

## NIRBHAYA - THE CAUSE OF THE CHANGE IN THE JUVENILE JUSTICE LAW

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### INTRODUCTION

A nation's development and prosperity depend on the children in that nation. Children have several advantages for a nation, both social and economic. First, they are the country's future citizens from a financial perspective. As kids mature, they receive an education and develop the talents that make them valuable members of society and the economy. When they enter the workforce, they carry the information and skill sets required to support a nation's competitiveness in the international zone. Children are also considered a nation's social future as they bring new views, cultures and ideas likely to influence a nation's destiny. They also get a sense of energy that can aid in developing a country.

Recently, it has become evident that the most essential part of the field of criminology is juvenile delinquency. Crime committed by offenders under 18 is called juvenile delinquency. According to studies, various life circumstances, such as peer pressure, poverty, a lack of education, family breakdown, mental illness, etc., impact young people and open the door to juvenile delinquency. Unfortunately, adolescent delinquent conduct has taken on severe forms, indicating a broken society. Social institutions are experiencing frightening levels of instability and damage from deviant behaviour, making it a global issue. It serves as a wake-up call for citizens and the country.

One case in India which brought several changes in the juvenile and rape laws as it involved violent and inhuman acts is the **Nirbhaya Gang rape and Murder case**. It was horrifying to hear of the gang rape case in Delhi that claimed the life of a 23-year-old girl. There was so much anger, dissatisfaction & criticism worldwide for such a horrible act. All the accused of participating in this crime were given the death penalty, except for a juvenile who was 17 years old at the time of the crime & one other accused who had committed suicide at the Tihar trial. The boy, now 29 years old, was freed on 20th December 2015 under the Juvenile Justice Act 2000, three years after his conviction & sentence. Because he was a minor, he was completely exempt from the death sentence & got protection under the Juvenile Justice Act 2000. Due to the extreme brutality & gruesomeness of the crimes involved, this case is

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considered one of India's landmark rulings. It led to numerous changes in the country's juvenile laws.

### **NIRBHAYA CASE<sup>1</sup>**

Jyoti Singh, the victim, was a 23-year-old physiotherapy intern who boarded a bus at Munirka with a friend to travel to Dwarka in Delhi. A small-town Indian girl's several hopes & goals got shattered on a violent night of 16th December 2012, when molesters & attackers performed one of the most terrible crimes in India's history. Nirbhaya's body was horrifically mutilated in addition to being sexually assaulted. According to a subsequent medical assessment, the attack severely injured her abdomen, intestines & genitalia. Doctors concluded from the damage that a blunt instrument, presumed to have been the iron rod, had been used for penetration. The rod was eventually identified by police as an L-shaped, rusty tool similar to wheel jack handles. On 29th December 2012, Nirbhaya passed away after multiple organ failure, internal bleeding & cardiac arrest.

### **JUDGEMENT**

A panel of three judges ruled that pity did not excuse the accused's actions. In a clear message, the court treated the Delhi Gang Rape case as one of the rare cases where the court can impose the death penalty because the heinous crime shocked society. According to the Honourable Supreme Court, evidence showed the accused's presence on the bus and their involvement in the crime included DNA identification, fingerprints and witness testimony. The bench said the casual manner in which the victim got treated and the devilish method in which they played with her body, identity and dignity was humanly unthinkable. The inmates sexually assaulted the victim to the worst level, treating her like an object for them to have fun with.

The Supreme Court gave the four accused the death penalty in the 2012 Delhi Gang Rape and Murder Case. The Honourable Court described the crime as the rare, brutal, vicious attack they had seen. This decision served justice for the victim's family and all women in the nation after seven years. But the juvenile convict in the Delhi Gang Rape Case who got off easy after serving a term in a juvenile home was the most contentious case because of the horrifying crime he committed & the severity of the penalty given to minors under Indian law. He was also said to be one of the most violent culprits among all those charged since he

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<sup>1</sup> Mukesh v. State of NCT Delhi

was the one who had inserted an iron rod into the victim's genitalia. Because it was a terrible crime, people pushed for the juvenile rapist to be treated as an adult. Moreover, due to his cellmate's involvement in the Delhi High Court bombing, intelligence agencies had reason to believe that the juvenile was becoming radicalised in 2015.

When the time was near for the release of the juvenile offender, many protests and conflicts arose in the country. In case of *Dr Subramaniam Swami v. Raju Th. Juvenile Justice Board*<sup>2</sup>, Dr. Subramaniam, petitioned the court to impose an order prohibiting the juvenile's discharge from the special home. However, the Indian Supreme Court argued that the law does not permit this, so it asked Dr. Swami to contact the Indian Parliament and ask for the necessary changes to punish such offences severely. Despite solid public protest & Nirbhaya's family's demands that the juvenile identity be made public for security purposes, the juvenile was freed from the correctional facility after three years, as the court stated that the current legislation did not allow them to stop him from releasing. The juvenile allegedly received cooking, painting & tailoring training at the Majnu Ka Tila shelter in North Delhi. Over his three years in the juvenile facility, he frequently communicated with his mother. Once, the rehabilitation centre's counsellor commented that he hadn't seen any "positive change" in the juvenile offender since the day of his arrest. It's thought that the young criminal didn't even feel bad about his actions.

### **CHANGES IN THE LAW**

The Indian Parliament amended changes in the Juvenile Justice Act, 2000 and a new act was enacted known as the Juvenile Justice (Care & Protection) Act, 2015.

The changes in the newly enacted law:

- Petty, severe and heinous offences were the three kinds of offences defined under the Juvenile Justice Act of 2015.
- Every district must establish a juvenile justice board to handle matters involving minors and the law. Two social workers, two women, a metropolitan judge, and a judicial magistrate constitute the board.
- The Juvenile Justice Board will provide the juvenile with institutional care for three years in all situations except serious offences.

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<sup>2</sup> SC (2014) 8 SCC 390

- Under the Commissions for Protection of Child Rights Act of 2005,<sup>3</sup> a Sessions Court has been notified as a Children's Court. By this Bill, a Children's Court will decide whether to try a juvenile referred by a Juvenile Justice Board as an adult, propose counselling, stay in an observation house, etc. The child's physical and mental capacity is evaluated using this procedure.
- The juvenile justice act regards children between 16 and 18 as adults if they have committed horrible offences in a conflict.
- No juvenile shall receive a death or life sentence.
- After the juvenile justice board receives a child for the first time, the case investigation must be finished within four months. If the explanation is documented in writing, this can be prolonged for two additional months.
- The heinous crime must be examined within 60 days of the child's initial appearance before the juvenile justice board.
- Furthermore, international adoption is permitted if local adoption is not achievable within 30 days of the child being deemed legally available.<sup>4</sup>
- The Indian Parliament changed various laws regarding sexual assaults against women in response to the horrific rape case of Nirbhaya & the outrage of the general public worldwide. Section 375 of the IPC, 1860 now defines rape differently, i.e., simple penetration is no longer necessary. Therefore, forcing a lady to have sex by forcing any instrument or mouth into her vagina would be considered rape.

To reduce the age of criminal liability for juvenile offenders, Maneka Gandhi, Minister of Women & Child Development, proposed the Juvenile Justice Bill 2015. This measure has now been passed into law, dropping the minimum age of criminal responsibility from 18 to 16 & only in rare circumstances. However, it was clear that the quick passing of the bill was a concession to pressure from the public against the release of the juvenile convicted in the gang rape & murder of Nirbhaya. But the question arises: Will simply lowering the age of criminal responsibility for juvenile offenders from 18 to 16 years old be sufficient to stop the heinous crimes committed by juveniles?

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<sup>3</sup>Dr R.N Dinesh, The Role of NCPCR In Protect, Promote and Defend Child Rights in the Country, 2014.

<sup>4</sup>Juvenile Justice (Care and Protection) Act, 2015

## CONCLUSION

Finally, Nirbhaya received justice for the death penalty of all four offenders. However, there is still a gap and discrepancy in our nation's laws, which delays the decision. Many rape cases are still open for investigation. In this instance, the 23-year-old woman has not received the necessary justice because the juvenile who committed the crime was also involved and is scot-free today. He was old enough to comprehend such ideas. However, in accordance with our laws, no one can now be punished for crimes committed in the past, so the fifth accused was given a three-year sentence and later got easy after committing such an inhuman act. Thus, the Nirbhaya Gang rape and Murder case questioned the inefficiency of the Juvenile Justice System in India.

