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Juvenile Justice In India: Historical Development

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Abstract: This article examines the historical development of juvenile justice in India from 1773 to 2000, analyzing legislative and institutional reforms across four phases: pre-legislative (1773–1850), colonial legislative (1850–1919), state-driven (1919–1950), and post-constitutional (post-1950). Using primary sources (statutes, colonial reports) and secondary legal scholarship, the study traces the shift from punitive to reformatory approaches, influenced by British, American, and Swedish legal frameworks, Indian constitutional mandates, and international conventions. Findings highlight the recognition of juvenile developmental needs, establishment of specialized courts, and reduction of criminal liabilities for minors. The article underscores the interplay of colonial governance, indigenous advocacy, and global standards in shaping a welfare-oriented juvenile justice system.

Keywords: Juvenile justice, India, colonial legislation, reformation, constitutional law, international conventions

I. INTRODUCTION

The juvenile justice system in India has undergone a profound transformation, evolving from a framework indistinguishable from adult criminal justice to a specialized system prioritizing rehabilitation over punishment. Historically, child offenders faced harsh penalties akin to adults, reflecting societal views that disregarded their developmental stage (Kumari, 2017). This article provides a comprehensive analysis of the historical evolution of juvenile justice in India from 1773 to 2000, structured across four phases: pre-legislative (1773–1850), colonial legislative (1850–1919), state-driven (1919–1950), and post-constitutional (post-1950). It focuses on three key dimensions: the treatment of juvenile offenders, the forums or courts established under various statutes, and the criminal liabilities imposed.

The study is informed by Roscoe Pound's (1945) advocacy for judicial over administrative handling of juvenile cases to ensure fairness and the *parens patriae* doctrine, which positions the state as a guardian of minors. It examines the influence of British colonial policies, American and Swedish legal models, Indian constitutional provisions, and international conventions, notably the United Nations Convention on the Rights of the Child (UNCRC, 1989). By synthesizing primary sources (e.g., statutes, jail committee reports) and secondary scholarship, this article contributes to understanding the complex interplay of domestic and global forces in shaping India's juvenile justice system.

II. METHODOLOGY

This research employs a historical-legal methodology, analyzing primary sources, including the Apprentice Act (1850), Indian Penal Code (1860), Reformatory Schools Act (1876), and Juvenile Justice Acts (1986, 2000), alongside reports from the Committee on Prison Discipline (1838) and Indian Jail Committees (1864, 1919–1920). Secondary sources include legal texts by Kumari (2017) and Pillai (2014), and case law (e.g., *Hiralal Mallick v. State of Bihar*, 1977). The analysis is organized chronologically, with thematic sub-sections addressing treatment, forums, and liabilities. Data were qualitatively evaluated to identify shifts in legislative intent from retribution to reformation, with comparisons to British, American, and Swedish systems to contextualize India's reforms. The study ensures academic rigor through systematic source verification and critical analysis.

III. PRE-LEGISLATIVE PHASE (1773–1850)

Prior to 1850, India lacked specific juvenile justice legislation. The Regulating Act of 1773 empowered the East India Company to legislate, but juvenile justice was governed by Hindu and Muslim personal laws, which treated child offenders similarly to adults, often imposing severe punishments (Report of the Committee on Prison Discipline, 1838).

1. Committee on Prison Discipline (1838)

Established by Lord William Bentinck, the Committee on Prison Discipline, chaired by Henry Shakespear, and investigated jail conditions, revealing a 7% prisoner mortality rate in India compared to less than 1% in England (Report of the Committee on Prison Discipline, 1838). The committee advocated harsher punishments, reflecting a medieval mindset, and neglected juvenile-specific reforms, perpetuating their exposure to adult prisoners. Its recommendations led to minor improvements in food and clothing but failed to address the unique needs of juvenile inmates.

2. Indigenous Advocacy

In 1778, Krishna Chandra and Jai Narain Ghoshal proposed shelter homes for Calcutta's impoverished children, including beggars, orphans, and delinquents. Their efforts resulted in the Orphan Committee in Calcutta and the David Sassoon Industrial School in Bombay (1843), which focused on reforming juvenile offenders through apprenticeships, marking an early rehabilitative approach (Kumari, 2017).

3. Apprentice Act, 1850

The Apprentice Act (1850) targeted poor and orphaned children aged 10–18, binding them to trades for up to seven years or until age 21 for boys or marriage for girls. While primarily focused on vocational training, it included provisions for handling misbehavior, laying the groundwork for juvenile justice:

- **Treatment:** Masters could administer “moderate chastisement” (e.g., whipping); magistrates could order confinement (up to one month, including one week solitary) or private whipping for boys under 14. Girls or boys unsuitable for whipping could be confined on minimal rations.
- **Forum:** Magistrates served as guardians, authorizing apprenticeships, punishments, or contract cancellations, combining executive and judicial roles.
- **Liabilities and Safeguards:** Punishments included chastisement, confinement, or contract termination. Safeguards allowed complaints against abusive masters, treated as if the apprentice were their child, and mandated maintenance post-master's death (Apprentice Act, 1850).

This act, though limited, introduced structured interventions for children, setting the stage for dedicated juvenile justice legislation.

III. COLONIAL LEGISLATIVE PHASE (1850–1919)

This period saw significant legislative advancements influenced by global prison reform movements and colonial policies, marking the emergence of a structured juvenile justice framework.

1. Indian Penal Code, 1860

The Indian Penal Code (IPC) introduced provisions recognizing juvenile developmental differences, a significant departure from earlier practices:

- Section 82: Declared children under 7 as *doli incapax* (incapable of committing a crime), exempting them from criminal liability.
- Section 83: Provided conditional immunity for children aged 7–12,

Requiring proof of insufficient maturity to understand the nature and consequences of their actions, rebuttable by evidence of “mischievous discretion” (Pillai, 2014).

Criminal liability depended on maturity rather than age, with leniency for those over 12 during sentencing (*Hiralal Mallick v. State of Bihar*, 1977). These provisions established a foundational principle for juvenile justice reforms.

2. Indian Jail Committee, 1864

Chaired by A.A. Roberts, the 1864 committee investigated prison conditions and made recommendations affecting juveniles:

- Support for Whipping: Endorsed the Whipping Act (1864), allowing corporal punishment as an alternative to imprisonment for juveniles convicted of non-capital offenses, aiming to reduce incarceration.
- Opposition to Reformatories: Argued that reformatories encouraged parental exploitation, advocating their closure.
- Separate Accommodations: Recommended separate facilities for juvenile and adolescent under-trial offenders to prevent contamination by adult criminals (Report of the Indian Jail Committee, 1864).

The committee’s punitive stance reflected conservative views but acknowledged the need for juvenile segregation, aligning with emerging global standards.

3. Reformatory Schools Act, 1876

Enacted under Sir Richard Temple’s influence, the Reformatory Schools Act (1876) was landmark legislation, shifting focus from retribution to reformation. It defined “youthful offenders” as those less than 16 convicted of imprisonable offenses (excluding death penalty cases):

- Treatment: Offenders were sent to reformatories for 2–7 years, with licensing to employers after age 14 for up to three years. Good conduct could lead to apprenticeship under the Apprentice Act, with unexpired sentences waived.
- Forum: High Courts, Sessions Courts, first-class Magistrates, and Presidency Magistrates in Calcutta, Madras, and Bombay handled cases.
- Liabilities: Included reformatory detention; escapes incurred imprisonment or fines. Police could arrest escapees without warrants.
- Safeguards: Licenses could be revoked for employer misconduct, and periodic inspections ensured facility standards (Reformatory Schools Act, 1876).

This act prioritized vocational training and welfare, aligning with global trends toward juvenile rehabilitation.

IV. STATE-DRIVEN PHASE (1919–1950)

The Indian Jail Committee (1919–1920) catalyzed state-level reforms, emphasizing reformation over punishment and addressing inconsistencies in juvenile justice administration.

1. Indian Jail Committee, 1919–1920

Chaired by Sir Alexander G. Cardew, the committee viewed juvenile delinquency as a product of environmental factors, advocating comprehensive reforms:

Child Offenders:

- **Age Limits:** Adopted the Madras Children Act's definitions (children under 14, young persons 14–16), aligning with the English Children Act (1908).
- **Prohibition of Imprisonment:** Banned imprisonment for children under 14; those 14–16 could be imprisoned only if deemed unruly or depraved.
- **Remand Homes:** Recommended special remand homes to prevent juvenile detention with adult criminals.
- **Children's Courts:** Advocated informal courts with magistrates adopting a paternal approach, requiring background information (e.g., home environment, health) before trials.
- **Probation:** Expanded Cr.P.C. Section 562 for probation to families (Report of the Indian Jail Committee, 1919–1920).

Adolescent Offenders:

- **Age Limits:** Defined adolescence as 16–21, extendable to 23, rejecting the U.S. model (16–30).
- **Borstal Institutions:** Recommended separate facilities for adolescents inspired by English Borstal systems and U.S. reformatories (Kelkar, 2013).

These recommendations laid the groundwork for state-level Children Acts.

2. Children Acts (1920–1949)

Starting with the Madras Children Act (1920), eight states enacted laws establishing juvenile courts, remand homes, and probation, adopting the American model of informal proceedings without lawyers. Key features included:

- **Segregation:** Juveniles were separated at the adjudication stage.
- **Differential Treatment:** Delinquents could be sent to remand homes or imprisoned in grave cases if deemed depraved.
- **Age Variations:** Definitions of “child” varied (13–18 years), causing disparities (Kumari, 2017)

The Bengal Vagrancy Act (1943) addressed neglected children under 14, providing training and care for those in unfit environments. Acts in Bengal (1922), Bombay (1924), Delhi (1941), Mysore (1943), Travancore (1945), Cochin (1946), and East Punjab (1949) followed similar patterns but highlighted the need for uniform legislation.

V. POST-CONSTITUTIONAL PHASE (POST-1950)

Post-1950 reforms aligned juvenile justice with constitutional mandates and international standards, emphasizing child welfare and rights.

1. Constitutional Framework

The Constitution of India (1950) provides a robust framework for juvenile justice:

- Article 15(3): Permits special provisions for women and children.
- Article 24: Prohibits employment of children under 14 in hazardous industries.
- Article 39(e) and (f): Directs the state to protect children's health, prevent abuse, and ensure healthy development.
- Article 45 (86th Amendment, 2002): Mandates early childhood education until age 6 (Constitution of India, 1950).

Article 13 ensures that juvenile justice laws align with fundamental rights, rendering inconsistent provisions void.

2. International Conventions

The United Nations Declaration of the Rights of the Child (1959) and UNCRC (1989) emphasized child welfare, influencing India's legislation. The 1959 declaration recognized children's need for special safeguards due to physical and mental immaturity, while the UNCRC defined "child" as under 18, gender-neutral (UNCRC, 1959; UNCRC, 1989).

3. Children Act, 1960

Applicable to Union Territories, the Children Act (1960) defined "child" as boys under 16 and girls under 18, establishing:

- Institutions: Child Welfare Boards for neglected children, Children's Courts for delinquents, and Children Homes, Special Schools, Observation Homes, and After-Care Organizations.

Treatment:

- Bail and Custody: Immediate bail unless risky (e.g., association with criminals), with detention in observation homes.
- Inquiry: Followed Cr.P.C. summons trial procedures.
- Punishment: Included admonition, probation, special school placement (3+ years for older children), or fines for those over 14 who earn.
- Immunities: Prohibited death penalty, imprisonment, joint trials with adults, and acts of cruelty or exploitation.

Forum: Comprised magistrates and two social workers (one female) (Children Act, 1960).

State-level variations persisted, with differing age limits and imprisonment provisions, underscoring the need for uniformity.

4. Juvenile Justice Act, 1986

Enacted following the Beijing Rules (1985), the Juvenile Justice Act (1986) aimed for uniform juvenile justice, defining “juvenile” as boys under 16 and girls under 18:

- Treatment: Mirrored the 1960 Act, with bail, observation home detention, summons trial inquiries, and punishments like admonition, probation, or special school placement.
- Forum: Juvenile Welfare Boards and Juvenile Courts.
- Liabilities and Immunities: Excluded death penalty and imprisonment; prohibited publication of juvenile identities (Juvenile Justice Act, 1986).

The act introduced minor additions (e.g., advisory boards) but largely reiterated the 1960 Act’s framework.

5. Juvenile Justice (Care and Protection of Children) Act, 2000

Post-UNCRC ratification (1992), the Juvenile Justice (Care and Protection of Children) Act (2000) adopted a gender-neutral definition of “juvenile” (under 18), replacing “delinquent juvenile” with “child in conflict with law”:

- Juvenile Justice Board (JJB): Comprised one magistrate and two social workers (one female) with expertise in child welfare.
- Treatment:
 - Inquiry: Completed within four months.
 - Punishments: Added community service and counseling to admonition, probation, special home placement (up to 2 years for 17–18-year-olds), or fines.
 - Immunities: Prohibited death penalty, imprisonment, joint trials, and acts of cruelty.
- Amendments (2006): Gave overriding effect to the act, allowed juvenility claims at any stage, and extended provisions for 16–18-year-olds (Juvenile Justice Act, 2000).

V. CONCLUSION

The evolution of juvenile justice in India reflects a transition from punitive to reformative approaches, driven by colonial reforms, constitutional mandates, and international conventions. From the Apprentice Act (1850) to the Juvenile Justice Act (2000), India developed a welfare-oriented system prioritizing rehabilitation over punishment. The interplay of British, American, and Swedish legal influences, indigenous advocacy, and global standards shaped a framework balancing justice with child welfare. Future research should explore implementation challenges and the impact of the Juvenile Justice Act (2015) to strengthen the system further.

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