

A REVISED JUVENILE JUSTICE ACT- CALL OF THE HOUR

Sakshi Saranya Rout¹

ABSTRACT

India with a population of more than 1.3 billion rises with thousands of rape cases and sexual abuses daily and presently the crime has increased so much that no girl or woman feels safe to be on her own. The entire country is pigeonholed into a rape country. India is a country fighting to cease gender inequality since long back as most of the men do not know how to deal with their masculinity so protection of women is necessary but along with that equalizing their status with the male gender is important as well.

This particular paper draws attention to the Juvenile Justice Act where a juvenile rapes the victim and still able to walk out of the court freely. The paper has tried to become a voice for the millions of victims waiting for justice.

The highlighting part of the paper talks about the history and evolution of the Juvenile Justice Act in India. Moreover, it is talking about the reason behind the rising of rape cases, how a teenager gets involved in all of this and how most of the cases are not even reported.

The conclusive part analyses the need for a revised Juvenile Justice Act and no matter what every offender should be punished for committing such heinous crimes that not only affect the life of the victim but leave an imprint on her mind for a lifetime period.

The sufferings and struggle of the victim and her family can never be put into words so justice has to be delivered hand to hand irrespective of the offender's age.

Keywords: Juvenile Justice Act, Offender, Rape, Victim, Teenager.

¹ BA LLB, FOURTH YEAR, KIIT UNIVERSITY, BHUBANESWAR.

INTRODUCTION

India wakes up every day with news of rapes, sexual assaults, murder, etc. Saddening, many cases do not even get lodged or some of them are undercover with political power or money. What more hurtful is family members of the victim also get involved either in raping or in covering up the case not only that but many police officers get manipulated or influenced by the power of money. Moreover, there are cases where the police officer has involved himself in raping the victim.

The situation gets out of hand when a minor or under age is involved in a rape case. Now the question arises is it due to lack of sex education or is it the generation gap that is not allowing the parents to share and discuss things with each other?

Research says young age boys' get involved in such heinous crimes because of their serious psychological problems/mental health issues such as depression, by visualizing the male-dominated society or in common words the patriarchal society, if they are left out, getting addicted to sexual activities through the wrong source of information, an environment full of open sexual behaviour between adults, etc. The aggression or the excitement/enthusiastic attitude keep on building within them and to prove their manhood they end up committing such crimes which are to another level.

Understanding the mind of teenagers with sexual behaviour is a challenging task. These days there is easy access to sexualized materials through the internet, cinema, magazines, etc. which is paving another way for teenagers to get addicted easily to such things.

Nirbhaya rape case or the Delhi gang-rape case, where the girl named Jyoti was raped by a group of 6 people, made the entire country roar. 4 people out of 6 were executed out of which one of them committed suicide and another one aging 17years (during the time of committing the offence) walked out of the jail freely. The teenager did not commit the act with a childish mind, so is it fair that age should become a barrier to punish the culprit?

HISTORY OF INDIAN JUVENILE JUSTICE ACT

Stepping back to 1979 Sikkim, Lakshadweep, Tripura, Arunachal Pradesh, and Chandigarh had their respective Children's Act but never applied it whereas in states like Himachal

Pradesh and Assam had the law enforced but no such institution to handle such similar cases and on the other hand Nagaland did not even have any such Children's laws of its own.

The adoption of the United Nations Minimum Rules for Administration of Juvenile Justice of 1985, made the word 'minor' originate for the first time, and the evolution of the Juvenile Justice Act, 1986 made a change as well as put some effect on the domestic law.

The Juvenile Justice Act, 1987 is nothing but a full copy of the Children's Act, 1960 with the improvisation of the word minor and some minor changes. Since, October 2, 1987, the Juvenile Justice Act 1986 has been applied in all areas by due notification wherever it can be extended.

The Indian legislature endeavor the Juvenile Justice Act, 2000 by imprinting the principles laid out in the UN Conventions where the minors committing offences are to be dealt with different laws as compared to the adults according to the Hon'ble Supreme Court of India. The main concern of the Juvenile Justice Act, 2000 was a rehabilitation of the minors and understanding their mental condition.

The juvenile plea can be raised at any time, even if the accused has been convicted by any court at first instance.²

With the increase of heinous crimes by the youngsters aged between 16 to 18, it was very necessary to have new legislation, rather it is termed to be retributive because teenagers committing such heinous crimes that also includes rape should be punished with imprisonment for 7 years or more and must be treated as adults in a juvenile court which means a benefit of being a child is no more granted.

Psychological and moral elements are to be given importance while being responsible for a crime.³

On 7 May 2015, the act was passed by the Lok Sabha instead of several protests by different members and on 22 December 2015, it was further passed by the Rajya Sabha after the juvenile accused of the Nirbhaya rape case stepped out freely. And on 15 January 2016, the Indian government replaced the Juvenile Justice Act 2000.

²Raj Singh v. State of Haryana 23 April 2015.

³Pratap Singh v. State of Jharkhand 02 February 2005.

Further the bill allowed to have a Juvenile Justice Board consisting of sociologists and psychologists to decide whether the juvenile (16 to 18 years) be treated as an adult or not.

The new Judicial Waiver in the Judicial Justice Bill 2015 gained a lot of criticism as it allows treating and punishing the juveniles as adults for committing a crime to another level.

IMPLEMENTING CAPITAL PUNISHMENT IS A MUST

It was found out that the number of juveniles involved in rape cases made a drastic increase from 2012 to 2013 i.e., in 2012 63 cases were reported whereas in 2013 163 cases were reported for rape charges and 76 for murder charges.⁴

In Bharatpur, a 14 year old allegedly raped a five year old, in Assam a minor girl was raped by 3 youths out of which 2 were minors/underage and one of them was his cousin.⁵

A pause should be taken in here and realized that this silence will just increase the rate of crime and the victims will be suppressed to it.

There is less conversation about sexuality at schools and homes but a lot of it can be found in different media platforms that define the mechanism.

According to the reports of NCRB (National Crime Records Bureau) crime rates by juveniles was increased by 78% from 2003 to 2013. In 2003 there were 466 rape cases whereas in 2013 there were 1,884 rape cases by juveniles, in total an increase of 304.3%.⁶

Age should not be criteria for execution instead intention and understanding the nature and result of the crime should be taken into consideration. In a democratic country like India, it is not acceptable to release such offenders committing heinous crimes considering their age.

In the Kathua murder case,⁷ the minor was one of the main accused involved in abducting, gang-raping, and murdering the eight year old minor girl, it was also alleged that the minor

⁴Raj Shekhar, Grave Crisis: 158% rise in rapes by juveniles, Times of India, (15 July 2014, 06:59 AM), <https://timesofindia.indiatimes.com/city/delhi/Grave-crisis-158-rise-in-rapes-by-juveniles/articleshow/38401991.cms>

⁵Dhamini Ratnam, Why are so many minors committing heinous sex crimes?, Hindustan Times, (01 May 2018, 09:39 AM), <https://www.hindustantimes.com/india-news/why-are-so-many-minors-committing-heinous-sex-crimes/story-nmiXVEXugqNLGH5FLJ1XP.html>

⁶Satya Prakash, In past 10 years, rape cases against jump 300%, Hindustan Times, (24 December 2014, 00:15 AM), <https://www.hindustantimes.com/india/in-past-10-years-rape-cases-against-juveniles-jump-300/story-OiDq04bWBDcU5RucvfZepM.html>

⁷Mohd. Akhtar v The state of Jammu and Kashmir, 07 May 2018

accused was between the age of 19 to 23 years under municipal and school records but still he was treated as a juvenile.

If it is about cheating or robbery then yes treating the teenager as a juvenile is fine but raping and then murdering the victim by torturing them extremely is completely not wise enough to consider the teenager as a juvenile. Moreover, even if the Juvenile Justice Act, 2015 provides a law to punish the teenager above 16 years of age commits a heinous crime with imprisonment of 7 years or more so certainly if compared is the punishment fair enough with the crime committed by the offender. There are cases where the juvenile not only rapes the victim but also takes out his grudges or for his enjoyment, he inserts broken glasses or lightened cigarette or any other deadly weapon into the private parts of the victim to harm her more.

The juvenile in Nirbhaya's rape case became one of the most debated topics during that time, but he was convicted by the Juvenile Justice Board. On 31 March 2018, a 16 year old boy gang-raped a minor but he has just imposed a fine of Rs. 5,000/- and was not imprisoned rather kept in a probation home till he attains the age of 21. The incident took place in the Simdega district.⁸

From the very beginning, the condition of the offender such as poverty or age has always been taken into consideration and anybody barely thinks about the sufferer. The offender's mental ability should be the main point of the table; he must be well aware of his deeds and fully conscious during the commission of the crime. The solution for such rapes and murders has to be Capital Punishment i.e., hanged till death, or else juveniles won't take a break not only juveniles rather each offender should go through such punishments amidst of ambit of the rape took place because small punishments like imprisonment have not brought any changes rather the rape cases are just boiling up more and more with each passing day.

CONCLUSION

India is a patriarchal society where the girl is a victim who suffers a lot for the acts of others, not only her morals and reputations get hampered but her family comes into the picture as well. Their sufferings keep on continuing for their entire life without any pause or halt. Not only this but the girl being a victim is always asked to hide her face, why is it so? Is the

⁸Press Trust of India, Juvenile gets 20 yrs in jail for gang-rape of minor girl, Business Standard, (02 August 2019, 01:00 PM), https://www.business-standard.com/article/pti-stories/juvenile-gets-20-yrs-in-jail-for-gang-rape-of-minor-girl-119080200647_1.html

victim liable for all her sufferings? After all of this the offender is free to roam around, how is this justified in any way? And is the Indian government is just going to sit and do nothing to get a change in its present laws?

In countries like the USA and UK, a juvenile is also tried in a criminal court for committing heinous crimes like rape, India should get inspired, learn and amend its Juvenile Justice Act and punish the juveniles equally depending on the gravity of the crimes committed by them. If the Indian judiciary system truly believes in providing justice to everyone then this major step should be taken to make a way for it. Imprisonment is not feared by anyone because they know at the end they will be released or they will have the right to live their own life at least but death, death is a house of fear in everyone's mind. So let the statement, "Justice delayed is justice denied" be not proved by the Indian judiciary and let equal justice prevail.

