

INCONSISTENCY WITH JUVENILE LAWS

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ABSTRACT

*“Our world is still a laboratory of torture, a warehouse in which human commodities are sadistically kept and where spectrums of inmates range from drift wood juveniles to heroic dissenters”- **Justice V.R. Krishna Iyer***

Juvenile crimes have been one of the most immense problems of all time in the world. This problem not only affects the individuals who commit the crime, but also affects the victim of the crime. This also affects the juvenile offenders as the crime can be on their record as long as they live. International Laws prohibit death sentences, life imprisonment and all forms of degraded punishments against these juvenile offenders. Still some of the states do not follow these laws and adjudicates the matter by their own state or/and traditional system of justice. However, there are a number of ways to abolish these practices, which I will discuss in this paper.

The largest and most common risk factor is the wrong determination of age of the juvenile offender at the time of commission of the crime. Between the 1970's and early 1990's, the number of juveniles has grown largely for a number of reasons. This factor alone has caused a noticeable increase in crimes by or/and against juveniles. Many of these juvenile criminals also said to be abused and neglected. For the majority, it is due to lack of proper system and experts to determine the age. Various researchers have found that the majority of these offenders are more likely to be arrested, and are to commit a violent crime as an adult, than their counterparts who did not suffer such abuse. The reasoning for this is that, psychologists have determined that, the symptoms of child abuse are "high levels of anger and antisocial behavior". The paper urges to cultivate such system of juvenile justice which can adjudicate the matters properly without any discrepancy.

INTRODUCTION

“There can be no keener revelation of a society’s soul than the way in which it treats its children”- Nelson Mandela

A juvenile is a child or a young person who, under the respective legal system, may be dealt with for an offence in a manner which is different from an adult.¹ Juvenile offender is a child who commits an offense before he/she reaches eighteen years of age, as defined by the international standards contained in the U.N. Convention on the Rights of the Child (“CRC”).² The paper focuses on the sentencing of juvenile offenders to sentences in violation of international human rights, namely the death penalty, life imprisonment, and a range of other forms of degraded punishments. Age determination therefore demands that juveniles in conflict with the law receive special treatment in justice systems.

The following paper lays stress on the laws related to juveniles across the world in each and every nation. The laws followed in every country are no doubt perfectly laid in accordance to their country, but is it questionable or not. Like the law in U.A.E. clearly states that if juveniles are found guilty in any crime a leniency would be given to them, but if the crime is against Islam then even a juvenile can be granted with the capital punishment. Hence a question arises whether the capital punishment is necessary for the juvenile or not. But there have been instances where juveniles have done a heinous crime in such a manner which was very brutal and the juveniles were completely aware of their actions and its repercussions. So in such a case it becomes extremely difficult for the law to decide that what punishment should be given to the juvenile. Furthermore it is extremely difficult to evaluate that whether the juvenile was aware that his actions or crime done by him was wrong and would be punished by the law if found guilty. Also many surveys were done by the various nations if the juveniles in their nation were involved in crime or not, and the result amazed every one when it was displayed that juveniles the 19th century were involved in crimes more often than the juveniles of the 20th century, this outcome clearly shows juveniles are now more aware about the rights and wrongs. Now in order to stop the questions being arose that whether the judgment given in relation of the juvenile, a uniform code of law to be adopted by the nations across the globe, making the laws regarding the juveniles unified throughout the world.

Background of juvenile Justice.

¹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (‘The Beijing Rules’), General Assembly Resolution 40/33 of 29 Nov. 1985, sec.2 (a).

² CRC, Nov. 20, 1989, 1577 U.N.T.S. 3.

*“No one is born a good citizen; no nation is born a democracy. Rather, both are processes that continue to evolve over a lifetime. Young people must be included from birth. A society that cuts off from its youth severs its lifeline”- **Kofi Annan***

Article 40 deals with Juvenile Justice³ Children who are accused of breaking the law have the right to legal help and fair treatment in a justice system that respects their rights. Government are required to set up minimum age below which children cannot be held criminally responsible and to provide minimum guarantees for the fairness and quick resolution of judicial or alternatives proceedings. This convention also deals with the establishment of rehabilitation for the child victims. Children who are neglected, abused or exploited should receive special help to physically and psychologically recover and reintegrate into society. Particular attention should be paid to restoring health, self respect and dignity of the child.⁴ The convention also deals with the article which provides that no one is allowed to punish children in a cruel or harmful ways. Children who break the law should not be treated cruelly. They should not be put in prison with adults, should be able to keep in contact with their families and should be sentenced to death or life imprisonment without possibility of release.⁵

The constitution of India also provides the legal framework for the protection of children. The constitution also mandates to provide the special protection to children under Article 15(3). Article 39 (E and F) provides protection of children’s healthy development. Article 24 of Indian constitution prevents the children from working in hazardous environment below 14 years. Article 21-A provides the right to education to all the children. In spite of such legislation the government is ineffective to control the increase in crime by the Juveniles. If one looks back to all the reason behind such crime one will find that the reason behind the increase in the crime by juvenile is illiteracy and the social environment that motivates the child to move forward in a direction for crime. Now the question that always strike that whom we should punish for such act, is it the juvenile or the immaturity of the Juvenile to understand the nature of his own act which he is doing is either wrong or contrary to law. Punishing Juvenile would impart Justice or not? Certainly justice would never be provided by punishing Juvenile, but we have to look the factors or the reason behind such act of Juvenile. We have to overcome the entire scenario before making any view on the Juvenile offenders.

³ Convention of rights of child

⁴ Article 39 of Convention of rights of child

⁵ Article 37 of convention of rights of child

“Criminals do not die by the hands of the law. They die by the hands of other men” - **George Bernard Shaw**

Under International Laws, some punishments which are applicable to adults are not applicable for children like juvenile offenders. In the past years, there was progress towards the abolition of these sentences. However, several states are still facing difficulties to enforce these in practice. Due to this some states frequently puts juvenile offenders at a risk of being treated as adults in criminal justice systems.

1) DEATH PUNISHMENTS

A. International Law Prohibits Sentencing Juvenile Offenders to Death

Sentencing juvenile offenders to death is banned by International Law. Article 37 of the CRC provides:

*States Parties shall ensure that: ... Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.*⁶

In addition to the above, Article 6 of the International Convention on Civil and Political Rights provides that “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age”⁷

The Human Rights Committee has also confirmed that the prohibition of executing children is a rule of customary International Law, which cannot be made as the subject of reservation by a State, party to the ICCPR.⁸

B. Countries Should Stop Sentencing Juvenile Offenders to Death and Remove All Remaining from Death Rows

⁶ Convention on the rights of the children, Art.37 (a).

⁷ International Convention on Civil and Political Rights , Art. 6 , para. 5, Dec. 16, 1966.

⁸ Human Rights Committee, General Comment No. 24, para. 8, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (1994).

Although universally not acceptable and prohibited by International Laws, the death penalty is still imposed by courts in Iran, Pakistan, Saudi Arabia, Sudan and Yemen, although some of these states have abolished the sentence in their laws.

Under Iranian law, the age of majority is attained at puberty, as specified in the Civil Code as 15 lunar years (14 years and 5 months) for boys and 9 lunar years (8 years and 8 months) for girls.⁹

The death penalty can be imposed on various cases such as Adultery and Murder.¹⁰ In relation to abolition of death penalty, the government officials argue that they work in accordance with international law because they do not execute juvenile offenders until they turn eighteen.¹¹

In North and South Sudan, the court continues to adjudicate the matters with death sentences against juveniles¹². In 2008, the Supreme Court of Khartoum found that the prohibition of death penalty for children did not extend to “hudud” offenses.¹³

In Yemen’s Penal Code, an amendment was done in 1994, to require reduced sentences for crimes committed by persons under 18.¹⁴ However, due to lack in proper and adequate mechanism of the proceedings in the court, juvenile offenders under age of eighteen years are, sometimes, put on death row in Yemen.

The paper urges these States to abolish sentencing child offenders to death and to remove from death row all persons who were sentenced to death for crimes committed before they were eighteen.

2) Life Imprisonment

⁹ HUMAN RIGHTS WATCH, Iran, Saudi Arabia, Sudan:End Juvenile Death Penalty,October 8, 2010, at <http://www.hrw.org/news/2010/10/09/iran-saudi-arabia-sudan-end-juvenile-death-penalty>.

¹⁰ id

¹¹ id

¹² Amnesty International, Annual Report 2011: Sudan.

¹³ Ibid 6

¹⁴ Yemeni Penal Code, Art. 31.

A. International Laws prohibits sentencing of Juvenile offenders to Life Imprisonment

Life sentencing for Juvenile offenders is prohibited by International Laws. Article 37(a) of the CRC prohibits this sentencing and Article 37(b) of the CRC further states that “imprisonment of a child ... shall be used only as a measure of last resort and for the shortest appropriate period of time.”¹⁵

Article 14 of the International Convention on Civil and Political Rights also provides that the age of minor must be taken into account in sentencing.¹⁶ The prohibition against life imprisonment of juvenile offenders is so practiced that it approached to the level of *jus cogens* norms.¹⁷

This implies that it condemns a child to die in prison and breaks the possibilities of child rehabilitation and redemption.

B. The USA being the only State to impose Life Imprisonment in Practice

Most of the states of the world have amended their laws and abolished the Life sentencing but the United States remains the only state imposing Life Imprisonment in practice. In the United States of America, approximately 2,570 juvenile offenders were serving life sentences for crimes committed when they were less than eighteen years of age.¹⁸

The United States have not ratified the CRC, but as a signatory they must follow the ideals of the treaty. The Human Rights Committee proposed that sentencing juvenile offenders for life violates the guarantee to protect children. They express their deep concerns against the sentencing in the United States of America.¹⁹

¹⁵ CRC, Art.37(b), supra note3.

¹⁶ ICCPR, Art.14, para.4, supra note 4.

¹⁷ Vienna Convention on the Law of Treaties, Art.53, para.5.

¹⁸ Human Rights Watch, Prison conditions for youth offenders in the United States 1 (2012).

¹⁹ Human Rights Committee, Concluding Observation: United States of America, para.34, U.N. Doc. CCPR/C/USA/CO/3/Rev.1(2006).

The paper urges the USA to abolish the practice of sentencing juvenile offenders to life imprisonment at the federal level and to educate states to ensure that all child offenders must get the opportunity to come before the parole boards.

3) Other Punishments

A. International Laws prohibits sentencing juvenile offenders to other punishments

It is an obligation under International Laws to prohibit all forms of degraded punishments for children. It is the duty of the states to respect the dignity and physical integrity of every juvenile offender, guaranteed under Universal Declaration of Human Rights²⁰ and affirmed in the CRC. And these degraded punishments are in violation with these instruments and precedents.

Article 19, para 1 of CRC states to protect children “from all forms of physical or mental violence.”²¹

Human Rights standards never emphasized the assertion that a certain degree of “moderate” or “reasonable” corporal punishment is in the best interest of the child. The Committee on the Rights of the Child stated that “interpretation of a child’s best interests ... cannot be used to justify practices, including all forms of cruel or degrading punishment, which are in conflict with the child’s human dignity and right to physical integrity.”²²

The case laws also emphasize the ban on all form of degraded punishments in juvenile justice system. In 1978, the European Court of Human Rights ruled that judicial birching of a juvenile in the United Kingdom breached Article 3 of the European Convention, which bars inhuman or degrading treatment or punishment.²³

B. States should amend their laws to stop imposing these punishments in Practice

²⁰ Article 5.

²¹ Convention on Rights of Children.

²² Committee on the Rights of the Child, General Comment No. 8, para.26.

²³ *Tyrer v. United Kingdom*, 26 Eur. Ct. H.R. 5(ser.A) (1978).

Till now, about 42 states are still imposing such forms of degraded punishments to juvenile offenders under state or traditional system of justice. For example, Malaysia²⁴ and Nigeria²⁵ allow the whipping of children found guilty of the offences.

The Committee on the Rights of the Child has expressed concern about such sentencing of children to states including Brunei Darussalam, Iran, Nigeria, Saudi Arabia, Yemen, and has recommended that these countries must amend their existing laws to make these practices unlawful and invalid in nature.²⁶

In Saudi Arabia, flogging is foremost punishment for a number of offences, and can be ordered by judges, in their discretion, for other offences.²⁷

The paper welcomes efforts to legislate on the sentencing juvenile offenders to degraded punishment, and urges States to enforce the laws forbidding such practices. With regard to the remaining countries allowing them, it urges States to abolish the practice of imposing such degraded form of punishments on juveniles.

4) Conflicts over the age of juvenile offenders

Under International Laws, juvenile offenders are the persons under the age of eighteen years at the time of the commission of the crime. They should not be sentenced under laws applicable to adults.²⁸

The lack of birth registration and of adequate forensic facilities with trained staff who are experts in conducting age determination tests often makes a child's age undeterminable,

²⁴ Malaysian Child Act 2001, para.91(1)(g).

²⁵ Nigerian Criminal Code Act, para.18.

²⁶ Committee on the Rights of the Child, Concluding Observations: Brunei Darussalam, para. 37, U.N. Doc. CRC/C/15/Add. 219 (2003); Concluding observations: The Islamic Republic of Iran, para. 45, U.N. Doc. CRC/C/15/Add. 254 (2005).

²⁷ GLOBAL INITIATION TO END ALL CORPORAL PUNISHMENT OF CHILDREN, Saudi Arabia-Country Report 2, updated Jan.2012.

²⁸ Committee on the Rights of the Child, General Comment No. 10, para. 36.

and frequently puts these juvenile offenders at risk of being treated as adults at the time of the commission of the crimes.

For instance, in Yemen, the death penalty has been abolished but persons who were under eighteen years of age at the time of the commencement are regularly sentenced to death due to mistakes in age determination tests.²⁹

Therefore, recommends that in cases where the age of a minor is not determined, the minor must be presumed to be under the age of majority until such an assumption is rebutted by the prosecution. If this burden is not met, the accused must be tried and sentenced as a juvenile offender. Such a presumption is necessary to protect children from being treated as adults in criminal justice systems.

Recommendations

Based on the foregoing, the paper asks the Human Rights Council to urge all the states to:

- I. Abolish the practice of sentencing child offenders to the death penalty and to remove from death row all remaining persons who were sentenced to death;
- II. Abolish the practice of sentencing juvenile offenders to life imprisonment;
- III. Amend ambivalent laws to ensure no juvenile offender is sentenced to life imprisonment;
- IV. Abolish the practice of sentencing juvenile offenders to receive degraded punishments, and to protect all children's dignity and physical integrity; and
- V. Adopt laws stating that in ambiguous cases relating to determination of the age of the child, the prosecution must bear the burden of proving that the accused is over eighteen.

In addition, it urges the Human Rights Council to condemn the death penalty, life imprisonment, and all forms of degraded punishment administered as a disciplinary actions while children are in detention. It also urges to ask the Special Reporter on torture and other cruel, inhuman or degrading treatment or punishment to address the various aspects of these punishments.

Hence in all the countries whether it be U.S.A, U.K. India, U.A.E. Iraq, Israel, Australia, etc., when a juvenile is found guilty and judgement is given a slight thought always comes in the

²⁹ HUMAN RIGHTS WATCH, THE LAST HOLDOUTS.

mind of the nation and a question is always aroused that whether the judgement given was fair or not due to judgement being given against the juveniles. So in order to prevent that from happening a uniform code of rule should be followed and that code of rule is already decided and passed by the United Nations Organisation i.e. Article 37, Article 39 and Article 40 of Convention on the Rights of Child in accordance of Article 49. These articles should be followed by nations throughout the globe. And hence restricting the question on the justice related to juvenile justice.

CONCLUSION

*“Children need love, especially when they do not deserve it.” - **Harold S Hulbert***

Children are the nation’s future citizen and they deserve the compassion and the best care which we can give to them. No child is born criminal and all children are innocent and responsibility should be attributed to that social environment and social context that have stirred the criminal tendencies whose removal might mould the child and change the child into a person of stature and excellence. Death penalty won’t provide remedy to the victim party nor would it decrease the crime rate by the Juvenile offenders. The best way is to provide a wholesome environment to each and every child of the world so that each child would develop its personality to the fullest extent neither as citizen of nation nor as an offender. Moreover each and every child must be cared brought up well by its parents. At last one should not forget that a Juvenile offender could be nothing more than poor child or child who because of the fault of others caught red-handed in the struggle for survival and he or she deserve a emphatic, kind and humanistic treatment.