

Unraveling the Legal Age of Criminal Liability in India: A Socio-Psychological Emphasis on Sexual Offenses

¹Ameesha, ²Dr. Abhishek Baplawat

Received: 21- June -2023

¹Research Scholar, Amity Law School, Amity University, Rajasthan and Assistant Professor (Law), ICFAI Law School, The ICFAI University, Jaipur, Rajasthan, Email id: ameeshasingh290893@gmail.com

Revised: 08- July -2023

Accepted: 13- August -2023

²Associate Professor, School of Law, Manipal University, Jaipur, Rajasthan; Email id: abhishek.baplawat@jaipur.manipal.edu

Abstract

The complicated problem of setting the minimum age for criminal responsibility in India is examined in this research study, with a focus on sexual offenses. The study explores the current legal framework governing India's criminal liability age and discusses the many elements that go into determining it. While doing so, it considers legislative advancements, judicial decisions, and international norms as it examines the historical context and evolution of the legal age.

The study takes a multidisciplinary approach and incorporates legal analysis, and comparative viewpoints from other countries. It assesses the efficiency of the present criminal liability age in tackling sexual offenses critically and points out any shortcomings.

This study aims to contribute to evidence-based policy discussions and enhance the protection and well-being of both victims and accused individuals in India by analyzing the complications surrounding the legal age of criminal responsibility, particularly in the context of sexual offenses.

Keywords:-Criminal responsibility, sexual offenses, victims' rights, vulnerability and Psycho social rehabilitation, reintegration, criminal justice system

I. Introduction

In many legal systems around the world, deciding when someone becomes criminally responsible is a difficult topic. It entails finding a difficult balance between defending the rights of people who are accused of crimes and preserving society's safety and well-being, especially for vulnerable groups like sexual assault victims¹. This subject has received a lot of attention in India, where there is a rising understanding of the need to critically review the current legislative framework surrounding the age of criminal culpability, particularly in the context of sexual offenses.

The legal age of criminal culpability is the minimum age at which someone can be tried as a criminal and punished for their crimes². It is essential in establishing whether someone may be charged with a crime and is considered to be capable of understanding the repercussions of their conduct³. A variety of elements, such as psychological, social, and cultural aspects, must be taken into account in order to determine the proper age of criminal culpability.

Legislative changes aimed at addressing the problem of criminal liability in various settings have been made in India over the years. The Juvenile Justice (Care and Protection of Children) Act of 2015 marked a major turning point in the treatment of young people involved in criminal activity⁴. However, concerns remain about the efficacy of the current legal age of criminal responsibility, particularly with relation to sexual offenses.

This area of the law needs to be critically examined due to the fragility of the victims, the potential long-term effects of such crimes, and the need to achieve justice and rehabilitation.

The goal of the paper is to provide a thorough understanding of the evolution of the legal age of criminal culpability in India by looking at legislative trends, judicial precedents, and international norms.

II. The legislative provisions in determination of the legal age of criminal liability in India.

The Juvenile Justice (Care and Protection of Children) Act, 2015 and other pertinent legislation serve as the main regulatory bodies for India's current legal system that determines the minimum age of criminal responsibility. The Juvenile Justice Act of 2015 abolished and replaced the older Juvenile Justice (Care and Protection of Children) Act of 2000 and made major adjustments to how minors involved in criminal activity are treated.

A "juvenile" is defined as someone who has not reached the age of 18 in Section 2(12) of the Juvenile Justice Act, 2015⁵, which sets down the definition of the age of criminal liability. By virtue of this clause, it is established that those under the age of 18 are regarded as juveniles and are dealt with by a different court system that is geared toward their care, protection, and rehabilitation.

The Act acknowledges the necessity of striking a balance between the rights protection and welfare of children who break the law and their responsibility for their conduct. It emphasizes restorative justice, rehabilitation, and reintegration for young people while taking into account their age, maturity, and awareness of the repercussions of their acts.

The Act also calls for the creation of juvenile justice boards at the district level, whose job it is to ascertain the accused's age and determine if they fall under the jurisdiction of the juvenile justice system. To oversee the care and protection of children in need, the Act also creates Child Welfare Committees.

It is significant to highlight that the Act has protections and exclusions that permit adolescents charged with severe crimes to receive the same treatment as adults. Infractions that are considered to be severe crimes, such as murder, rape, and acid assaults, are permitted to be tried as adult offences by minors between the ages of 16 and 18. This is permitted by Section 15 of the Act. With the use of this provision, such cases can be moved from JJBs to ordinary criminal courts, where the accused can face the same processes and sanctions as adult offenders.

When assessing the legal age of criminal culpability in particular settings, additional pertinent statutes may be considered in addition to the Juvenile Justice Act. For instance, the 2012 Protection of Children from Sexual Offenses Act places a specific emphasis on protecting children from sexual offenses and includes procedures for their investigation, prosecution, and rehabilitation. The POCSO Act creates strict procedures to handle sexual assaults against minors and defines a "child" as any individual under the age of 18. "So what happens is often youth who are a little over 18 but don't have clear documents to establish their age, attempt to pass off as juvenile. Mention the word juvenile, and it brings back memories of the teenager, who was one of the perpetrators in the brutal and violent gang rape of Jyoti Singh, better known as Nirbhaya, in December 2012.

III. The role of judicial decisions in shaping the legal age of criminal liability

The Indian legal age of criminal culpability, including how it applies to sexual offenses, has been significantly shaped by judicial precedents. The criminal justice system has been impacted by the judiciary's interpretation and execution of the law, which has affected how the legal age of criminal culpability is understood and put into practice.

Indian courts have tackled the question of finding the minimum age for criminal responsibility in a number of cases, particularly when it comes to sexual offenses involving minors. These judicial rulings have established precedents and offered information that make it easier to apply the law and guarantee that it is consistently interpreted.

The important decision in *Jarnail Singh v. State of Haryana* (2003)⁶ is one case that made a significant contribution to the conversation about the minimum age of criminal responsibility. The age of the accused should be established in this case, according to the Supreme Court of India, based on the date of the offense rather than the date of the trial or conviction. The age of the accused at the time of the offense must be taken into account when evaluating their legal responsibility, as this ruling highlighted.

The Supreme Court's decision in the 2017 case of *Independent Thought v. Union of India*⁷ sets forth yet another important legal precedent. According to the court, having sex with a girl under the age of 18 constitutes rape under the Indian Penal Code, even if the girl is married. This ruling raised awareness of the problem of child marriages and demonstrated the necessity of safeguarding minors' rights and welfare, regardless of their marital status.

The issue of children who commit severe sexual offenses has also been covered by legal precedents. The Supreme Court has offered instructions on the transfer of cases from the juvenile justice system to the normal criminal courts for significant offenses in cases like *Pratap Singh v. State of Jharkhand* (2018)⁸. These decisions have made it clearer when a minor accused of a serious sexual offense can be tried as an adult, allowing for a more balanced response to such charges.

In determining the legal age of criminal culpability and how it applies to sexual offenses, judicial precedents have a considerable influence. These rulings have assisted in establishing legal norms, ensuring consistency in the criminal justice system, and bringing clarity to interpretation. Judicial precedents have contributed to the continued development of legal standards and practices in India by specifically addressing concerns pertaining to age determination, accountability, and the protection of minors in sexual offense cases. Crimes executed by juveniles increased by 30% in the city in the city in 2020 as compared with 2019, as per the National Crime Records Bureau Report.

Nevertheless, it is significant to remember that, over time, and depending on the particulars of each case, the interpretation and application of judicial precedents may change. To maintain a fair and effective justice system that effectively addresses the intricacies of sexual offenses against minors, it is crucial to continuously examine and analyze judicial decisions. This is made even more important by the fact that legal interpretation is always changing.

IV. The legal age of criminal liability in India with international standards

Investigating best practices and allowing for a comparison with the Indian legal system are two benefits of looking into international norms for the legal age of criminal culpability. Potential gaps or places for alignment can be found by looking at these standards, directives, and best practices.

The United Nations Convention on the Rights of the Child is a significant international treaty that establishes guidelines and rules for safeguarding and promoting the welfare of children. The UNCRC's Article 40 highlights the significance of establishing a minimum age of criminal responsibility and exhorts governments to do so while also taking the child's mental and emotional development into account⁹. According to the UNCRC, this age should not be lower than 12 years old, and it emphasizes the importance of offering support, aid, and rehabilitation to juvenile offenders.

Comparatively, the Juvenile Justice (Care and Protection of Children) Act, 2015 establishes the age of criminal responsibility as 18 years old in India. The UNCRC's recommendation that the age of criminal responsibility not be lower than 12 years of age is in line with this age¹⁰. It is important to note that the Act departs from the UNCRC's emphasis on rehabilitation rather than punitive measures for minor offenders by allowing juveniles between the ages of 16 and 18 to be treated as adults in circumstances of severe crimes¹¹.

Other nations have developed their own legal thresholds for criminal responsibility, frequently taking cultural, social, and developmental factors into account. For instance, some European nations have chosen to set the age at 14, but others have opted for 16 or 18¹². The difference in legal minimum ages between jurisdictions reflects various strategies for striking a balance between responsibility and the defense of juvenile criminals.

The treatment and rehabilitation of child offenders are also recommended by international standards and guidelines¹³. The Bangkok Rules, which were adopted by the UN General Assembly in 2010, place a strong emphasis on the value of restorative justice, reintegration, and rehabilitation for young people involved in criminal activity¹⁴. These recommendations encourage the use of community-based initiatives and diversionary tactics as alternatives to incarceration.

While the Juvenile Justice Act in India acknowledges the necessity of rehabilitation and reintegration, the efficacy and accessibility of such interventions may vary across various locations¹⁵. To comply with international standards, greater analysis and development are needed for the execution and accessibility of rehabilitation programs for young offenders.

V. Psychological aspects and their implications for determining the appropriate age

Understanding children's cognitive, emotional, and behavioral traits and how they affect deciding when someone becomes legally responsible for a crime requires looking at child development perspectives. A child's growth phases and capacities can be better understood through scientific study and psychological studies, which also help determine how responsible they are and how well they can understand the repercussions of their actions¹⁶.

According to research on child development, children experience major cognitive, emotional, and social changes as they mature¹⁷. It emphasizes how decision-making skills, impulse control, and a sense of good and wrong grow progressively over time in youngsters. Children may have a limited aptitude for anticipating the results of their acts, according to studies, and they may be influenced by outside forces like peer pressure and immaturity in judgment.

Developmental psychology, for instance, acknowledges that the prefrontal cortex, which controls impulses and decision-making, continues to develop up until early adulthood¹⁸. This suggests that children might have less developed decision-making skills and be more prone to impulsive conduct, which could hinder their ability to fully understand the implications of their choices.

Research on child development also emphasizes the significance of taking socio-emotional elements into account when determining a child's level of responsibility. Children may be less adept at solving problems, more vulnerable to other influences, and less able to successfully manage their emotions¹⁹. These elements may have an effect on how they make decisions and on how well they are able to understand the nature and consequences of illegal behavior.

The right age of criminal culpability can be determined by taking into account the cognitive, emotional, and behavioral facets of child development²⁰. It supports the claim that kids' immaturity and ongoing growth may restrict their level of responsibility. Children's emotional and cognitive development are taken into account

when determining the appropriate age for criminal responsibility, which recognizes their weaknesses and encourages a more therapeutic approach to dealing with their involvement in criminal activity²¹.

Although the Juvenile Justice Act of India establishes the minimum age of criminal responsibility at 18, it is crucial to take child development perspectives into account to make sure that this age is in line with our growing understanding of children's abilities. The progressive character of child development is better understood by scientific research and psychological studies, which emphasize the necessity of judging children's responsibility according to their unique capacities rather than only their chronological age.

VI. Potential shortcomings

The occurrence and trends of such crimes can be better understood with the help of empirical data on the involvement of minors in sexual offenses. This information can be used to assess whether the current legal age accurately represents the majority of offenders who commit sexual offenses. Studying the age distribution of both criminals and victims might also reveal any patterns or discrepancies that the judicial system would need to take into account.

In order to fully comprehend the difficulties of these situations and the results of the current legal system, case studies concerning sexual offenses committed by people under the legal age of criminal liability are helpful. The particulars of these cases, including the gravity of the offenses, the responses of the criminal justice system, and the results in terms of rehabilitation and reintegration, can shed light on the advantages and disadvantages of the current strategy.

The opinions of different stakeholders, such as victims, offenders, lawyers, and social workers, should also be taken into account when evaluating the current legal age of criminal culpability. A more thorough comprehension of the real-world effects and potential restrictions of the existing legal age can be gained by gathering their opinions through interviews, surveys, or qualitative research techniques.

Analyzing the results critically is necessary to pinpoint any potential flaws or areas that need improvement. It might make clear a number of important things, like:

- a) Under- or over-inclusiveness: The age of criminal responsibility may not fully capture some offenders or may accidentally send people to the adult criminal justice system when they would benefit more from rehabilitative interventions²².
- b) Differentiated punishment for offenses: Depending on the circumstances, such as permission, age proximity, or power dynamics, the existing legal age may not be able to distinguish between distinct sexual offenses²³. It could be important to take a nuanced strategy that takes into account the unique circumstances of each situation.
- c) Recovery and reintegration It is necessary to evaluate the efficacy of rehabilitation programs for people who are underage. It is crucial to assess the accessibility, availability, and caliber of programs and services designed to address the underlying causes of sexual offenses and aid in the reintegration of young offenders into society.
- d) Prevention and education: Strategies to address the root causes of such offenses can be informed by examining the effectiveness of preventative measures and educational initiatives aimed at increasing sexual offense awareness and promoting responsible behavior among children and adolescents.

VII. Rehabilitative approaches available for individuals involved in sexual offenses

Examining the strategies available to meet their requirements and encourage effective reintegration into society is necessary when considering rehabilitation and reintegration for people involved in sexual offenses,

particularly those who are younger than the legal age of criminal liability. These rehabilitation programs' impact and potential areas for development can be better understood by evaluating their performance.

For those who have committed sexual offenses, rehabilitation efforts place a strong emphasis on addressing the root causes of their conduct, offering therapeutic interventions, and fostering their effective reintegration into society. These programs often include a variety of elements, including initiatives for social reintegration, skill development, psychological support, counseling, and education.

Understanding the factors influencing a person's criminal behavior, resolving emotional problems, encouraging empathy, and creating effective coping strategies are all made possible with counseling and psychological help²⁴. These programs seek to improve self-awareness, encourage moral decision-making, and deter future offenses.

Programs for skill development and education are crucial elements of rehabilitation because they help people learn new skills, advance in their educational careers, and become more employable²⁵. These initiatives support people in creating strong identities, finding their purpose in life, and improving their chances of integrating into society.

Initiatives for social reintegration place a strong emphasis on encouraging community acceptance and support for those who have committed sexual offenses²⁶. They entail working in tandem with community organizations, families, and support systems to create a welcoming climate that encourages offenders to reintegrate. These programs may involve victim-offender mediation, community service, restorative justice procedures, and public awareness campaigns.

Empirical research and assessment studies are necessary to gauge the success of rehabilitation and reintegration strategies. The various rehabilitation programs are examined in this research, including recidivism rates, levels of effective community reintegration, and enhancements in psychosocial wellbeing. These indicators can be examined to determine the effectiveness of rehabilitation efforts and to pinpoint areas that require improvement.

The implementation of rehabilitation and reintegration programs may be complicated by a lack of funding, a lack of specialized training for professionals, social stigma, and the requirement for interagency cooperation²⁷. It is necessary to take a holistic strategy to addressing these issues, involving the cooperation of government entities, social service providers, healthcare workers, educational institutions, and neighborhood associations.

VIII. Conclusion & Suggestions

It is possible to provide a number of evidence-based recommendations to improve the legal framework governing the age of criminal culpability, with a focus on sexual offenses in particular, in light of the research findings and analyses performed. These suggestions seek to protect the rights of those who have been accused while ensuring the safety and wellbeing of victims. They aim to influence and execute the legal system through influencing legislators, attorneys, and other stakeholders.

- a) Take a sophisticated approach to the age of criminal responsibility: Recognize that a set age may not sufficiently capture the diverse cognitive, emotional, and behavioral characteristics of those who commit sexual offenses. Instead, apply a more customized strategy that considers the child's maturity level, developmental stage, and aptitude for comprehension and anticipating consequences. This method can enable a more complex evaluation of guilt and allow treatments to be tailored accordingly.
- b) Strengthen prevention efforts and educational initiatives: Pay special attention to complete and age-appropriate sex education programs that place an emphasis on consent, wholesome relationships, and

responsible behavior. Children and teenagers should be able to attend these activities in schools, community centers, and other appropriate locations. Preventive approaches can assist lower the incidence of sexual offenses among young people by fostering awareness and understanding.

- c) Improve rehabilitation programs: Make investments in the creation and execution of interdisciplinary, evidence-based rehabilitation programs that are especially suited for those involved in sexual offenses. These initiatives ought to focus on the underlying causes of criminal conduct, cultivate empathy, encourage the growth of constructive coping skills, and support learning and education. It is crucial to continually assess and enhance these programs using best practices and empirical data.
- d) Make support systems more robust: Assure that there are adequate support mechanisms in place for both victims and accused sexual offenders, including mental health services, counseling, and social support networks. These support networks must take into account the particular requirements of those who have been impacted by sexual assaults and work to enable their healing, recovery, and reintegration.
- e) Increase knowledge and training among legal professionals: Provide specific instruction on how to handle cases involving people who aren't old enough to be held criminally liable for sexual offenses to lawyers, judges, prosecutors, and law enforcement agents. Understanding child development, trauma-informed practices, and the significance of striking a balance between responsibility and the ideals of rehabilitation and the best interests of the child should all be covered in this course.
- f) Strengthen coordination and collaboration: Encourage cooperation between community organizations, social service providers, medical staff, educational institutions, and government entities that deal with sexual assaults. To enable smooth transitions between the various stages of the legal process, such as investigation, prosecution, rehabilitation, and reintegration, establish efficient referral mechanisms and coordination structures.
- g) Encourage more research and data gathering: Promote more research and data gathering on sexual offenses involving people who are younger than the legal age of criminal liability. In order to guide the development of evidence-based policies and treatments, this study should concentrate on understanding the underlying causes, patterns, and trends. Long-term evaluation studies should be included as well in order to evaluate the success of adopted measures and pinpoint areas that require improvement.

Policymakers, attorneys, and stakeholders can help create a legal framework that effectively tackles sexual offenses involving people who are under the age of criminal responsibility by putting these evidence-based recommendations into practice. These suggestions aim to achieve a balance between defending victims, upholding the rights of those who have been charged, and encouraging the rehabilitation and reintegration of young offenders into society.

References

1. Hudson, Barbara. "Justice in the risk society: Challenging and re-affirming justice in late modernity." *Justice in the Risk Society* (2003): 1-258.
2. Cipriani, Don. *Children's rights and the minimum age of criminal responsibility: a global perspective*. Routledge, 2016.
3. Dan-Cohen, Meir. "Decision rules and conduct rules: On acoustic separation in criminal law." *Harvard Law Review* (1984): 625-677.
4. Monahan, Kathryn, Laurence Steinberg, and Alex R. Piquero. "Juvenile justice policy and practice: A developmental perspective." *Crime and justice* 44, no. 1 (2015): 577-619.
5. Kumar, Pawan, and Ranjit Singh. "Juvenile Justice (Care and Protection of Children Act) 2015: A Critique." *Journal of Global Research & Analysis* 5: 113.
6. 2013 (VII) AD (SC) 313, AIR 2013
7. Union of India ((2017) 10 SCC 1)
8. Appeal (crl.) 210 of 2005

9. Keating, Heather. "Children's Rights and Children's Criminal Responsibility." In *Law in Society: Reflections on Children, Family, Culture and Philosophy*, pp. 293-308. Brill Nijhoff, 2015.
10. Brown, Aaron, and Anthony Charles. "The minimum age of criminal responsibility: the need for a holistic approach." *Youth justice* 21, no. 2 (2021): 153-171.
11. Singh, Deepak. "An analysis of section 15 of the Juvenile Justice Act, 2015." *Christ ULJ* 8 (2019): 1.
12. Caesius, Antonio. "The Statute of the International Criminal Court: some preliminary reflections." *European Journal of International Law* 10, no. 1 (1999): 144-171.
13. Penner, Erika K., Ronald Roesch, and Jodi L. Viljoen. "Young offenders in custody: An international comparison of mental health services." *International Journal of Forensic Mental Health* 10, no. 3 (2011): 215-232.
14. Huber, Andrea. "Women in criminal justice systems and the added value of the UN Bangkok Rules." *Women and Children as Victims and Offenders: Background, Prevention, Reintegration: Suggestions for Succeeding Generations (Volume 2)* (2016): 35-84.
15. Bajpai, Asha. *Child rights in India: Law, policy, and practice*. Oxford University Press, 2018.
16. Fonagy, Peter, Miriam Steele, Howard Steele, George S. Moran, and Anna C. Higgitt. "The capacity for understanding mental states: The reflective self in parent and child and its significance for security of attachment." *Infant mental health journal* 12, no. 3 (1991): 201-218.
17. Elder Jr, Glen H. "Time, human agency, and social change: Perspectives on the life course." *Social psychology quarterly* (1994): 4-15.
18. Kambam, Praveen, and Christopher Thompson. "The development of decision-making capacities in children and adolescents: Psychological and neurological perspectives and their implications for juvenile defendants." *Behavioral sciences & the law* 27, no. 2 (2009): 173-190.
19. Clark, Caron AC, Lianne J. Woodward, L. John Horwood, and Stephanie Moor. "Development of emotional and behavioral regulation in children born extremely preterm and very preterm: Biological and social influences." *Child development* 79, no. 5 (2008): 1444-1462.
20. Shakoor, Bambade H., and Deborah Chalmers. "Co-victimization of African-American children who witness violence: effects on cognitive, emotional, and behavioral development." *Journal of the national medical association* 83, no. 3 (1991): 233.
21. Farrington, David P., Rolf Loeber, and James C. Howell. "Young adult offenders: The need for more effective legislative options and justice processing." *Criminology & Public Policy* 11, no. 4 (2012): 729-750.
22. Fondacaro, Mark R., Stephen Koppel, Megan J. O'Toole, and Joanne Crain. "The rebirth of rehabilitation in juvenile and criminal justice: New wine in new bottles." *Ohio NUL Rev.* 41 (2014): 697.
23. Ward, Tony, Devon Polaschek, and Anthony R. Beech. *Theories of sexual offending*. John Wiley & Sons, 2006.
24. Ward, Tony, and Mark Brown. "The good lives model and conceptual issues in offender rehabilitation." *Psychology, crime & law* 10, no. 3 (2004): 243-257.
25. Liberman, Robert Paul, Kim T. Mueser, Charles J. Wallace, Harvey E. Jacobs, Thad Eckman, and H. Keith Massel. "Training skills in the psychiatrically disabled: Learning coping and competence." *Schizophrenia bulletin* 12, no. 4 (1986): 631-647.
26. Farkas, Mary Ann, and Gale Miller. "Reentry and reintegration: Challenges faced by the families of convicted sex offenders." *Federal Sentencing Reporter* 20, no. 1 (2007): 88-92.
27. Griffiths, Curt Taylor, Yvon Dandurand, and Danielle Murdoch. *The social reintegration of offenders and crime prevention*. Vol. 4. Ottawa, ON: National Crime Prevention Centre, 2007.