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Research Paper

Juvenile Criminal Responsibility: Need to Address the Issue Through Other Jurisdictions of World

Law

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ABSTRACT

The horrifying gang-rape case in Delhi where a juvenile proved to be the most brutal among six offenders has raised hue and cry all over the Country after he could get a bare three years custodial sentence by Juvenile Justice Board (JJB). It is statistically calculated that in a decade since 2000, sexual assaults by Juveniles upon women have increased fivefold. Among other incidences, a very recent example of juvenile being involved in gang-rape case in Mumbai's Shakti Mills and the Guwahati case. The increasing trend in the incidence of juvenile crimes is a matter of grave concern of legality and desirability of Juvenile justice itself. Why should juveniles above 16 indulging in violent crimes not be treated as adult criminals? Why should juveniles who are privy to a heinous crime not be given the same punishment as others? Why should our juvenile justice law not follow tough with violent juvenile's approach being followed by other juvenile system in world? These are the key issues indented to be discussed in this paper.

LEGISLATIVE POSITION IN INDIA

Prior to Juvenile Justice Act, 1986, there was no specific Central law dealing with the subject. This was enacted with a view to imparting uniformity and bringing juvenile justice in line with the current International trends. The international instruments- U.N. Rules for the Administration of Juvenile Justice, 1985, the U.N. Convention on the Rights of the Child, 1989, the U. N. Rules for the Protection of Juveniles Deprived of their Liberty 1990 and other relevant international instruments have been duly ratified by the Government of India. The above Act and the amended Act 2000[1] is sequel to these U.N. Rules. However, it is wrong to say that in India, there was no legal framework to recognize Administration of Juvenile Justice system. The Constitution[2] itself consists various enabling provisions to deal with the same. These provisions impose upon State a primary responsibility of ensuring that all needs of children are met and that their basic human rights are fully protected. Moreover, in 1920, an Indian Jail Committee was constituted which recommended a distinct and comprehensive handling of child offenders, leading to the enactment of the Children Act in several progressive provinces like Madras, West Bengal and Bombay, in 1920, 1922 and 1924 respectively.

The amended legislation of juvenile justice brought three important changes: (i) the age of juvenile[3] was raised from 16 to 18 years, (ii) the Juvenile Court had been replaced by a three-member Juvenile Justice Board[4], and (iii) the custodial sentence[5] limited up to maximum of three years. Of these three changes, (i) and (iii) have been a subject matter of huge controversy by raising several questions on term justice not being done by law on the assertion that law is the legal frame work, the technical means, and justice is the moral end which these means are meant to serve.

Under the Penal law in India, the provisions for exemption from criminal liability in case of juveniles are seen in sections 82[6] and 83[7] of IPC. The exemption is founded upon the principle of non-capability to form an intention- an essential requirement of commission of a crime. A child under the age of seven years is, by presumption of law, *doli incapax* and the proof of his age *ipso facto* is an answer to the prosecution. The absolute exemption from criminal liability has been given to such juveniles. However, a child under age of twelve years termed as *doli capax* is not entitled to get absolute exemption from criminal liability. His maturity of understanding to judge the nature and consequences of his conduct is subject to be examined by Court of Law, meaning thereby he is given a qualified immunity from criminal liability. The Juvenile Justice Act took away the IPC- conferred jurisdiction on normal Criminal Courts to try an accused. Around the world, this exemption from criminal responsibility has been set differently like— 12 years in Canada, Ireland and the Netherlands; 14 for Germany and Italy; 10 in England and Wales. In the US, States like North Carolina set the bar at six, though most States go with seven.

POINTING TOWARDS THE WORSENING TREND

This is a known fact that an amendment in accordance with the United Nations Child Convention was brought to Juvenile Justice Act in 2000 enhancing the age from 16 to 18 years giving protection from criminal liability. The National Crime Records Bureau figures on juvenile crimes reveal a 143% increase in the number of rapes committed by juveniles from 2002 to 2012. If a bare example of the year 2011 is taken up, this recorded 1,149 rapes by juveniles- most of them between 16-18 years, whereas in 2000, the number was just 198. The following table shows a worsening situation in terms of various crimes:

	2000 (Below 16 years)	2001 (Below 18 years)	2011 (Below 18 years)
Murder	267	531	888
Rape	198	399	1,149
Theft	2,388	3,196	5,320
Total	**9,267**	**16,509**	**25,125**

According to NCRB about 65% of such juveniles booked under IPC are between 16 and 18 years of age (2010-11). Further the striking figure is that 94% of juvenile crimes are committed by boys. State wise MP with 20% and Maharashtra with 19% are top in juvenile crimes chart. It is also a striking figure that such offences shot up by 80% in 2001, as compare to the previous year- the amending Act year.

With this report that juveniles between 16 and 18 years are increasingly committing serious crimes and are also being hired for committing such crimes because of the glaring loophole in the JJ Act. As per NCRB, the number of juveniles arrested for murder has doubled while those booked for rape has increased by over 7.5 times in the past five years. Rapes by juveniles have increased by 188%, thefts and robberies by about 200% and abduction of women by 660% during the same period. In more than 70% of the cases, the offenders were between 15 and 18 years. Recently in a PIL filed by Anant Asthana alleging that a large number of unprivileged juveniles were being forced to take up crime by organized gangs like *Thak Thak* (Knock Knock). The Delhi High Court "…directed Delhi Police to ensure that guidelines issued by the Juvenile Justice Board on January 25, 2011 are adhered to[8]". Though, this is other manifestation of the problem, yet not irrelevant to the issue in context.

DIFFERENT COUNTRIES' PERSPECTIVES

There is no common approach to the attribution of criminal responsibility. The practice is very varied, with ages ranging from seven to eighteen in different Countries. Generally, a juvenile's culpability and sentence is determined according to the nature and severity of the offence and the level of his maturity and the discretion in this regard is left to the Courts. As it was provided

by section 83 of Indian Penal Code, however, later on, it was taken away and fixed that juvenile up to age of 18 can only be tried by the Court as constituted in JJ Act. The age of criminal responsibility is seven in Cyprus, Ireland, Switzerland and Liechtenstein; eight in Scotland; thirteen in France; fourteen in Germany, Austria, Italy and many eastern European Countries; fifteen in the Scandinavian Countries; sixteen in Portugal, Poland and Andorra; and eighteen in Spain, Belgium and Luxembourg. Some of them have already mentioned.

It is pertinent that the U.N. Convention on the Rights of the Child, 1989 was not ratified by the United States whereas India was signatory to it. In US, the 1990s was witnessed as favouring retributive juvenile justice policy. It was the outcome of a massive rise in the incidence of juvenile offences (the rate of juvenile offending in the U.S. was almost half the total crime rate) as well as extraordinary violence and brutality of juvenile crimes. A substantially large percentage of juvenile crimes related to offences involving confrontation with victims (homicides, forcible rapes, aggravated assaults and robbery) and narcotic crimes. The amendments were made to the Federal and State juvenile justice laws with tough approach by introducing transfer proceedings before the Court in all cases where a juvenile above 15 years was involved in a violent crime or narcotics crime. For instance, in Indiana, South Dakota and Vermont, children as young as 10 can be tried as adults. California's Proposition 21 which was passed in 2000 allowed prosecutors to automatically try juveniles who commit felonies as adults. Under Michigan's Juvenile Waiver Law passed in 1997, juveniles can automatically be tried as adults. Till 2005-the year in which *Roper v. Simmons*[9] was decided by the US Supreme Court, juvenile offenders, below the age of 18 years, were being awarded even death sentences. Later on, in *Graham*[10] Court expanded upon its Eighth Amendment juvenile jurisprudence by ruling that locking up juveniles for life based on crimes other than homicides is cruel and unusual. *Miller*[11] followed the *Graham* and made it clear that the Eighth Amendment permits the imposition of LWOP on juveniles, but only after what it airily calls an "individualized sentencing." Thus, life sentences can still be awarded in US. upon juveniles.

In U.K., for serious offences like murder, rape e.tc. the case starts in Youth Court but is transferred to a Crown Court which is the same as a Sessions Court in India. The Crown Court can sentence the juvenile. Further, concerned by the rising incidence of severe crimes by young offenders and the need to bring them to justice, the long-standing common law doctrine of "rebuttable presumption" was abolished through Section 34 of the Crime and Disorder Act, 1998. In 2009, the House of Lords, in *JTB v. R*[12] rejected the doctrine of *doli incapax* as a valid defence in case of crimes committed by persons above 10 years following the interpretation of the above section. In this case, offence was constituted under section 13(1) of the Sexual Offences Act 2003 for inciting a child under 13 to engage in sexual activity which included anal penetration with the penis, oral sex and masturbation. At the time of the activity the juvenile was 12 years of age. In an interview he admitted the activity but said that he had not thought that what he was doing was wrong. Above position shows that in both the U.S. and U.K., juveniles who commit violent crimes such as rape, murder etc are prosecuted in the same manner as adults.

In case of *V. v. the United Kingdom*[13], two ten-years-old boys (the other applicant in case no. 24724/94) had played truant from school and abducted a two-year-old boy from a shopping precinct, taken him on a journey of over two miles and then battered him to death and left him on a railway line to be run over. The brutal nature of the killing, and the severing of James's body, provoked shock and revulsion. In these circumstances, it is unsurprising that the case has given rise to great public concern and has received a high level of publicity. The European Court of Human Rights in France on December 16, 1999 held that the trial and conviction of ten year old by the adult Crown court, in public view, does not constitute violation of Article 3 of the European Convention on Human Rights unless it inevitably constitutes or results in ill-treatment in attaining the necessary minimum level of severity.

Juvenile justice system in Canada, it is administered by the provisions of Youth Criminal Justice Act, 2003, as amended from time to time, where the age of criminal responsibility is at twelve years. Section13 of the Code of Criminal Procedure of Canada is in pari materia with the provisions of Section 83 of the Indian Penal Code. A juvenile between the age of 14 to 17 years may be tried and sentenced as an adult in certain situations. The Youth Criminal Justice Act governs the application of criminal and correctional law to those who are twelve years old or older, but younger than 18 at the time of committing the offence, and that, although, trials were to take place in a Youth Court, for certain offences and in certain circumstances, a juvenile may be awarded an adult sentence. In Australia too, the law allows lifting of restrictions on naming juveniles in particular circumstances. China holds more than 60%[14] of juvenile offenders in custody and places only 30% on probation. Other Countries are clearly far less lenient with juveniles committing heinous crimes.

CONCLUSION AND SUGGESTIONS

As above discussed, after the amendment of JJ Act in 2000, a violent spurt in crimes committed by juveniles especially between 15-18 years of age has been seen. They are found not only implicated in pity offences but in heinous crimes also like rape, murder, kidnapping etc. By going through the rapid rate of crimes committed by juveniles in India, it becomes clear that the Parliament had exceeded its mandate by blindly adopting eighteen as the upper limit in categorizing a juvenile, in accordance with the Beijing Rules, 1985, and the U.N. Convention, 1989, without taking into account the socio-cultural economic conditions and the legal system for administration of Criminal Justice in India. In original draft of Penal code the provision of section 83 gives an opportunity to understand the understanding/judging level of juvenile which is now barred by JJ Act. On the line of this provision and keeping in view the system of other Countries, maturity level of the juvenile must be tested in case of heinous crimes with a view to satisfy the content of the Justice. It is very against the sense of the jurisprudence of justice that we urge to ensure that the young should be treated humanely at the cost of the rights of their potential victims. Therefore, to add an exception in the JJ Act is advisable.

The reasoning and principle may be correlated to the Human Rights activists/opponents of capital punishment, who are constant to get abolish the Capital punishment from Indian system. However, keeping in view the various circumstances, it could not still be abolished completely from the system but a framework[15] for administration of capital sentence has been evolved. Hence, it is seemed to be very appropriate that for the purpose of administration of juvenile justice system in India a framework should be carved out so that the exceptional acts done by juveniles can be tested and accordingly treatment can be met out in order to justify the sense of justice.

Further, keeping in view the various natures of the criminal acts done by juveniles, the doctrine of reasonable classification which is a part of the Article 14 of the Constitution could be invoked for the purpose of ensuring nature of the treatment, if the crime is a grotesque act etc., accordingly treatment should be meted out to the offender. Punishment does not always bring about reformation but it acts as a deterrent. The definition of juvenile should be altered and some classification has to be made. The gravity of an offence should determine the punishment.

If from Human Rights' perspective, Juveniles should not be tried as adults but this does not necessary preclude them from facing some form of detention. However, they also require age-appropriate rehabilitation. Our priority must also be to work with boys and adolescents to change social norms and behavior to prevent perpetration of rape by teenagers — this includes programnes that enhance the knowledge and skills of young people and help them to understand gender equality, healthy sexual practices, consent and foster respectful relationships[16]. We need to gender sensitization. Gender sensitization programmes must

be started when children are young. Along with gender-sensitive curriculum, we also need to break gender stereotyping that happens at every stage of a child's life, starting with the family, in India. For this purpose, now it is essential that various social agencies must be engaged to fulfill this moral vacuum.

REFERENCE

1. Juvenile Justice (Care and Protection of Children) Act 2000. | 2. Articles 15 (3), 39 (e) and (f), 45 and 47. | 3. Section 2 (k) of JJ Act 2000. Also see UN Committee on the Rights of the Child 23rd Session Vide Resolution 26 and 27 (dated 23/02/2000) | 4. Section 4 (2) of JJ Act 2000 " A board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of first class and two social workers of whom at least one shall be a woman….." | 5. Section 15 (1) (g) of JJ Act 2000. | 6. "Nothing is an offence which is done by a child under seven years of age". | 7. "Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. | 8. See The Times of India, Sept. 27, 2013. | 9. 543 U. S. 551 (2005) | 10. *Graham v. Florida*, 130 S. Ct. 2011, 2030 (2010). | 11. *Miller v. Alabama*, 132 S. Ct. 2455 (2012). | 12. (2009)UKHL 20 UKHL/0009/2009','1" | 13. (GC), no. 24888/94, § 57, ECHR 1999-IX. | 14.The Hindustan times, *Major Crimes are not minor matter* , April 13, 2013. | 15. *Bachan Singh v. State of Panjab*, (1980) 2 5CC 684: 1980 5CC (Cri) 580. | 16. The Hindu, *One in four men across Asia admits to having committed rape*, Sept. 10, 2013. |