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Historical Development of Juvenile Justice System: A Comparative Study of USA, UK and India

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ABSTRACT

The main differences between a child and an adult are their levels of maturity, physical and mental skills, and life experiences. Children are very likely to give in to the temptations of groups that want them to get involved in crime. When these young people's thoughts go in the wrong direction, they can tamper with the way our society is run and destroy moral standards. In order to preserve the sanctity of the nations, every country has evolved its juvenile justice system in order to deal with juvenile delinquents effectively. The world's current juvenile system is the result of various ups and downs experienced by nations in achieving a balanced approach to deal with delinquency and societal stability. This article seeks to trace the development of juvenile system in USA, UK and India.

Keywords: Juvenile, Delinquency, Conflict, juvenile-justice system.

I. INTRODUCTION

"I am the child.

All the world waits for my coming. All the earth watches with interest to see what I shall become. Civilization hangs in the balance, for what I am, the world of tomorrow will be. I am the child.

You hold in your hand my destiny. You determine, largely, whether I shall succeed or fail, Give me, I pray you, these things that make for happiness. Train me, I beg you, that I may be a blessing to the world".

- *The Child's Appeal*²

The above quote from Mamie Gene Cole's book *The Child's Appeal* shows what childhood is all about and why it's important to embrace, care for, and protect these years. When compared to how human rights have changed since the 17th century around the world, the recognition of child rights has come a little later. On the other hand, juvenile delinquency is a serious

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² Available at <https://poetryexplorer.net/poem.php?id=10049198> (Last visited on 02-12-2022)

social problem that has been a concern for a large part of all societies around the world.³

The English word "juvenile" comes from the Latin word "juvenis," which means "young person." In a general sense, it means a "child who hasn't reached a certain age when the law treats him like an adult and he can be held responsible for his crimes." Even though the words "juvenile" and "child" are often used colloquially, they have distinct meanings in the law. The United Nations Convention on the Rights of the Child says that a child is "any person under the age of eighteen, unless the law that applies to the child says that the child can become an adult before that age." Dr. Cyril Burt says that a child is a delinquent when he or she acts in an extremely terrible manner and requires assistance from the government.⁴ Alan Coffey says that the term "juvenile delinquency" is used to describe a large group of young people who are in trouble or about to get into trouble.⁵ Edward Eldefonso says that delinquency is when a CHILD IN A CERTAIN AGE GROUP DOES SOMETHING THAT IS AGAINST THE LAW. SO, A JUVENILE IS A LEGAL term for a child who has done something that, if done by an adult, would be considered a crime. God gives us children, but sometimes that gift comes with a huge price tag. Crime and violence statistics show that young children are both victims and perpetrators of a lot of crime and violence. The youth of a country decide what will happen to it.⁶ No country can move forward if its youth are in danger. There are more and more worries that the number of violent crimes committed by young people is going up in many countries around the world⁷. This paper looks at how the juvenile system in India has changed over time and compares it to the systems in the United States and the United Kingdom. The paper also talks about the different models on which the juvenile justice system is built. The paper mostly talks about how the juvenile justice systems in the US, UK, and India have changed over time.

II. PRINCIPLE OF PARENS PATRIAE AND MENS REA: FOUNDATION OF JUVENILE JUSTICE SYSTEM

This section elaborates upon the parens patriae doctrine and the idea of mens rea, the two pillars upon which juvenile justice rests. Parental guardianship is essential for children's development and well-being in all circumstances; yet, when parents fail to do so, the State steps in as the children's substitute guardian under the Parens Patriae doctrine. The idea of

³ Kate Bradley, *Juvenile delinquency and the evolution of the British juvenile courts*, c.1900-1950

⁴ Jeffrey Sharlein & Malitta Engstrom, *Neighborhood Disproportion in Juvenile Justice Contact*, 69 JUV. & FAM. CT. J. 25 (2018).

⁵ *ibid*

⁶ Kingdom Sunday Mboho & Tahirih Emmanuel Udousoro, *A Comparative Analysis of Juvenile Justice System in the Northern and Southern Part of Nigeria*, 29 J.L. POL'y & GLOBALIZATION 15 (2014).

⁷ *ibid*

parens patriae is significant because juvenile criminality is usually (though not always) the result of parental neglect to obligate appropriately. Since children lack the mental maturity of adults to comprehend and frame proper mens rea, they require specialized care and procedures due to their tender age.⁸

III. UNDERSTANDING VARIOUS MODELS OF JUVENILE JUSTICE SYSTEM

Juvenile justice experts have experimented with a number of methods, all while keeping the requirements of youth in consideration. Besides the classical "justice" and "welfare" models, the following models have been proposed for the juvenile justice system:

The reintegration and resocialization of a child involved with the juvenile court system are at the heart of the **participative model**, which is based on a more relaxed approach. The general public, educators, and community agents all play critical roles in shaping a model juvenile justice system. The **Welfare Model**, is based on the parens patriae principle.⁹The emphasis of this model is on the child who is considered equivalent to an individual upon whom the benefits must be extended.

The third model, the "**rights-based**" one, is concerned with fostering the child's full potential. In an effort to promote the child's development and eventual integration into mainstream society, this model typically lays its emphasis on community- and family-based care. The child is coerced into joining the welfare programme so that he might become an active participant in the betterment of society.

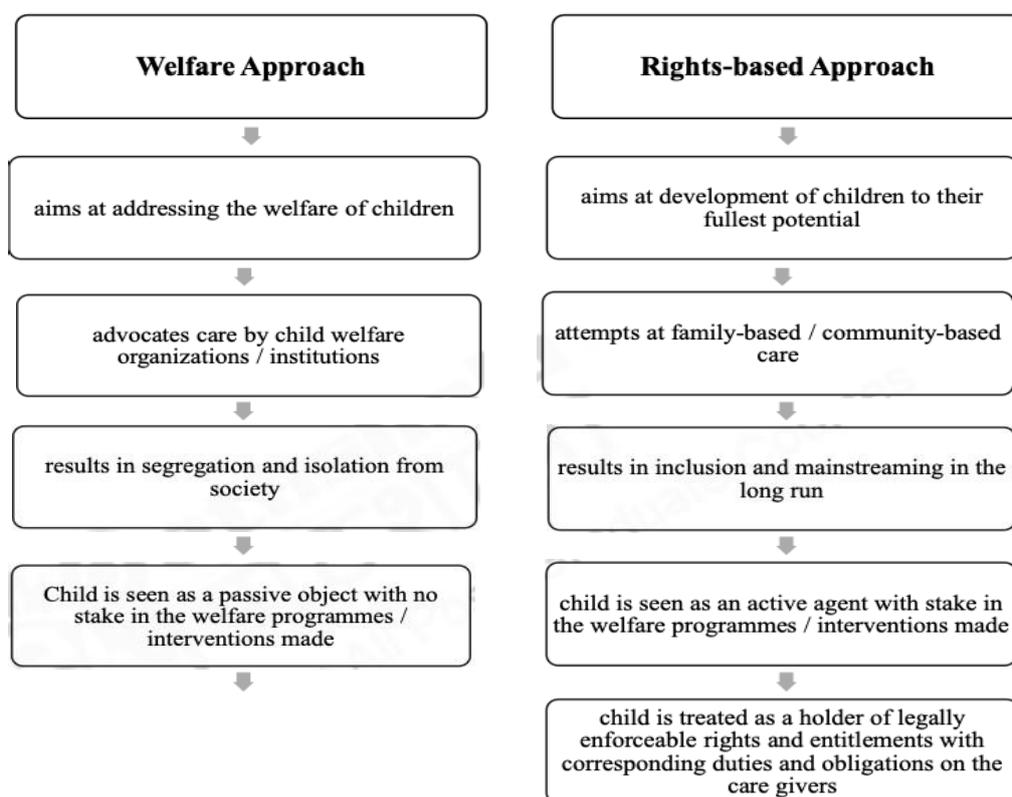
From a theoretical perspective, there has been a significant shift in the leading approach to juvenile justice in India, notably from a welfare-based approach to a right-based approach. Despite its noble objectives, the welfare-based strategy has failed to prioritise the fullest possible growth of children.¹⁰ However, a transition from a welfare-based strategy to a rights-based one has occurred with the creation of international treaties on child rights, particularly the UNCRC. By viewing children as individuals with rights and related responsibilities to their families, the State, and society at large, the rights-based approach seeks to protect their well-being.¹¹ Below, we compare and contrast the two main strategies

⁸ Vianca I. Picart, *Re-Sentencing Reform: A Comparative Analysis of the Juvenile Justice System in the United States, United Kingdom, Colombia and Australia*, 24 ILSA J. INT'L & COMP. L. 477 (2018)

⁹ W. T. Westling, *Understanding Law*, 7 Aust. & N.Z. J. CRIMINOLOGY 255 (1974).

¹⁰ Dominic P. Herbst & Henry G. Sontheimer, *A Synergistic Model for a Juvenile Court Administered Alternative Education Program*, 11 J. OFFENDER Counseling, Services & REHAB. 67 (1987).

¹¹ Syed Moosvi Raza Kazmi, *Guidelines for the Establishment of Youth Courts (UNCRC)*, 2 Jus Corpus L.J. 223 (2021).



IV. TRACING THE GENESIS OF JUVENILE JUSTICE SYSTEM

Age of responsibility and the belief that children are different from adults and require special care and attention throughout their formative years are the cornerstones of the juvenile justice system. Children lack the maturity to be held criminally responsible, hence this does not apply to them.

(A) Foreign Jurisprudence: Evolution of Juvnile System in Usa, Uk And India

a. DEVELOPMENT IN USA

The foundations of the juvenile justice system are the emergence of the age of Responsibility and the recognition that children are unique and require specific treatment throughout their formative years.¹² Children cannot be held criminally liable because of their immaturity. The rise in urbanization that followed the industrialization in USA also contributed to the country's population boom. As a result, more and more kids were turning to a life on the streets and engaging in all sorts of delinquent behaviour¹³. As a result, a Child Saving Movement was formed, and a number of reform institutions opened their doors to care for these kids. Ex Parte Crouse, a ruling by the Pennsylvania Supreme Court in 1839, expounded on the common law

¹² Richard C. Mitchell, *Reflections on the UNCRC's Future from a Transdisciplinary Bricoleur*, 21 INT'L J. CHILD. Rts. 510 (2013).

¹³ Ton Liefwaard, *Juvenile Justice in Global Perspective*, 29 S. AFR. J. CRIM. Just. 333 (2016).

notion of *parens patriae*, which permitted the minor delinquent Mary Anne Crouse to be detained in the House of Refugees without a trial.¹⁴ As a result, a number of facilities catering to both low- and high-status juvenile offenders were established. Oftentimes, juvenile offenders exhibit behaviours that are not technically crimes but are still against the law, such as truancy and incorrigibility (as in the case of Mary Ann Crouse). Juvenile detention facilities in the United States were modelled after the Bridwell facility in the United Kingdom. Bridwell was originally designed as a punishment home where inmates could learn valuable life and vocational skills. After reviewing the evidence and the Superintendents' reports, however, a number of authors, including Pisciotta, voiced their disagreement with the verdict, arguing that the juveniles' confinement in reformatory schools was in stark contrast to the original intentions behind the establishment of such facilities and the *parens patriae* doctrine.¹⁵

b. JUDICIAL ATTITUDE OF FEDERAL JUDGES IN USA

The decision in *Kent v. United States*¹⁶ is landmark since it recognized that juveniles were accorded the same due process right as adults. Since the goal of juvenile courts is rehabilitation rather than punishment, it was thought just before verdict that they were on a different plane than the bulk of the criminal justice system.¹⁷ When ruling on the doctrine of waiver, the judges made the startling comment that juveniles get "the worst of all universes" since they receive "neither the protection provided to adults nor the solicitous care and regeneration therapy suggested for children." Specifically, the Supreme Court ruled that a juvenile court's transfer of jurisdiction to a criminal court without a spoken order was unlawful, and that the juvenile offender was entitled to access to the documents and reasons for such waiver. The decision in *Re Gault* is significant in the creation of juvenile rights because it highlighted the several procedural rights guaranteed to juvenile offender. Before the *re Winship* judgement, juvenile delinquent matters in the United States were treated as civil actions and determined using the lower "preponderance of responsibility" threshold of proof rather than the higher "beyond reasonable doubt" standard used in criminal law. Therefore, the *Re Winship*¹⁸ judgement was crucial because it set the standard of proof of beyond reasonable doubt in juvenile delinquent trials.

(B) Development in United Kingdom

¹⁴ Marcia Johnson, *Juvenile Justice*, 17 WHITTIER L. REV. 713 (1996).

¹⁵ Alexander W. Pisciotta, "Saving the Children: The Promise and Practice of *Parens Patriae*", 28 Crime & Delinquency 410 (1982)

¹⁶ 86 S.Ct. 1045 (1966)

¹⁷ Darlene Jorif, *Balancing Juvenile Justice*, 19 DEVIANT BEHAV. 89 (1998).

¹⁸ 90 S.Ct. 1068 (1970)

In the 1850s, the judicial system for juvenile criminals in Britain began to shift with the advent of reformatory schools. Other measures were enacted while these punitive ones prevailed. The major shift came through the introduction of regulations to remove the child from certain industrial zones and with making elementary school education mandatory for them in 1870. The "Children's Charter" was enacted in 1889 to guarantee the safety of children and enable the government to intervene in when required to resolve interpersonal conflicts between the children and their loved ones.¹⁹ Mostly in early 20th century separate juvenile courts were not yet established in the country and a need was felt to seek stronger legal protection for minors. In response to these demands, lawmakers established the Children's Act of 1908. The Act did establish juvenile courts in Britain, but it did not include any substantive measures dealing with juvenile criminality. After that, in 1907, the Probation Act was passed, which established probation as a tool for rehabilitating criminals, especially juvenile offenders. Therefore, the conditions would require the probationers to relocate and live away from any potentially negative influences. The Act also said that a probation officer would be put in charge of making frequent site visits to make sure that the law was being followed. In 1925, a group led by Sir Thomas Molony was established to investigate the care given to young offenders. The committee's findings were released in 1927, two years later, and they recommended the creation of juvenile courts with distinct jurisdictions from those of adult courts. The Children and Young Persons Act of 1933 was written using this study as its foundation. The primary goal of the 1933 Act was to decrease criminal activity by focusing on the well-being of children and giving them access to effective rehabilitation programs. It was discovered that the vast majority of adolescent criminals, particularly males, were from the working class. However, poverty was not the only cause of juvenile misbehaviour; there were other factors at play, such as a lack of correct parenting for a variety of reasons, a lack of direction, etc. Consequently, the juvenile justice system in Britain underwent significant ideological shifts. The proper strategy was discovered to be reformation of the structural injustices in the first place, even if certain segments strongly believed in the conventional concept of delivering punishment to avoid recidivism. However, another part of the report found that reform was needed not in the physical infrastructure but in the way juvenile courts dealt with minors.

(C) Development of Juvenile Justice System in India

In 1992, India accepted the United Nations Convention on the Rights of the Child, 1989.

¹⁹ W. T. Westling, *Understanding Law*, 7 Aust. & N.Z. J. CRIMINOLOGY 255 (1974)

However, in 2000, the Juvenile Justice (Care and Protection of Children) Act, 2000 was approved, marking a major milestone for the juvenile justice system in India. The growth of India's juvenile justice system may be tracked through six distinct stages.

1. Situation of the system prior to 1773

Parental responsibility for children's maintenance and safety is mandated by several legal systems, including Hindu and Mohamedan personal law. If a Muslim discovered a kid who had been abandoned or neglected and was in danger of harm, that Muslim was required by law to take care of the infant. A youngster may be made to pick up trash after someone else who has done so publicly, while an adult would be fined. In accordance with Islamic law, the murder of minors is expressly forbidden. Thus, it is clear that different aspects of the traditional laws demonstrate that children were not held totally accountable and responsible for their conduct and were not treated on par with adults, giving priority to their specific requirements.²⁰

2. Between 1773-1849:

Our country was ruled throughout this time by the East India Company, a trade company that had its beginnings in the early 1600s.²¹ In the aftermath of its defeat, however, the Crown assumed authority through the Governor General. Appearing changes in the country began when the crown took control. Workers in India suffered greatly as a result of colonial exploitation, and many were forced to relocate to slums or other impoverished areas of the country. It's no surprise that this factor contributed to a rise in juvenile crime.²² The Regulating Act of 1773 and the Charter Act of 1833 both formalised the East India Company's status as a legislative and executive branch of Indian government, making 1773 a watershed year in the country's legal development.²³ During this time, a number of laws were passed, and several committees were formed, with a primary focus on the treatment of juvenile detainees. As a result, several child welfare programs emerged during this time. In 1843, the first Ragged School for homeless and orphaned children was founded in Bombay; nowadays, it is known as the David Sasson Industrial School and is recognised as a Special Children's Home by virtue of Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

3. Between 1850-1919

In 1850, lawmakers recognised the need to separate adolescent offenders from adult inmates

²⁰Vaidehi Joshi, *Juvenile Delinquency and Evolution of Juvenile Justice in India*, INT'L J.L. MGMT. & HUMAN. 686 (2020).

²¹ Clayton A. Hartjen, *Legal Change and Juvenile Justice in India*, 5 INT'L CRIM. JUST. REV. 1 (1995).

²² Erika Rickard, *Paying Lip Service to the Silenced Juvenile Justice in India*, 21 HARV. HUM. RTS. J. 2008

²³ *ibid*

by passing the Apprentices Act. The Report of the Indian Jails Committee, 1919–1920²⁴, chaired by Alexander G. Cardew, recommended that juvenile offenders be treated apart from adult offenders.²⁵ Many laws were created during this time period concerning minors; however, the Juvenile Justice Act of 1850 was the first to provide juveniles a distinct status, allowing those between the ages of 10 and 18 who committed minor offences to serve out their sentences as apprentices rather than in prisons. The purpose of the legislation was to channel young people's energies in a positive direction, protect their minds from exposure to criminal influences, bring about change, and make sure everyone worked so that everyone could contribute to society once they were of the age of majority.²⁶

4. During 1919-1950

The Indian Jails Committee (1919–1920), which recommended a new system for trying juvenile criminals, also suggested granting obligatory bails and emphasising the need of reformation and rehabilitation. On the basis of the League of Nations Declaration, many separate state laws were enacted during this time period to protect children. These include the Madras Children's Act in 1920, the Bengal Children's Act in 1924, the Mysore Children's Act in 1943, the Travancore Children's Act in 1945, the Cochin Children's Act in 1946, and the East Punjab Children's Act in 1946. The Vagrancy Act of 1943 was also a pivotal piece of legislation enacted at this time on behalf of vagrant and impoverished children. This law mandated the appointment of a guardian for children under the age of 14 whose parents were either incarcerated or alcoholics.²⁷

5. Post 1950

After India got its independence in 1947, its Constitution went into effect in 1950. In its third part, it set out a number of fundamental rights that could be enforced by the courts. To make sure that children got the care and development they needed, different states passed different laws for juveniles at the state level by 1960. This meant that India did not have a single law for juveniles. Then, in 1960, the Central government passed The Children Act, which was a law for the whole country. It was also used as a model law for the states. In the case Sheela

²⁴ Asha K.P Mukundan, “*Study of the Status of the Justice Delivery System For Juveniles In Conflict With Law In Maharashtra*” (TISS, Mumbai, 2008)

²⁵ Ashley Blackburn, *The Juvenile Justice System in India: From Welfare to Rights*, 3 YOUTH VIOLENCE & JUV. Just. 395 (2005).

²⁶ Ashley Blackburn, *The Juvenile Justice System in India: From Welfare to Rights*, 3 YOUTH VIOLENCE & JUV. Just. 395 (2005).

²⁷ Gauri Pillai & Shrikrishna Upadhyay, *Juvenile Maturity and Heinous Crimes: A Re-Look at Juvenile Justice Policy in India*, 10 NUJS L. REV. 49 (2017).

Barse & Anr v. Union of India & Ors,²⁸ the Supreme Court looked at the conditions of children in adult jails and said that a uniform law for juveniles was needed. The Indian government ratified the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules, in 1985. This gave the movement more power. So, in 1986, the Indian Parliament passed the Juvenile Justice Act. This was done to make sure that Indian law was in line with the rules from Beijing and that all laws were the same. So, the Act was made to help develop and rehabilitate neglected and troubled young people in the country and to decide cases involving young people. For kids who break the law and kids who aren't cared for, there are juvenile courts and juvenile welfare boards. But the goals of the Beijing rules were not fully met, which led to changes to the law in 2000.

6. During 2000-2023

India signed the United Nations Convention on the Rights of the Child in 1992. In 2000, the Juvenile Justice (Care and Protection of Children) Act was passed. Children were put into two groups by the Juvenile Justice Act of 2000:

1. A child who is in trouble with the law²⁹ and
2. A child who needs care and protection

The JJ Act of 2000 also lowered the age of juvenility to 18 years old. In a ruling from 2014, the Supreme Court of India pointed out several ways that the juvenile justice system is different from the criminal justice system for adults. This was a clear statement of the law before 2015.

In 2021, a few changes were made to the JJ Act, most of which had to do with the adoption process. Adoption orders will now be given by the District Magistrate (including the Additional District Magistrate). But another big change to the law is that crimes with prison sentences of three to seven years that were once "cognizable" under the law from 2015 are now "non-cognizable".

V. CONCLUSION

The controversy surrounding juvenile justice in India is not new, as evidenced by a historical examination of the topic. Nonetheless, the Juvenile Justice Act, 2015 derives its specific impetus from the Justice Verma Committee's findings following the infamous Nirbhaya tragedy, which prompted the search for answers to several issues, including women's safety and juvenile delinquency. It was proposed that the Juvenile Justice (Care and Protection of

²⁸ AIR 1986 SC 1773

²⁹ Juvenile Justice (Care and Protection of Children) Act, 2000, s.2(1)

Children) Act, 2000, which predated the Juvenile Justice Act, 2015, be revised to add a provision for transferring juvenile offenders between the ages of 16 and 18 to adult criminal courts for serious crimes. This transfer of cases was already prevalent in western nations such as the United States and the United Kingdom, and featured processes such as judicial waiver, direct filing, and blended sentences, among others. The Juvenile Justice (Care and Protection of Children) Act, 2015 was adopted by Parliament on January 15, 2016, following the President's approval on December 31, 2015.

As a federal nation, the United States has various laws for each state. Thus, the juvenile justice system differs from state to state and is regulated by each state's legislation. The age of a delinquent child determines the juvenile court's jurisdiction. In the majority of states, the age of juvenility is 18 years old, except those states that have lowered this upper limit for juvenility. The Juvenile Justice and Delinquency Prevention Act of 1974 provides for the protection of minors under federal law. On the basis of this act, state financing for juvenile justice is increased. The development of juvenile justice has occurred over many years. In the current configuration, the system's attitude has concurrently evolved from being simply rehabilitative to punitive to reformative. However, a detailed examination of the jurisprudence of India and other nations, such as the United States, who have adopted a tough-on-crime strategy in recent years reveals that these measures have failed to successfully reduce juvenile misbehavior. Particularly in India, the JJ Act of 2015 has given the law a punitive hue that is not only contrary to constitutional mandates, as will be demonstrated in subsequent chapters, but is also ineffective. The age of criminal responsibility in the United Kingdom has been set at 10 years. Children between the ages of 10 and 18 are often prosecuted by the Youth Court for committing criminal offences. However, the legislation makes an exemption for minors who commit serious crimes, such as rape or murder, and allows them to be tried in the Crown Court, where the penalty of imprisonment can be increased to life imprisonment. Also prevalent in England is a tough-on-crime attitude that is retributive and punitive in character and has been condemned for violating international norms for juvenile justice.
