

## Can A Juvenile Ever Be Accountable For A Crime?

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One remembers the agitating crowds after the December 2012 rape case in Delhi in which not only was a young woman brutally raped, but also deliberately inflicted internal injuries which resulted in her death. This inhuman act aroused the anger of the people and masses of people, especially women and including activists, came out in the streets, demanding harsh laws and the severest penalties for rapists, including death. It was known at that time that the accused came from deprived backgrounds from which the lumpen are drawn, but there was no outcry at that stage that these people should be spared because they came from poor, uneducated, socially deprived families. The universal demand was that women must be protected. The Indian Penal Code was amended, the police activated and in a number of cases thereafter death or life imprisonment was the penalty imposed and trials were accelerated. Judges vied with each other in the speed with which the trial of rape cases was conducted. The Press, the activist groups, the feminists all applauded this. There was only one nigger in the woodpile--- in many rape cases, including the one in Delhi and the subsequent one in Mumbai, some of the accused were juvenile, who could not be tried for an IPC offence and to whom the Juvenile Justice (Care and Protection of Children) Act 2000, as amended in 2006, applied. The Juvenile Justice Board, headed by a Magistrate, if satisfied that the juvenile had committed an offence, was authorised to send the juvenile to a special home, to be detained therein for a maximum of three years.

A demand was raised that these juveniles should be treated as normal accused persons and should be tried according to normal law. It was stated that a person who commits rape, especially in the company of others, actually acts as a mature, pubescent male, physically capable of committing rape and, therefore, should be treated as an adult. It would be grossly unjust if in a group of accused for the same offence, a person one day older than eighteen could face a possible death sentence, whereas a person one day short of eighteen would have to serve a maximum of three years in a special home. As things stand, under section 14 of the Act it is only the Juvenile Justice Board which has the authority to hold an enquiry into the matter and then pass a suitable order under section 15 of the Act. To many this is illogical and incongruous.

The objective of the Juvenile Justice Act was to provide care and protection to children, cater to their development needs, adopt a child friendly attitude in adjudication and arrange for their rehabilitation through specialised institutions. The Act begins with a premise that a juvenile cannot commit an act of criminality. Therefore, even if the act committed is ordinarily a crime, the juvenile is deemed not to be a criminal but a person in conflict with law. The heinousness of the offence does not change this position. The law defines juvenile as a person who has not completed eighteen years of age. The Chambers Twenty-first Century Dictionary, however, defines juvenile as “young, youthful, childish, immature”. Whereas the legal definition leaves no room for ambiguity, notwithstanding the fact that by other parameters the juvenile may be mature and capable of understanding the consequences of his deeds, the dictionary meaning does leave scope for determining whether a person has achieved a certain level of maturity. This distinction is important because under Anglo Saxon jurisprudence mens rea, or criminal intent, is of vital importance in determining the criminality or otherwise of the act. A mature mind can have mens rea, or intent, whereas an immature mind would not be able to fully appreciate the rights and wrongs of a situation and, therefore, cannot have mens rea. In India the Juvenile Justice Act arbitrarily determines that anyone below the age of eighteen will be deemed to be a juvenile and, therefore, incapable of mens rea.

The present Minister of Women and Child Development has made a plea that a person over sixteen years of age should, at the discretion of the court, be treated as an adult. There is uproar amongst so called child rights activists against this suggestion. On one of the TV channels, during one of the programmes three of these activists vehemently urged that no change was needed because in any case most of the accused in such cases are from deprived backgrounds. One watched with horror as these women, all of whom appeared to be well-heeled and with superior education, argued that if a person from a deprived background committed rape he should be treated more gently than and differently from an accused from a relatively more fortunate background. In other words, the Juvenile Justice Act applies to such people and they should be let off with a rap on the knuckles. Obviously between December 2012 and July 2014 these women have travelled a long way from the demonstrations on the streets of Delhi.

I can understand a child or a youth from a slum being envious of the fat cat child riding by in luxurious car and heaving a brickbat at the wind screen. I can understand his picking a pocket or snatching a hand bag, or even damaging public property. But murder or rape call for a very different mentality and certainly do not fall within the generic expression, "letting off steam". These are offences which call for specific violence against another individual, who would naturally resist it, and then proceeding with the violence either till death is caused or the woman is raped. How can this be taken lightly?

The Juvenile Justice Act has many good points and certainly in a society where exploitation of children is rampant we do need to put special emphasis on Articles 39, 45 and 47 of the Constitution. However, in the matter of crimes in which violence is almost embedded, such as murder, dacoity, armed robbery, molestation of women and rape, we need to build into the law a position that above the age of fifteen, that is, puberty, in defined serious offences the court should have the authority to determine whether the accused is capable of mens rea. If the court so finds then let the juvenile be tried as an adult, but with the restriction that the death penalty will not be imposed on a person below the age of eighteen and that the maximum penalty will not exceed, say, fifteen years imprisonment. This will provide adequate protection whilst ensuring that there is a deterrent effect of punishment.

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