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Historic Conjunction of Juvenile Law and Child Psychology

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Abstract

In any developed nation, the way law is implemented is seen as a reflection of what the statute or article was intended for, since modern society is a complex blend of different societal layers, it is necessary to make distinctions based on certain criteria in order to satisfy the ulterior motive of law: to maintain peace and harmony in society. One such distinction is that between the law applicable to adults and that applicable to minors, or in legal terms, juveniles. Pakistan also shared its history of juvenile justice with India, up until its independence in 1947. Even then it took Pakistan fifty-three years to formulate a uniform piece of legislation for juveniles, and then another eighteen to update and revise it considerably. By virtue of the procedure of independence, Pakistan inherited a lot of laws that had been introduced by the British in the subcontinent during their rule. Several of these laws were oriented towards juveniles and the need for their separation from adult, either wholly or partially and some of them survive to this day as well.

Key Words: UDHR, CRC, Juvenile Justice System, Juvenile

1. The Origins of Juvenile Justice System

Juvenile law is one of those fields of law that may seem relatively modern in its concept, operation and machinery but has developed over thousands of years in various stages through the fields of law, psychology, philosophy and sociology. Its inception can be traced back to at least around 1754 BC, which is the era in which the Code of Hammurabi was made. In the ancient Mesopotamia, a primitive and well-preserved Babylonian code of law was the Code of Hammurabi which contains 282 laws dealing with civil, criminal, family and other matters. This code is one of the earliest and more complete written legal codes from ancient times.

The Hammurabi Code contains references to runaway children, children who refused to comply with their parents and children who annoying their fathers, who would be considered juvenile delinquents or at the very least juveniles with anti-social behavioral tendencies in modern legal and psychological jargon. Roman law, too, around 2000 years ago, provided the rule of *doli incapax*, which meant to secure the youngsters from prosecution owing to the assumption of a lack of capacity and understanding required to be guilty of a criminal offence. Early Jewish Law, which is derived largely from the authoritative text known as the Talmud, was compiled in the 4th century and presented a list of conditions in which immaturity was to be considered as a factor when deciding what punishment was to be imposed on a criminal.

The Roman law of the 5th century progressed further in the realm of juvenile justice, with the children under the age of 7 being classified as infants and not being held criminally responsible whatsoever. However, youth approaching puberty were estimated reasonably to know the basic difference between right and wrong and make decisions accordingly and the puberty age of children was decided as 14 for boys and 12 for girls.

Anglo Saxon common law of the 11th and 12th centuries, which was later to become one of the core justice systems of the world, was highly influenced by the principles of Roman civil and church law. The principle of *doli incapax* was imported into the common law system, which was the part of English law that was derived from customs of the area and judicial precedent set by the judges often acting in the King's name. The common law system was rife with problems of its own with rigid elements and the restrictive writ system that forced the plaintiff to reconsider their options whenever they had to go down the legal road. The basic concept to deal with the juveniles was that to deal with the same as adults all curtailed from the English Common Law countries. In English Common Law, it was common practice that the juveniles were given trainings to work the agricultural and domestic work, in English Common Law.

In the 15th century, Courts of Chancery were created in England to operate on the principles of equity, which aimed to fill in the gaps and lacunas of the common law system. The Courts of Chancery were a welcome addition for the less fortunate such as divorced women and abandoned children, and the principles of equity worked in synchronization with the human sense of morality and justice (as envisioned in their respective Latin maxims), which gave a platform for juveniles to finally get the justice they deserved. Since these courts operated in the name of the King, the king had the rights as the parents practiced the right of parents patriae (parent of the country) and the courts acted in loco parents (in place of the parents). These doctrines allowed the state to act on behalf of the children, especially orphans and abandoned minors, and make decisions with their best interest in mind.

These advancements in English law spurred the development of juvenile law in America as well. The social circumstances regarding juvenile delinquents was pathetic to say the least and would be in gross violation of human rights by today's standards. The children, who were suffering from troubles, were also suggested to make fruitful efforts to have control on their families to focus their families and intervene within the matters of their families. In addition to all, they also use the almshouses (locked, one-room buildings that housed many types of people regardless of health, gender and condition). After 1700s, it was the responsibility of the family to look after the children and hold all the activities of their children, Community (society) can play a positive role to help such children by keeping them with their own families or with other families, as a form of reclamation of such factors which are taken as anti-social activities, instead.

By 1800, legal, psychological and sociological academic discourse had advanced to a point that there was a genuine concern among the public regarding the welfare and rehabilitation of minors who had been convicted of crimes before. However, poor economic conditions and an influx of immigrants resulted in a huge number of unsupervised kids roaming the streets. Some of the children were kept just for the reason that there was no other option except to keep them there and some were detained due to criminal behavior simply because there were no other options. Determined to make a change, pioneering penal reformers Thomas Eddy and John Griscom spearheaded the Child Saving Movement in the 1820s, managed the Society for the Prevention of Pauperism to face housing young people in adult jails and prisons and urge the creation of a new type of department.

In 1825, when the New York House of Refuge was developed, the efforts made by them paid them, because it was the first private and a special department of its kind, constructed houses for poor, snubbed and criminal people who were considered by high ups to be on the line of delinquent life. Within 3 years of its establishment, many other departments were established in Boston and Philadelphia, and by the end of 1840s, almost twenty-five more institutions were opened throughout America.

2. The Historic Conjunction of Juvenile Law and Child Psychology

The year 1840 also marked the birth of the discipline of what would be later known as child psychology, thanks to the famous scientist Charles Darwin, who maintained a record for the progress and development for one of his own children, he collected the data which was necessary for the purpose of this study. This study was conducted on an alien species. Darwin's research would later go on to influence many leading names within the field of psychology. The success of these combined efforts led to many organizations and community efforts being organized to help young people, with varying degrees of effectiveness overall. Although these efforts tried to improve conditions for wayward children, all legal matters for children continued to be handled by adult civil courts, achieving inconsistent outcomes which failed in decreasing delinquency or offending behaviors across communities. Moreover, Houses of Refuge quickly fell victim to the same issues that plagued adult jail and prisons such overcrowding, deteriorating conditions, staff abuse and blatant racism within the incarcerated population.

As the confidence of the public in the judiciary and houses of refuge began to wane, social reformers began advocating for a new institution which could properly cater to the needs of the imprisoned youth and placed emphasis on the need for their education. Finally, in 1886, the famous developed schools were established at small level, rural level, cottages which were maintained and functioned by parental figures who worked to educate and care for the children and adolescents. By 1896, there were 51 such schools in America. However, the same issues as before popped up with adolescents being housed with adults and being exploited with no forms of safeguards or checks within the walls. At that time, the black children who were taken as improper for rehabilitation and they were placed only in jails, it was considered that some refuge centers or reform schools should be established for their welfare but later on the houses/refuge centers and reform schools were discontinued being very old, primitive and repressive buildings. Even if they were lucky enough to be admitted in a reform school, they were discriminated against and did not participate in educational activities.

At the end of the 19th century, reformist social dialogue resulted a shift generally. In 1891 American educational psychologist G. Stanley Hall proven the *Pedagogical Seminary*, a journal was introduced to discuss different aspects of child psychology. Then, in 1899, The United States created a history in 1899, when the world's first court for juveniles was established in Chicago, it was a unique action on the part of United States. The court was based on two basic concepts. First, minors did not have the ability to assume responsibility for their acts as adults do. Second, because their personality was not yet sufficiently matured, they could have been rehabilitated more effectively than adult criminals. The establishment of juvenile courts was no small feat, as it directly translated to public wide recognition of the concepts of juvenile crime and juvenile delinquency. The courts often employed probation officers, social workers, and psychologists to work with the child and family, as well as to guide the decision-making of When the juvenile courts gave their decision regarding any juvenile delinquent, it was their responsibility to appoint some social worker, probation officer and psychologists whose duty was to guide juveniles as well as their families for compliance of court orders.

3. The expansion of English law in the Subcontinent

While America was busy setting precedent after precedent for juvenile justice, England was busy making history on its own in the South Asian region during the nineteenth and twentieth centuries. The East India Company had laid strong hold in the Indian subcontinent and had gained control of all affairs of the once mighty empires, from legislation to governance. Laws passed by the British were automatically applied to the local populace, and some of these laws were drafted with youthful offenders in mind as well. One of the earliest such laws was the. **The Reformatory Schools Act of 1897, which worked alongside the Code of Criminal Procedure of 1898. The final piece of legislation regarding delinquent juveniles which was enacted before Pakistan and India gained independence was the Punjab Borstal Act, 1926.**

4. Juvenile Law and its Global Recognition

The future looked bright for juvenile law around the globe when arguable the biggest tragedy known to mankind struck in the form of World War II. With millions of lives being lost due to unfathomable acts of violence spanning the entire world, countries came to the realization that such an atrocity could not and should not manifest itself again for it would wipe out the entire human race. To ensure peace for the upcoming generations, the United Nations decided to complement the United Nations Charter with a road map to guarantee the rights of every individual everywhere. The Universal Declaration on Human Rights (UDHR), an important document was approved by the General Assembly in 1946 during the first session in 1948, and this document recognized the children rights and adopted a resolution.

The adoption of UDHR breathed a new sense of satisfaction within the legal fraternity as it meant that now an overarching international piece of legislation would ensure the rights of juveniles as well. The UDHR would later go on to become part of the International Bill of Human Rights which consists of the Universal Declaration of Human Rights (adopted in 1948), the International Covenant on Civil and Political Rights (ICCPR, 1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966).

Following the principles of international law, member states would soon follow in these footsteps and introduce legislation in line with the interest of protecting the rights of children. Pakistan was no different and introduced the Sindh Children Act 1955, The Sindh Borstal Schools Act 1955 and the Probation of Offenders Ordinance 1960, which still had ways to go regarding both jurisdiction and implementation but at least gave hope that some attention was being paid to the condition of juvenile justice within the country.

The United Nations would continue to build upon the momentum, On 29 November 1985, the United Nations Standard Minimum Rules were passed by the United Nations General Assembly whose main function was to establish the Administration of Juvenile Justice ("The Beijing Rules"). The commitments of member states were confirmed through the process of Beijing Rules to endeavour and develop the circumstances that will certify and ensure a fruitful life of juveniles but meaning as well as positive life for the juveniles in our society. Such actions of society or government will speed up and faster the way of thinking of juveniles and to promote their education which can lead them toward a free from crime and delinquency as possible.

In 1989, a momentous obligation for the children of world were made by world leading personalities who agreed to enter into an international agreement on children rights and their implementation which is the most important part of United Nations Convention on Child Rights. The wave of international law giving juvenile law priority would be rounded off with the instructions of United Nations for the deterrence of Juvenile Delinquency.

5. Conclusion

It can be concluded from the above discussions that both individual and societal behaviors are very important in being root factor for delinquent behavior of a juvenile. It is also important that the thinking of fair treatment with individuals, especially with the children i.e., juveniles as provided by the justice system influences their attitudinal, emotional, and behavioral outcomes. Therefore, the present study presents all mentioned dimensions, root factors and determinants of juvenile delinquency, perception of fair treatment and juvenile justice system in Pakistan as well. Under this study, the responsibility of parents is more important than any institute or individual, they must give proper time to their children during the specific period of their growth which can lead them toward a guided rout of life. The educational institutes, NGO's, officers of prisons and courts can pay more positive role for the development of juveniles' institutions in society. Even United Nations are united to work for the welfare of juveniles and they are ready to pay for the development programs of juveniles.

References:

- <https://courses.lumenlearning.com/suny-hccc-worldhistory/chapter/hammurabis-code/>
<https://www.britannica.com/topic/Code-of-Hammurabi>
<https://www.iclr.co.uk/knowledge/glossary/doli-incapax/>
http://www.daviddfriedman.com/Academic/Course_Pages/Legal_Systems_Very_Different_13/LegalSysPapers2Discuss13/Strasser_Juvenile.htm
<https://openoregon.pressbooks.pub/ccj230/chapter/13-3-history-of-the-juvenile-justice-system/>
<https://study.com/academy/lesson/history-of-juvenile-delinquency.html>
https://us.sagepub.com/sites/default/files/upm-assets/95059_book_item_95059.pdf
<https://law.jrank.org/pages/7956/Juvenile-Law-History.html>
<http://www.cjcj.org/education1/juvenile-justice-history.html>
<https://criminal.findlaw.com/juvenile-justice/development-of-the-juvenile-justice-system.html>
The History of Juvenile Justice and Today's Juvenile Courts (https://us.sagepub.com/sites/default/files/upm-assets/95059_book_item_95059.pdf)
<https://www.britannica.com/science/child-psychology>,
<https://courses.lumenlearning.com/abnormalpsychology/chapter/early-milestones-in-the-history-of-child-psychology/>
<https://www.un.org/en/sections/universal-declaration/history-document/index.html>
https://en.wikipedia.org/wiki/International_Bill_of_Human_Rights
<https://resourcecentre.savethechildren.net/library/united-nations-standard-minimum-rules-administration-juvenile-justice-beijing-rules>
<https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>