

A Study of Age of Responsibility: What is Optimal?

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A. Introduction

Age of responsibility is the age at which an individual can be legally held responsible for any act that he/she has committed. In India, the age has been fixed, depending on the kind of act that has been performed. Such a basis for deciding the age of responsibility has led to having different ages for each statute, based on the object of the act. However, this position is largely present in criminal law. In civil law barring a few exceptions, the age of responsibility has been fixed at 18 years.¹This article discusses the inherent conflicts that the numerous ages of responsibilities, prescribed in different statutes have created and tries to look for a possible solution to reconcile the ages.

B. Civil Law and Criminal Law

Civil law governs situations, that are in the nature of private wrong. Such situations are not as serious as those in criminal law which are considered to be public wrong, done against the whole society. An example of civil law, can be an agreement between two individuals, a breach of such an agreement will not cause any harm to a party not a part of the agreement and hence, such a situation will be a private wrong. Contrary to this is the situation of criminal wrong. An example of the same can be a case where A murder's B, here there will be a need to punish A, as if he is left unpunished, A may commit more crimes. Herein A will be considered an offender of the peace of society and hence, his act will be a public wrong. As criminal law, relates to a diverse nature of offences, against the society, there are inherent contradictions with respect to age of consent on the basis of the object of the act. However, in civil law, the position is more or less settled as most of the offences relate to a breach of contract.

C. Age of Responsibility in Civil Law.

The most common offence in civil law is the breach of contract. The age of responsibility for such an offence has been prescribed as per the Indian Contract Act and is usually the same in other statutes as well. As per the Indian Contract Act, 1872, contracts with individuals below 18 years are void.²This shows that

¹Section 11, Indian Contract Act 1872, 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 who is of sound mind and is not disqualified from contracting by any law to which he is subject."

²Section 11, Indian Contract Act 1872, 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

the age of responsibility has been fixed at 18 years. A similar position is followed in numerous other laws such as the Transfer of Property Act.³ Even though, most of the statutes follow the age as prescribed by the Indian Contract Act, there are certain exceptions to the same based on the object of the act.

D. Exceptions in Civil Law.

Personal laws relating to marriages also fall under civil law as they are concerned with the bond between two individuals. The age of responsibility in each personal law differs as per the customs of the particular religion, the law is directed at. For example, in Muslim Law, the age of puberty is considered the age of responsibility for Muslim girls,⁴ as has been followed by various Islamic countries.⁵ In Hindu Law, the age of responsibility for marriage is considered as 18 years for girls and 21 years for boys,⁶ the same has been adopted from the Child Marriage Restraint Act, 1929. Another exception to the age of responsibility at the age of 18 years is the case of wards under court appointed guardians. For such wards, age of responsibility is at the age of 21 years,⁷ in any matter related to property. However, in criminal law, each situation is an exception by itself as the object of the act decides the age of responsibility.

E. Criminal Law

As per the Indian Penal Code 1860, age of responsibility is different between individuals. As per the Act, no individual below 7 years of age can be punished for any offence.⁸ An individual between the age of 7 years to 12 years⁹ can only be punished if he/she has the maturity level to commit the offence. However, as per the Juvenile Justice Act 2015, governing the procedures for trial of child offenders, age of responsibility is set at any age below 18 years.¹⁰ As per the Prohibition and Regulation of Child Labour Act

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

³ Section 7, Transfer of Property Act, 1882: Persons competent to transfer - Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

⁴ Mohd. Nihal v. State, W.P. (CRL.) 591/2008, Delhi High Court, July 8, 2008.

⁵ <https://www.ageofconsent.net>

⁶ Section 2(a), Prohibition of Child Marriage Act, 2006: (a) “child” means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;

⁷ Section 33, Guardians and Wards Act, 1890: Right of guardian so appointed or declared to apply to the court for opinion in management of property of ward.

(1) A guardian appointed or declared by the court may apply by petition to the court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or administration of the property of his ward.

(2) If the court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons, interested in the application as the court thinks fit.

(3) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject- matter of the application.

⁸ Section 82, Indian Penal Code, 1860: Act of a child under seven years of age. —Nothing is an offence which is done by a child under seven years of age.

⁹ Section 83, Indian Penal Code 1860: Act of a child above seven and under twelve of immature understanding. —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.

¹⁰ Section 2(12), Juvenile Justice Act 2015: “child” means a person who has not completed eighteen years of age;

1986, age of responsibility is at 14 years.¹¹ This is different from the Motor Vehicles Act, wherein the age of responsibility is prescribed depending on the kind of vehicle to be driven. To drive a passenger car, the minimum prescribed age is 18 years.¹² This is different for driving a bike¹³ and a truck.¹⁴ Thus, it can be said that criminal law, prescribes different age of responsibility based on the nature of each crime. Apart from been confusing for an individual, such a position of different age groups has created inherent contradictions.

F. Contradictions between two ages of responsibility.

These have arisen because of the different ages of responsibilities prescribed in different statutes. There are certain situations where it is not clear, if any punishment arises or not. Such scenarios are described below.

I. Scenario 1: A child aged 7 years, committing a theft.

As per the Indian Penal Code 1860, a child below 7 years cannot be punished for a crime.¹⁵ For a child above 7 years, the punishment is determined based on the maturity level.¹⁶ There are no basis given for punishing a child, who commits an offence at the age of 7 years. However, such a scenario though hasn't been dealt with formally, is likely to fall under Sec 83 of the Indian Penal Code, 1860¹⁷ and such a child will be punished based on his/her maturity level. Though, such a position is not a problem by itself, it is conflict with the Juvenile Justice Act 2015. The Juvenile Justice Act 2015, prescribes the procedure of punishment for child offenders who have committed an offence. As per the act, a child offender is any individual below 18 years of age.¹⁸ As there is no provision in Indian Penal Code 1860, for punishing a child aged 7 years, the case is likely to fall under the Juvenile Justice Act 2015. Such a position is a problem, in case the child is aged 7 years and has immature understanding. Ordinarily, under the Indian Penal Code, such a child would not have been punished.¹⁹ However, under the Juvenile Justice Act 2015,

¹¹ Section 2(ii), Prohibition and Regulation of Child Labour Act, 1986: "child" means a person who has not completed his fourteenth year of age.

¹²Section 4(I), Motor Vehicles Act, 1988: No person under the age of eighteen years shall drive a motor vehicle in any public place:

¹³ Section 4(I), Motor Vehicles Act, 1988: Provided that a motor cycle without gear may be driven in a public place by a person after attaining the age of sixteen years.

¹⁴ Section 4(ii), Motor Vehicles Act, 1988: Subject to the provisions of section 18 no person under the age of twenty years shall drive a transport vehicle in any public place.

¹⁵Section 82, Indian Penal Code, 1860: Act of a child under seven years of age. —Nothing is an offence which is done by a child under seven years of age.

¹⁶Section 83, Indian Penal Code 1860: Act of a child above seven and under twelve of immature understanding. —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.

¹⁷Section 83, Indian Penal Code 1860: Act of a child above seven and under twelve of immature understanding. —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.

¹⁸Section 2(12), Juvenile Justice Act 2015: "child" means a person who has not completed eighteen years of age;

¹⁹Section 83, Indian Penal Code 1860: Act of a child above seven and under twelve of immature understanding. —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.

such a child will be punished on the basis of the gravity of his crime. This will be violative of Article 14²⁰ as has been understood in Anwar Ali Sarkar²¹ and numerous other cases.

II. Scenario 2: a child aged 4 years committing rape

As unreal as it sounds, the same recently took place in Delhi.²² However, such a child will not be punished as the bar of Section 82 will be applied. Assuming, the child had the mens rea or intention, such a position is ultra vires to the object of the Indian Penal Code and Protection of Children from Sexual Offences Act 2012. The child will also not be punished under the Juvenile Justice Act 2015, as it violates the principles of natural justice.

In numerous other case, in Cambridgeshire in United Kingdom, kids aged as low as 5 years have been assaulting adults.²³ As per the English law, the age of responsibility is at 10 years and as per the UN conventions, no child below 7 years can be punished. Most of these children as per the Cambridgeshire police, engage in such violence repeatedly and despite that cannot be punished. This repeated behaviour itself shows that there is a mens rea or intention. So, why is the age still fixed at 7 years as per most of the human rights conventions?

G. Age of 7 years as criminal responsibility.

As per most of the child right conventions, countries have to decide on an appropriate age below which no child will be punished for any offence.²⁴ In India, such an age has been fixed at 7 years. While fixing the age of 7 years, numerous factors like the maturity level of individuals, the ages in the continent²⁵ and social factors. As per medical researchers, a child aged above 7 years is better able to handle to changes in the body.²⁶ Apart from this, most of the countries in Asia, have ages ranging between 7-14 years.²⁷ As most countries, have similar culture and social patterns, it would be helpful to look at the social factors that determined the age of 7 years as for most developed countries, the age ranges from 10-15 years.²⁸

H. Social Factors and Age of 7 years.

In India, the age of responsibility was decided in 1860 when it was still under British rule. It had two choices, either to accept the British law prescribed age of maturity of 10 years or to create a new one. It chose the later, it created a new one at age of 7 years. There were numerous reasons for it. The first being the life expectancy in India was much lower than that in Britain. While in India, it was 23 years,²⁹ in

²⁰Article 14, Constitution of India, 1949: □The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

²¹*State of West Bengal v Anwar Ali Sarkar* (AIR 1952 SC 75)

²²<https://www.thequint.com/news/india/4-year-old-sexual-assault-how-law-views-crime-by-children>

²³<https://www.cambridge-news.co.uk/news/cambridge-news/boy-five-britains-youngest-domestic-14740205>

²⁴Section 40(3), Child Rights Convention

²⁵<https://www.crin.org/en/home/ages/asia>

²⁶<https://www.verywellfamily.com/7-year-old-behavior-and-daily-routines-620716>

²⁷<https://www.sbs.com.au/news/how-young-is-too-young-the-age-of-criminal-responsibility-around-the-world>

²⁸<https://www.sbs.com.au/news/how-young-is-too-young-the-age-of-criminal-responsibility-around-the-world>

²⁹Max Roser (2018) - "Life Expectancy". Published online at *OurWorldInData.org*. Retrieved from: <https://ourworldindata.org/life-expectancy> [Online Resource]

Britain, the same was 41 years.³⁰ Low life expectancy made child marriages prevalent in India. This meant that children were often married in infancy. This meant that most individuals had kids by the age of 10-12 years. This meant that the individuals had matured by 10-12 years, setting an age of 10 years, would have had meant that certain people would have had gone scot free. So, the Indian lawmakers decided the age to be 7 years. However, the question that arises is, should the age be lowered in light of changing times?

I. Changing times and Age of 7 years.

Completely opposed to the situation of 7 years old in 1860's is the situation of children today. As of today, 95% of children attend school,³¹ around 28 million kids can operate internet.³² This means that all of them are exposed to new ideas through violent TV shows and games. This affects child psychology and normalizes violence, as the mind is not fully developed. So, does this mean that children below 7 years are more prone to commit crimes and hence, the age should be lowered?

J. Children and Crime.

In India, offences committed by children are on the rise.³³ These crimes have also become more heinous and serious, as could be seen in the 2012 Delhi Gang rape case.³⁴ This led to an amendment in the Juvenile Justice Act, wherein punishment was to be prescribed on the basis of the gravity of offence. However, the government still decided to retain the minimum age of 7 years as prescribed by the Indian Penal Code, 1860 as most of the statistics showed that crime committed by children over 7 years was on the rise.³⁵ Even, medical opinions showed that children below 7 years have no agency to commit a crime,³⁶ such is often based on the situation at home. To include, such instances of violent behaviour, the Juvenile Justice Act 2015, provides for putting children below 7 years, committing violent crimes in care of foster parents.³⁷ Though, Juvenile Justice Act provides for the rehabilitation of these children, the methods used to determine age often provide a wrong idea and certain times, children who have done serious crimes and are above 7 years are treated as those who are below 7 years.

³⁰<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/lifeexpectancies/articles/howhaslifeexpectancychangedovertime/2015-09-09>

³¹ <http://www.worldbank.org/en/country/india/brief/educating-india-children>

³²<http://www.unicef.in/STAYS SAFE ONLINE/fastfacts-There-are-302-million-internet-subscribers-in-India-of-which-94-are-mobile-internet-users-and-6-wired-internet.html>

³³http://www.prsindia.org/administrator/uploads/general/1438698738_Children%20in%20conflict%20with%20law-%20Vital%20stats.pdf

³⁴<https://www.independent.co.uk/news/world/asia/nirbhaya-case-anger-and-protests-as-juvenile-delhi-gang-rapist-freed-after-three-years-in-reform-a6780601.html>

³⁵http://www.prsindia.org/administrator/uploads/general/1438698738_Children%20in%20conflict%20with%20law-%20Vital%20stats.pdf

³⁶<https://www.verywellfamily.com/7-year-old-behavior-and-daily-routines-620716>

³⁷<https://www.thequint.com/news/india/4-year-old-sexual-assault-how-law-views-crime-by-children>

K. Finding the correct age of children.

As per Section 94 of the Juvenile Justice Act 2015,³⁸ the board has to determine the age through the matriculation certificate or an equivalent certificate, in absence of such a certificate, through the birth certificate. If both these certificates are unavailable, then through medical tests such as ossification test. These appear to be conclusive proofs, however there are certain problems with using these documents as proofs.

L. Problems with the methods prescribed

In *RK Tarun v Union of India*,³⁹ the petitioner questioned the validity of Section 94⁴⁰ in light of Article 14⁴¹ of the Indian constitution. The petitioner contended that the birth certificate, issued by a statutory body is a more conclusive proof than the matriculation certificate or other such certificates like the school leaving certificates, which may be rigged. Though, the court dismissed this claim due to lack of evidence. Many people raised similar questions, after the Delhi Gang rape case,⁴² however there was no amendment made to this method of age computation. Certain people also suggested using medical tests as the only method of age computation. However, the supreme court had already declared it an unreliable option of age

³⁸Section 94, Juvenile Justice Act 2015: Presumption and determination of age.

1. Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

2. In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —

i the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

ii. the birth certificate given by a corporation or a municipal authority or a panchayat;

iii. and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

3. The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

³⁹2015 SCC OnLine Del 13461

⁴⁰ Section 94, Juvenile Justice Act 2015: Presumption and determination of age.

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Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

3. The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

⁴¹Article 14, Constitution of India, 1949: □ The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

⁴² <http://www.thehindu.com/news/cities/Delhi/hc-rules-juvenile-in-december-16-delhi-gang-rape-nirbhya-case-to-walk-free/article8005365.ece>

computation in *Jaya Mala's*⁴³ case. So, what method is the best method to compute age, still remains a question, unanswered in Indian Jurisprudence. However, it can lead to many problems if age of an individual is computed wrongly.

M. Problems with wrong computation.

The age of responsibility for each act has been decided by taking into mind, an individual's maturity level a wrong computation may punish the innocent while leave the guilty. An example of this is the case, *Md. Nadeem Iqbal v State of Bihar*.⁴⁴ In this case, *Md Nadeem Iqbal*,⁴⁵ aged 25 years defrauded the court, by showing his matriculation certificate that showcased his age as 16 years. Hence, he got a lesser degree of punishment for the offence of murder. Another example is the case of *Ashwani Kumar Saxena*,⁴⁶ whose birth certificate showcased, his age as 17 years, which was much higher in reality. He was punished under the Juvenile Justice Act, for a time of one month, when he completed 18 years. This proved to be a wrong sentencing on two grounds, first ground being that the accused was not a juvenile.⁴⁷ Secondly, the minimum punishment prescribed for an offence of murder⁴⁸ as was the case is life imprisonment, which was commuted as 1 month in the said case, after which the fact of defrauding was discovered. In such cases, where the fact of defrauding is discovered, post sentence has been completed, the law will not be able to punish the accused again on the account of the principle of 'double jeopardy' as specified in Article 20(2)⁴⁹ of the Indian Constitution. As per the principal of double jeopardy,⁵⁰ no person can be punished for the same offence twice.

Hence, it can be said that wrong computation of age is a problem as it leads to the innocent being punished and the guilty been left scot-free. Another problem that exists with regards to age of responsibility is finding a common age.

N. Reconciling ages in India.

Reconciling ages in India, appears to be a problem in the Indian Scenario. As seen above the ages are often decided on the basis of the object of the act. So, having a common age will be a problem. Suppose, keeping in mind the age of responsibility of 12 years as prescribed by Indian Penal Code, 1860,⁵¹ the age as prescribed by the Prohibition of Child Marriage Act 2006,⁵² for both genders is changed. This means that age of responsibility for marriage is 12 years. This by itself, sounds like a problem. First, the bodily

⁴³ *Jaya Mala v Home Secretary, Government of J&K*, AIR 1982 SC 1297

⁴⁴ <https://indiankanoon.org/doc/91182982/>

⁴⁵ <https://indiankanoon.org/doc/91182982/>

⁴⁶ <https://indiankanoon.org/doc/57506863/>

⁴⁷ Section 2(12), Juvenile Justice Act 2015: child" means a person who has not completed eighteen years of age

⁴⁸Section 302, Indian Penal Code 1860 - Punishment for murder.—Whoever commits murder shall be punished with death, or 1[imprisonment for life], and shall also be liable to fine.

⁴⁹ Article 20(2), Constitution of India 1949 - No person shall be prosecuted and punished for the same offence more than once

⁵⁰ Article 20(2), Constitution of India 1949 - No person shall be prosecuted and punished for the same offence more than once

⁵¹Section 83, Indian Penal Code 1860: Act of a child above seven and under twelve of immature understanding. —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

⁵²Section 2(a), Prohibition of Child Marriage Act, 2006 - (a)"child" means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;

developments have not happened in either female⁵³ or male body.⁵⁴Hence, children at such a age will have no knowledge of the meaning of marriage. Secondly, the UN has in numerous reports stated the optimal age of motherhood at 20-35 years,⁵⁵marriage at early ages like 12 years will cause early pregnancies and higher cases of infant and maternal mortality, as can be seen in Nigeria's case. In Nigeria, the age of marriage is fixed at 11 years for girls,⁵⁶this has lead to Nigeria having an infant mortality rate of 7%⁵⁷ and maternal mortality rate of 8%.⁵⁸

It can be clearly seen from this example that a reconciliation of ages is not possible. Another example that shows the same is fixing the age of criminal responsibility at 18 years, as in the case of civil law.⁵⁹Such a position will mean that majority of child offenders go punished. As per numerous news report, juvenile crimes are on the rise.⁶⁰Hence, raising the age of criminal responsibility would mean that such children go unpunished, which is dangerous for the society as there will always be a threat of repeat offences. So, where does the final solution lay?

O. Conclusion

It is not possible to reconcile the age of consent to a single one due to the inherent contradictions that exist in the same. Keeping at the the same, would mean that there will be higher chances of defrauding with respect to the age of criminal responsibility.

So, the solution is two folds, first keep the ages of responsibility as have been prescribed by different acts and decide on a particular act that would supersede all other ages of responsibility, an example can be the Indian Penal Code,⁶¹ prescribed ages.

For, cases, where defrauding has been done, an exception to Article 20(2)⁶²should be created wherein such individuals can be punished for the same offence twice. In cases, where children below 7 years, are involved in any offence, they should be sent to foster homes till the time investigation is completed.

These solutions will help in a stricter enforcement of the age of responsibility and leave lesser scope for a defraudment.

⁵³Harsh Chawla, April 30, 2010, India Today: 'Puberty Much Earlier.'

⁵⁴Indian Express, December 8 2010, 'Boys hitting puberty earlier-study.'

⁵⁵Denis Campbell, December 31, 2010, Guardian UK, 'The Right age to become a mother.'
<https://www.theguardian.com/society/2010/dec/31/pregnancy-mothers-fertility-children>

⁵⁶ <https://www.ageofconsent.net>

⁵⁷ <https://knoema.com/atlas/Nigeria/topics/Demographics/Mortality/Infant-mortality-rate>

⁵⁸ https://www.indexmundi.com/nigeria/maternal_mortality_rate.html

⁵⁹Section 11, Indian Contract Act 1872, 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 who is of sound mind and is not disqualified from contracting by any law to which he is subject

⁶⁰ <https://timesofindia.indiatimes.com/city/delhi/Juvenile-crime-up-16/articleshow/53935926.cms>

⁶¹Section 83, Indian Penal Code 1860: Act of a child above seven and under twelve of immature understanding. —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

⁶² Article 20(2), Constitution of India 1949 - No person shall be prosecuted and punished for the same offence more than once