

MINIMUM AGE OF CRIMINAL RESPONSIBILITY AND JUVENILE DELINQUENCY IN INDIA

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INTRODUCTION

There are very few references to ancient or medieval Hindu and Mohammedan laws addressing issues concerning juvenile offenders. What is found is a simple ethical code in Hindu Law concerning treatment of children which states that a parent should not administer any punishment to a child under the age of 5 years. Children of such tender age should only be nursed with affection and love. After the age of 5, punishment may be given in the form of rebuke and later as the child moves towards adulthood, this punishment must be replaced by advice. Once the age of 16 is crossed, the child should be treated as friend by his/her parents.

“The idea of a minimum age of criminal responsibility in India first surfaced in the Narada Smriti which laid down that - ‘From the moment god gives life to the eighth year, a child shall be considered to be in the womb. From the age of 8 to 16, he shall be considered as a boy and then a youth, following which he can act independently’¹. This shloka, eloquently recognises that a child under the age of eight, will not be held liable for any civil or criminal wrongs conducted by him. He will be partly responsible for his acts till the age of sixteen and following this age, he will have full responsibility.

This idea laid down hundreds of years ago still bears an uncanny resemblance to the present legal system concerning child offenders and juvenile delinquents in India. Primary provisions regarding the same are contained in the Indian Penal Code, 1860 as well as the Juvenile Justice (Care & Protection of Children) Act, 2000.

¹ Vishnu Sharma, “The age of Criminal Responsibility in India”, *Journal of the Indian Law Institute*, Vol. 12, No. 1 (JANUARY-MARCH 1970), pp. 139-150.

Childhood being a dynamic notion, is subject to constant revision given the relevant time and space. The analysis of this notion becomes all the more important with regard to the legal system and establishment of minimum age of criminal responsibility.

A major impediment to understanding this concept of childhood comes in defining ‘Who is a child?’ as this definition varies across borders and legislation to legislation. Article 1 of United Nations Convention on Rights of Child states – ‘for the purposes of the present convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.’

The United Nations CRC also calls upon the parties to encourage the formation of laws, procedures and authorities especially applicable to children who have violated the penal law and particularly the formation of a minimum age under which children shall be presumed not to have the capacity to infringe the penal law.

This conception of minimum age extends protection to offences committed by minors under a particular age by taking into consideration, the fact, that a person of that age did not possess the skill of judgement or reasoning to understand the implications of his/her act. Since it is made apparent that a person who is a minor or child lacks the mental capacity to weigh his act in terms of right or wrong, it becomes superfluous that such a minor cannot be tried or convicted in the same manner as an adult and thus separate provisions must be enacted for a child offender.

Article 15(3) of the Constitution of India permits the State to enact special legislation for women and children. In addition to fundamental rights which children enjoy along with adults, the Constitution guarantees to children below 14 years of age that they shall not be employed to work in any factory or mine or engaged in any other hazardous employment. The Constitution directs the State to protect children of tender age against abuse and also ensure that they are not forced by economic necessity to enter avocations unsuited to their age and strength. By virtue of Article 39(f) the State is also to ensure that children are given opportunities to develop and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children and youth are protected against exploitation and against moral and material abandonment

The word 'child' in Indian laws has been used in various legislations as a term denoting relationship; as a term indicating capacity; and as a term of special protection.

The primary objective of this project is to analyse the concept of 'Age of Criminal Responsibility' in light of the relevant provisions of the Indian Penal Code. Along with this, the project also seeks to understand the provisions of the Juvenile Justice Act and International Jurisprudence on the issue of age. The project report has been culminated with various suggestions so as to improve the given act and make the legal system governing juvenile or child offenders more efficacious.

MINIMUM AGE OF CRIMINAL RESPONSIBILITY IN INDIA

Understanding the Meaning of Criminal Responsibility:

Responsibility is often used synonymously with 'Liability'. Yet, in criminal law, the two words have starkly different interpretations and meanings. Liability is imposed by law and whether it is civil or criminal, there is always a factual basis for imposing liability. Basic elements or pre-requisites for imposing liability are harm, conduct and causal relationship between harm and conduct. Such conduct must be voluntary. Responsibility, on the other hand, can be recognised as the basis of liability. Apart from the 3 above mentioned elements, another element necessary to constitute criminal liability is mens rea or criminal intent.

'As was pointed out a century back, when the issue of responsibility is raised in a criminal case, the real or ultimate question that has to be determined is whether at the time of the act, the accused had the mental capacity to entertain a criminal intent- whether in point of fact, he did entertain the criminal intent.'²

The concept of criminal responsibility is an important basis for the collaboration between law and psychiatry. There has, however, been a great deal of difficulty in defining the term 'criminal responsibility' due to the semantics surrounding this expression. Understanding this term also means analysing the context in which it is used.

² Orvill C. Snyder, "Criminal Responsibility", VOL. 1962: Z041.

In the DeJarnette Case, 75 Va. 867, the lower court gave the following instruction: ‘An accused is responsible for the crime, if he understands the nature and character of his act, and consequences and has a knowledge that it is wrong and a mental power sufficient to apply that knowledge to his own case, and to know that if he does the act, he will do wrong and receive punishment, and possesses a will sufficient to restrain his impulses arising from mental derangement’³

It can be inferred from the above definition, that knowledge of consequences of one’s act coupled with the capacity to understand the nature and character of the act are essential ingredients to determine criminal responsibility of an individual who has been held liable for committing a wrongful act. The significance of the minimum age of criminal responsibility is that it recognises that a child has attained the emotional, mental and intellectual maturity to be held responsible for their actions.

Some countries have age limits that vary according to the nature or severity of the offence. In others, the minimum age of criminal responsibility depends upon the relative maturity of the child within certain defined ages – the principle of *doli incapax*. When this applies, prosecutors can rebut the presumption that a child is ‘incapable of committing a crime’ by providing evidence that the child did in fact understand the consequences of his or her actions

It clear that children who are over the minimum age of criminal responsibility and in conflict with the law have a lesser culpability than adults because they ‘differ from adults in their physical and psychological development, and their emotional and educational needs’⁴. It is thus important that states must accommodate these differences by establishing justice procedures for children that guarantee their right to a fair trial and that are focused upon rehabilitation of the child rather than on punishment or retribution.

Relevant Provisions of IPC:

In India, the relevant provisions regarding minimum age of criminal responsibility are contained in Sections 82 and 83 of the Indian Penal Code 1860.

³ T.W. Harrison, “The Definition of Criminal Responsibility”, *The Virginia Law Register*, Vol. 13, No. 1 (May, 1907), pp. 1-11.

⁴ The Minimum Age for Criminal Responsibility, Justice for Children Briefing no. 4, Penal reform International.

Section 82 of the IPC lays down that – “*Nothing is an offence which is done by a child under seven years of age*”

The above provision is reflective of the fact that under the age of seven years, no infant can be guilty of a crime, for under that age an infant is, by resumption of law, doli incapax, and cannot be endowed with any discretion. If the accused were a child under seven years of age, the proof of that fact would be ipso facto an answer to the prosecution.⁵

Further, Section 83 of the IPC lays down that – “*Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.*”

According to this provision, where the accused is a child above seven years of age and under twelve, the incapacity to commit an offence only arises when the child has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct and such non-attainment has to be specially proven. In the case of Hiralal⁶, where a child of 12 or so used a sharp sword to kill a person along with his two brothers and no evidence of age or immaturity of understanding was led on his behalf, it was held that he committed an offence under Section 326 of the Indian Penal Code. The test in such cases is whether the child knew that what he was doing was seriously wrong and went beyond childish mischief.

While Section 83 provides this benefit of doubt to a child aged between 7 to 12 years of age, no protection from culpability on ground of tender age has been provided to one who is above the age of 12. This is because, ‘the period between 7 and 12 years is rather the twilight period of transition to a minimal workable level of understanding of things in the firmament of worldly affairs’⁷

Determination of Minimum Age:

With regards to determining International Standards on setting the minimum age of criminal responsibility, guidance has been provided by the ‘Beijing Rules’ which recommends that any minimum age of criminal responsibility ‘shall not be fixed at too low an age level, bearing in

⁵Ratan Lal & Dhiraj Lal, Justice KT Thomas ; MA Rashid, *The Indian Penal Code*, Lexis Nexis, 34th Edition, 2014.

⁶ Hiralal, 1977 Cr. LJ 1921: AIR 1977 SC 2236.

⁷ Supra, Note 4.

mind the facts of emotional, mental and intellectual maturity'⁸ This rule largely indicates that the modern approach is to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual understanding, can be held responsible for essentially anti-social behaviour.

JUVENILE DELINQUENCY AND RELATED LAWS

The legal difference between a criminal and a delinquent is a merely a matter of a day on the calendar e.g., if one commits an illegal act on the day before he ceases to be a juvenile, it is merely a delinquent act. But, on the next day, the same illegal act becomes a criminal offence. The illegal act is the same but the perpetrator of the act is a day older and therefore a criminal.⁹

Juvenile can be defined as a child who has not attained a certain age at which he, like an adult person under the law of the land, can be held liable for his criminal acts. The term juvenile delinquency applies to violation of criminal code and certain patterns of behaviour that are not approved for children and young adolescents.

The Juvenile Justice Act is built upon a model which addresses both children who need care and those who are in conflict with law. The definition of a child is governed by several rules and conventions that India is a signatory to.

Article 1 of United Nations Convention on Rights of Child states – ‘for the purposes of the present convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.’

In sync with the basic ideals enshrined in the Constitution of India as well as recognising India's international obligations, the Juvenile Justice (Care & protection for children) Act was enacted in the year 2000. ‘The act essentially provides for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to and disposition of delinquent juveniles. The essence of the JJCPA 2000,

⁸ *UN Standard Minimum Rules for the Administration of Juvenile Justice* ('The Beijing Rules'), adopted by General Assembly resolution 40/33 of 29 November 1985, Rule 4.

⁹ Albert H Burrows, "The Problem of Juvenile Delinquency", *The Journal of Educational Sociology*, Vol. 19, No. 6, The Negro College--Its Place in Democracy (Feb., 1946), pp. 382-390.

is restorative and not retributive, providing for rehabilitation and re-integration of children in conflict with law into mainstream society.¹⁰

Reason for Fixing the Age at 18 years:

The age of eighteen has been fixed on account of the understanding of experts in child psychology and behavioural patterns that till such an age the children in conflict with law could still be redeemed and restored to mainstream society, instead of becoming hardened criminals in future

- **Legal Basis:** The basis of fixing of the age till when a person could be treated as a child at eighteen years in the JJCPA, 2000, was Article 1 of the United Nations Convention of the Rights of the Child, adopted in September 1990.
- **Scientific Basis:** Scientific data that indicates that the brain continues to develop and the growth of a child continues till he reaches at least the age of eighteen years and that it is at that point of time that he can be held fully responsible for his actions. Along with physical growth, mental growth is equally important, in assessing the maturity of a person below the age of eighteen years.

Causes behind Juvenile Delinquency:

There are often varied causes behind juvenile delinquency and the problem cannot be attributed to one factor

- **Biological Causes-** Hearing problem, speech problem, excessive strength etc. can cause frustration or irritation to the juvenile who may see crime as an outlet to vent out.
- **Socio Environmental Causes-** Family background and upbringing play a vital role in shaping the personality of any individual. Likewise, children facing violence at home, or those coming from broken families are more likely to commit crimes. 'Badami (1965) considered broken homes with other factors, such as, poverty, lack of

¹⁰ Mukesh Yadav, Pooja Rastogi, "Age of Criminal Responsibility of Juvenile in India vis-à-vis Global Scenario: A Critical Review", *J Indian Acad Forensic Med.* July-September 2013, Vol. 35, No. 3.

recreational facilities, disorganized family, including family conflicts, and neglect of children to be the important factors causing juvenile delinquency'¹¹

- Psychological and Personal Causes- While intelligence levels vary, the personality traits, such as neuroticism, psychoticism, frustration and maladjustment appear to be important causative factors of juvenile delinquency.

Statistics on Juvenile Offenders:

According to the National Crime Records Bureau statistics of 2011, juvenile crimes comprise 1.1 % of IPC offences in which nearly 2 % of their offences were brutal of the total violent crimes were registered.

Further, NCRB statistics state that among the IPC offences by Juveniles ,64 % of juveniles were between the age of 16-18. There were a minimum 32.5% of offences by the age cluster of 12-16 yrs. and 3.6% by the age cluster of 7-12 years. Offences by Juveniles in the lowest age are 7-12 yrs. which increased by 30.6 % in 2010, the most giant leap amongst the age brackets.¹²

With regard to sexual offences, data has revealed that there has been a sharp rise in rapes committed by juveniles. While in 2010, the figure was at 858, it became 1149 in 2011 and 1316 in 2012. The number of juveniles held for rape in 2013 is 1,388.

Owing to the rise and brutality of sexual assaults particularly by juveniles on young girls and women, there has been an increasing sense of urgency to create legal avenues for some deterrence to warn off the under-age perpetrators.

Provisions of The JJ Act, 2000:

The first legislative initiative for juvenile justice and rehabilitation was the Juvenile Justice Act, 1986 which put forward a uniform law to deal with juvenile delinquents. Several

¹¹ Priyanka Yadav, "Juvenile Delinquency as a Behavioural Problem", *The International Journal of Indian Psychology*, Volume 4, Issue 1, No. 76, October, 2016

¹² Aakash Kumar, "Age of Criminal Responsibility", *International Journal of Social Science and Humanities Research*, Vol. 3, Issue 3, pp: (115-121), Month: July - September 2015.

inconsistencies of this Act with India's international obligations as well as the failure of the provisions to deal with problem at hand, the 1986 act was repealed and thus replaced by the Juvenile Justice (Care & Protection of Children) Act, 2000. Juvenile Justice Act has been enacted to consolidate and amend the law relating to 'juveniles in conflict with law' and 'children in need of care and protection', by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this.

This enactment further includes provisions to set up Child Welfare Committees in each and every state for 'children in need of care and protection'. For juveniles in conflict with law, it provides for the setting up of Juvenile Justice Board in every state. Moreover, it is required for every state to setup Special Juvenile Police Unit, to deal exclusively with the juveniles.

The juvenile justice system stresses on future welfare of the juvenile rather than on punishment for past misdemeanours. Under no circumstances a juvenile is kept in some police lock-up or jail. For the purpose, the law provides for the setting up of Observation Home and Special Home in each district or group of districts by the State government or by a voluntary organization in agreement with the state government. While the former is for the temporary reception of juveniles in conflict with law during the pendency of their inquiry before the JJB, the latter is meant for the reception and rehabilitation of juvenile in conflict with law, if upon completion of inquiry, the JJB is satisfied that the juvenile has to be institutionalized for his treatment.¹³

During his /her stay, the juvenile is engaged in extracurricular activities as well as vocational training. He/she is also provided with counselling and life skills sessions so as to channelize energy in a more positive direction. The ultimate aim is to reform the individual and rehabilitate them in a manner that they can become a part of the mainstream society.

¹³ Ayush Mishra & Jyoti Kumari, "Debating the Age of Criminal Responsibility in India", *International Journal For Legal Developments & Allied Issues*, Volume 1 Issue 2 [ISSN 2454-1273].

Role of Judiciary:

The Judiciary has been extremely active in protecting juvenile delinquents such that no harsh punishment which is capable of hampering their future growth is meted out. Back in 1977, the Supreme Court in the case of *Raisul v State of UP*¹⁴, held that penalty of death should not be imposed on a person below 18 years of age.

Also, regarding apprehension and production of the juveniles before the court, the Supreme Court has been very sensitive. In *Sheela Barse and Anr. v. Union of India*¹⁵, the Supreme Court directed the District Judges in the country to nominate the Chief Judicial Magistrate or any other Judicial Magistrate to visit their respective jails and ascertain how many children below 16 years of age were confined and what were the charges against them.

More recently, following the horrific Nirbhaya Rape case in 2013, the Supreme Court noted that:

‘There are incidents where a child in the age group of sixteen to eighteen may have developed criminal propensities, which would make it virtually impossible for him/her to be reintegrated into mainstream society, but such examples are not of such proportions as to warrant any change in thinking, since it is probably better to try and re-integrate children with criminal propensities into mainstream society, rather than to allow them to develop into hardened criminals, which does not augur well for the future.’¹⁶

The above view is indicative of the sensitivity with which cases involving juveniles are dealt with. The ultimate aim of all law enforcing personnel is to ensure that a reformatory approach, rather than a retributive approach is followed. Harsh punishment will only corrupt the mind of the juvenile thereby transforming him/her into a hardened criminal.

Need for Change:

The demands to lower the age of criminal responsibility under the Juvenile Justice Act, 2000 were first made frantically in the year 2013. On the ghastly night of the 22nd December, 2013,

¹⁴ *Raisul v. State of Uttar Pradesh* [AIR 1977 (SC) 1822].

¹⁵ *Sheela Barse v. Union of India* [JT 1986 136].

¹⁶ Dhruva Sareen, “Contrasting Conflict: Lowering the Age of Juvenile Justice”, *India Law Journal*, Vol 7, Issue 2, Article 5.

a young woman was gang-raped on a moving bus in the most brutal manner possible which ultimately resulted in her death. Out of the six perpetrators, one was a minor at the time of the commission; making him in the eyes of law, not mature enough to reason his actions and thus be let off scot free, thus triggering the nation's woes regarding the age of criminal responsibility.

Under Section 15 of the Juvenile Justice Act, those juveniles who commit even the most barbaric of crimes are given a punishment with the maximum sentence to be of only three years, that too, in a reform facility.

The Nirbhaya gang rape incident led to mass outrage and demand to convict juveniles between the age of 16-18 years in an adult manner for heinous offences committed by them. It was reiterated that it was unconstitutional to place all juveniles, irrespective of the gravity of the offences, in one bracket. It was urged that Section 2(1) of the JJCPA, 2000, ought not to have placed all children in conflict with law within the same bracket, it was submitted that the same is ultra vires Article 21 of the Constitution of India.

Referring to the report of the National Crime Records Bureau (NCRB) for the years 2001 to 2012, it was submitted that between 2001 and 2012, the involvement of juveniles in cognizable crimes was on the rise. It was a well-established medical-psychological fact that the level of understanding of a 16-year-old was at par with that of adults and therefore a person committing a barbaric offence had the capacity to gauge the complete implications of his/her act. It was also submitted by several agencies that lowering the upper age from 18 to 16 would serve as a deterrent to juvenile delinquents, thereby bringing down the incidence of such crimes.

Justice Verma Committee Report:

Justice Verma Committee was constituted to recommend amendments to the Criminal Law after the Nirbhaya Rape case. The Committee submitted its report on January 23, 2013 and one of the issues that it dealt with included lowering the maximum age of juveniles from 18 to 16. The committee did not recommend the reduction in the age of juveniles in conflict with law and maintained it at 18 years. Stress was laid on how the given age is based on sound principles recognized internationally and contained in the provisions of the Indian Constitution and there is a definite thought process, which went into its enactment. Ultimately, the committee

emphasized on reformative approach for delinquents rather than harsh punishment which would make it all the more difficult to integrate them with mainstream society, thereby defeating the very purpose of the JJ Act, 2000.

Critical Analysis of 2015 Amendment:

Following the mass outrage on reducing the age of juvenile, Juvenile Justice Act 2015 was enacted which came into force in January, 2016. The most important change is that juvenile of age group of 16 to 18 are to be tried like an adult for heinous or barbaric offences committed by them. Under the provisions of this new act, the court shall make sure that the child who is found guilty of heinous crime shall be sent to a place of safety till the age of twenty-one years and afterwards, the person shall be shifted to jail. According to Maharukh Adenwalla, *“Juvenile Justice (Care & Protection of Children) Act, 2015 has reversed the well-founded principle of juvenile justice by allowing Juvenile Justice Boards to waive the right of children above the age of 16 years who have committed a heinous offence into the criminal justice system. This means the treatment of a juvenile will depend on the type of offence committed rather than the situation”*¹⁷

In *Pratap Singh v. State of Jharkhand*¹⁸, it was observed by Court that in Rule 4 of United Nations Standard Minimum Rules for the Administration of Juvenile Justice, while defining a juvenile criminality or criminal responsibility, the moral and the psychological components must be given prime importance. However, in the present law, this psychological component has been given least importance and stress is laid only on the nature of act committed by the delinquent.

It has been re-iterated by legal luminaries that ‘Adolescents in conflict with law need the guidance of adults and not the company of hardened criminals’. Thus, several NGO’s have stepped forward to point out fallacies in the newly amended version of the Juvenile Justice Act and how these changes are not in the best interest of the delinquent as well as the society.

¹⁷ Sayashi Saha,” CRITICAL ANALYSIS OF JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 - IN THE LIGHT OF REDUCED AGE OF CRIMINAL RESPONSIBILITY OF JUVENILE IN INDIA”, *International Journal of legal developments and allied issues*.

¹⁸ *Pratap Singh v. State of Jharkhand* [3 SCC 551 (2005)].

GLOBAL SCENARIO ON THE ISSUE OF AGE

After the aftermath of the First World War, which culminated in 1918, the League of Nations issued the Geneva Declaration of the Rights of the Child in 1924. Following the gross abuse and violence of human rights during the Second World War, which caused the death of millions of people, including children, the United Nations had been formed in 1945 and on 10th December 1948 adopted and proclaimed the Universal Declaration of Human Rights which declared all human beings to be free and equal.

‘The growing consciousness of the world community was further evidenced by the Declaration of the Rights of the Child, which came to be proclaimed by the United Nations on 20th November 1959, in the best interests of the child. This was followed by the Beijing Rules of 1985, the Riyadh Guidelines of 1990, which specially provided guidelines for the prevention of juvenile delinquency, and the Havana Rules of 14th December 1990.’¹⁹ The underlying aim behind all of these rules was to establish a uniform and internationally accepted rule regarding juvenile delinquents and also provide for certain measures so that such delinquents can be counselled and ultimately merged into the mainstream society.

Four years after the adoption of the Beijing Rules, the United Nations adopted the Convention on the Rights of the Child vide the Resolution of the General Assembly on 20th November 1989, which came into force on 2nd September 1990. India is not only a signatory to the said Convention, but has also ratified the same on 11th December 1992. The Juvenile Justice (Care & Protection of Children) Act, 2000 is modelled on this Convention.

Further, the concept of minimum age of criminal responsibility also called for cooperation. The Beijing Rules out forward that the minimum age should not be kept too low and the age must be determined on the basis of certain scientific principles that recognise one’s ability to know what is right and what is wrong.

¹⁹ *Supra* Note 10.

‘A study of current MACRs worldwide shows that most countries have set the same at ages between 7 to 14, however they have also made provisions for special treatment of offenders falling under the age of 18.’²⁰

The situation in different countries can be explained as follows:

- USA – In the United States of America, there is no uniform standard regarding the minimum age of criminal responsibility and thus, different states have different standards. In most states, 7 is fixed as the age of criminal responsibility however the age has been fixed at 6 years in North Carolina. In most U.S. States, the jurisdiction of juvenile courts is automatically waived when a juvenile above a certain age, usually 13 or 15, commits a violent or other serious crime, and the case is automatically transferred to adult court.
- England & Wales- The minimum age of criminal responsibility in England and Wales is ten years and those below the said age are considered to be *doli incapax* and, thus, incapable of having any *mens rea*, which is similar to the provisions of Sections 82 and 83 IPC.
- Canada- In Canada, the age of criminal responsibility has been set at 12 years. Youth between 14-17 years may be tried and sentenced as an adult under certain situations.

While every state has set its minimum age of criminal responsibility on basis of capacity to adjudge implications of one’s act, there are also certain exceptional situations where children may be tried as adults. For example, in countries like Indiana, South Dakota and Vermont, children as young as 10 can be tried as adults. Similarly, Japan and Netherlands charge the juveniles to lifetime imprisonment if they are found to have committed a grave offence with due maturity and intention. Countries like Australia, Denmark, Germany, Hungary and Russia have adequate provisions to charge the juvenile offender of heinous crimes to be sentenced to imprisonment from ranging to 7 years to half the time of the adult sentence. At this instance, a parallel can be drawn with the Juvenile Justice (Amendment) Act, 2015 which allows trial of minors in the age group of 16-18 as adults on commission of heinous offences.

²⁰ Stuti Bhatia, “The Minimum Age of Criminal Responsibility in India: Is it to be blamed for the increasing youth crime”, *RLR VOLUME II ,ISSUE I*.

CONCLUSION

With the advancement of society, the aspect that presents a policy challenge for the criminal system and law enforcement personnel is nature of crime committed by the juveniles or minors. Children, without any doubt form the most important stratum of the human rights pyramid. They constitute 1/3rd of the world population and are also the carriers of human race.

By virtue of being vulnerable and easily susceptible to being influenced into committing crimes, issues regarding juvenile delinquency and rehabilitation of child offenders have gained popular ground not only in India, but also all over the world.

‘The difficulty that the current prospect presents before us is protecting both the offender and the victim. Thus, the whole debate lies in providing an appropriate legal mechanism to reflect the transition from the age of childhood innocence through maturity to full responsibility under the criminal law.’²¹

Along with specialised institutions such as Children’s Courts and juvenile care centres, specific legal rules have been developed which differentiate the position of children and young people within the general criminal justice system. Considerable recent attention has been directed towards rules governing the minimum age of criminal responsibility, and the imposition of criminal responsibility above that age depending on a youth offender’s ability to assess the implications and wrongfulness of his/her act.

Keeping in mind various facets of the situation at hand, it can be concluded that while the Juvenile Age must remain fixed at 18 years, those committing heinous offences from the age bracket 16-18 years should be given stricter punishment and must be tried like an adult. This will have the following positive impact:

- It will serve as a deterrent to commission of grave or heinous offences as the perpetrator will not get away with his acts merely by virtue of his/her age

²¹ Mahalaxmi Tewari, “DOLI INCAPAX: Re- Accessing the Age of Criminal Responsibility”, *RESEARCH HUB – International Multidisciplinary Research Journal (RHIMRJ)*, Volume-2, Issue-2, February-2015.

- Doing so, is in complete consonance with principles of natural justice as it provides punishment to a depraved person who shields his heinous acts under the garb of his/her age, thereby misusing the law to his/her advantage.

It has been stated that ‘*Good people do not need laws to tell them to act responsibly, while bad people will find a way around the laws*’.²² A person who is mature enough to commit a barbaric crime, is also mature enough to face the consequences of the same and sheltering such a person on the basis of age would only lead to multiplication of criminal tendencies in the society.

Nonetheless, an ideal situation would be the one where every child is given a healthy environment and atmosphere to express himself such that juvenile delinquency is drastically reduced and children grow up to be completely responsible adults. Ideals regarding Prevention of Juvenile Delinquency have been primarily contained in the Riyadh Guidelines, adopted in December 1990. The same can be achieved through:

- Policies and Programmes initiated by the Government that involve community participation such as youth self-help, victim compensation and assistance programmes;
- The family must look into both physical and mental wellbeing of the child so that conditioning, since a young age, is done in a positive manner;
- Education plays an important role in instilling tolerance as well as knowledge of what is right and what is wrong. Harsh disciplinary measures such as corporal punishment must be strictly avoided in schools;
- Mass media should limit display of violence and should further emphasize on positive stress control mechanisms as well as focus on contributions young individuals can make to the society;
- Abnormal behaviour patterns such as high levels of aggression or insecurity must be seen as red flags and dealt with through counselling or therapy sessions;

All in all, in cases involving juvenile delinquency, the law enforcement bodies must delve deep to analyse why an offence was committed and how the delinquent can be reformed or rehabilitated in the society. Only in cases involving grave or heinous crimes, the juvenile must be treated and tried like an adult so as to ultimately do justice to the victim and at the

²² Supra Note, 16.

same time ensure that the law does not become a breeding point for criminal tendencies to grow and be nurtured under the garb of age.

