

## CHILD AND LAWS -SACHIN KALA

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Every country's child is their future and thus it becomes very important for any state to nurture the upcoming generation but first and foremost thing is to protect children from the dangers prevalent in a society, it also becomes much important because at this age child is unaware of right and wrong and accepts things in their own way. Thus it is important to know that child goes in the right direction so to guide children on the right path and to avoid any misconduct in their upbringing by any other person for whom laws are framed so that children's mind doesn't get hampered in any way, it is to be understood that human being at the stage of child is like an earthen pot which is wet and can be given any shape whatever one wants but once given any shape it cannot be changed even if one tries to change it will resist and sooner or later will get broken. One important thing here to notice is that the pot cannot take the shape itself rather it is the external forces which paved the way for the proper formation of the earthen pot, similarly in the child phase it is his or her parents which are the external forces but it is not limited to the parents only there are various other segments of the society both positive and negative which will shape the mind into responsible and law-abiding citizens and if such positive change couldn't be made out then child's direction can be turned towards the dark side of the society which is none less than drugs, alcohol and many other illegal activities which will be also a potential threat to the society; moreover if such thing happened to an individual then it will become almost impossible for child to trace back to starting point i.e. to change his mind and mold which will be beneficial for the society but to such changes the child will resist because it will be the change against his flow of nature with that result in child breakage i.e. depression, isolation from the society or make him/her feel awkward and it could also end with suicide. And if the end result of the future of country is so terrible then why not give them proper space and time to express them and thereafter if there is a requirement when child is going on wrong path he/she can be guided by the external forces.

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In India there are many laws framed for the child some of them are; The Protection of children from sexual offences Act, 2012; The right of children to free and compulsory education Act, 2009; Juvenile Justice (Care and Protection of children) Act, 2000; Child Labor (Prohibition and regulation) Act, 1986; Prohibition of child marriage Act, 2006. But the recent ordinance<sup>1</sup> came to effect was something which could itself choke the country from inner self purification, in this ordinance the punishment for rape of a girl below 12 years was made more severe by adding that "if any person commits rape of a girl below the age of 12 years then he shall be punished with fine or with death sentence" in the country like India where rapes are even being committed by the minor and for which state has introduced such heavy gravity of punishment which could land the child to be punished for death sentence, the only objective of this ordinance to make

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<sup>1</sup>Indian Penal Code, 1860, Acts of Parliament, 11 Aug. 2018 (India),  
[https://mha.gov.in/sites/default/files/CSdivTheCriminalLawAct\\_14082018\\_0.pdf](https://mha.gov.in/sites/default/files/CSdivTheCriminalLawAct_14082018_0.pdf)

punishment more severe was to make them fear of the punishment and helping in reducing such type of rape cases. If everything is to be done by making the people more fear with regards to the punishment than all punishment should turn down and amended to death sentence which is good for the country and as well as for society where crime rate will be at the bottom. While this ordinance does not make the justice seems to be delivered to the victim rather it creates injustice for the accused, the lady of justice always holds in her hands a balancing scale it symbolizes that justice should be done in every case i.e. the gravity of offence should be balanced with the punishment, but this ordinance does not well stand on the standard jurisprudence which is universally accepted through the world. Also another important thing which needs to get mentioned is that, in Indian judiciary where the cases has piled one over another, the cases in which death penalty is to be awarded or is awarded and are awaited to be challenged in the Supreme Court take a lot of time and end result is that getting delay in death sentence makes the accused to burn from inside and moreover the death punishment does not remains severe at all it loses its grip on it and then it becomes quite difficult to put him under the category of death punishment. It happens because everything has its own time frame in which it is to be done like when the mangoes are ripe it is the time for the farmers to harvest the crop, if they delay in harvesting the crop than the essence for which it was cultivated will be lost and the fruit will be rotten and of no use at all at last we have to dump it because with delaying the fruit has no significance. Thus by the acceptance of this Ordinance we will cut our both hands as we will be giving death punishment to the children which is itself is in-human act and leave no room of doubt at international platform that, India as a mindless country in framing legal regulation and also making those cases delay in the apex court which will automatically destroy the temper of the punishment.

In whole we are not condemning the capital punishment our stand is firm on the ground that the capital punishment which is being imputed in the Sec.42 of POCSO Act which offers punishment by IPC, 1860 under section as follows, 376 AB and 376 DB is unjust and unfair while balancing the offence. The better explanation can be further elaborated with respect to IPC, 1860 the capital punishment is given in following offences:

- 120 B of IPC-
- 121 of IPC
- 132 of IPC
- 194 of IPC
- 302, 303 of IPC
- 305 of IPC
- 364 A of IPC
- 31 A of NDPS
- 396 of IPC
- 376 A of IPC

The important thing here to notice is that in all these offences human life has come into threat or there is a death of a person in respective sections, thus it was essential for the framers of the law to have a stern punishment in all these offences thus it was made equivalent to the culprit life i.e. to give him/her punishment with imprisonment to the person remainder of the life or with death penalty. Here in this case the punishment doesn't seem to be inappropriate because the nature of offence committed that is to take other human being life and for which the punishment written in the laws is imprisonment to the remainder of the life or with death penalty is not harsh but seems deal with offence competently. The reasoning behind such grave punishment is to balance the offence with justice meted out to the plaintiff by awarding the culprit with death penalty, but on the other hand the ordinance which has attached death penalty to the offence of committing rape of the child under the age of twelve years doesn't seem to balance the scale of justice, however state justified by stating that Union Law Minister Ravi Shankar Prasad 'such grave punishment is awarded only to make the bad people fear from doing the rape of the child' two things can be clearly be interpreted from the above statement firstly, that the state themselves accepted that the punishment which has been imputed doesn't balance the scale of justice rather it has merely only objective to create fear in one's mind to not commit rape, whenever government frame such kind of punishment which has intention to create fear is an act which needs to be condemn at every point of time also, if they only want to create fear in the people's mind and by which they try to reduce the crime rate then why they don't turn every offence, punishment to the death sentence which will make the crime rate to go at the bottom. Here state can feel happy about low crime rate in there territory but they would be then not ruled by the people rather they will be ruling the people, which is against the democratic soul of the country like India who is very well known for its democratic principles and abiding by the same. Secondly, the statement made out by the Union law minister from which it purport that state has failed in its machinery to protect the child from the grave offences and now they have turn down every aspect and has added capital punishment to the offence it is such a shame for the country who state is unable to protect their future generation and also by their continuous neglect the situation has become so worse that no they have nothing but to take the sword out of the cover a i.e. to give death punishment to the offence of rape committed on child under the age of twelve. It is an act which needsto be given a thought and needs to be analyzed with respect to the laws of the other nation. Firstly it is to be understood that the state has reached at its bottom line in maintaining the law and order of the society as it has been manifested by this ordinance that only thing which could be done in order to maintain the law and order in the society is to make the people fear from the punishment, by which state is now controlling the order in the society. It should be understood that the answer to rape is not always the capital punishment, but there must be policies of reformation which can rehabilitate the culprit even by having death penalty the crimes does not stop happening. Also, the UN Human Rights Office argues this position for other reasons as well, including the fundamental nature of the right to life; the unacceptable risk of executing innocent people; and the absence of proof that the death penalty serves as a

deterrent to crime<sup>2</sup>. Human life is gift and to be born as a human being is sacred and beautiful, we must not waste and it must not be taken away by such unjust laws. Rather it should turn down towards the reformation policies which can change the individual mindset; it will help him/her to change own life and we don't he/she could inspire others to become better human being.

Secondly, India being the signatory of the UN convention of rights of child, should feel the responsibility on its shoulder to protect the children from the cruel and inhuman act or punishment. But, here is the irony that on one side India has signed the UNCRC to protect the children from the cruel and inhuman practice or punishment and on the other hand the Union government issues the ordinance promulgating to have punishment of death penalty in rape committed by any person on the child below the age of twelve of years. Herein UNCRC article 37 (a) clearly states that; States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age<sup>3</sup>;

Also no other countries have death penalty for the crime of rape committed on child rather they have the life imprisonment for the offense; imprisonment is also kind of redeem of mind. When most of the states in the world have rejected the concept of the death penalty then it holds a strong ground to make it clear that the reasoning behind to not to give death punishment. Rather here we need development in the legal system that such harsh punishment cannot be given to the children just like the old saying goes that "it is easier to build strong children rather than to repair broken men". At last we conclude that, such harsh punishment giving to children is not at all justified, rather this punishment (death penalty) needs to be decrease because the punishment not merely means punishing the guilty, but to have justified punishment for the act which he has committed.

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<sup>2</sup>United Nations Human Rights, office of the High Commissioner, report on 'Death Penalty' <https://www.ohchr.org/EN/Issues/DeathPenalty/Pages/DPIIndex.aspx>.

<sup>3</sup>United Nations Human Rights, office of the High Commissioner, report on 'Convention on the Rights of the Child' <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.