

**THE MENTAL AGE AND MENTAL COMPETENCY SHOULD BE
TAKEN INTO ACCOUNT WHILE DECIDING ON A PUNISHMENT FOR
A HEINOUS CRIME COMMITTED IN INDIA**

Zoyah Kumar Sen

Sanskriti School, New Delhi

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ABSTRACT

When we discuss punishment, mental age should be taken into consideration. Varma (2013) noted down that in view of the socioeconomic changes over the past decade, the changed nutritional diet, and exposure have led children to mature faster and therefore, develop their facilities well before 18 years of age. In nations that have ratified the UN Convention, such as the United States and the United Kingdom, a distinction is created for offenders under the age of 18 to distinguish between guilt in horrific crimes and exceptional offenses such as rape and murder. In India, the National Crime Records Bureau, n.d recorded data for 2011, which showed that 33,887 juveniles were arrested for 25,178 crimes. Of these, 1,211 were 7-12 years old, 11,019 fell between 12 and 16 years, and 21,657 were in the 16-18-year age group. This data was analyzed by Varma (2013) and he came to the conclusion that 64% of all juvenile criminals fail within 16-18 years. Interestingly, the data also reveals that only 5.7% of juveniles arrested were homeless while a vast majority stayed with their parents or relatives, but were from economically-backward families. According to one of the supreme court's judgments, mental age is not considered. This research paper emphasizes that the laws that are used to try juveniles should be distinctly different from the laws that are applicable to adults. We have compiled this with the help of a literature review and thematic analysis of all the research available and different research that has been done to come to the conclusion that it is essential to emphasize that the debate on physical age is more than just a discussion about a number. In this paper, we see through our research, that the age of the criminal is not taken into account when determining whether or not they will be convicted of a specific crime. Regardless of the criminal's age, if they have committed the crime, they will be convicted. However, the severity of the punishment will be affected. When we talk about age, only age is recognized; no other elements, such as gender,

the background of the child, the mental age, or the environment of the house aren't taken into account. Biases are not currently taken into account in India, but they should be because when they are, the severity of the punishment meted out to the child is lowered. The paper will address the above mentioned themes and then explore reforms.

Introduction

As defined by *Bernard et al (2021)* punishment is the infliction of some kind of pain or loss upon a person for a misdeed that is the transgression of a law or command. *Bernard et al (2021)* added that punishment may take forms ranging from capital punishment, flogging, forced labor, and mutilation of the body to imprisonment and fines. Punishment in certain circumstances is at times straightforward however that is not always the case as said by. For example, when a juvenile is tried, a lot of factors need to be taken into account before determining a punishment. When we discuss punishment, mental age should be taken into consideration. As jotted by *Varma (2013)*, the socioeconomic changes over the past decade, the changed nutritional diet, and the exposure have led children to mature faster and therefore, develop their facilities well before 18 years of age. The United Nations Convention on the Rights of the Child is a human rights treaty that helps to define children's political, economic, social, health, and cultural rights. Nations that ratify this convention are bound by international law. Governments of member countries that have ratified the convention are required to report on their progress towards the implementation of the convention and the status of rights of the child in their country and appear before the United Nations Committee on the Rights of the child periodically. Their findings and documented views and concerns of the Committee are available on the website of the committee. In nations that have ratified the UN Convention, such as the United States and the United Kingdom, a distinction is created for offenders under the age of 18 to distinguish between guilt in horrific crimes and exceptional offenses such as rape and murder. According to the article *Bussiness Standard, n.d*, In India, the Protection of Children from Sexual Offences, or POCSO, (Amendment) Bill, 2019, seeks to provide stringent punishment to those engaging in sexual crimes against children, death penalty in cases of aggravated sexual assault, besides levying fines and imprisonment, to curb child pornography. However, even after the necessary laws were made, the *National Crime Records Bureau. n.d* recorded data for 2011, which showed that 33,887 juveniles were arrested for 25,178 crimes. Of these, 1,211 were 7-12 years old, 11,019 fell between 12 and 16 years, and 21,657 were in the 16-18-year age group. This data was analyzed by *Varma (2013)* and he came to the conclusion that 64% of all juvenile criminals fall within 16-18 years. Interestingly, the data also reveals that only 5.7% of juveniles arrested were homeless while a vast majority stayed with their parents or relatives, but were from

economically-backward families. According to one of the supreme court's judgments, mental age is not considered. As stated in the article, *rehabilitation of juveniles (2019)* A juvenile is defined under the Juvenile Justice (Care and Protection of Children) Act as someone below 18 years. The Act states that the justice system, as available for adults, is not suitable for application to juveniles. Thus, the purpose of the Act is to provide for the care, protection, treatment, development, rehabilitation, and social integration of delinquent juveniles.

On matters of practice, a juvenile, on being apprehended by the police, is entitled to bail no matter what the offense. The maximum punishment a juvenile can receive, regardless of the offense, is three years. And, while juveniles cannot be sentenced to death or granted imprisonment for life, they can be punished even after they turn 18 years old. Any sentence awarded is not spent in prison but instead at a rehabilitation facility or a special remand home. Notably, the Act is not the only statute under which exemptions to juveniles are granted. The Indian Penal Code also grants exemptions to children below seven and 12 years of age. *Varma (2013)* stated that India ratified this Convention after which the Act was amended to conform to the standards prescribed under it. The age of 18 is prescribed under the Beijing Rules, made under the Convention, and while it is not mandatory, it is founded on the principle that the age of criminal responsibility shall not be fixed too low bearing in mind the facts of mental and intellectual maturity. Below 18 years is considered insufficient throughout the world, and India also regards that as the age of innocence. As stated by *Varma (2013)* due to the societal changes over the last decade, the changed nutritional diet, and the exposure that children have from a very young age, it is true that they are maturing faster and, hence, their faculties develop well before 18 years. Hence, now may well be the time to reconsider the limit of 18 years. This research paper emphasizes that the laws that are used to try juveniles should be distinctly different from the laws that are applicable to adults. This study also brings into conversation dual facets of age and its relation to offenses and attempts to understand the relationship between mental age and mental competency while taking into account the factors that affect the decision of a punishment for a heinous crime committed in India by a juvenile. While there are more variables than just age at play, there were multiple studies that showcased 'age' and how it affects the offender's sentence, however, there were minimal studies that incorporated both facets of the research question, that being, the relationship between mental age and mental competency. We have compiled this with the help of a literature review and thematic analysis of all the research available and different research that has been done to come to the conclusion that it is essential to emphasize that the debate on physical age is more than just a discussion about a number. In this paper, we see through our research, that the age of the criminal is not taken into account when determining whether or not they will be convicted of a specific crime. Regardless of the

criminal's age, if they have committed the crime, they will be convicted. However, the severity of the punishment will be affected. When we talk about age, only age is recognized; no other elements, such as gender, the background of the child, the mental age, or the environment of the house aren't taken into account. Biases are not currently taken into account in India, but they should be because when they are, the severity of the punishment meted out to the child is lowered. The paper will address the above-mentioned themes and then explore reforms.

Literature review

The existing literature was reviewed to understand the relationship between mental age and mental competency while taking into account the factors that affect the decision of a punishment for a heinous crime committed in India by a juvenile. This study brings into conversation dual facets of age and its relation to offenses. While there are more variables than just age at play, it is important to systematically review the literature available. There were multiple studies that showcased 'age' and how it affects the offender's sentence, however, there were minimal studies that incorporated both facets of the research question, that being, the relationship between mental age and mental competency. The following section reports the literature that addresses the knowledge base developed thus far concerning the perceptions of juveniles and the factors that influence the level of severity.

The in-depth research carried out by *Ferreira (2008)* articulates the importance of 'liability age' and 'capacity responsibility' and is an appropriate place to start. Through the review, they attempt to build a bridge between, on the one hand, the results produced by psychologists' research, and, on the other hand, legal concepts such as 'discernment' and 'capacity'. They lead us to a better understanding of where the age limits for criminal and tort liability should be set and how we can better advocate their change. Similarly, research conducted by *Ghetti et al. (2001)*, has aimed to advance knowledge of the factors affecting public opinion about juvenile delinquency, particularly with respect to perceptions of deserved punishment, accountability, and legal competence. The review by *Charity M et al. (2011)* bifurcates, age vs physical age and aside from noting its correlation also examines the influences of the crime type (person or property) and the crime outcome (mild or severe) on mock jurors' verdict and sentencing decisions for adult defendants and juvenile defendants tried as adults. The research by *Nunez et al. (2007)*, examined extralegal factors, such as defendants' gender, victim type, and mitigating factors, such as age and abuse history, which influenced respondents' jurisdictional preferences for violent male and female juveniles. This research elaborated more on what could have driven the offender to commit the offense and thus arriving at a more nuanced version of the research. This was closely followed by a paper that formed a correlation between law and psychology

while extensively using topics of psychology such as Piaget's theory of cognitive development and Kohlberg's theory of moral development to better understand the concept of 'liability age' and 'capacity age'.

While diving deeper into the reviews, there seems to be a common theme among all of them. The age doesn't matter as much as the crime committed by the offender under varying variables. There were two factors that showcased how people conceptualized crime severity. The first factor was the type of crime the juvenile committed and the outcome of the crime was the second factor, examined in relation to crime severity. It is apparent that age plays an instrumental role in deciding the outcome of the juvenile offender.

While the research on juvenile cases and the factors that decide the severity of the crime is expansive, one of the prominent gaps is the lack of specific research done on the different types of scenarios where the mental age does not always match the physical age. eg- If the victim is an adult, and suffers from cerebral palsy, where the mental age is equivalent to a three-year-old, then should the case be tried in a juvenile court or not. Additionally, unsurprisingly, there is a lack of contextual work situated in India's context, the site for this study.

Methodology

This research paper was compiled with the help of a literature review and thematic analysis of all the research available. The first thing I attempted to do was to find out more information on my topic and the research through different platforms and while gathering more information I tried to understand all the things that were in the gray area regarding my topic. In other words, I tried to find out what was a problem in the world. While researching for the things that were a problem, I came across topics that I wanted to talk about. Finally narrowing it down and selecting the most important ones. The next thing I did was research papers related to my topic so as to find out what previous work has already been done in the field. After finding satisfactory research, I did the annotated bibliography where all the important information pertaining to my topic was compiled. The annotated bibliography gave me a clear picture of the recurring and important themes that led me to my findings. The three important findings were age, severity, and biases. Age became an important theme in my paper because after reading the other research papers it became apparent that the age of the accused did not change the conviction of the juvenile, rather it had an effect on the type of punishment they received. I also noticed that based on the severity of the crime the punishments and convictions of the juveniles changed. This became my second finding. I also noticed that jurors have biases like (age, gender, race, sexuality, etc) and these factors can affect the accused's verdict and sentencing decisions, either

in a positive or a negative way. I highlight this further in my discussion where I discuss my findings, with examples, in detail.

Findings

After going through all the research papers, I came across some important themes which I would like to highlight. The first one was severity, which was how the punishments and convictions of the juveniles changed and I came across this example given by *Walker et al. (2011)* ‘ The outcome of the crime significantly affected the severity of punishment recommended for the defendant such that crimes resulting in severe outcomes received longer recommended sentences than crimes with mild outcomes. Additionally, a severe crime outcome increases the perceived severity of the crime and the perceived maturity of the defendant, regardless of the defendant’s depicted age.’ This example shows that depending on the severity of the crime, the punishments and convictions can lead to either the severity of the punishment decreasing or increasing. This is because a more heinous crime is associated with the accused having more mental maturity and thus it led them to get a harsher punishment.

The second theme I came across was age and how it did not change the conviction of the juvenile but had an effect on the type of punishment they received. The following sentences, stated by *Warling et al. (2003)* are perfect examples. ‘When acting as mock jurors, those participants who were more likely to convict an accused in general were also more likely to convict the defendant in the current study, regardless of his age. However, the age of the defendant was related to sentencing, such that the youngest defendant was consistently given a lighter sentence than the older adolescent or the adult ’. This example highlights the fact that age plays an important role in the conviction of the crime, however, it doesn't prevent the offender from being convicted. Only after the offender has been convicted does age become more vital. This is because when a juvenile is convicted, the defendant's age does not impact jurors’ verdicts. While it is true that sentence length varies with age, jurors tend to assign less severe sentences to younger defendants.

Another important theme I found was that jurors have biases like (age, gender, race, sexuality, etc) and these factors affect the accused’s verdict and sentencing decisions, either in a positive or a negative way. According to *Warling et al. (2003)* ‘ Juvenile defendants face a jury of adults who may hold biases that could influence verdict and sentencing decisions’. We see from this example that when jurors are giving a verdict they may be influenced by their own prejudices, background, or the environment they have been brought up in, which at times lead them to give an unfair ruling or maybe favor a certain party more. The biases or prejudices people hold are at

times influenced by experiences or a belief an individual has believed all their lives. As stated in an article by *cherry (2020)* cultural conditioning, media portrayals, and upbringing can all contribute to the implicit associations that people form about the members of other social groups.

Discussion

While researching I found that when a crime has taken place, one of the first things that are looked at is the magnitude of the crime. The more serious the crime, the harsher the punishment that is given. *Ghetti et al. (2001)* found that crime type and crime outcome are two factors related to perceptions of the severity of the crime, and significantly impact participants' perceptions of the defendant's legal competency and sentencing decisions. A research done by *Walker et al. (2011)* ascertained that the length of the sentence is positively correlated with the participant's perceptions of the severity of the crime, the defendant's perceived maturity, the need for societal protection from the defendant, the need for the defendant to be rehabilitated, and the appropriateness of trying the juvenile defendant as an adult. In my opinion, judging a person's maturity should not be solely based on the severity of the crime they have committed. *Spectrem news (2021)*, a news channel recently reported that in Florida, a toddler accidentally shot a two-year-old sister and even though they committed murder they are not more mature than a twelve-year-old or a fourteen-year-old thus severity in itself cannot be the only measure to judge someone's mental maturity. Hence the accused's legal competency and sentencing decisions should not only depend on the severity of the crime.

Another important factor that came up time and again was age. It becomes apparent after reading the research papers that the age of the offender did not change the conviction of the juvenile but had an effect on the type of punishment they received. I believe that jurors should also take into account the age of the defendant and not just the severity of the crime. If only severity is taken into account the punishment's length changes but the culpability does not change. While the severity of the crime is important and the length of the punishment should depend on the severity of the crime, I don't think that the severity of the crime should be the only reason to convict an accused. The other important point is that when age is considered, it is the only factor that is recognized. No other element, such as gender, the background of the child, the mental age, or the environment of the house isn't taken into account. Such factors can play a vital role in deciding the judgment or sentencing of the offender. In a hypothetical scenario, if a 15-year-old stabs someone vs an 18-year-old who stabs, the age should definitely play a mitigating role in reducing the punishment, and also the circumstances of the crime should be kept in mind.

The last theme that I want to highlight is biases, which are sparsely mentioned in the research

papers. It is evident that jurors have biases like (age, gender, race, sexuality, etc) and these factors affect the accused during verdict and sentencing decisions, either in a positive or a negative way. 'Bias' for a layman means inclination toward a person or a group which can be seen as unfair. It refers to favorable treatment for one another. If we use the term 'bias' in the judicial sense, it would mean the judge passing an unfair verdict in favor of one party, due to them being friends with the party. It could also mean 'being way too harsh for a particular advocate and soft for another during a hearing due to differences in gender of the two advocates'. Biases are not currently taken into account in India, but they should be because when they are, the severity of the punishment meted out to the juvenile is lowered. Being biased in judicial terms can also be witnessed when a judge is so determined on bringing forth a particular outcome that all arguments and evidence made to the contrary are neglected by the judge. A blog called (*iPleaders 2021*) gave an example of one such case where judicial bias can be seen is the Sahara Birla Paper case, wherein it was seen that the Supreme Court of India gave a biased decision in favor of the government. The petition filed by the NGO, in this case, included allegations against the government. The Court dismissed the petition and aborted the complete issue by declaring the lack of evidence to constitute the offense in question. The Court, rather than asking the petitioner to avail remedies, went on adjudicating the matter by declaring the diary entries inadmissible. The blog (*iPleaders 2021*) further adds that biasness, in this case, can be seen through the judge's action of ignoring the evidence as he declared the diary inadmissible and gave a verdict without considering the evidence. It is apparent that biases are something that cannot be eradicated from the legal system. I suggest there should be a bench of judges when a case is being heard so as to mitigate any biases an individual may have.

Conclusion

This paper highlights a vital factor whilst deciding on the quantum and nature of punishment for a heinous crime committed by a juvenile in India: It delineates the necessity of taking into account the mental age and mental competency of the accused and the vital link between age, severity and biases. After discussing all these themes, it has been found that an outcome of a crime is dependent on different factors such as, age, severity and biases. It is apparent that severity of the crime, the punishments and convictions can lead to either the severity of the punishment decreasing or increasing. On the other hand, it has been found that only after the offender has been convicted does age become more vital. This is because when a juvenile is convicted, the defendant's age does not impact jurors' verdicts. It was also found that biases or prejudices people hold are at times influenced by experiences or a belief an individual has believed all their lives and these beliefs often translate in clouding a sentencing of a juvenile. If

these above factors are kept in mind, a lot of juveniles may have a chance to be tried fairly. It is alarmingly clear that special reforms need to be made for juveniles as the current legal system doesn't seem to be updated with the increasing globalization leading to children maturing faster. At the end of the day the younger generation are the future for our nation and finding a solution to this problem will be beneficial to all.

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