



THE IMPACT OF AGE OF MINORITY DURING SENTENCING TO DEATH IN THE CONTEXT OF DIFFERENT COUNTRIES

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ABSTRACT:

With changing times the rate of crimes committed in the society also increases significantly .The study is mainly based on how a crime in normal sense would be called inhuman and brutal but the punishment for the crime is lessened due to the age factor of the convict .This is a major issue because due to the increasing exposure towards technology , a juvenile or minor's brains thinks and perceives equivalent to a grown up adult .so when an adult is convicted for a crime and receives death penalty , so can a minor with the same thinking capacity deserves.This is an analytical study conducted with the secondary information collected from various online websites , journals , books and other sources.A doctrinal method is approached with qualitative research method.the age of majority has variable factors ,they are different in different countries , religions , statutes of different countries and other guidelines so it is important to square down on one common denomination of age of minority to analyse.There are mitigating and aggravating factors for one to get a death penalty .They both have been taken into account while analysing the study.It has been found through the study that most of the times , the decisions involving death penalty has other factors involved like socio-economic status of the country, cultural impact , public opinions etc due to which the justice fairly not provided .The only limitation of the study

according to the author is that , there were no elaborate case files provided in-order to analyse the non-verbal intentions of the juris.The author throughout this study understood that region wise case analysis would help to understand various underlying values of the society instead of world as a whole.

KEYWORDS: *Juvenile ,Death penalty ,Minority ,Law, Culture, Religion*

BACKGROUND:

In law, a minor may be a person below a precise age, typically the age of majority, that de jure demarcates childhood from adulthood. The age of majority depends upon jurisdiction and application, however it's usually eighteen. Minor might also be utilized in contexts that are unconnected to the age of majority. for instance, the old within the us is typically twenty one, and younger individuals are typically known as minors within the context of alcohol law, where they're a minimum of eighteen.The term below age typically refers to those under the age of majority, however it's going to conjointly talk over with persons underneath a precise regulation, like the legal age for consuming alcohol, smoking age, age of consent, mature age, driving age, voting age, etc. Such age limits are typically totally different from the age of majority.

The thought of minor isn't sharply outlined in most jurisdictions. The age of criminal responsibility and consent, the age at that college attending is not any longer required, the age at that de jure binding contracts are often entered into, then on could also be totally different from each other.In several countries, together with Australia, India, Brazil, Croatia, and South American nation, a minor is outlined as someone below the age



of eighteen. within the us, wherever the age of majority is ready by the individual states, minor typically refers to somebody underneath the age of eighteen however will, in some states, be utilised in bound areas (such as casino gambling, firearm possession and also the overwhelming of alcohol) to outline somebody below the age of twenty one. within the criminal justice system in some places, "minor" isn't entirely consistent, as a minor could also be tried and chastened for against the law either as a "juvenile" or, typically just for "extremely serious crimes" like murder and/or stealing, as associate degree "adult".

In Japan, Taiwan, and Kingdom of Thailand, a minor may be a person below twenty years .. In New Zealand law, the age of majority is twenty years aged in addition, however most of the rights of adulthood are assumed at lower ages: for instance, getting into contracts and having a testamentary documents are allowed at fifteen. The Indian Majority Act, 1875 in section 3¹ states that each person domiciled in Republic of India shall attain the age of majority on completion of eighteen years and not before. Unless a selected personal law specifies otherwise,

every one domiciled in Asian nation is deemed to possess earned majority upon completion of eighteen years older. However, within the case of a minor for whose person or property, or both, a guardian has been appointed or declared by any court of justice before the age of eighteen years, and just in case of each minor the management of whose property has been assumed by the Court of Wards, age of majority are going to be twenty one years, not 18. The age of majority differs from various laws within the State itself, for Instance personal laws like muslim law have the age of 15 years or age of adolescence to be considered a major while in Judaism 13 years is age of majority in case of boys and 12 years in case of a girl. Contrary to these the christianity (includes roman catholics) considers 18 years as age of majority just like any other law. In Indian contract 1872 section 11², the age criteria to be a major is not being a minor i.e 18 yrs and 21 yrs in cases where a guardian is appointed by the court. In family law that includes special marriage³ or hindu marriage act⁴, the age of majority for female in 18 years and for male is 21 yrs. Naturally under Indian penal Code and Juvenile Justice (Care and Protection of Children) Act⁵ the

¹ "Age of majority of persons domiciled in India.-

(1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.

(2) In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day."

² "Who are competent to contract.—Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject. —Every person is competent to contract who is of the age of majority according to the law to which he is subject, and

and who is of sound mind and is not disqualified from contracting by any law to which he is subject."

³ Section 4(c) - "the male has completed the age of twenty-one years and the female the age of eighteen years; 3[(d) the parties are not within the degrees of prohibited relationship: Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnised, notwithstanding that they are within the degrees of prohibited relationship"

⁴ Section 5 (iii) - "the bridegroom has completed the age of [twenty-one years] and the bride, the age of [eighteen years] at the time of the marriage"

⁵ section 2 (k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 - "'juvenile" or "Child" as a person who has not completed eighteenth year of age"



age of minority is 18yrs. Most countries have 18- 20 years as the age of majority since that is time when biologically a person attains certain kind of maturity unless he is suffering from any kind of mental or psychological disorder or other specific cases.while this was the scenario in India , different countries in the world has different ages of majority depending on various factors like age to legally consume alcohol or live independently etc.Age 15 is the age of majority in Iran while in Cuba, Kyrgyzstan, Turkmenistan ,Uzbekistan ,Scotland the age is one up i.e 16yrs. 17 is the majority in North Korea, North Tajikistan while All countries of the European Union (with exceptions as listed) AlbaniaAfghanistan American Samoa, United States Andorra,Argentina ,Armenia, Angola,Australia,Azerbaijan, Bahamas, Barbados, Belarus, Bhutan Bolivia ,Bosnia and Herzegovina, Brazil (though one may vote at the age of 16) Brunei ,Bulgaria Burundi ,Cambodia ,Canada (provinces of Alberta, Manitoba, Ontario, Prince Edward Island, Quebec and Saskatchewan) Chile U Ipelemao China Colombia Costa Rica Côte d'Ivoire Croatia (16 if minor marries or has child) Cyprus Czech Republic Djibouti ,Dominican Republic Dominica Ecuador El Salvador, Estonia Fiji France Gabon Germany Greece Ghana Gibraltar Guatemala Guernsey Guinea (minors are emancipated upon marriage) Guyana Haiti Hong Kong Hungary Iran India Indonesia (minors are emancipated upon marriage) Ireland Italy Israel Isle of Man Jamaica Jersey Kenya Laos Latvia Lebanon Liechtenstein Lithuania Luxembourg Macau North Macedonia Malaysia Malta Mauritania Mauritius Mexico Moldova Monaco Montenegro Nepal Netherlands Oman Pakistan Panama Paraguay (minors are emancipated upon marriage) Peru Philippines Poland (minors

are emancipated upon marriage) Portugal Qatar Romania Russia Rwanda Saint Kitts and Nevis Saudi Arabia Senegal Serbia Seychelles Slovakia Slovenia South Africa Spain Sudan Switzerland (16 if parents agree) Syria Taiwan Tanzania Trinidad and Tobago Tunisia Turkey United Kingdom, (except Scotland) United States, (with these exceptions: Alabama, Delaware, Massachusetts and Nebraska, 19; Colorado, Mississippi and Puerto Rico, 21) Ukraine Uruguay Venezuela Vietnam Yemen Zimbabwe I.e majority of the countries 18 years is the age of majority. 19 is the legal age of majority in Alabama, United States Canada (provinces of British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut and Yukon)Delaware, United States Massachusetts, United States Nebraska, United States ,south Korea while Age 20 is majority inDenmark (incl. Faroe Islands and Greenland, minors are emancipated at 18) Finland (minors are emancipated at 18) Iceland (minors are emancipated at 18) Japan New ZealandNorway (minors are emancipated at 18) Taiwan Sweden (minors are emancipated at 18) Thailand (minors are emancipated upon marriage) .In Bahrain Cameroon Chad Colorado, United States Egypt Honduras Lesotho Madagascar (minors are emancipated upon marriage) Mississippi, United States Namibia Puerto Rico, United States Singapore Swaziland , the highest she of majority exists as 21 years old.Historically the age bar shifted from 18 in 1700s to 21 in1900s worldwide while if the case deepens , the age of adolescence was a sign of maturity and was considered as majority age.There is a difference in the age of majority in different countries based on the customs and culture of the country while



westernised countries changed the age bar according to the changing world.

INTRODUCTION:

The study began with the Concrete Encased High school girl murder case where a young girl of 17 years was tortured and brutally murdered by 4 other High school going minor boys in Japan. The Brutality used to torture the young girl in 44 days is spine chilling and would fall under the definition of Rarest of rare case. The doctrine of rarest of rare case formulates mitigating and aggravating factors in order to help one decide if the crime was brutal enough to sentence the convict with capital punishment, specifically death penalty. The learned Judge in this was shocked with the amount of sadism filled in the minor boys yet sentenced them to a very meagre periods in prison give the fact that they were minors. This enraged the global community raising questions on, should the punishments be given to the person's evil mental state and act or for his age. This gave raised to one of the major objective of study that, what are the factors that should be considered while sentencing a minor who committed a crime eligible for death penalty. The 104 countries in world totally banned death penalty while 55 of them retained it in books or have a half baked stand regarding giving a death penalty. Japan tops the inequality HDI which shows the potential justice achieved if the amount of inequality is removed which shows the weak justice system. The aim of justice system should definitely be rehabilitative but at least in cases that show threat to the humanity should be sentenced with capital punishment. Various countries have different reasons to abolish Death penalty. The main reason is the UN based organisations that promote peace and non violence in countries. Amnesty

international listed various reasons for abolishing or retaining death penalty (i) cultural reasons (ii) It is misused as a political tool (iii) It is discriminatory mostly based on certain community, race-religion etc. for instance, George Stinney Jr, a young 14 yr old African American guy was sentenced death penalty making him the youngest to receive it mostly because of his ethnicity. After 70 years of his death he was proved innocent. This is a grave misuse of law. (iv) It mostly takes place within skewed justice systems (v) statistically it did not deter crime rate (vi) it is irreversible in nature. While mostly on humanity basis it is condemned, it is not a hidden fact that grave cases where the global community was shook because of the crime and its intensity, Death penalty should be awarded in order to provide justice to the victims and their families. This research would mainly focus on the cases where the convict had an age of minority that was a factor for him to escape the death penalty (the case satisfying doctrine of rarest of rare) in various countries. They may be political reasons, religious or must be coming from the customs of the very country. It also includes the different ages of majority and minority given by other was existing in the country and the reasons behind the same. The thought of minor isn't sharply outlined in most jurisdictions. The age of criminal responsibility and consent, the age at that college attending is not any longer required, the age at that de jure binding contracts are often entered into, then one could also be totally different from each other. In several countries, together with Australia, India, Brazil, Croatia, and South American nation, a minor is outlined as someone below the age of eighteen. It is significance of this study is to balance the views on death penalty in case of juveniles and consider the mental factor



(mental state, gravity of offence, weapon used etc) and crime committed instead of age being the extremely mitigating factor.

Reasons and arguments abolitionists and retentionists countries behind their decisions⁶

This is the meat part of the study where in depth analysis is shown for various countries taking stand for or against death penalty specifically of minors who act as adults but are legally loosened up due to their age. These reasons are used further in recommendations to consider the varying opinions. The retentionists have their reasons for the same, they say we need to be tough on crime. The convicts have to pay for their mistakes. It is fair in the criminal justice system to take such step. It is cheaper as well as humane to execute people, can they change or compensate to such heinous crimes committed etc while abolitionists have standard arguments for the same that There is no way to remedy the occasional mistake, There is racial and economic discrimination in application of the death penalty⁷. Application of the death penalty tends to be arbitrary and capricious; for similar crimes, some are sentenced to death while others are not⁸, the death penalty gives some of the worst offenders publicity that they do not deserve. The death penalty involves medical doctors, who are sworn to preserve life, in the act of killing. Executions have a corrupting effect on the public, the death penalty cannot be limited to the worst

cases. The death penalty is an expression of the absolute power of the state; abolition of that penalty is a much-needed limit on government power, there are strong religious reasons for many to oppose the death penalty. Even the guilty have a right to life. Everybody knows that violence is terrible and that we ought to curb it. In some sense sounds rational and reasonable, before we raise the question: do we require the death penalty to be 'tough' on crime? The reaction to that is no, we are not.

The false dichotomy that grimmer punishments deter crime does not take into account that complex social and economic factors slow crime rates and, second, that criminals often do not plan to get arrested or think through all the ramifications of their actions. Various versions of this statement came when Amnesty began campaigning for the clemency of Australians Andrew Chan and Myuran Sukumaran, who are reportedly on the death row in Bali for drug offences. Ironically, we are not thinking about periods for the death penalty, we are concerned about the reverse.

These people understand their actions, and accept that they ought to suffer justice. But a death sentence takes away the opportunity for reform from people. Myuran Sukumaran and Andrew Chan are perfect examples of progress, one of them leading art lessons and the other of a pastor learning. Their rehabilitation has so far penetrated that a previous Kerobokan prison governor has

⁶ Caldwell, R. (1952). Why Is the Death Penalty Retained? The Annals of the American Academy of Political and Social Science, 284, 45-53. Retrieved March 23, 2020, from www.jstor.org/stable/1029442

⁷ 10 reasons to oppose the death penalty. America Magazine. (2020). Retrieved 23 March 2020, from

<https://www.americamagazine.org/politics-society/1982/11/20/10-reasons-oppose-death-penalty>.

⁸ 5 reasons some people think the world needs the death penalty. Amnesty International Australia. (2020). Retrieved 23 March 2020, from <https://www.amnesty.org.au/5-reasons-some-people-think-the-world-needs-the-death-penalty/>.



suggested that they will not be hanged. Several people globally who languish on death row have accepted and forgiven their abuse. There is no State gain in murdering these men, a senseless loss of life.

The subsequent alternative point is that the death threat is pushing citizens to change themselves. The proof for this is clearly not definitive once again. Public justice initiatives across the globe have seen significant change progress without the possibility of execution, most also because of services that rely on recovery of prisoners. Most court mechanisms are directed against the individual convicted of the offense. Siti Zainab is a Saudi Arabia-based Indian citizen on death row. Siti was a domestic worker who reportedly murdered a household member following inhuman abuse at the hands of her boss. In the Gulf, domestic staff are sometimes unable to seek help from their bosses and Siti is allegedly suffering from a mental disorder.

A balanced criminal justice system does not imply an infallible one irrespective of that mistakes may and do occur. In Georgia, USA, Troy Davis was executed after seven of nine primary witnesses modified their evidence, even going so far as to petition for the innocence of Troy. Many criminals have done horrible, unspeakable acts so civilized society will not enter their ranks by carrying out a murder as well. By their acts, individuals are measured, and murdering another human being is just as dark as actions come.

⁹ Murder of Junko Furuta : infamously known as the Concrete-encased high school girl murder case or the 44 days in Hell

¹⁰ Miryang murder case: The infamous Korean gang - rape and murder case

Case studies from various countries

This chapter is divided into two sub themes in-order to show the difference of opinion shown by jurists and factors considered by them arising from various countries while sentencing the crime of a minor. The landmark cases used in this study were the murder of Junko Furuta⁹ and Miryang¹⁰. Both the cases involved High schoolers brutally raping and torturing girls aged below 16 years. The convicts were found guilty but were only punished with a prison sentence for 20-30 years. Given the brutality of the convicts who were juveniles, even the juries said that if the convicts weren't if that age, they would definitely be given a death penalty. The murder of Ana kriegel¹¹, a young Russian residing in Ireland yet proves the point that convicts should be treated as adults when tried in the court of law. The convicts in this case were as young as 12 and 13 years old yet have brutally assaulted and murdered the victim. They were murders committed just out of pure revenge or fun¹², racist discrimination¹³ or for no reason at all¹⁴.

CONCLUSION

The major finding in this study was that, most of the world countries have banned or abolished the death penalty. The main reason is the UN based organisations that promote peace and non violence in countries. Amnesty international listed various reasons for abolishing or retaining death penalty (i) cultural reasons (ii) It is misused as a political tool (iii) It is discriminatory mostly based on

¹¹ Catherine and Curtis Jones-the youngest convicted duo from Florida

¹² the infamous menendez brothers murder case

¹³ the murder of xinran jI

¹⁴ The murder of Angela wrightson



certain community, race-religion etc. for instance , George stinney Jr , a young 14 yr old African American guy was sentenced death penalty making him the youngest to receive it mostly because of his ethnicity .After 70 years of his death he was proved innocent. This is a grave misuse of law.(iv)It mostly takes place within skewed justice systems (v) statistically it did not deter crime rate(vi) it is irreversible I nature.While mostly on humanity basis it is condemned , it is not a hidden fact that grave cases where the global community was shook because of the crime and its intensity , Death penalty should be awarded in order to provide justice to the victims and their families.It can be analysed from the above information that most decisions taken by the justice systems and law making bodies are highly influenced by international organisations as well as public opinion.It should be understood that the circumstances and situations of a sentence is based on multiple situations and circumstances and that one general rule should not and cannot be applied for all of them.On the other hand , it is found through the study that more than thousands of cases are as such that they fall under the category of brutal crime committed by juveniles while still they are not sentenced with a death penalty .This is grave and unfair form of justices.The author through the finding realised that there should be a different laws in relation to death penalty for minors that should be incorporated in different countries taking in count of their factors and variables instead on giving general guidelines.This would give a room for ignorance and useless confidence in minors that mature before age due to different factors like technology , surrounding etc to take law and order in a lite manner and commit crimes knowing that they would not be punished

This study was majorly conducted in order to find out why , that minors who are closing the age of majority or minors who show maturity of an adult are not sentenced to death penalty due tot he mere reason of age .The fundamental motive was to to Study the various reasons behind abolishing or retaining penalty ,Suggest a concrete and distinctive method that can used to decide during Sentencing death penalty to minor and related questions.through the study it was found that the world is divided into two parts as retentionists and abolitionists who have different ideologies when it comes to death penalty.The international community of law , based of these two types of people provided guilty , that area common for every country ignoring the fact that : age of minority is different for each country , religion and statues .Moreover , the socio - economic status , law making body , cultural norms, social practices , public opinion etc also plays. Major role in defining and deciding such rules .It is fairly ignorant to provide such common rules.The major finding was that biologically the structures of human mind evolve faster than considerable previous generations which creates a room for children of minority age understand , think and perceive as fully grown adults.This brings us to suggest that these offenders should be tried as a fully grown adult and should be subject to death penalty given the brutality of the crime committed .This is suggested by the author in order to consider all the different factors in different countries .One rule should not be imposed .And justice should be provided regardless of age unless remorse and regret is genuine portrayed by the minor offenders.
