

A SOCIO-LEGAL ANALYSIS OF THE DEATH PENALTY FOR JUVENILES

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INTRODUCTION

The Indian penal code was developed in 1860 with inspiration from British India. Any lack of rehabilitation was successfully made up for by the “Children's Act” that followed and the Juvenile Acts that followed, up until the “Apprentice Act of 1950,” which appeared to acknowledge the fragile position of youngsters in a society that was becoming more separated. The law concerning juvenile offences has been effective up to the extent of any lack of rehabilitation, nonetheless. This law was later replaced by the Reformatory Schools Act, 1897ⁱ, which states that children up to the age of 15 may be transferred to a reformatory cell.

The “Juvenile Justice Act of 2002ⁱⁱ” was the more comprehensive arena of counteraction of the broader area of combating misbehavior by bringing children in need of protection and care into its purview and establishing plans for handling children who are determined to have committed an offence.

This particular paper examines the theory and application of the laws pertaining to young people who have committed crimes and only makes context-specific allusions to the arrangements managing young people who require care and assurance.

It is essential to understand a child's position under the Indian Penal Code and the distinction—or maybe lack thereof—between a child/minor and a juvenile before going into the complexity and nuances of the aforementioned topic and study aims. The history of juvenile law in India must be thoroughly researched in order to get this understanding, as is done in the following.

The modern history of juvenile justice in India dates back to 1850, when the main statute was established to deal with children under the age of 15 who committed minor offences or were apprehended as vagrants.

It began quietly by permitting limited such children's enrolment as pupils to familiarise themselves with some exchange but some extended by setting up independent private offices for switching children. In order to accommodate care assurance reconstruction and restoration of delinquent and neglected children and to restrict the sending of children to jail or the use of prison and police headquarters under any circumstances, these courts made their mark on the criminal justice framework by passing the first uniform enactment for the entirety of India.

In “*Krishna Bhagwan v. State of Bihar* ⁱⁱⁱ”, the Patna High Court affirmed the principle that a child's age at the time of the alleged offence, not at the time of the trial, should be considered if he is charged with a crime. similar to what was decided in the illustrious case of *Pratap Singh v. State of Jharkhand*^{iv}.

RESEARCH OBJECTIVES

The following objectives will be analysed in the present research study:

- 1) Identification of the causes of juvenile crime
- 2) Understanding the punishment against Juvenile crimes internationally.
- 3) To examine prominent case laws against Death Penalty of juveniles.

RESEARCH METHODOLOGY

A doctrinal research methodology is required given the current study issue. The research paper includes laws under the Indian Penal Code and more in order to investigate and determine the laws linked to minors and their significance. This essay uses a variety of rulings, examples, and quotes from many jurists to help the reader grasp the subject. The legal input does include decisions from India as well as case laws from other nations. To get to a conclusion, resolve

all the issues, and accomplish the goals of the research topic, the researcher additionally analyses and employs many articles and pre-existing materials.

As a result, the researcher suggests using the doctrinal approach of study.

RESEARCH QUESTIONS

The following research questions will be identified and analysed for the purpose of conducting the present study:

- 1) What are the causes of Juvenile crimes?
- 2) What are the penalties for juvenile crime in countries around the world?
- 3) What are some major Case Laws against Death Penalty of Juveniles?

LITERATURE REVIEW

- **Socio-Legal Impact of Capital Punishment on Juveniles.^v**

A juvenile is defined as "a child or a young person who is under the age of 18 besides minors in the age category of 16 to 18 to be prosecuted as adults if they commit heinous crimes in respect with J.J. Act 2015," according to an article on the "Socio-Legal Impact of Capital Punishment on Juveniles." Juveniles are those that do terrible things yet are still a few years or months away from becoming an adult. Most of the time, they are completely aware of the implications.

- **Adolescent brain science and juvenile justice policymaking.^{vi}**

In this paper the author explains the mental aspects on a child's brain and suggests a better policy making from the government for the juvenile's punishment. The author examines how this change in policy has been influenced by developmental research, notably developmental neuroscience. In his conclusion, the author makes recommendations for further research and policy analysis, including

(a) a study of the developmental differences between adolescents and adults that have implications for their differential treatment under the law, with a focus on the neural underpinnings of these differences;

(b) a study of the impact of changes in juvenile justice policy and practise on outcomes other than recidivism; and,

(c) a study of the financial costs and benefits of these differences.

- **Juveniles and the Death Penalty^{vii}**

According to Lynn Cothorn in her article "Juveniles and the Death Penalty," "holding juvenile offenders accountable for delinquent acts while providing treatment, rehabilitative services, and programmes designed to prevent future involvement in law-violating behaviour" is one of the main goals of the juvenile justice system. According to this, the goal of the juvenile justice system should be reformation rather than punishment.

- **The Decline of the Juvenile Death Penalty: Scientific Evidence of Evolving Norms^{viii}**

In this paper the author explains how the death penalty for juvenile is on a decline and less and less cases of death penalty comes in recent times. There is convincing evidence of a rising societal norm against the death penalty for juvenile criminals, even in the jurisdictions that theoretically allowed its use. As a result, in the last few years, the number of children sentenced to death has virtually completely disappeared.

ANALYSIS OF THE TOPIC

The causes of Juvenile crimes

Delinquent behaviour is not solely caused by one source. It is a result of a number of causes, including deprivation, the state of the economy, substandard housing, a lack of education, the environment, unsavoury company, etc. There are biological, psychological, and emotional natural components. The adults do not provide the young people with enough advice or a decent example. In an atomic age, a violent age, where robber nations care nothing for humanity, where ethics have been shattered and ideals have been abandoned, people want immediate enjoyment and leave future to fend for itself. The main causes of juvenile delinquency are:

- (i) Socio-environmental; and
- (ii) Psychological.

(i) Socio-Environmental

- a. Cultural conflicts: As a result of population drift brought on by urbanisation and industrialization, there are now cultural tensions between locals and immigrants. These societal divisions caused by cultural differences have led to aberrant behaviour, which has raised the crime rate in that area.
- b. Family Background: This element also motivates juvenile offenders to commit crimes in society. If the children witness their parents or other family members acting in a similar way, they are more likely to develop criminal tendencies themselves. Regular arguments between the parents, dominance of one parent over the other, stepmotherly behaviour with the kids, depravity of the parents, poverty, an unpleasant home environment, unemployment, a meagre income, or a parent's extended absence from home can cause the child to associate with the wrong crowd and engage in criminal activity.
- c. Family Type and Size: It is acknowledged as a contributing element to delinquent behaviour. Compared to smaller and nuclear families, delinquents are more likely to come from joint and larger families because larger families are more likely to pay less attention to their children. Numerous studies have highlighted the importance of population size as a factor in the rise of juvenile delinquency, but comprehensive research is still needed in India to fully understand these phenomena.

(ii) Psychological

- a. School Factors - The school has a big impact on a child's growth and development because it is where they spend the most time and have the closest interaction with the majority of other kids. In some schools, teachers' abusive behaviour breeds resentment and anger in the students, driving them to skip class and turn delinquent.
- b. Drug Addiction: Adolescents who are obsessed with drugs are more likely to commit misdemeanour offences. Nowadays, drug use among teenagers is fairly frequent. Both a disturbance and a hostile environment are brought about by addiction in the family. The other family child is in grave danger in this environment.
- c. Overcrowding: When a child sleeps in the same room as his parents, he witnesses and hears activities that are best left undisturbed. Their mental development is not healthy if there is any family member jealously toward other family members or any other unpleasant conversation. A child's mindset may be altered by the angry and aggressive behaviour of their parents and any other family members, which may also push them toward crime or delinquency.

Laws Prohibiting Capital Punishment amongst Juveniles

- **Juvenile Justice [Care and Protection of Children] Act of 2000**

Given that this act was approved as an amendment to address and improve the shortcomings of the aforementioned act, its flexibility to changing international standards, such as the updated "CRC [Convention on the Rights of the Child] Beijing regulations" and the associated 1990 rules, is evident.

The court ruled in *Raj Singh v. State of Haryana*^{ix} that laws pertaining to juveniles shall take precedence in cases involving juveniles regardless of the type of offence committed because the act was written with rehabilitation in mind rather than an adversarial system of government, which is warranted given that children are by nature such.

In a similar vein, the court in *Jameel v. State of Maharashtra* found that, with regard to the appellant's argument regarding the applicability of the relevant legislation, a juvenile was defined as a male under the age of 16 and a girl under the age of 18.

- **Juvenile Justice [Care and Protection of Children] Act of 2015**

When the aforementioned statute was passed, everyone's memories of the Delhi gang rape case of Nirbhaya^x, a law that Maneka Gandhi herself championed, were still fresh, making it nearly difficult for opposition to surface inside the parliament.

The Justice Verma Committee was established to consider potential changes to India's penal code, even though the juvenile in the Nirbhaya case "got off easy" as the most severe sentence that could be imposed, despite the enormity of the act, was three years in a remand home.

In order to distinguish between minor violations, major offences, and heinous offences, the legislation divided crimes into these three groups. An evaluation board will determine the victim's maturity at the time the heinous offence was committed if the victim is a minor between the ages of 16 and 18.

As a result, the paper will now discuss the juvenile death penalty in other nations, such as the United States of America, United Kingdom and Iran and the social implications of the same.

Punishment Against Juvenile Crimes Internationally

A juvenile is “ *A person or child , aged below 18 , or a certain age limit as per a country’s norm , the age before which the particular sovereign in all its good consciousness seemed to exempt such a class from the same punishment as a reasonable prudent man would muster on an adult for a crime, due to varying reasons, such as lack of complete development of cognitive skills to , consideration of abusive, exploitative and desperate surroundings they were raised in and various other mitigating circumstances that had them be a “child in conflict with law”*”

and not the usual duty bound citizen the state aspires of have and are primarily looked to be rehabilitated and integrated into the fabric of the society”

Democracies would prefer to do away with the death penalty, but in societies where law and order must be upheld and punishment is administered that is harsh on the accused and aversive for the majority of the society rather than retributive, or "eye for an eye," justice, it is frequently seen as a necessary evil. This must be kept in mind, and one must constantly be on guard.

Therefore, the death sentence is commonly used as a last resort when a person's culpability and ill intent can be proven beyond a reasonable doubt. Therefore, the prior phrase is only used in the context of heinous acts and is described as "hateful or ruthlessly evil." Having said that, it's crucial to keep in mind that juvenile justice frequently serves as a corrective. So let's look at other countries' legal frameworks and perspectives.

United States of America

The historic *Roper v. Simmons*^{xi} ruling by the Supreme Court, which ruled that the death penalty for juveniles was unconstitutional and therefore not taken into consideration by law because the appropriate punishment for juveniles in such cases was determined to be life in prison instead of the death penalty, must be carefully considered. The United States has a dual federalism system, or remains of it, therefore the age at which someone can get the death penalty can vary from 16 in Alabama, 17 in Florida, to 18 in California.

Therefore, it is crucial to comprehend the rules for such harsh penalties that were established and are still in effect now, as illustrated by *Furman v. Georgia*.^{xii}

The guidelines in the ruling, which was decided by a razor-thin margin of 5 to 4, held that the death penalty violated the 8th and 14th amendments of the US Constitution for the following reasons:

- 1 “It is a punishment originally understood by the framers of the Constitution to be cruel and unusual.”
2. “There is a societal consensus that the punishment offends civilized standards of human decency.”

3. “It is grossly disproportionate to the severity of the crime or makes no measurable contribution to acceptable goals of punishment.”

Similar arguments were made in *Gregg v. Georgia*^{xiii}, which held that the determination of guilt or innocence in death penalty cases must be made independently from hearings in which sentences of life in prison or death are decided, and that the court must take into account both the crime and the offender's circumstances when weighing aggravating and mitigating factors. To decrease the arbitrary aspect of the death penalty, this was done. The death sentence must be reviewed by the highest State court of appeals to determine that it is appropriate for the nature of the offence and that it is applied evenly under State law.

This suggests that there was some uncertainty regarding the constitutionality or, more precisely, the unconstitutionality of the capital punishment for juveniles prior to *Roper v. Simmons*.

As mental infirmity was considered a "mitigating" element and the sentence was perceived as severe and vengeful, this was seen as a sign for a new petition in the case. This was in addition to the earlier decision in *Atkins v. Virginia*^{xiv}, which prohibited the death punishment for those with mental disabilities.

Additionally, in *Kent v. the United States*^{xv}, the death penalty degenerated into an unusually harsh punishment for children where the factors to be taken into account were the severity of infractions, the mitigating elements like age, impact, living examples, climate, past record, and more specifically, the likelihood of restoration into a productive member of society.

United Kingdom

The death sentence was prohibited for all domestic offences in 1983 under Protocol 6 of the European Convention on Human Rights^{xvi}, and it was abolished completely in 2002 under Protocol 13.

Even though there were many executions in the 1800s throughout the former British Empire, with public hangings eventually giving way to private hangings, the Children Act of 1908^{xvii} outlawed juvenile executions for crimes committed before the age of 16. Later, the Children and Young Persons Act of 1933^{xviii} raised the minimum age for the death penalty to 18 years old.

Additionally, the death penalty was eliminated entirely in the UK by virtue of the “Murder [Abolition of Death Penalty] Act 1965 and Northern Ireland [Emergency Provisions] Act 1973^{xix}”, in response to a significant amount of public outcry regarding wrongful executions, false testimony, and arbitrary action, such as in the case of Timothy Evans, where John Christie's conclusive testimony was taken away while he was testifying.

Iran

According to Acquittal Global, there have been about 73 juvenile executions in Iran, the nation that has carried out the most recent executions of minors. However, none of these cases have been confirmed as being carried out by the Iranian government. It is crucial to maintain frankness in procedures like these, especially when there is a desperate element present, because such a lack of notice may come from or stem from the discretionary behaviour.

“The Arab Human Rights Charter, which is ratified by the majority of middle eastern countries, stated that no minor will be subjected to the death penalty in its previous incarnation in 1994. In any case, the 2004 Arab Human Rights Charter's updated article 7[1]26 states in any circumstance.”

Inconsistencies with international standards, such as the CRC^{xx}, to which Iran and other Middle Eastern nations are signatories, have become a growing source of concern in recent years, with a number of dissident and death penalty watch groups calling attention to inconsistencies like the fact that regardless of whether a malfeasance is perpetrated when a child is under 18, the matter may be postponed until the person turns 18, which is the age of eligibility for the death penalty.

CONCLUSION

The Act must be successfully implemented in order to lessen juvenile offences, which are an unpleasant reality. Mindfulness efforts should also be made. The approach and way of thinking about the key participants in the system, such as the police, have to go from dismissing to reforming the teenagers engaged in a legal battle.

Adolescent misconduct can be explained by mental, natural, physiological, and individual aspects, as well as other things like peer pressure, actual incapacity, and dissatisfaction with the school.

The family is one of the oldest and most important social groups; it is responsible for a child's socialisation. A child learns the difference between great and horrible, nice and evil, appropriate and improper from his family.

If a child is "under the juvenile justice age has been prescribed by the board, having the development" of an adult, the children's court to whom the case is moved first and foremost wants to ensure that the board took into consideration the conditions that led to the minor's act.

The general guidelines "of the criminal strategy code apply to the adolescent, currently being attempted as a grown-up," at that point, provided the court truly believes the teenager to be liable and attempts him as an adult.

Juvenile delinquency can manifest itself in a variety of ways and can range in severity, frequency, and degree. It can take the form of various offences like theft, pickpocketing, drug addiction, sex offences, predatory behaviour, etc. Like other social issues, delinquency has deep-seated causes. The child, who is the nation's future, needs to grow up in a healthy environment and receive moral instruction that will help him become an informed and responsible citizen.

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- Mukesh and others v. NCT of Delhi and others, CRIMINAL APPEAL NOS. 607-608 OF 2017 (arising out of S.L.P. (Criminal) Nos. 3119-3120 of 2014)

ENDNOTES

ⁱ “Reformatory Schools Act, 1897 [Act VIII of 1897]”

ⁱⁱ “Juvenile Justice Act, 2000,”

ⁱⁱⁱ “Krishna Bhagwan v. State of Bihar, JT 2002 (6) SC 523”

^{iv} “Pratap Singh vs State of Jharkhand ,Appeal (Crl.) 210 of 2005”

^v “Saumya Tripathi, Socio-Legal Impact of Capital Punishment on Juveniles, ISSN 2581-5504 (2019).”

^{vi} “Steinberg, L. (2017). Adolescent brain science and juvenile justice policymaking. *Psychology, Public Policy, and Law*, 23(4), 410–420.” <https://doi.org/10.1037/law0000128>

^{vii} “Lynn Cothorn, Juveniles and the Death Penalty, U.S Department of Justice”

^{viii} “Fagan, J., & West, V. (2005). The Decline of the Juvenile Death Penalty: Scientific Evidence of Evolving Norms. *The Journal of Criminal Law and Criminology (1973-)*, 95(2), 427–500.” <http://www.jstor.org/stable/3491342>

^{ix} “Raj Singh v. State of Haryana ,CRIMINAL APPEAL NOS. 701-702 /2015 (Arising out of S.L.P. (Crl.) Nos.5767-5768/2013)”

^x “Mukesh and others v. NCT of Delhi and others, CRIMINAL APPEAL NOS. 607-608 OF 2017 (arising out of S.L.P. (Criminal) Nos. 3119-3120 of 2014)”

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- xi “Roper v. Simmons, 543 U.S. 551”
xii “Furman v. Georgia, 1972 U.S. LEXIS 169”
xiii “Gregg v, Georgia, 1976 U.S. LEXIS 82”
xiv “Atkins v. Virginia ,536 U.S. 304”
xv “Kent v. United States ,383 U.S. 541”
xvi “Entry into force: 1 March 1985”
xvii “1908 c. 67”
xviii “Replaced the previous law in place”
xix “Based on aforementioned Protocol 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of Death Penalty”
xx “UN Commission on Human Rights, Convention on the Rights of the Child., 7 March 1990, E/CN.4/RES/1990/74, available at: <https://www.refworld.org/docid/3b00f03d30.html> [accessed 31 October 2022]”

