

ROLE OF LAW DEALING WITH JUVENILE DELINQUENCY IN INDIA: A CRITICAL STUDY

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Abstract

We all know about the gang rape of 16th December, 2012, Nirbhayarape case, where one of the co-accused was a minor (17 years and 6 months approx). And he was charged and convicted according to Juvenile Justice Act, 2000 with three year imprisonments and that also he will served his imprisonments in the juvenile reform house. And now he also gets freed from Juvenile Home as he completed his term. Whereas, the other co-accused were sentenced to death. And according to police charge sheet the minor was the most brutal person among the co-accused at the time of the commission of this heinous crime. But the punishment which he received for this crime was not justified according to the crime which he was committed against the women of the world and also against the mankind. Even in the report of The Justice Verma Committee, which was formed at that time for the recommendation of criminal law amendment in cases of sexual assault cases, refused to reduce the age of the minor from 18 to 16. Many protestor, activist, social worker demanded that the age of the minor should be reduced to 16. Thats why, am choosing this topic for my research, so that the age of the minor under Juvenile Justice Act, 2000 in India should be reduced to 16 from 18 in case of a commission of the crime which is in itself is heinous in nature. With change of time law should be changed. Those who commits crime for fun and has the capacity to understand the nature of offence then in that case he should not be treated like a minor. As, it will not be effective to control the crime committed by the Juveniles. Also, this will not create any fear among the others which is necessary as per the deterrent theory.

Key Words: - *Deterrent theory, Indian Penal Code, Juvenile Delinquency, Punishment*

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1. Introduction

Before starting with the paper first I would like to introduce you all with the penal law relating to juvenile. In India, penal provisions are mentioned in Indian Penal Code 1860. Under Indian Penal Code, Section 82 and Section 83 deals with the act of juvenile of different ages. Section 82 of Indian Penal Code says that “Nothing is an offence which is done by a child under seven years of age.”¹ In India a child below 7 years get complete immunity from any criminal liability. A child below 7 years considered to be as doli incapax as during this age a child is not in a position to understand the nature of his act/offence and its consequence. So, they were given absolute immunity from criminal liability. Section 83 on other hand says that “Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient

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¹ Gaur, K. D, 2009, Text Book on The Indian Penal Code, 4th edn, Delhi: Universal Publication Co. PVT. Ltd.

maturity of understanding to judge of the nature and consequences of his conduct on that occasion.”² Under Section 83 qualified immunity is provided to a child of age group 7-12 years. If any child between these groups has committed any crime and if they didn’t attend the required maturity or understanding in such case they will be exempted from Criminal Liability for that act. But if it is found from the act of the child that the child was matured to understand the act and its consequence then in such case he will be get punishment like an adult. For example, if a child picks some valuable from his friend home and sell it to the market and misappropriate the money he earned from it, shows the maturity of the child. In such case, he will get punishment according to the relevant provisions of the Indian Penal Code. In other words, section 83 speaks about *doli capax*, means if a child above 7 years and below 12 years commits any crime and from their subsequent conduct after the act shows about the maturity of the child regarding his understanding about the act and its consequences then in such case he will get punished like an adult.

In India, a child of age group between 12-18 years will be treated like an adult for punishment. But for the protection of the children from hardened criminal they are not sent to the jail rather they are being send in the juvenile home. The law relating to juvenile is rehabilitative and reformatory in nature. As the maximum punishment for a minor is 3 years. And too they have to spend the term in rehab where they will get training, education, care etc so that after completing their punishment they can become a good responsible citizen. The law dealing with Juvenile delinquency is based on the Reformatory theory of punishment where a criminal will be reformed into a good individual. In India Law relating to Juvenile dealt with Juvenile Justice (Care and Protection of Children) Act, 2000. Even Section 27 of Criminal Procedure Code, 1973 says that “Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.”³ This was all about the penal provisions for Juvenile conflict with law and the relevant criminal procedure dealing with it. All minor children below the age group of 18 years prosecuted and punished according to the Juvenile Justice (Care and Protection of Children) Act, 2000. The maximum punishment given under Juvenile Justice Act is 3 years. But whether a child commits a petty offence, serious offence or heinous offence punishment for the same is imprisonment not more than 3 years. Another important point which is to be mentioned here is that, in JJ Act punishment of three years means not the punishment which an adult used to spend in the jail.

²*Ibidem.*

³ Section 27 in The Code Of Criminal Procedure, 1973, accessed on <https://indiankanoon.org/doc/1480339/>, 03.03.17.

Here the punishment means the rehab and reform in the Observation home and Special home established under this Act or any other law for the time being in force. Now the question is whether this punishment will really help to control the crime committed by the Juvenile. As we know in a society punishment is given to create a fear among other so that no other person will repeat the same offence. There must be fear in the mind of the others from the punishment. That is deterrent theory should be applied in cases of Juvenile who commits heinous crime like Rape.

2. Juvenile justice (care and protection of children) act, 2000

The Preamble of the JJ Act, 2000 starts with “An Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.”⁴ From the preamble it is clear that this Act is formed for the upliftment of Juvenile in Conflict with law and child in need of care and protection so that they should get proper care and protection as well as any matter related to them should be dealt separately by the Act. The main object of this Act is to reform and rehab the Juvenile in Conflict with law and child in need of care. As per section 2(1) of the Act “Juvenile in Conflict with law means a juvenile who is alleged to have committed an offence”⁵ Under this Act Juvenile means who has not completed the age of 18 years at the time of commission of the offence. Section 15 of the said Act deals with the orders passed by the board after hearing the offence. Section 15 states that

“(1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit,-

- (a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counseling to the parent or the guardian and the juvenile;
- (b) direct the juvenile to participate in group counselling and similar activities;
- (c) order the juvenile to perform community service;
- (d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;
- (e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may

⁴ The Gazette of India Ministry of Law, Justice and Company Affairs (Legislative Department) The Juvenile Justice (Care And Protection Of Children) Act, 2000, accessed on <http://khoyapaya.gov.in/mpp/resources/Juvenile%20Justice%20Act%202000.pdf>, 01.03.17.

⁵ *Ibidem*.

require, for the good behavior and well-being of the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behavior and well-being of the juvenile for any period not exceeding three years;

(g) make an order directing the juvenile to be sent to a special home;

i. in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;

ii. in case of any other juvenile for the period until he ceases to be a juvenile:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

2. The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognized voluntary organization or otherwise, and shall take into consideration the findings of such report before passing an order.

3. Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law :

Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

4. The Board shall while making a supervision order under sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.”⁶

The maximum punishment which can be award to a juvenile is only 3 years. And that too they have to spend the 3 years term in Observation home or in Special Home depend on the cases.

Now if a juvenile commits rape along with grievous hurt like in Delhi gang Rape case which we considered as one of the heinous crime against woman in such Whether 3 years punishment is sufficient to create deter in the society as well as whether it will be justice to the victim and her family. Not only that, what example will law highlight by giving such a little punishment to the criminal? One

⁶*Ibidem.*

of the co accused of the Delhi Gang Rape who was 17 years during the day when offence was committed was convicted for rape and murder and given maximum imprisonment for 3 years under Juvenile Justice Act 2000. Even on 20th December, 2015 he got released from the home, the family who lost their young daughter due to the involvement of such culprit was unable to recall the horrible nature of the incident which occurred on that fateful night of December 2012 and by that time the accused who committed the crime completed the said term of 3 years in special home and has been discharged from the liabilities of offense and allowed to enjoy his right to free movement with a fresh identity as per the law which says that juvenile identity should be protected.

This Act is a serious threat to the society as neither this act help in the control of crime committed by the Juvenile and nor it able to provide justice to the victim. Mohd Naveed Jutt alias Abu Hanzala a Pakistan-based Lashkar-e-Toiba terrorist when arrested in India mentioned his age as 17 years because it was taught to them during training that if they caught by the Indian Police then they should have mentioned their age as 17 years as in India there is only 3 years punishment for the minor. Though in this case it was found that Jutt was 22 years when he was arrested. Juvenile Justice Act, 2000 has become the tool for escape after committing the serious crime. Because Indian Law thinks Juvenile should not be punished rather they should be reformed. Indian law fail to recognize what society want from Indian Judiciary and the most important thing is that whether such punishment will provide justice to the victim? In last few years Juvenile crimes has been increased and some of the offenders were the repeaters. And why there is an increase in the repetitive offender that we can guess easily. As for controlling crime which in itself is heinous and for repetitive offender, Indian Law has to apply the deterrent theory for Juvenile. Then only it can be controlled.

Law is incorporated for the betterment of the society and with the change of time and it need amended also. Even though the Juvenile Justice Act 2000 was amended after the Delhi Gang Rape case when due to public protest and outrages Justice Verma Committee submitted it reports and after that certain amendments were done in criminal law as well as in the JJ Act, 2000. After this report parliament passed the new Bill of JJ Act, 2015 and finally it becomes an Act after the president's assent i.e. Juvenile Justice Act 2015. After the amendment children between 16-18 age groups who have committed heinous crime will be treated like adult and punished according to that but not death penalty and life imprisonment will be awarded. Heinous offence under new amended Act means "offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more".⁷

After the Delhi Gang rape case, even the said Act was amended but there is an increase in the heinous offence committed by the children of age groups

⁷ The Gazette of India, Ministry of Law & Justice, (Legislative Department), The Juvenile Justice (Care And Protection of Children) Act, 2015, accessed on <http://www.indiacode.nic.in/acts-in-pdf/2016/201602.pdf>, 04.03.17.

between 16-18 years. The maximum number of cases which is registered by National Crime Records Bureau during 2015 was Rape. Even though the Juvenile Justice Act, 2015 has the provision to treat children of age groups between 16-18 as adult in cases of heinous crime and also they has to face trial in Children Court but question remain the same whether this Act will be able to control the crime committed by Juvenile. One should learn from the past and apply it in future. So, when we have seen and already watching the increase of crime done by the Juvenile in such circumstances the law should be changed according to the situation and circumstances. A simple imprisonment is not a sufficient punishment to spread deter in the society.

Last year in Delhi an 18 years boy hit a man with his father Mercedes and due this the man died on spot. Now, here the question which comes in mind of any prudent men that whether the child should be tried for Culpable homicide not amounting to murder along with negligent rash driving. And if he convicted here then what should be his punishment... Because a child who is driving a car also knows the consequences of it if he drives it negligently as well as in India children below 18 years were not provided with driving license. They can get license only when they will complete 18 years. Anyhow in this case 2-3 years punishment will not be sufficient to deter other children from driving any vehicle. As today's it has become common in young age children to drive car, bikes etc. For their wrong parents were equally responsible. Even they may not be able to understand the consequence of their act but their parents were matured enough to know the consequence of the children act. So, in motor vehicle accident parents should be equally responsible for their ward act and they should get the punishment like an abettor. This will be help to control the hit and run cases done by the juvenile.

Reducing age from 18 to 16 under Juvenile Justice Act, 2015 for dealing heinous crime will actually not going to help, control or achieve the motive of the act. Behind every crime there is a motive, circumstances, family conditions as well as the mental condition. In modern world where due to advancement of science and technology, children grow faster before their age. What they know now at their tender age, we learn it when we become matured like handling smart phone, driving bikes in tender age etc. So, in such situation we can't say that a child between 16-18 groups should only be treated like adult in case of heinous crime. Then what about those who are below 15 years but due to rash driving has killed more than 1 person then in such situation how court will deal with it.

Next Juvenile Justice Act was enacted to reform and rehab the juvenile in conflict with law. Now if they were sent to jail under the JJ Act, 2015 under section 21 then in such situation reform and rehab of the children may not be possible.

Also under Section 19(3) "The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformative services including educational services, skill development, alternative therapy such as counseling, behavior modification therapy, and psychiatric support shall be provided to the child during the period of his stay in

the place of safety.”⁸ When a Child of age between 16-18 groups has committed any heinous crime then in that case he has to stay in the safety home for reform till he attained the age of 21 years and after that only he will be sent to jail for serving his rest punishment and that too also if he did not show any sign of reformation during his stay in the special home. Section 20 of the JJ Act, 2015 says that“(1) When the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay, the Children's Court shall provide for a follow up by the probation officer or the District Child Protection Unit or a social worker or by itself, as required, to evaluate if such child has undergone reformatory changes and if the child can be a contributing member of the society and for this purpose the progress records of the child under sub-section (4) of section 19, along with evaluation of relevant experts are to be taken into consideration.

(2) After the completion of the procedure specified under sub-section (1), the Children's Court may:

(i) decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay;

(ii) decide that the child shall complete the remainder of his term in a jail:

Provided that each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed.” From this it is clear that if someone shows any reform in his behaviour, character then in that case after attaining the age of 21 years he may release from the safe home with conditioned mentioned in the section 20.

Now question which comes into the mind of prudent person that it is not necessary, the changes shown in the character and behavior aspect of the juvenile is permanent in nature or just to get benefits from the existing provisions of law to get himself at liberty to release from the safe home, as it's tough to understand the human psychology and behavior.

Also it's not necessary that only children of age group between 16-18 groups should only be treated as adult in case of heinous crime. A Heinous crime can be committed by any one. In such case treating children of Age group of 16-18 years as adult for trial will be bias and violation of Article 14 of the Constitution of India. According to me age should not be consider as a factor to decide whether a child should be treated like adult or not. It should be decided from the act done by the child and the knowledge of its consequence.

Another threat of this act is that terrorist organizations are opportunistic to get benefit will of this act and providing training to their carers etc. As Indian law, is also applicable for any terrorist who is arrested within Indian Territory. I think we all remember the Uri attack of last year where two terrorist one 15-year-old Sahil Hussain and another 16-year-old Yasin Khurshid were arrested unarmed, allegedly helping terrorists sneaking into India. Both were the recognized as a member of Jaish-e-Mohammad terrorist group. Not only that, when Kasab was

⁸*Ibidem.*

arrested for Mumbai Attack, during trial from escaping death penalty, he tried to convince court that he was juvenile when he commits the crime. But latter on from ossification test it was proved that he was major not minor.

One thing which everyone should note down that most of the terrorist camp they used to deploy minor in their camp. There might be two reasons behind it:

1. It's easy to mould the minor mind.
2. There is no death penalty and life imprisonment for minor in most of the country like India.

So, if a juvenile terrorist of below 16 years is arrested in India as per the amended Act of 2015 then in such case he will serve only 3 years punishment in Special or safe home for reformatory purpose even though if he had killed more than 10 person in terror attack and after getting released from the shelter home again he can join the terrorist group. In such cases Judiciary become helpless as it hand were tied by the law of land.

Even though new law has reduced the age of minor from 18 to 16 years for the cases of heinous crime but then also this law failed to control the Juvenile Crime in India. And the reason behind is the liberal law which does not provide any harsh punishment for heinous crime. There is a need of deterrent law for dealing with offences related to juvenile delinquency. Law should be preventive in measure and not an excuse for escaping anyone liability. It should be both preventive, reformatory and deterrent for dealing cases related to Juvenile in Conflict with Law. Then only it will be a good law.

3. Suggestion and conclusion

Juvenile Justice Act was enacted according to the guidelines of Convention on the Rights of the Child adopted by General Assembly of United Nations on 20th November 1989. The Act was enacted for the rehabilitation of the child in conflict with law and as well as child in need of care and protection. International organizations and even Indian Government has taken every step for the protection, rehabilitation and reformation of the juvenile in conflict with law. But still number of cases relating to juvenile in conflict is increasing day by day. That is a proof that somewhere the act is not effective to control the juvenile delinquency. This issue is really a serious threat for every country as a Country's future is depend upon their juvenile.

The JJ Act, 2015 was amended to control up to certain extent the juvenile delinquency. But this change has also put some serious question in the applicability of the Act. As here also there is a scope of evade. As, this Act is strict against the death penalty and life imprisonment of children below 18 years. So, in that case even if a child of 17 years 11 months has committed any heinous offence then also he will not get death penalty or life imprisonment.

Also, the changes which are made in terms of the age i.e. children between 16-18 years will be trialled like an adult in case of heinous crime is bias in nature. As in this situation a child who is going to be 16 after one week also get benefit

from such changes. As below 16 years children who have committed a heinous crime will not face any trial. They will escape from the punishment.

To make this law effective it should spread deter along with reformative, rehabilitate etc. First there should not be any biasness while dealing with cases related to heinous crime .i.e. there should not be any age discrimination for imputing punishment. Heinous crime like hit and run case by juvenile, where parent's negligence is proved in such case they should get punishment along with their child. This will help to create deter in the mind of parents as well as in the mind of the children, since children get first education from their home. If they get wrong education, then in case their parents should be liable for their wrong deed. Also over population, unwanted child this are some common problems behind every crime. So, this must be controlled first.

“Law is for controlling crime and not for an excuse”

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