jugendhilfe 2011, 28.

¹⁴ *Garland*, The Culture of Control, Crime and Social Order in Contemporary Society, 2002.

¹⁵ Cf. *Kumari* (fn. 3), pp. 14 ff.

¹⁶ National Crime Records Bureau, Crime in India, 2009, tables 10.2., 10.3. and 10.6.

financed by the local authorities (towns and administrative districts).

Focussing on juvenile delinquents, the minimum age of criminal responsibility has been 14 years since 1923, if the period of the Third Reich is left out of consideration. A juvenile offender older than 14 and less than 18 years of age can be punished, if he or she has reached a level of moral and intellectual maturity sufficient to enable him/her to understand the wrongfulness of the act and to conduct himself in accordance with such understanding (sec. 3 JCA). Juveniles are punishable for the same acts as adults; there are no status offences in Germany like they exist in some other Western states, i.e. there are no special provisions applicable on juveniles only like the prohibition of the consumption of alcohol, tobacco smoking or running away from home. The typical offences committed by German juveniles in the age group from 14 to 17 are theft (shop-lifting), damage of property, and fraud, especially obtaining services by deception.¹⁷ If the court finds that a juvenile lacks the necessary capacity for punishment or if a child under 14 years of age commits an act which is punishable by law, the matter is adopted by the youth welfare institutions and, if necessary, a family court can decide what measures may be taken.

In 1953 young adults, i.e. persons older than 18 and less than 21 years, were included in the German juvenile justice system. The extension has been debated ever since, because it is anything but self-evident that young persons who are held fully accountable by civil law (sec. 2 German Civil Code), who are legally allowed to marry, to vote and to fight in a war, are treated differently by criminal law. Nevertheless, the extension of the YCA has been retained for more than half a century by now, irrespective of the political parties ruling in Bonn or Berlin. One of the reasons that the inclusion has been retained is that young adults are not treated in exactly the same way as juveniles. In contrast to juvenile offenders there are no doubts that young adults have legally reached the level of maturity which is the necessary requirement for adult punishment. The courts, however, have to decide if a young adult offender has to be punished according to the principles of the criminal law for adults (meaning that he or she is punished with fines or imprisonment) or according to the principles of the YCA (meaning non-custodial supervisory measures, disciplinary measures or youth penalty). The idea behind the concept is that young adults who still act like juveniles can better be influenced in their future behavior by the application of the juvenile justice categories.

2. The organization of juvenile justice

a) In most cases the first contact that juveniles have with the Criminal Justice System is with a police officer. In India, this may sometimes go along with insensitivity and ruthlessness on the police officer's side due to the traditional mindset having developed within the police for ages, wide discretionary powers, a training to deal only with adult criminals, multitasking, work stress and the like. On other hand it must be

kept in mind that many juveniles apprehended by the Indian police are characterized by inherent socio-economic disabilities. It has been observed that out of the total juveniles involved in various crimes in 2009, 7,781 were illiterate and 11,653 had education up to primary level. These two categories have accounted for 57.8 % of the total juveniles arrested during the year 2009. Similarly, a large percentage of the juveniles (64.1 %) belonged to poor families whose annual income was below Rs. 25,000/- (approximately 379 Euros).¹⁸ Taking note of these two ends, i.e. a non-specialised administration on one side and helpless juveniles on the other, JJ(C&P)A introduced "The Special Juvenile Police Unit" (SJPU) to act as a bridge in order to bring the system closer to the juveniles. According to section 63 (3) and rule 84 (1) the SJPU is to be established in every district and shall consist of a Juvenile or Child Welfare Officer (JCWO) of the rank of Police Inspector and two paid social workers one of whom shall be a woman. The involvement of social workers ensures a friendlier and caring approach towards juveniles as against the traditional role of police. It is further ensured by the Act to have at least one officer in every police station, specially instructed and trained, to be designated as the JCWO to deal with juveniles. It is the Superintendent of Police of the district to head SJPU and oversee its functioning and above all the Central and State Government to monitor establishment and functioning of SJPU.

The JJ(C&P)A and rules have also prescribed a code of conduct for the actors including police officers (SJPU) while dealing with 'juveniles in conflict with law'. A juvenile can be apprehended mainly in case of offences, which are punishable with imprisonment for more than 7 years. If an offence is punishable with less than 7 years, then only in the general interest of the juvenile an apprehension is permitted. Moreover, in a petty offence (punishable with fine up to Rs. 1,000/- only), the police may dispose off the case at the police station itself, as prescribed under Rule 13(2) (d). Upon apprehension of a juvenile, the police shall not hand-cuff, chain or otherwise fetter the juvenile or to send him to police lock up or jail. Instead, the police shall inform the JCWO of the nearest police station. It is strictly required by the JJ(C&P)A and the relevant rules that a juvenile shall be produced before the Board within 24 hours of apprehension and in case the Board is not sitting, then to be produced before a single member of the Board, who is empowered to pass all orders except final disposal. Police may record the information regarding the alleged incident in the General Diary. A social background report, circumstances of apprehension and offence must be submitted to the Board before the first hearing. It is interesting to note that the police officer is authorized to attend the Board proceedings, but in plain clothes and not in police uniform. This is to minimize the impact on the tender mind and mainly to have a friendly and benevolent approach during the entire process. A police officer, if found guilty of torturing a child, is liable to be removed from service besides being prosecuted under section 23 of the Act and Rule 84 (11).

¹⁷ Meier/Rössner/Schöch, *Jugendstrafrecht*, 2nd ed. 2007, pp. 60 ff.

¹⁸ National Crime Records Bureau (fn. 16), table 10.14.

A second major responsibility shared for the preservation of the purity and sanctity of the Juvenile Justice System is by the 'Juvenile Justice Boards' established under section 4 of the JJ(C&P)A. An amendment to the JJCP&A in 2006 made it mandatory to constitute 'Juvenile Justice Boards' in every district. The 'Juvenile Justice Board', herein after called as Board, consists of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman. No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health, education, or welfare activities pertaining to children for at least seven years. This way a golden confluence of expertise judicial representation, for due observance of principles and procedure, and a sociological approach, for juvenile re-socialization, is ensured. The Board, though a quasi-judicial body, is conferred with exclusive jurisdiction to try all the cases pertaining to 'juveniles in conflict with law' notwithstanding any other law for the time being in force (sec. 6).

The JJ(C&P)A has succeeded in preserving integrity of juveniles not physically but also mentally. The psychological impact on tender minds is minimized by not exposing them to the court premises but by conducting the proceedings within the premises of the Observation Home where the juvenile may be held. Further, it is ensured that the premises have to be child-friendly and shall not look like a court room. Also it is stipulated for the board not to sit on a raised platform and to operate without a witness box.

Generally, decisions of the board are taken on consensus, but in case of any difference of opinion among the members, the opinion of the majority and if no such majority then, the opinion of the Principal Magistrate prevails. A core function to be discharged by the board is to deal with cases of juveniles in conflict with law. In addition to this the board has to take cognizance of crimes committed against juveniles under sections 23 to 28 of JJ(C&P)A; monitor observation homes and juvenile homes established under the JJ(C&P)A for juveniles in conflict with law; pass necessary direction to the district authority and police to create or provide the necessary infrastructure or facilities so that minimum standards of justice and treatment are maintained in the spirit of the JJ(C&P)A; maintain liaison with the Child Welfare Committee in respect of children needing care and protection, and the like.

b) Compared to the situation in India, the key players in juvenile justice in Germany are not the police or a judicial-like board, but the public prosecutor and the courts. The different alignment is a consequence of the justice-oriented approach the German system adheres to in contrast to the welfare approach which characterizes the Indian system. Since juvenile justice is seen as a special branch of the criminal justice system in Germany, it is consequent that the procedure in juvenile justice cases follows the general principles of the criminal procedure against adults with the trial as its central stage and the court as its main actor. Because Ger-

many like most other states of continental Europe follows the inquisitorial – not the adversarial – system, the trial is governed by the court, especially by the presiding judge, and not by a public prosecutor and the defense counsel which are the main actors in the Anglo-American legal tradition. In the pre-trial stage, on the other hand, the process is directed by the public prosecutor, who is bound by law to take up a case, if there are sufficient factual indications (sec. 152 Code of Criminal Procedure), and who alone is in the position to terminate the proceedings. In Germany, the police are by law only the auxiliary force for the prosecution. From the legal point of view, the authority of the police is dependent upon the orders and decisions of the public prosecutor (sec. 161 Code of Criminal Procedure, sec. 152 Courts Constitution Act), while in practice the police acts independently and has the power to structure the case and its outcome by the depth and accuracy of their criminal investigations.

The public prosecutor and the professional judges are jurists by their formal education, not social workers. They have studied and qualified in law, and it is expected only as an additional competence that they have education and training as well as experience in the education and upbringing of youths (sec. 37 YCA), this additional competence, however, not being indispensable. The lay judges – usually one man and one woman – are seen as representatives of the people; they may have a special training in the education of minors, but this is not an indispensable requirement either. The obvious lack of professional expertise in the understanding and handling of youth is compensated by the obligatory involvement of the youth welfare institutions in the proceedings. The youth welfare offices have to provide a specialized youth court assistance service which has to be involved in all stages of the proceedings. Its task is to highlight the supervisory, social and care-related aspects in the proceedings, be it during the investigations, during trial or during the execution of the non-custodial sentences. From the organizational point of view, the youth court assistance service forms the main connecting line between the criminal justice institutions and the social services (sec. 38 YCA; sec. 52 CYSA).

Irrespective of the fact that the legal position of the police is characterized by its dependency on the public prosecutor's orders and decisions the factual position of the police must not be underestimated. Like in India, the first contact most juveniles have with the criminal justice system is with a police officer. The manner in which the police officer confronts the underage suspect, questions him/her, makes the necessary investigations and informs the parents, can hardly be considered less relevant to the future conduct of the young person than the formal proceedings during trial or the imposition of a sentence. The German police therefore take great care to maintain high standards in the education and further training of police officers who are responsible for the handling of juvenile justice cases. The administrative rules governing all police actions clearly state that juvenile justice differs from the general principles of criminal justice in that it focuses on the future behavior of the juveniles and the avoidance of

further offences.¹⁹ In contrast to law enforcement against adults, the handling of juvenile justice cases is in many German Laender (states) organized in a way that – within regional limits – the same police officer is responsible for a particular juvenile. The aim of this mentoring-like programme is that the police officer has a better knowledge of the young person and his/her social background so that the officer can better decide on the particulars of the case and the recommendations given to the public prosecutor. Especially in multiple offender cases the police cooperate with the youth welfare services and the schools to ensure that all public institutions adjust their course of action and dysfunctional contradictory decisions are avoided. In this context it is useful to remember that most suspects who become known to the police (cf. *table 1*) are one-time offenders. Only a small share of 5 to 10 % of the juvenile delinquents can be considered at risk of entering a criminal career. Interestingly enough this highly specific group of juveniles is typically confronted with many emotional and social problems among which an unstable family background and a low educational level often play an important role.²⁰ This specific distribution of aggravating factors which can be found in Germany seems to be parallel to the situation in India, where a high percentage of the delinquent youth is illiterate or has an education on the primary level only and comes from low income families. In both countries, crime and delinquency seem to correlate with social and economic status.

3. The reaction to juvenile delinquency

a) The principle criminal law in India, i.e. the Indian Penal Code, 1860, under section 53 prescribes various forms of punishments, mainly death, imprisonment for life, rigorous or simple imprisonment, forfeiture of property and fine for adults. These punishments are spread over the code depending upon the gravity of the offence and the nature in which it was committed. On the other hand the JJ(C&P)A recognize very limited forms of punishments meted out to the juveniles. Under Section 16 of JJ(C&P)A, it has been clarified that ‘no juvenile in conflict with law shall be sentenced to death or life imprisonment or committed to prison in default of payment of fine or in default of furnishing security’ (cf. *table 2* on p. 500).

Once the Juvenile Justice Board is satisfied, at the conclusion of the inquiry, that the juvenile has committed an offence it can pass an order subject to section 15 of JJ(C&P)A. This consequence is not in the form of a punishment but a corrective measure taken on behalf of the state for social reintegration of the juvenile in conflict with law. Most of the times, the order is either limited to sending the juvenile back to home after admonition, or making him/her to perform some community service, or pay fine. In 2009, a total of 7,606 cases were disposed off (nearly to 22.6 %, cf. *table 2*)

¹⁹ *Holzmann*, Polizeilicher Umgang mit unter 14-jährigen Tatverdächtigen, Eine kritische Analyse der PDV 382, 2008, p. 311.

²⁰ *Meier*, Recht der Jugend und des Bildungswesens 2008, 426.

by resorting to these measures, all together. Apart from this, juveniles are also released (nearly 18 % of the total, in 2009, cf. *table 2*) on probation of good conduct under care and supervision of any parent, guardian or other fit institution. The overall trend in India, if analyzed, is seen to be more towards non-institutional corrective measures than the institutional one. This is evident from the fact that only 16.1% of juveniles in conflict with law were sent to Special Homes during 2009 (cf. *table 2*). With an amendment to the JJ(C&P)A in 2006, a juvenile in conflict with law can be sent to a Special Home for a maximum period of three years located nearest to the place of residence of his or her parents. This dispositional order is inclusive with an ‘individual care plan’ for the concerned juvenile in conflict with law.

In a real sense, several measures are taken for ‘rehabilitation and social reintegration’ once the juvenile is sent for institutional correction. The ‘individual care plan’ is executed to address every single need of a juvenile, mainly physical-emotional-psychological, educational and training, leisure, creativity and play, attachments and relationships, protection from all kinds of abuse, social mainstreaming, post release follow-up and restoration. It is ensured to restore the juvenile’s self-esteem, dignity and self-worth and nurture him/her into a responsible citizen.

Sometimes, these institutional measures are inadequate for juveniles to adjust to the mainstream society. On release, the transition from institutionalized life to the social one is qualified with many socio-economic difficulties and allied problems. These transitional difficulties are minimized by installing ‘transitional homes’ as a part of after care programs. These organizations enable such children to adapt to the society and during their stay they are encouraged to move away from an institution-based life to a normal one. These programs are made available for 18-21 year old persons, who have no place to go to or are unable to support themselves. It includes community group housing, encouragement to learn a vocation or gain employment and contribute towards rent or run a house, encouragement for self sustain without state support, to move out from group housing to an independent place, etc. Also a substantial amount of encouragement is given to take up entrepreneur activity and thereby loan and other facilities are provided from financial institutions.

The entire life cycle of a juvenile from apprehension till social reintegration is designed to be oriented towards reformation, by minimizing all possibilities of victimization. It is further strengthened by the insertion of certain novel features like the prohibition of publication of the name, etc., of the involvement in any proceeding through any newspaper, magazine, news-sheet or visual media; the prohibition of joint proceedings with a person not a juvenile; destruction of records pertaining to juveniles to overcome the stigma of being branded as convicts; heavy punishments for cruelty to juveniles; speedy disposal of cases’, etc. Thus, the philosophy of criminology and criminal administration is redefined for the welfare of the juveniles under JJ(C&P)A in India.

b) While the Indian approach to juvenile delinquent behavior can be characterized as non-stigmatizing and non-punitive, the situation in Germany is different. In Germany,

juvenile delinquency is reacted to by the criminal justice institutions in a criminal justice way. The legal consequences and the legal procedure are to be orientated primarily in line with the educational concept of the YCA aiming at the prevention of further offences (sec. 2 YCA), but there is no doubt that the legal consequences have the quality of juvenile justice sanctions (cf. *table 1* on p. 500).

If a juvenile is formally convicted, the court may choose from a variety of sanctions which may be imposed. In serious cases the decision is based on the severity of the offence, in all other cases the underlying educational concept of the YCA must be taken into account. Only a small part of the convicted juveniles is sent to prison; in 2009, unsuspended youth penalty was imposed on 2,076 convicted minors only (3.4 %; *table 3* on p. 501). This form of punishment – youth penalty executed in a youth prison – clearly distinguishes the German system from the Indian system, because Special Homes in India – are at least by intention – not meant to be jails, but reformatory institutions, whereas unsuspended youth penalty in Germany means high security prisons for a duration of 6 months up to 5, or in exceptional cases, 10 years. The aim of the execution of the prison sentence in Germany is twofold: on the one hand sec. 17 YCA decrees that youth penalty is a reaction to the seriousness of the youth's guilt, guilt and retribution clearly being concepts of adult criminal law. On the other hand the provision decrees that youth penalty may be imposed, if it is considered necessary to react to the harmful inclinations demonstrated by the juvenile during the offence, i.e. youth penalty is seen as a measure of rehabilitation and reintegration, which comes near to the intention of the Special Homes in India. Apart from youth detention up to 4 weeks and supervised accommodation, however, the vast majority of the sanctions imposed upon convicted juveniles in Germany are non-custodial measures, ranging from probation over disciplinary measures to supervisory measures. Typical examples are orders to perform certain tasks, to make good for the damage caused by the offence, to pay a small amount of money to a charitable organization or to attend a social skills training course. The range of applicable non-custodial sanctions is thus as differentiated in Germany as it is in Indian law.

IV. Summary and Conclusions

Summarizing the main results it should be noted that the Indian and the German juvenile justice systems have many features in common. In both countries juvenile delinquency is considered a social problem which must be dealt with by society. Young people violating the rules and thus disturbing the social order attract the attention of the social control agencies. Informal and formal control stakeholders like parents and family on one side and legal institutions like police, courts or prisons on the other have a superior interest in a law-abiding behavior of the next generation. Juvenile misbehavior is, on the whole, not perceived as an imminent danger to society, but as a potential risk for the development of the individual and society alike which has to be reacted to in a positive, empowering way. In contrast to criminal justice against adults juvenile justice is governed by the rehabilita-

tive ideal as the underlying legitimation for intervention in both countries. The language of the Indian Juvenile Justice Act 2000 (“a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation”) has clear-cut parallels in the German Youth Courts Act (“the legal consequences, and with respect for the parental right of upbringing also the procedure, shall be orientated primarily in line with the educational concept”). Although it is obvious that there is always a gap between law in the books and law in action – which may be especially true for India –, in both countries the legal provisions comply with the expectations and requirements of international recommendations and conventions, namely the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), and the UN Convention on the Rights of the Child.

In their attempt to influence the young delinquents and strengthen their capacity for a law-abiding conduct, India and Germany choose different approaches. In the international scholarly debate various models are discussed which can be distinguished when analyzing juvenile justice systems.²¹ Taking up these typologies and neglecting particulars it may be stated that India follows a welfare and Germany a justice oriented approach. Comparing the organizational structures (juvenile justice board vs. youth court) and the main sanction categories (Special Homes vs. youth penalty) the differences can be seen very clearly, the divergent legal constructions offering additional evidence (addressing juveniles in conflict with law as well as children in need of care and protection in just one act vs. splitting the matter in two acts, the Youth Courts Act and the Child and Youth Services Act). Assigning labels like welfare and justice approach, however, oversimplifies the complex nature of juvenile justice. In both systems elements can be found which theoretically belong to the respective counter-model, e.g. accentuation of due process principles and provision of legal assistance in India and involvement of the youth court assistance service in Germany. Although the legal groundwork is different, both systems show a considerable similarity in their basically benevolent perspective on the young delinquent.

Similar as they may be, the two legal systems meet socio-political environments which could hardly be more different. In India, the system meets an emerging and fast developing country, with a high percentage of youth, a lively attachment to traditional values and a remarkable degree of inequality within society, in Germany, on the other hand, it meets a highly developed, issue-oriented and prosperous, but ageing society – in a word, both juvenile justice systems are applied in completely different cultural contexts. It is astonishing that in both countries illegal behavior of young people has a noticeable different social significance. Even if it is considered

²¹ Cf. *Winterdyk*, in: *Winterdyk* (ed.), *Juvenile Justice Systems: International Perspectives*, 2nd ed. 2002, pp. 11 ff.; *Pruin*, in: *Düinkel et al.* (eds.), *Juvenile Justice Systems in Europe, Current Situation and Reform Developments*, 2010, pp. 1519 ff.

that it is highly problematic to compare statistical data which have been gathered in different environments, the tendency of the police data is quite clear: In India police registration of juvenile delinquency is a relatively rare phenomenon, while in Germany it is strikingly common; in India more adults than juveniles are arrested, while in Germany juvenile delinquency by far exceeds criminal acts committed by adults, if the different sizes of the age groups are taken into account. Although we have not compared the severity of the offences reported to the police in our article, so that the hypothesis must be left unrefuted that in Germany the delinquent acts committed by the juveniles are less severe, we dare to conclude that Germany is more heavily burdened with juvenile delinquency than India. Because both juvenile justice systems are basically very similar we suggest this unexpected finding may be explained primarily by the different cultural contexts in which youth grows up in both countries and which are characterized by varied degrees of informal social control: In India, the stabilizing influence of family, community and religion seems to be of greater importance for the socialization of youth than in Germany. The influence of the informal control agencies may decrease in India in the future and new value systems may arise as the continuing process of modernization takes place.²² For the present, however, the Indian cultural traditions still seem to have a positive impact on everyday life-style of youth. The stronger the influence of the informal control agencies, the less it appears to be necessary that the behaviour of the young people is controlled by the formalized system of juvenile justice.

²² *Vincentnathan* (fn. 7), p. 30 (pp. 44 ff.).

Table 1: Juvenile delinquency in India and Germany 2009

	India	Germany
Population (estimated mid-year)	1 169 400 000	82 002 400
No. of registered cases	6 675 217 ^a	6 054 330
Offence rate ^b	571	7 383
No. of established suspects	7 751 631 ^c	2 187 217
Rate of established suspects ^d	663	2 477 ^e
No. of suspects below 18 years	33 642	345 329
Percentage of suspects total	0.4	15.8

Sources: National Crime Records Bureau (India); Federal Criminal Police Office (Germany)

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- ^a Cases registered under Indian Penal Code (IPC) or Special and Local Laws (SLL).
 - ^b Number of cases that come to police notice per 100 000 inhabitants.
 - ^c Persons arrested under IPC and SLL crimes.
 - ^d Number of established suspects per 100 000 inhabitants.
 - ^e Reflecting German nationals only, without children under 8 years of age.

Table 2: Disposal of Juveniles Arrested and Sent to Courts in India 2009

	N	Percent
Total juveniles arrested and sent to courts	33 642	100.0
Sent to Home after Advice or Admonition	4 986	14.8
Released on Probation	6 063	18.0
Sent to Special Homes	5 420	16.1
Dealt with Fine	1 113	3.3
Acquitted or otherwise Disposed of	1 507	4.5
Pending Disposal	14 553	43.3

Source: National Crime Records Bureau 2009, table 10.13.

Table 3: Disposal of Juveniles Convicted by Youth Courts in Germany 2009

	N	Percent ^a
Total juveniles convicted by youth courts	60 900	100.0
Unsuspected Youth penalty	2 076	3.4
Youth penalty suspended on probation	4 329	7.1
Disciplinary measures	49 411	81.1
- Youth detention up to 4 weeks	12 241	20.1
Supervisory measures	18 712	30.7
- Supervised accomodation	35	0.06

Source: Statistisches Bundesamt, Strafverfolgung 2009, tables 4.2.1., 4.4.1.

^a Supervisory measures, disciplinary measures and youth penalty may be ordered in combination. The total of the percentages therefore exceeds 100.0 %.