

## Juvenile's criminal liability in India: A critical analysis

Dr. Anil Kumar Dubey

Assistant Professor, School of Law, Guru Ghasidas University, Bilaspur, Chhattisgarh, India

### Abstract

The Delhi gang rape case of December 2012, in which a young woman was brutally assaulted sexually and physically by six persons including a juvenile and died of her injuries after two weeks, shook the conscience of the country and evoked wide-scale public protests demanding exemplary punishment to the perpetrators and triggering collective introspection on the safety of women. In the aftermath of the incident, the criminal law was amended by substituting the definition of rape with extensive one and making the punishment severer. Batch of petitions were filed in the Supreme Court twice for lowering the age limit of juvenility, as a juvenile was one of the most brutal perpetrators of the incident, and attempts were made to amend the law relating to juvenile. A critical analysis of various aspects of the issue has been made in this research paper.

**Keywords:** juvenile's criminal, supreme court, gang rape case

### Introduction

The expression "juvenile" means "young person who is not yet adult <sup>[1]</sup>". The expressions minor, child, adolescent and juvenile are synonyms. A person up to age of 18 years is generally considered a minor <sup>[2]</sup>. But, the age of majority or adulthood (state of growth to full size or strength, intellectual and emotional maturity) varies from context to context depending on the nature of responsibility and mental, emotional and physical maturity of the persons. For example, a person is considered a child up to the age of 14 years under Section 2 (ii) of the Child Labour (Prohibition and Regulation) Act, 1986 which is enacted to prohibit the engagement of children in hazardous employments and to regulate the conditions of work in other employments set up in accordance with the provisions of the Act, while, for a valid marriage, the male person is supposed to be adult only after completing the age of 21 years and the female person after 18 years according to the provisions of Section 5 (iii) of the Hindu Marriage Act, 1955; Section 4 (c) of the Special Marriage Act, 1954 and Section 2 (a) of the Prohibition of Child Marriage Act, 2006. The juvenile offenders are governed by the Juvenile Justice (Care and Protection of Children) Act, 2015 (the Act of 2015). The term juvenile has been defined in Section 3 (12) of the Act according to which juvenile or child means a person who has not completed eighteenth year of age.

### Treatment of Juvenile Offender

The juvenile offenders were treated just like adult offenders till the end of the 18<sup>th</sup> century. They were prosecuted in criminal courts and they served their sentence in the same prison in which adult criminals were lodged. The obvious result was that the prison turned into breeding centers of vices and criminality ending the possibility of reform in juveniles <sup>[3]</sup>. In course of time, it was realized that children were not capable of having the criminal mentality till they attained certain age and attempts were made for the reformation of criminal justice system so that the justice be done to juvenile offenders. The crusade against atrocities of juvenile offenders began in 1772 when certain special concessions were granted

to them in civil matters <sup>[4]</sup>. Similar concessions were later extended in criminal matters leading to an independent movement for juvenile justice.

Keeping in view the social, psychological and economic factors responsible for the offences committed by juveniles and concern for their mental, physical, moral and emotional development necessary for complete development of personality, attempts were made world-wide to establish a distinct criminal justice system to treat the juveniles which emerged as juvenile justice system. In this system, offences committed by juvenile are termed "juvenile-delinquency", juvenile offenders are termed "juvenile-delinquent" and the court trying the case is called "juvenile court." The juvenile offenders are kept in a home, not in prison, generally known as correctional home, juvenile home, special home, children's home, observation home, *etc* and attempts are made for their rehabilitation and social reintegration during their stay in the home so as to make them good citizen and self dependent.

In view of the aforesaid background, the Indian Jail Committee 1919-20 recommended various measures for the reform of juvenile offenders. In pursuance of the recommendations of the Jail Committee, the Children Acts <sup>[5]</sup> were passed by various States to deal with the juvenile offenders. Borstal School Acts <sup>[6]</sup> were also passed to provide them education, industrial training and recreation. The Children Act, 1960 was enacted to deal with these matters relating to juvenile in Union Territories.

Later on, a review of the working of existing Children Acts revealed that much attention is required to be given to delinquent or neglected children and the necessity of a uniform juvenile justice system was also felt. Consequently, the Juvenile Justice Act, 1986, applicable to the whole country (except the State of Jammu and Kashmir), was passed in conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice which sets out some guiding principles for juvenile justice system; and the corresponding laws on the subject were repealed by this Act. Under Section 2 (h) of this Act, a boy up to the age of 16 years and a girl up to the age of 18 years were considered juvenile.

The Juvenile Justice Act, 1986 was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000 (the Act of 2000), because, it became expedient to re-enact the existing law relating to juvenile justice in view of the United Nations Convention on the Rights of the Child, 1989, (which prescribes a set of standards to be adhered by all State parties in securing the best interests of child and emphasizes social re-integration of child victims without resorting to judicial proceedings); the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing rules); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) and all other relevant international instruments. In this Act (here in after referred as the Act of 2000), the expression “juvenile in conflict with law” was used for “delinquent juvenile” under Section 2 (1) which means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. The expression “child in need of care and protection” was used under Section 2 (d) instead of neglected juvenile. The Juvenile Justice Board functioned as a Juvenile Court under this Act. Juvenile offenders are sent to Special Home when found guilty of committing offence. After the incident of Delhi gang rape, the Juvenile Justice (Care and Protection of Children) Act, 2015 was passed on the line of the Act of 2000 to treat the juvenile of age group of 16 to 18 as adult offender if they committed offence as an adult and most of the expressions used in the Act of 2000 were used in the same sense.

### Liability of Juvenile Offender

If a juvenile was found guilty of having committed an offence, only certain orders mentioned in Section 15 of the Act of 2000 might be passed regarding him or her. The juvenile may be directed to participate in group counseling, to perform community service or to be released under the conditions mentioned in the provisions of the Section. As the punitive measures, the juvenile might only be ordered to pay fine under Section 15 (1) (d) if he or she was over 14 years of age and earned money; or to be sent to a special home, which was meant for reception and rehabilitation of juvenile, for a period of three years under Section 15 (1) (g). But, according to the provision of Section 16, the juvenile could not be sentenced to death or imprisonment for any term which may be awarded for the same offence in any other law, or committed to prison in default of payment of fine or in default of furnishing security. Clearly, the juvenile justice system under the Act of 2000 provided to juvenile offender the immunity from criminal liability. But, in the criminal law, absolute immunity from criminal liability is provided to a child only up to 7 years of age <sup>[7]</sup> and a child between 7 to 12 years of age can be conferred immunity from criminal liability if he or she has not attained sufficient maturity of understanding to judge the nature and consequences of his or her conduct <sup>[8]</sup>. Hence, it is relevant here to glance at the position of juvenile’s criminal liability in other countries.

In United Kingdom, children less than 10 years of age are irrefutably considered as is capable of committing an offence. Children between 10 to 18 years of age are considered capable of committing offence, but are usually tried in Youth Court unless they have committed serious offences such as rape or homicide, or have been charged with adults <sup>[9]</sup>. In United States of America, although the traditional age of majority is

18 years, nearly all States permit persons below the 18 years of age to be tried as adults. For example, in California, persons older than 14 years may be tried as adults if they commit serious crimes such as rape, robbery, murder, *etc.* The State of New York has fixed the age of juvenility at 16 years and permits the prosecution of persons between 13 to 16 years of age as adults in cases of serious crimes <sup>[10]</sup>.

In Canada, the Youth Criminal Justice Act, 2002 provides for criminal justice to young persons between 12 to 18 years of age wherein a person below the age of 12 years is considered as a child and a person between 12 to 18 years as a young person. The Act makes special provisions where a young person commits a serious offence and serious violent offence. For both kinds of offences, the offenders may be punished by the Youth Justice Court just like an adult <sup>[11]</sup>. In Brazil, the Statute of the Child and the Adolescent, 1990 treats persons below 18 years but above 12 years as adolescent <sup>[12]</sup>. In Bangladesh, the Children Act, 1974 defines a person as child who is below the 9 years and as a youthful offender below 16 years of age. The youthful offender may be sentenced to imprisonment for serious crimes <sup>[13]</sup>. In Nepal, the minimum age of criminal liability is 10 years. A person below the age of 16 years is considered child and person between 16 to 18 years of age are charged and tried as adults <sup>[14]</sup>.

Evidently, in other countries, juvenile offenders between a certain age group are considered liable for serious crimes and are treated as adult offender. It is also worth mentioning here that member countries have discretionary power in determining the age of juvenility as is clear from Rule 4.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules) which is as follows: “In those legal systems recognizing the concept of the age of criminal liability for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.” Furthermore, the Beijing Rules provide ground for treating juvenile offenders between a certain age group as adult offender which is clear from the Rule 17.1 (a) <sup>[15]</sup> and 17.1 (d) <sup>[16]</sup>, though, Rule 17 (2) prohibits the corporal punishment for juveniles. The United Nations Convention on the Rights of the Child, 1989 also does not prohibit the prosecution of a juvenile an adult, as it authorizes the State members under Article 3 (a) for establishment of a minimum age below which the children are to be presumed not to have the capacity to infringe the penal law. The Convention considers every human being below the age of eighteen years a child under Article 1 unless under the law applicable to the child, majority is attained earlier and provides certain guarantees under Article 40 (2) (b) to every child alleged as or accused of having infringed the penal law.

### Judicial Approach

In the aftermath of the incident of Delhi gang rape case, criminal law was amended, but no amendment was made to the Act of 2000 immediately. Consequently, a batch of writ petitions were filled in the Supreme Court for lowering the age of juvenility <sup>[17]</sup>. The claim was made on the ground that the age of liability of juvenile in India is different from what has been accepted by other countries <sup>[18]</sup> and it was contented that there was a general world-wide concern over the rising graph of criminal activity of juveniles below the age of 18 years which has been accepted to be the age limit under which

persons were to be treated as children <sup>[19]</sup>. It was also pointed out that even in Indian criminal justice system, the age of criminal liability has been recognized as 12 years under Section 83 of the Indian penal code <sup>[20]</sup>.

But, the Court refused to provide remedy on the ground that the Act of 2000 is in tune with the provisions of the Constitution and various Declarations and Conventions <sup>[21]</sup> and it does not think necessary to interfere with the provisions of statute till availability of sufficient data to warrant any change <sup>[22]</sup>. However, the Court accepted the possibility of development of criminal propensities in children between age group of 16 to 18 years <sup>[23]</sup>. Evidently, the Court was reluctant to interfere with the issue. It might direct to the Government for taking necessary step in the regard.

After that, writ petitions were again filed in the Court <sup>[24]</sup> and it was contended on the part of the petitions that having regards to the object behind the enactment, the Act of 2000 has to be read down to understand that the true test of juvenility is not in the age but in the level of mental maturity of the offender <sup>[25]</sup>. The stand was justified on the ground that a child below the age of 7 years cannot be held to be criminally liable under Section 82 of the IPC while the criminality of those between 7 to 12 years has to be judged by the level of their mental maturity. A blanket treatment of all offenders below the age of 18 years committing any offence regardless of seriousness and depravity is wholly impermissible under our constitutional scheme <sup>[26]</sup>.

But, the Court again refused to read down the Act of 2000 for lowering the age of juvenility on the ground that reading down the provisions of a statute cannot be resorted to when the meaning thereof is plain and unambiguous and the legislative intent is clear. The fundamental principle of reading down is that the courts must read the legislation literally in the first instance. If on such reading and understanding, the vice of unconstitutionality is attracted, the courts must explore whether there has been an unintended legislative omission. If such an intendment can reasonably be implied without undertaking what would be a legislative exercise, the Act may be read down to save it from unconstitutionality <sup>[27]</sup>. In the present case, there is no difficulty in understanding the clear and unambiguous meaning of the different provisions of the Act <sup>[28]</sup>. However, the Court realized the need of lowering the age of juvenility, but, due to its inability, it left the matter to be settled by the legislature as is clear from the following statement of the Court: Before parting, we would like to observe that elaborate statistics have been laid down before us to show the extent of serious crimes committed by the juveniles and increase in the rate of such crimes, of late. We refuse to be tempted to enter into the said arena which is primarily for the legislature to consider. Courts must take care not to express opinions on the sufficiency or adequacy of such figures and should confine its scrutiny to the legality and not the necessity of the law to be made or continued <sup>[29]</sup>.

Later on, while hearing the case of a 40 years old man convicted of murder, who successfully raised a claim of juvenility as he was 16 years old at the time of alleged commission of crime, the Court described the juvenile law as far too liberal <sup>[30]</sup>; and asked attorney General to suggest the Government to take a relook at the Act of 2000, because the law must satisfy the desire of society and prescribe a punishment befitting the gravity of the crime <sup>[31]</sup>. It is worth

mentioning here that under Section 7A of the Act of 2000, a claim of juvenility might be raised before any court and it was to be recognized at any stage, even after final disposal of the case, and such claim was to be determined in terms of that Act.

In another case also, the Court had to set a man, sentenced to life imprisonment for the rape and murder of a 7 years old girl, free after he was proved to be a juvenile at the time of commission of the crime <sup>[32]</sup>.

While hearing a plea by murder accused, who claimed to be less than 18 years old at the time of alleged crime, the Court issued order on the 6<sup>th</sup> April, 2015 asking the Government to re-visit the law so that a juvenile accused of rape and murder cannot get away by claiming he is too young to understand the consequences of his crime <sup>[33]</sup>. The Court observed that it can no longer shut its eyes to the danger posed to society by juvenile accused of heinous crimes like rape, dacoity, murder and drug-peddling. There can be a situation where commission of an offence may be totally innocuous or emerging from a circumstance where a young boy is not aware of the consequences. But, in case of rape, dacoity, murder, which are heinous crimes, it is extremely difficult to conceive that the juvenile was not aware of the consequences <sup>[34]</sup>.

### **Attempt Made By Government**

A comprehensive Bill “The Juvenile Justice (Care and Protection of Children) Bill, 2014” was drafted to replace the Act of 2000 in the wake of the intensified demand of severer punishment for the juvenile perpetrator involved in Delhi gang rape case when the Juvenile Justice Board found him guilty of committing the alleged crime and sent him to correctional home (special home) for 3 years <sup>[35]</sup>. The Bill was introduced in the House of the People on the 12<sup>th</sup> August, 2014. But, it was referred to the Department related Parliamentary Standing Committee. In its report of the 25<sup>th</sup> February 2015, the Committee made several recommendations to further strengthen the Bill. Most of the recommendations were accepted. Accordingly, the concerned Ministry (the Ministry of Women and Child Development) proposed to undertake Amendments to the said Bill <sup>[36]</sup>.

The Union Cabinet approved the introduction of Amendments to the Draft Bill 2014 on the 22<sup>nd</sup> April 2015. The Amendments to the Draft Bill struck a fine balance between the demands of the stakeholders asking for continued protection of rights of juveniles and the popular demand of citizens in the light of increasing incidence of heinous crimes by the juveniles. The amended version of the Bill was the result of an elaborate consultative process. It provided that in case of a heinous crime committed by a person in the age group of 16 to 18 years, the Juvenile Justice Board will assess whether the crime was committed as a child or as an adult. Since this assessment will take place by the Board which will have psychologists and social experts, it will ensure that the rights of the juvenile are duly protected if he has committed the crime as a child. The trial of the case will accordingly take place as a juvenile or as an adult on the basis of this assessment <sup>[37]</sup>. The House of the People passed the Bill on the 7<sup>th</sup> May 2015 <sup>[38]</sup>.

Later on, the Council of States also passed the Bill and the new law relating to juvenile came into existence as “The Juvenile Justice (Care and Protection of Children) Act, 2015.

### Concluding Observations

In view of the International instruments dealing with juvenile, the law on the subject in various countries, scheme of the law relating to juvenile offenders in our country and growing concern for increasing incidents of heinous crimes committed by juveniles, the present law relating to juvenile can be said to be expedient and fully justified. The rights of women and girls against heinous crimes are as important as the rights of juveniles of care, protection and rehabilitation in the interest of the broader justice to society. In course of time, the development of Science and technology has affected the degree of maturity of juveniles also and a legal deterrence for the protection of other members of society from heinous crimes committed by juveniles has become inevitable. By treating juveniles between age group of 16 to 18 years as adults for heinous crimes, the present law establishes harmony between two conflicting interests - the interests of the juveniles and the interests of the victims of heinous crimes committed by juveniles. Thus, it meets the needs of the society.

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14. *Id* at para 37.
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