

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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CHILD PENAL SYSTEM IN NIGERIA AND INDIA: THE DIALECTICS OF THEORIES AND PRACTICE IN THE POST-COLONIAL ERA

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Abstract

This research examines the divergence between theoretical frameworks and practical realities within the child penal systems of Nigeria and India during the post-colonial era. Drawing from a comparative legal analysis, the study investigates how historical British colonial administration shaped juvenile justice structures in both nations, creating systems that, while sharing common law heritage, developed distinct characteristics. The findings reveal that despite ratification of international instruments like the United Nations Convention on the Rights of the Child, implementation remains inconsistent across both jurisdictions. In Nigeria, a tripartite system comprising Customary Law, Shari'ah-based provisions, and English Common Law creates jurisdictional complexity, while India's constitutional framework establishes protective directives that often conflict with social realities. The research identifies significant gaps between codified legal protections and actual practice, with socioeconomic factors, urbanisation pressures, and institutional neglect contributing to systemic failures. The study concludes that meaningful reform requires redefining institutional structures beyond colonial legacies, incorporating indigenous cultural values, and developing contextually appropriate approaches that bridge the persistent gap between policy aspirations and ground-level realities.

Keywords: Juvenile Justice, Post-colonial Legacy, Policy Implementation, Legal Pluralism

Introduction

It is necessary to define a “child penal system” because such a term represents a difficult balance between two innate feelings, which each society has to find a compromise for: the feeling of protection towards the young and the feeling of punishment. The term “child penal system,” therefore, is defined as the whole legislation and welfare system set up by the state regarding children who commit crimes or need some care. Such a system is not stable; it changes due to notions of childhood, social welfare, citizens’ rights, as well as the very notion of the child. Nigeria and India present one more complication to such a notion because they have their origins in the legislation set up by the British colonial authorities, and now both states try to combine that heritage with their own culture and international law.

The theory of juvenile justice can be best understood in terms of one of the relatively recent concepts in human history, namely that a child offender is not to be treated like an adult offender. This idea was hardly practised at all for most of recorded human history, and certainly not during the colonial era in West Africa and South Asia. The idea of juvenile delinquency evolved slowly from one based on the assumption that a “bad child” was just a young offender to a realisation that the problem of delinquency often resulted from poverty, neglect, migration, and social disruption rather than from wickedness. Post-colonial legacy is meant here as the legacy of colonial justice systems, institutions, and priorities that survived long after Nigeria’s and India’s independence from British rule in 1960 and 1947, respectively. Legal pluralism is an important concept that is discussed in many places in the Nigerian side of this debate and denotes a state where there is more than one legal system existing in the same region, where, for Nigeria, these include common law, Sharia, and several other systems of customary law, all laying claim to jurisdiction over matters relating to children (Oba, n.d.).

Before going into details about the post-colonial history, it might be worthwhile to spend some time discussing just what “the post-colonial era” might really mean, as this phrase is easily mistaken for nothing more than a straightforward chronological designation – all events that took place following the fall of the Union Jack at Lagos in 1960 or at Delhi in 1947. The truth is that post-coloniality, according to a growing body of legal and imperial historians, is not so much a period as a condition – one that persists beyond the transfer of political authority and which continues to shape the way in which a nation-state understands its citizens, even its youngest citizens. (Brown, 2017). Seen in this light, the “dialectics” referred to in this study’s title refer not just to the incongruence between good law and poor application, but rather a

continuing tension between two rival conceptualisations of the child offender that remain unresolved since the time of independence, namely that of the former colonial administration that viewed the delinquent child primarily as an order issue, and that of a later generation that viewed him first and foremost as a rights-bearing individual in need of protection and rehabilitation.

Traditionally, both nations have a very similar background despite their geographic location and differences in cultural backgrounds. In India, the first move towards recognising the difference between young offenders and adults took place with the introduction of the Apprentices Act in 1850, when a provision was made in it allowing the courts to bind the young offenders between the ages of ten and eighteen years to the trades as apprentices instead of keeping them in prisons (Lawctopus, 2019; EPW, 2016). After that, the Reformatory Schools Act of 1897 was passed, allowing magistrates to send the youth offenders to the reformatory schools rather than ordinary prisons, and further on with provincial laws like the Madras Children Act of 1920, the Bengal Children Act of 1922, and the Bombay Children Act of 1924. (EPW, 2016). However, in Nigeria, the corresponding starting point was reached relatively late and was limited in terms of the geographical scope. The focus on child welfare from the perspective of the colonial administration was a result of growing worries about street trading, petty thievery, and vagrancy among children, which became even more pronounced after the appointment of the Social Welfare Officer in 1941, resulting in the adoption of the Children and Young Persons Ordinance in 1943, which initially only applied to Lagos but soon spread to other areas as well (Historical Nigeria, 2025; Ogunniran, 2015). In neither of these pieces of legislation were the best interests of the child taken into account as the primary consideration. As a number of Nigerian academics note, the main purpose of both acts was administrative convenience and social control (Ajol, 2012).

The reason why the comparison between Nigeria and India is particularly significant lies in the fact that, upon gaining their independence, both these countries have maintained the colonial statutes almost without change. The Children and Young Persons Act remained the central juvenile statute of Nigeria until 2003, and even after that date, only in those states which domesticated the new legislation (Ogunniran, 2015). In India, the reliance on a patchwork of provincial children's Acts existed until 1960, when the Children Act introduced a uniform but narrow national system (IJRPR, n.d.). This study intends to examine the divergence of theory and practice in both countries using an expository and historical approach. Three major themes

that defines the study includes: the colonial background of child justice and the way it influenced the intellectual foundations of both institutions; the reform process of the post-colonial period and the contradiction that remains within the rehabilitative and punitive approaches; and the problem of legal pluralism, socioeconomic pressure, and the inability of the institution to respond to them that helps to understand why the codification of children's rights does not benefit the child itself.

Colonial Foundations

A discussion of the history of child justice in both Nigeria and India has to acknowledge that neither of the two systems was created from scratch in the aftermath of colonisation. The legal systems in both countries are products of colonial legal thought, most of which still survives till date in terms of both practice and logic. In the case of India, the series of statutes including the Apprentices Act (1850), the Reformatory Schools Act (1897), the Indian Penal Code (1860, which made exemption for children below the age of seven from criminal culpability), the Code of Criminal Procedure (1898), and the Indian Jail Committee report (1919-1920) depict a colonial legal thought process (Development4You, n.d.; Lawjournals, 2024). The Jail Committee's recommendation that child offenders be treated differently from adult offenders was significant, yet its implementation was left largely to individual provinces, producing the patchwork of Madras, Bengal and Bombay children's Acts referred to earlier. This patchwork meant that a child's legal fate in colonial India depended heavily on where that child happened to be arrested, an inconsistency that would echo, in different form, well into the twenty-first century through disparities among Indian states in juvenile justice implementation (India Justice Report, 2025).

In Nigeria, the mode adopted by the colonial government reflected the general practice of indirect rule, in which British laws were introduced to the colony without affecting the customary and religious systems of governance, as long as they were not deemed to be "repugnant to natural justice, equity and good conscience" (Law and Social Justice Review, 2025). The Children and Young Persons Ordinance of 1943 was an intervention of limited scope: it established juvenile courts, as well as allowed the diverting of certain offenders from the mainstream system of justice, but it did not seek to interfere with the existing customs and religion that shaped childhood and family in Nigeria (Historical Nigeria, 2025). In this regard, the scholars have noted that the philosophical underpinning of justice in the colonial administration system of governance was purely repressive and aimed at deterring and

punishing rather than any attempt to reform the juvenile offenders, which could be regarded as secondary in importance (Ajol, 2012). The Children and Young Persons Act, which was further extended in its modified form throughout the nation until 2003, was the law governing children and young persons in Nigeria after independence in 1960. This implied that, for over forty years since 1960, the post-colonial Nigerian government was governing the children in conflict with the law based on a colonial-era law framework. (Ogunniran, 2015; Folorunso and Co., n.d.).

An intellectually significant idea lies hidden in the fact that all post-colonial states are the descendants of the same colonising power. According to Brown (2017), in speaking about the Indian experience, the penal powers of the colonial state did not simply disappear once independence was attained; instead, they were transformed into, and to some extent even perpetuated by, the post-colonial state through its adoption of the laws of empire along with the beliefs it held regarding danger, surveillance, and liberal citizenship. When applied to the juvenile situation, the implication of this is that it partly explains why, decades after gaining independence, Nigeria and India still had juvenile justice regimes where rehabilitation rhetoric was plentiful, while the commitment to the institutions needed for rehabilitation was wanting. In the former colonial regime, the prison system was constructed and operated in large part as an apparatus of control. After decolonisation, the post-colonial regime, in both Nigeria and India, went ahead to use the apparatus in the same spirit but with different rhetoric.

Another issue to be raised here concerns the institutional paucity of the colonial version of children's criminal justice system relative to the future vision that would be projected onto it by post-colonial reformers. The Nigerian literature on the matter makes it clear that while the Children and Young Persons Ordinance did indeed establish the courts and the possibility of committal to either reformatory or industrial institutions, intensive study of the matter conducted throughout the whole country revealed the fact that the institutions supposed to conduct the work of rehabilitation actually did not exist at all (Ogunniran, 2015). The juvenile delinquents were not given bail by the police, and the procedures instituted by the Ordinance did not show much protection that one would expect from the phrase "welfare of the young." Indian colonial reformatories also had a problem of credibility; in fact, the reformatory and industrial schools were criticised in contemporary British literature for being prisons in disguise rather than reformatories for young criminals. And this particular criticism was transferred along with the legislative model to the colonies without much thought put into it.

One should also take note of the way these colonial laws reflect on the concept of “childhood” that the empire carried to its colonies. The ten-to-eighteen age group mentioned by the Apprentices Act, as well as the boundaries of definitions applied by CYPO, were copied from English legal concepts that might have little in common with the indigenous perception of age, after which people were considered mature enough to be responsible adults (Development4You, n.d.). For example, in Nigeria, maturity was associated more often with reaching puberty, marriage, or economic independence than with a certain age limit. It is no coincidence that nowadays there exists a conflict between the Child Rights Act’s stipulation of eighteen years being the age of adulthood and the customary or Sharia law perception of when a girl becomes ready for marriage (Child Rights Act in Nigeria, n.d.; GWU Student Briefs, 2022). Thus, the process of colonisation not only brought new courts and new punishments but also imposed an entirely new epistemology of childhood upon indigenous populations.

Post-Colonial Reform, Rehabilitative Theory and Punitive Practice

Running through the history of child justice in Nigeria and India, both countries began, in earnest, to reform their inherited colonial frameworks at independence. On paper, both reform movements were driven by broadly similar forces: growing domestic dissatisfaction with outdated colonial statutes, the influence of the United Nations Convention on the Rights of the Child, adopted in 1989 and ratified by both Nigeria (in 1991) and India (in 1992), and a series of high-profile domestic incidents that forced legislators to act (International Association of Women Judges, n.d.; Juvenile Justice Act 2015, n.d.). Indeed, the very nature of the reforms and their evolution in each of these states has been characterised by a real dialectic between the ideal of rehabilitation expected under international law and the reality of a punitive desire arising in domestic politics.

Nigeria received its first major reform in the form of the Child Rights Act of 2003, which is a comprehensive legislation that covers 230 pages and comprises 278 sections aimed at domesticating the Convention on the Rights of the Child in its entirety (Child Rights Act in Nigeria, n.d.). One of the most important contributions it made to child justice included the creation of an exclusively dedicated Family Court, which would take over matters pertaining to children, as well as provision for protection of a child’s privacy during the trial, right to representation and special training of police officers dealing with the children’s cases (The Nigeria Lawyer, 2023). Some of the other features of the Act that were missing in the previous colonial ordinance included the concept of diversion of offenders from the process,

presumption in favour of non-custodial sentences, as well as residential centres like Children's Residential Centres and Emergency Protection Centres for separating care and protection cases from punitive cases. Ogunniran (2015) characterises the years between 2003 and 2014 as years of real progress compared to the years before the Child Rights Act.

However, the problem is that the Child Rights Act was enacted as a federal law in a state where issues concerning criminal justice and family affairs fall under the jurisdiction of the states to an appreciable degree, which meant that each of the thirty-six states of Nigeria had to separately domesticate the Child Rights Act in order for it to have legal effect in that particular state (Child Rights Act in Nigeria, n.d.). While progress was not made rapidly and not all states took part, by 2016, only twenty-four out of thirty-six states had taken such action, while by the beginning of 2026, Gombe State of Northern Nigeria was the only one not to give its consent, leaving a gap of more than twenty years from national intention to its universal implementation (Child Rights Act in Nigeria, n.d.).

Reform in India provides yet another example where theoretical progress is accompanied by regression in practice, although the nature of regression in this particular case differs slightly from that described above. The Juvenile Justice Act, passed in 1986 and revised in 2000 to become the Juvenile Justice (Care and Protection of Children) Act, both used the language of the Convention on the Rights of the Child, created Juvenile Justice Boards, stressed rehabilitation over punishment, and fixed eighteen as the age limit for all juveniles in India (Juvenile Justice Act 2000, n.d.). However, the heinous crime of the gang rape and murder of a girl in Delhi in December 2012, where one of the offenders happened to be just shy of his eighteenth birthday, sparked such fury in the general public that the debate on the legislation was transformed virtually overnight (Juvenile Justice Act 2015, n.d.). In the case of the above-mentioned gang rape, the accused youth was tried according to the existing law and sent to a corrective institution for a period of three years, which the victim's mother fiercely criticised as encouraging others to do likewise (Juvenile Justice Act 2015, n.d.).

Legislative action came in the form of Juvenile Justice (Care and Protection of Children) Act of 2015, which besides progressive provisions like establishment of an effective foster care and adoption system, included one thing that India's juvenile law had not seen before – a waiver process whereby children aged sixteen to eighteen who committed atrocious crimes could be tried as adults after being evaluated by the Juvenile Justice Board (Juvenile Justice Act 2015,

n.d.). It was very controversial. The bill was even reviewed by Parliament's Standing Committee, which recommended against the implementation of the waiver procedure, but since recommendations of the Standing Committee are not mandatory for the government, the bill was adopted in its previous form, passing in Lok Sabha in May 2015 amid strong objections from several lawmakers (Juvenile Justice Act 2015, n.d.). In the debate, Mr Shashi Tharoor, who was at that time a member of the Indian National Congress, expressed his views regarding the law, stating that the law goes against the international standards of juvenile justice and that most of the children who committed offences belong to low-income families who were not literate but needed education instead of punishment (Juvenile Justice Act 2015, n.d.). The child and women's rights groups saw the bill as a backward move, whereas some people welcomed it.

One of the related themes in the Indian reform narrative is that of adoption and alternative care, and in this case, the Juvenile Justice Act 2015 was, on the whole, more clearly progressive. The legislation provided the Central Adoption Resource Authority with statutory legitimacy, reduced the timeframe for both domestic and inter-country adoptions, increased the period during which parents may think twice about surrendering their children from one month to three, and introduced foster care as an official classification for the first time, along with state subsidies for those families who use the facility (Juvenile Justice Act 2015, n.d.). This set of rules received less opposition than the judicial waiver procedure just because they neatly fit into the welfare model agreed by reformists of all persuasions; it was only when rehabilitation and punishment clashed directly in relation to the treatment of the sixteen-to-eighteen group charged with the most serious crimes that the underlying dialectics were impossible to overlook. However, the 2021 amendment to the Act, which has delegated the authority to make adoption orders from civil court judges to district magistrates with the intention of resolving the backlog of cases that had accumulated over time, is also a minor instance of how administrative red tape, rather than a flaw in the rights system, continues to govern the speed of resolution. (Juvenile Justice Act 2015, n.d.).

This is, in essence, the dialectic that lends itself the title of this study. The ideological commitment to a rehabilitative, welfare-based juvenile justice system that India, as a party to international conventions, has adopted and developed over decades of activism in this regard, is in constant tension with the punitive element in the sentiment of the populace and government action, which at times rears its head after any particularly shocking crime has made

the news. Scholars who have examined the Indian case through the decolonial lens have observed a wider “epistemological conflict” inherent in the Indian juvenile justice system – an ongoing conflict between the rehabilitative model, adopted from the language of international human rights discourse, and the more punitive models of crime and criminality that underlie practical police, judicial and public responses to child offenders (Kumar, n.d.). In the judicial waiver procedure in the 2015 Act, and in its controversial application in cases such as the 2024 Pune Porsche crash that involved a juvenile driver, this conflict finds itself illustrated in a very vivid manner (Juvenile Justice Act 2015, n.d.).

Legal Pluralism, Socioeconomic Pressure and the Machinery of Implementation

The institutional and social context within which the statutes were applied could be described in terms of rights and realities in the countries. The Nigerian context can best be described as being characterised by legal pluralism, where there exist three major legal traditions. The three traditions consist of the English common law tradition adopted from the colonial era and enshrined in federal laws such as the Child Rights Act, the customary law tradition which derives its roots from the customs of the numerous ethnic groups in Nigeria; and Sharia law which regulates personal status issues and in some northern states also some criminal issues (Law and Social Justice Review, 2025; Criminal Justice System in Nigeria, n.d.). In pre-colonial Nigeria, the Yoruba, Igbo, and Hausa had their systems of conflict resolution, which were mostly geared towards reconciliation, restitution and restoration of peace rather than punishment through imprisonment, and this system still exists today to some degree for minor offences. (Criminal Justice System in Nigeria, n.d.). The problem is not in their existence; there is nothing wrong with legal pluralism in itself, which has the potential to provide culturally congruent and locally legitimate forms of justice. The problem is that they often conflict with each other on issues that have a direct bearing on children, particularly the marriageable age and the issue of custody and guardianship. (Child Rights Act in Nigeria, n.d.; Fountain University Law Journal, 2025).

This paradox can be found especially in issues related to child marriage. According to the Child Rights Act, the marriage of someone below eighteen years old is null and void since the law considers children as incompetent in making decisions about marriage, but this conflicts with Islamic laws that give the power to the father to betroth his daughter without her consent. It is

a paradox against a constitutional loophole whereby a girl who marries is considered to be of age regardless of her real age (Child Rights Act in Nigeria, n.d.). The girls have even organised themselves against such loopholes; “It’s Never Your Fault” managed to get over one hundred and fifty thousand signatures up to 2018 to set the age of consent at eighteen (Child Rights Act in Nigeria, n.d.). Another case in point would be that of the Almajiri system in northern Nigeria, which provides an example of how a traditional system respected for what it was meant to accomplish in the past – that of mobile Islamic scholarship – has deteriorated into a form of street begging and exploitation for a lot of the children under the conditions of urbanisation, poverty, and weakening of family and community structures (Umar & Maaji, 2025; Anti-Slavery International, 2020). It is also a clear-cut example of the main idea expressed in the study: even when there is a well-codified right, it might mean absolutely nothing for the child on the street because of the lack of necessary social structures, family and state capacities.

The implementation gap in India has a different flavour but an equal degree of seriousness and has been measured with great precision in the India Justice Report of 2025, a national-level study conducted across twenty-eight states and two union territories in the country. It came out that as of October 2023, fifty-five per cent of the more than one hundred thousand cases pending in three hundred and sixty-two Juvenile Justice Boards all over the country were still awaiting resolution, which means more than fifty thousand children were still waiting to get their verdict for years (India Justice Report, 2025; Live Law, 2025). Cases pending differed hugely from one state to another, ranging from thirty-five per cent pendency in Karnataka to an astronomical eighty-three per cent in Odisha, just like the geographical disparity that has plagued the juvenile justice system of India since its colonial legacy of provincial children’s acts (India Justice Report, 2025). Even though 92 percent of the districts in India already have an established Juvenile Justice Board, 25 percent of them do not have a complete board as per the law requirement. In comparison, thirty percent lack the attached legal aid clinics, which means that the poorest kids – kids who do not have the possibility to hire a lawyer – do not get any legal representation (Live Law, 2025; India Justice Report, 2025). The language used by the report itself says much about this: the promise of prompt and respectful treatment of children’s cases according to law remains “largely unfulfilled”; the situation of these children resembles that of adults awaiting trial and suffering from the flaws of this system. (Feminism in India, 2025).

Another complication arising in the Nigerian case, and one that should be contrasted with the

figures presented above in regard to India, lies in the confusion in definitions resulting from legal pluralism even prior to the hearing of a child's case in any court. The Child Rights Act states that "a child is anyone below eighteen years," while the much older Young Persons Act, which has not been repealed in all states that do not have their statutes completely harmonised with the Child Rights Act, defines a "child" as "anyone below the age of fourteen years, while 'young persons' comprise anyone aged between fourteen and seventeen years." Thus, where the definition of a child varies between statutes, the result could be quite arbitrary with respect to the fate of a sixteen-year-old being apprehended by the police, depending upon which statute a particular police official, prosecuting lawyer, or magistrate might choose to follow. The age determination process in India, too, is beset with a similarly structural issue that has attracted criticism for being vague in the Act of 2015, and resulting in endless litigation over the age of the accused that delays cases, and even in some well-documented cases, leads to individuals who were actually minors spending years in adult jails until the court sorts the mistake. (Deccan Herald, 2025).

These numbers are no mere abstraction – it is a failure of structure, funding, and personnel which lies beneath the statutory language. As noted in commentary on the 2025 report, juvenile justice is still relatively low on state funding agendas compared to infrastructural projects or welfare schemes that enjoy more political popularity. Social workers who have been recruited to serve on the Juvenile Justice Boards may be merely political appointments who lack the specialised knowledge of psychology of childhood development required in the role (Insights on India, 2025). Socioeconomic issues compound the weakness on either side of the contrast. In India, the vast majority of the children who get involved in law are from economically backward families, which prompted Shashi Tharoor, in the 2015 parliamentary discussion, to suggest that education rather than imprisonment is the appropriate course of action (Juvenile Justice Act 2015, n.d.). Nigeria faces the same problems such as urbanisation, inadequate primary health care, lack of access to safe water, poor sanitation facilities and unemployment opportunities for women which have been pinpointed by Nigeria's own National Child Rights Implementation Committee as the foremost concerns, creating the very situations of poverty and family dissolution that drive children to the streets and to exploitation and ultimately to interaction with the criminal justice system (Child Rights Act in Nigeria, n.d.). The problem areas identified in Nigeria's implementation gap include under-funding, lack of well-trained personnel, lack of enforcement and poor coordination among the many departments supposed to be in charge of child welfare. (Managarciya, 2026; Daily Struggle Newspapers, 2026).

Conclusion

Indeed, the story above clearly demonstrates how the relationship between theory and practice of child penal justice in Nigeria and India can be considered genuinely dialectical, and not only disappointingly unsuccessful. Firstly, the juvenile justice system created by the colonial governments in both countries had the purpose of social control but not of providing proper care for children. Moreover, independent Nigeria and independent India inherited this framework, which continued to function for years after independence, at least in spirit. The first signs of reform were introduced much later – the Child Rights Act of 2003 in Nigeria and the Juvenile Justice Act in India, which came into effect in 2015. These new regulations were obviously influenced by international standards of human rights in terms of child protection, and they provided for a child-oriented justice system. Nonetheless, these promises of rehabilitation and child-centred justice have met a lot of opposition in domestic politics in the form of punitive policies – for instance, the judicial waiver in India, which appeared right after the 2012 Delhi case. Another example is the non-uniform adoption of the Child Rights Act by different Nigerian states, which continues to the present day in some cases, like Gombe State.

Below this level of statutes and constitutional assurances lies an even deeper undermining of both systems in the form of processes which are beyond the reach of codified law to solve – namely, legal pluralism in Nigeria, with its customary and Sharia law regarding marriage, guardianship, and parental rights, which often takes precedence over or conflicts with statutory child protection; and institutional under-resourcing in India, with its more than fifty thousand children being locked up in a juvenile justice system which is lacking in judges, social workers, and administrative capacity, in its own view (India Justice Report, 2025). Social and economic marginalisation is also at play in both narratives in the background, as the children whom the criminal system encounters in these countries come predominantly from disadvantaged, marginalised and often urban communities, whose marginalisation stems from unequal development following colonialism.

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