

Rape: Juvenility and Punishment

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Sexual and gender based violence are a major concern in India and world over. It is a multi-faceted & complicated societal issue. One feels so miserable and helpless coming across such incidences day after day, right from the morning in electronic and print media leaving bad taste in mouth. The situation becomes even more bothersome to the society when such crime is committed by juveniles (with victims not necessarily a juvenile). Any such incidence raises difficult issues,

strong opinions and legal discourse for which a consensus opinion is virtually never reached. Societies and legal scholars have faced this difficult situation across the globe. India is no exception. Table 1 shows the proportion of such crimes by juveniles in India from years 2001-2018. Data clearly show a disturbing increase in both absolute numbers and proportions of such crimes committed by juveniles. There is an urgent need to address this issue now.

Table 1: Temporal Trend of Sexual Assaults over 18 Years in India

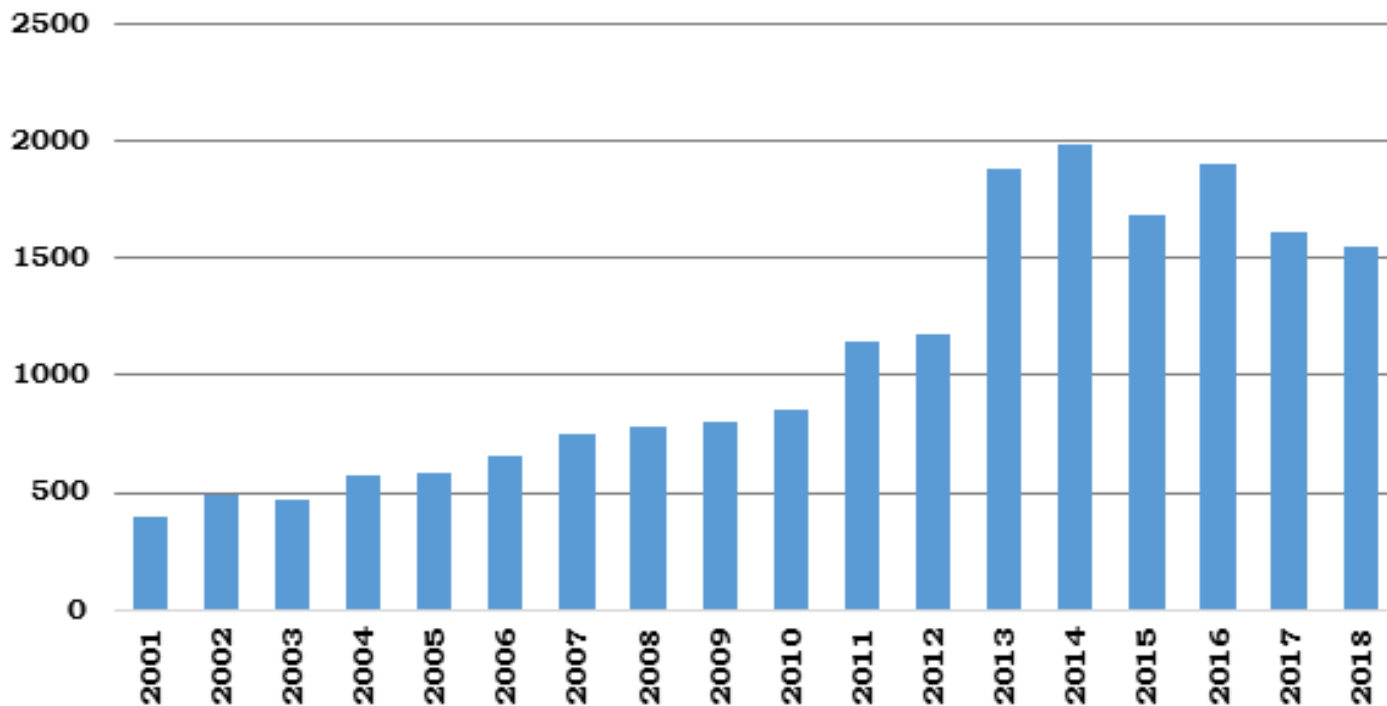
| Year | Total Rapes | Juveniles | % of rapes by juveniles |
|------|-------------|-----------|-------------------------|
| 2001 | 16,075 | 399 | 2.48 |
| 2002 | 16,373 | 485 | 2.96 |
| 2003 | 15,847 | 466 | 2.94 |
| 2004 | 18,233 | 568 | 3.12 |
| 2005 | 18,359 | 586 | 3.19 |
| 2006 | 19,348 | 656 | 3.39 |
| 2007 | 20,737 | 746 | 3.60 |
| 2008 | 21,467 | 776 | 3.61 |
| 2009 | 21,397 | 798 | 3.73 |
| 2010 | 22,172 | 858 | 3.87 |
| 2011 | 24,206 | 1149 | 4.74 |
| 2012 | 24,923 | 1175 | 4.71 |
| 2013 | 33,707 | 1884 | 5.59 |
| 2014 | 36,735 | 1989 | 5.41 |
| 2015 | 34,651 | 1688 | 4.87 |
| 2016 | 38,947 | 1903 | 4.89 |
| 2017 | 32,559 | 1614 | 4.96 |
| 2018 | 33,356 | 1547 | 4.64 |

Source : National Crime Records Bureau 2001-2018 (Total incidence u/s 376 IPC)

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No. of rapes by Juveniles (2001-2018)



Juvenile and Punishment:

Who is a juvenile for legal purpose? In most simple term, juveniles are those individuals who are below the age of majority. The age cut off limits to separate juveniles from majors varies from country to country, and from culture to culture across the world. For instance, in Germany, a person below 21 years of age is treated as a juvenile. In USA, the definition as a juvenile varies from state to state and criminal majority can begin at 16, 17, or 18 years of age. France defines three stages of minors viz. below 8 years, between 8-13 years, and between 13-18 years. In Sudan and Saudi Arabia, it is 18 years and Nigeria the cut off age is 17 years. In India, a person who has not completed eighteenth year of age is called a juvenile or a child. However, in 2015, the definition was revised to consider children

in the age group of 16-18 years involved in heinous offences to be treated as adults.

As for punishment to juveniles (a), different countries have different interventions or punishments for criminal acts of juveniles. Some countries have made subclasses within the ambit of definition of a juvenile while fixing the extent of punishment. The emphasis, however, world over is on educational intervention wherein the juvenile will go through a defined reformatory process on completion of which they will live their life sans crime.

To quote a few cases, in Germany no minor can be prosecuted as adult no matter what crime they commit. There are separate prisons for adolescents which are like mirror of the outside world to teach offenders to live life away from crime after they are released. In the USA, measures are designed to educate child

offenders in a variety of ways like placing the child under the care of an institution, ordering the child to work in public or private properties, or placing the child in an alternative incarceration and the like. In France, a child below 8 years of age cannot be convicted; a minor between 8-13 years the sentence can be in the form of educational intervention; and for minors between 13-18 years there can be both educational and a criminal punishment. However, in case of serious crimes, minors above 16 years may have to face the same punishment as for adults. In India, under relevant Acts revised from time to time irrespective of nature of their crime are referred to reform homes for a period of three years and after their release, their criminal records are deleted to make sure that juveniles can be restored towards the society without anyone being made aware of the past records of that juvenile. During these three years, the juvenile is made to undergo vocational programs and apprenticeship that are more adapted to the modern world. Since 2006, voluntary organisations have been allowed to work with juveniles to provide them with work opportunities, job experiences and education.

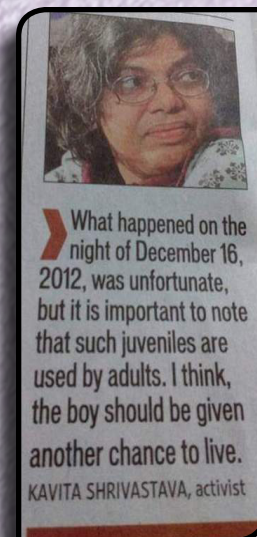
In 2015, the law was amended under which children in the age group of 16-18 involved in heinous offences, including rape, are tried as adults (b).

A Question: Indian Context

When rape is committed by so called “children” below 16 years of age, should their age be taken into consideration while awarding punishment? Opinions

vary.... Experts on media, especially social media, have been arguing for and against on the subject generating chain reactions from time to time. Statement in favour of no need to change the statues, talk of reforms, another chance, future of the child criminal infuriates people holding the opposite view no end.

Generally, the champions of a child who commits such heinous crimes tend to portray themselves to be higher thinkers and reformers than those who have opposing views. The morality of advancing one’s own image without any regards for the victim can be seriously questioned. Further, arguably, anticipation of leniency may have further fuelled the fire. Views of others need to be heard.



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Though there has always been a clamour to treat juveniles as adults for this crime, most recently this demand got flared up after the so called बच्चा, the most ferocious of the six criminals involved in December

2012 crime was freed after three years (c). Anger mounted after the four involved in the crime were hanged after a prolonged legal journey to their final day. As expected, anger was felt across Indian society against that juvenile. How did he get away without paying his dues? Can anyone guarantee that he will not do the same act in future? Who is making sure that no one else is victimized by the same individual? Time has come to discuss this issue openly and without apologies. Every angle of the problem and all possible solutions need to be heard. No one should be allowed to shout down opposing point of view. With this scenario in mind, Internal Complaints Committee (against sexual harassment) of Maitreyi College held an online essay competition open for students studying in various colleges of Delhi University and other Universities in Delhi and NCR. The topic was:

‘There is no need to check date of birth of the rapist’

The objective was to know whether in the opinion of young citizens, juveniles committing rape should be treated as adults at all ages.

Forty essays were received in all out of which 36 were by female students. All but one were under graduate students.

Table 2 : Gender of Participants

| Gender | Count | Percentage |
|--------------|-----------|-------------|
| Girls | 36 | 90% |
| Boys | 04 | 10% |
| Total | 40 | 100% |

Table 3 : Educational Status of the Participants

| | Count | Percentage |
|---------------|-----------|-------------|
| Pursuing UG* | 39 | 97.5% |
| Pursuing PG** | 01 | 02.5% |
| Total | 40 | 100% |

*Under graduation

**Post graduation

Responses received from the subjects while deciding the fate of the under trials fall in the following two categories:

Table 4 : Response- for/against

| Response | Count | Percentage |
|--------------|-----------|-------------|
| For* | 35 | 87% |
| Against** | 05 | 13% |
| Total | 40 | 100% |

*For: no need to take the age into consideration

**Against: take age into consideration

Clearly, a majority of our participants support a similar legal discourse for a minors and adults committing, irrespective of age. The current legal situation is very different and its implication for the perpetrator is very obvious. The culprit, if treated as an adult will be subject to severest of the punishment whereas for a juvenile the punishment will be a stay in reform home for a period of three years (with other provisions under law) during which time he will undergo behavioural therapy and will be reintroduced into the society. Though this survey, we wanted to know whether this dual treatment for a similar crime acceptable to the young

citizens? Some of the arguments for and against put forth by forty participants are presented below:

Arguments for not considering age of the offender

1. It is such a serious crime that there is no scope for any leniency on account of age of the criminal. That is, punishment should be according to crime, no other factor should be relevant. So, no adult or juvenile in that! Rapist doesn't see age of the victim; his age should not be considered while deliberating on the punishment.
2. If a child is physically and mentally mature enough to understand and commit rape, he should be considered mature for punishment also.
3. Law should be fair to the victim for whom it is a lifelong trauma. She has to live with social stigma, fear, depression, guilt and negativity all her life. Harm caused by the rapist will not heal ever.
4. Culprit will use this factor as an escape route. If not punished now, seeds for more severe crimes will be sowed.
5. Children are maturing fast; the law must also evolve.
6. It is nonsense to argue that the juvenile committed the crime does not know what he is doing, and that the crime is committed under impulse, or under influence of media or simply out of curiosity. Such arguments tantamount to making things simpler for the culprits. It is not by instinct; rather it must have taken time and thought to commit the crime.

7. Can somebody so sick in mind be reformed in just three years? Can his mentality be changed in such a short period?

Arguments Against

1. All the arguments given treating juveniles as adults are termed vengeance, belligerent, and aggressive approach.
2. Juveniles commit this crime without a proper understanding of the consequences, sometimes under peer pressure/ influence.
3. They should be given a second chance. Attempt should be made to reintegrate children with criminal tendencies to mainstream society through reformatory processes.
4. A premise that there will be deterrence in crime against women if there is 'one crime one punishment' is grossly flawed.
5. If housed with adult criminals in jail, their exposure to hardened criminals will increase further diminishing their chances to reform.
6. If age is a factor in issues like drinking, driving, marriage, voting etc. why can't age be a factor in crime against women?
7. According to neuroscientists, while more than 90% brain development takes place by about six years of age, various parts of brain remain in developing stage till late 20s. Neuroscience tells that while adolescents know difference between right and wrong, they lack the capacity to control their instincts.

Besides lack of adequate nutrition, high levels of stress, some trauma in life, and abuse add to the reasons for unacceptable behaviour – one or more of these factors, found in children with economically poor backgrounds need corrective therapy.

It can be seen that the arguments for treating a juvenile as an adult are centred around the nature of crime and extent of harm whereas the arguments advocated for treating juveniles differently concur with the social and behavioural experts.

Final Thoughts

Rape is a serious crime without a doubt, whether committed by an adult or a juvenile. However, with due respect to our judiciary and law of the land, when court grants that mild punishment to a juvenile and advocates use the age as a tool, blood of many of us boil and heart bleeds for the victim. In such situations, many are left to feel that law has sided with the perpetrator and justice is not served to the victim. An equally strong, if not stronger, parallel lobby preaches with a conviction that at the end of the day, the juvenile will be weaned off the criminal tendencies. This is what most countries, including India, seek to achieve given the emphasis on reforms of juveniles instead of punishment at par with the adults. Great degree of optimism indeed! But does that happen? It must be acknowledged by everyone including champions of juvenile criminals that there is no information on success of three years of intervention as prescribed by law. There must be some follow up but in absence of any structured follow up, society doesn't know whether

or not these juveniles are truly reformed after their release. Confidence dwindles when one comes across the reports like once a child in America commits a crime, they are more likely to commit a second crime after completing their sentence within the justice system [1]. In Germany too where 30% of its juveniles and young adults came back to prison in three years or as per a state report in New Jersey, more than 85% of its juveniles are rearrested or return to court[2]. Not much data are available on efficacy of the reformatory approach in India. Data from other countries mentioned above are troubling and there is immediate need to have some mechanism in place in India to follow these juveniles after release for an extended period. This will not only ensure safety of public but also provide valuable information to law makers to change the course if current approach is not working. In the meantime, debate continues in media, social media, college campuses, academic circles and dinner tables and the pressure mounts on the government as well as on law makers each time such a crime is committed by a juvenile.

End Notes

- a. Almost every nation in the world has a system to handle juveniles who are found in conflict with the law. For obvious reasons, there does not exist any universal standard for juvenile care. UN did try to bring uniformity with respect to the child juvenile justice practice especially since 1980s with shift in focus from punishment to development of the child. Resolutions were passed prescribing rules on how

juveniles should be cared for. However many countries can be found violating the rules. For instance, though death penalty is explicitly outlawed for juveniles, countries like Iran, Pakistan, Saudi Arabia have awarded this punishment to juveniles.

- b. Prior to independence, different regions in India had different and conflicting legal system for dealing with young criminals ranging from apprenticeship program, punishment like whipping and jail system. After independence, in 1960, The Children Act was passed which created a uniform process for juvenile courts to follow. Finally, in 2000, the Juvenile Justice (Care & Protection of Children) Act, revised in 2006, was passed. Revised again in 2015, the Act now called Juvenile Justice (Care & Protection of Children) Act 2015 made a sub category of juveniles with age 16-18 years. Under this Act, children in this age range, if involved in heinous crimes will be tried as adults.

Heinous crimes are defined as those for which minimum punishment under Indian Penal Code (IPC) or any other law under force currently is seven years. Further, the law has specified various sections under IPC and the punishment under which the crime committed by a juvenile can be termed a heinous crime. The list includes rape u/s 376 of IPC for which the punishment defined is minimum seven years and up to life.

- c. On December 2012, a 23-year-old physiotherapy intern boarded a bus

with her male friend late in the evening to reach home. There were six persons in the bus including the driver. All of them raped and tortured the girl. One of them was a juvenile, just short of 18 years, and was the most brutal among the convicts as he attacked the victim with an iron rod. One convict died during the trial period and the remaining four adults were sentenced to death and hanged on 20th March 2020. The Juvenile convict was released on 20th December 2015 after his stay in a reform facility over a period of three years.

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