
THE TRIAD OF REFORM, DETERRENCE, AND PROTECTION: LINKING MACR TO THE RIGHTS OF THE JUVENILE - A COMPARATIVE ANALYSIS

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INTRODUCTION

In the 21st session of the Human Rights Council of the United Nations General Assembly on the promotion and protection of all human rights including civil, political, economic, social and cultural rights, including the right to development, what stood apart as a recommended strategy has now become the reality in various criminal systems across the world.¹ The integration of the protection of all forms of violence within the juvenile justice system was declared to be an inclusive point in the national agenda of member nations. It is imperative that the process of juvenile justice reform is framed by a child and gender sensitive approach promoting fairness, effectiveness and efficiency as the major component of the laws formed in this context.² The legislations made in this regard aim to prohibit all forms of violence against children in the mechanism of the juvenile justice delivery system to enhance public accountability.³ There is difference of opinion and variation in laws, being a reflection of various legal traditions and cultural values, and more so policy priorities.⁴

The UN Convention on the Rights of the Child defines victim centric and child sensitive approaches as the basis of the laws that are made in this regard and thus, a basic mandate of the procedural safeguards including the right to legal assistance, the presumption of innocence, and non-discrimination has been set.⁵ Countries in the current contemporary and globalized

¹ United Nations Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General, 21st Sess, U.N. Doc. A/HRC/21/25 (2012).

² United Nations Human Rights Council, U.N. Doc. A/HRC/21/25, ¶ 69 (2012).

³ United Nations Human Rights Council, U.N. Doc. A/HRC/21/25, ¶ 71 (2012). Some such legislations include the UN Convention on the Rights of the Child, the UN Guidelines for Action on Children in the Criminal Justice System, and the UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice.

⁴ Laura S. Abrams & Diane Terry, What Is a Juvenile? A Cross-National Comparison of Youth Justice Systems, UCLA Luskin Challenge Inequality Project 1–30 (2018).

⁵ United Nations Convention on the Rights of the Child art. 40, adopted Nov. 20, 1989, entered into force Sept. 2, 1990, 1577 U.N.T.S. 3.

world tend to differ in the implication of this mandate. One of the major differences that stand out is the variation in the age of criminal responsibility. The age is comparatively lower in countries including India and UK, while countries such as Japan and Belgium adopt a higher age to emphasize more on protection.⁶ Such variations depend more on cultural, social, and political norms rather than policy recommendations, tending to create a sense of inequity in the justice delivery systems of various nations and institutions.

MACR- INTERNATIONAL STANDARDS AND REGIONAL VARIATIONS

The International minimum age of criminal responsibility (MACR) refers to the standard which primarily defines the age below which a person is considered to be incapable of committing a criminal offense due to an insufficient understanding of the probable consequences of their actions. A legal threshold is thus created determining the youngest age at which a child can be held liable as per the associated norms of the legal system. Such a conceptual threshold is guided by three major international instruments that further guide the minimum age that's set up.

With relevance to the Convention on the Right of the Child, Article 40 and General Comment 10 of the same are the relevant provisions in this regard. Article 40(3)(a) specifically states that there shall be established "a minimum age below which children shall be presumed not to have the capacity to infringe the penal law".⁷ In consonance with this, CRC has interpreted this convention with regards to children's rights in the context of providing juvenile justice in General Comment 10.⁸ Furthermore, paragraphs 30 to 35 provide for the details in regards to the fixing of such criminal responsibility.⁹

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules include Rule 4 which technically describes the age of criminal responsibility and recognizes the concept of the age for juveniles in regards to criminal responsibility.¹⁰ An emphasis has been made to keep in view the emotional, mental and

⁶ United Nations Committee on the Rights of the Child, General Comment No. 10 (2007): Children's Rights in Juvenile Justice, CRC/C/GC/10, paras. 32–38, app. (2007).

⁷ United Nations Convention on the Rights of the Child art. 40(3)(a), adopted Nov. 20, 1989, entered into force Sept. 2, 1990, 1577 U.N.T.S. 3.

⁸ United Nations Committee on the Rights of the Child, General Comment No. 10 (2007): Children's Rights in Juvenile Justice, CRC/C/GC/10 (Apr. 25, 2007).

⁹ *Id.*

¹⁰ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), G.A. Res. 40/33, annex, U.N. Doc. A/RES/40/33, rule 4 (Nov. 29, 1985).

intellectual maturity that is involved in the committing of a crime. A balance of scale is thus required in the fixing of such an age, keeping in check the mentioned factors.

The African Charter on the Rights and Welfare of the Child in Article 17 talks about the administration of juvenile justice and provides that there has to be, at all costs, a minimum age below which a child is deemed to be innocent and not to have the capacity to infringe the penal law in question.¹¹

There have also been several cases of international jurisprudence that have addressed the issues dealing with the fixing of MACR. For instance, while the European Convention on Human Rights does not address the notion of MACR but the court has highlighted to a considerable extent that a child charged with an offence must be treated in a manner which emphasizes the age and the level of maturity and emotional capacities she/he possesses.¹² Several guidelines in various countries align with the international notions of MACR in the defined international instruments. The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, to mention, states that the age considered should not be too low and should be in accordance with rationality and the legal provisions of law, and eventually global commitments.¹³ A 2011 report titled Juvenile Justice and Human Rights by the Inter-American Commission on Human Rights addressed the main issues in connection to the setting up of MACR and the related frameworks.¹⁴ The report focuses on the principle of the best interest of the child, guiding that children require special protection with respect to the human rights and scientific considerations. The report highlights the overuse of the deprivation of liberty and focuses on the alternatives prioritizing social reintegration in society. MACR has been defined as a fundamental human rights safeguard in juvenile justice by the same.¹⁵

LEGISLATIVE POLICIES AND JUDICIAL APPROACH- THE INDIAN CONTEXT

In India, there are distinct legislative provisions that deal with the notion of the minimum age of criminal responsibility. The provisions in the criminal laws of the country preserve the legal ideology of *doli incapax* while incorporating modern concepts relating to the development

¹¹ African Charter on the Rights and Welfare of the Child, art 17(4), adopted July 11, 1990, OAU Doc CAB/LEG/24.9/49 (1990).

¹² Adamkiewicz v. Poland, App. No. 54729/00, Eur. Ct. H.R., ¶ 52 (Mar. 2, 2010).

¹³ Committee of Ministers of the Council of Europe, Guidelines on Child-Friendly Justice, ¶ 23 (Nov. 17, 2010).

¹⁴ Inter-American Commission on Human Rights, Juvenile Justice and Human Rights in the Americas, OEA/Ser.L/V/II, Doc. 78 (July 13, 2011).

¹⁵ *Id.*

assessment and conditional liability aligning with international standards and commitments discussed above. The changes in the criminal laws of the nation deal with the addition of developmental psychology and neuroscience, and the associated policy and social considerations. In the Bharatiya Nyaya Sanhita, Section 20 and Section 21 deal with the setting up of the national standards of MACR.¹⁶ The language of the sections, when literally interpreted, defines it to be seven years of age. Section 21 further adds that nothing is an offence which is done by a child above seven years of age and under twelve years of age, based on the maturity of the understanding to judge the probable consequences of their actions.¹⁷ Though the courts are bound by the law, there is a degree of discretion involved in the assessment of maturity and moral awareness, allowing a case-by-case determination of the situation. This leads to a lacuna of going left in some situations, considering the international scenario in this regard.

The Juvenile Justice (Care and Protection of Children) Act, 2015¹⁸ and the amendments thereafter have been fundamental in determining this question, keeping in mind the reform, deterrence, and the protection mechanisms of the Indian legal system in coherence with international norms.¹⁹ One of the key provisions of this act is the trial of juveniles as adults. Section 15 and Section 19 of the act empower the Juvenile Justice Board to conduct a preliminary assessment to ascertain whether a child between the ages of 16 and 18 has committed a heinous offence or not. If, after assessing, it is concluded that the child has the mental and physical capacity to commit the offence and understands the consequences of the act, he may be recommended to be tried as an adult.²⁰ This attempt to change the legal position on MACR in specific cases faced critical perspectives from various child groups, psychologists, and legal scholars. Critics argued that it failed to account for variations in the cognitive development across different individuals.²¹ Furthermore, when national standards are kept in check with the international standards such as the UNCRC and the Beijing Rules, juveniles are expected to be treated within a rehabilitation framework and a balanced approach. Adult trials tend to reduce the chances of reintegration into the society.²² Exceptions always

¹⁶ Bharatiya Nyaya Sanhita 2023, ss 20–21.

¹⁷ Bharatiya Nyaya Sanhita 2023, s 21.

¹⁸ Juvenile Justice (Care and Protection of Children) Act 2015.

¹⁹ Major amendments include the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021.

²⁰ Juvenile Justice (Care and Protection of Children) Act 2015, ss 15, 19.

²¹ Huzaifa Hasan, Revisiting the Minimum Age of Criminal Responsibility in India: Bridging Law, Science, and Global Ethics, 2025 CCYJ NALSAR.

²² The UNCRC and the Beijing Rules together establish the international standards for how juveniles must be treated within a proper framework of rehabilitation rather than punitive punishment.

exist and some cases might need a scientific and specific approach which supports individual assessment in juvenile cases based on psychological maturity evaluations. The act represents India's first formal acknowledgment of the fact that some cases require specific handling and differential treatment, highlighting the demand for a balanced approach towards the situation.²³

Under the Protection of Children from Sexual Offences Act, 2012²⁴, juvenile sensitive approaches in respect to the cases involving minor offenders is included, as per national policies and international norms. When juveniles are accused herein, the provisions of the juvenile justice act take precedence. Focus is hence laid on a rehabilitative and reformatory approach. In *Thirumorthy vs. State represented by the Inspector of Police* ²⁵, the Supreme Court challenged the judgment passed by the Madras High Court dismissing the appeal under Section 374(2) of the Criminal Procedure Code, 1973²⁶ to affirm the conviction and sentence awarded by the trial court under distinct sections of the Code of Criminal Procedure, Indian Penal Code, and the POCSO act. This was reversed due to the non-adherence of the provisions and mandate under the Juvenile Justice Act. The accused was found to be a juvenile based on the date of birth recorded in the related school documents, thus, being a child in conflict with law (CLC).²⁷ Pursuant to the appeal of the accused, the court looked at the alleged non-adherence to the mandatory requirements of the JJ Act. The court held that even if the sessions court was designated as a children's court in this matter, the case had to be forwarded to the board for further directions, citing provisions under Section 15(1), 15(2), and 18(3) of the Act.²⁸ As a precedent for the case, in *Ajeet Gurjar vs. State of M.P.*²⁹, the court clearly cited that in the absence of a preliminary assessment being conducted by the board under the relevant section, which is section 15, and without an order passed under section 15(1) read with section 18(3), it had been held in the case that it was impermissible for the trial court to accept the charge sheet and to proceed with the trial of the accused. The proceedings in the case were

²³ Juvenile Justice (Care and Protection of Children) Act 2015.

²⁴ Protection of Children from Sexual Offences Act 2012.

²⁵ *Thirumorthy v. State rep. by Inspector of Police*, Crim. App. No. 1773 of 2024, 3 S.C.R. 1228 (India Mar. 22, 2024).

²⁶ Code of Criminal Procedure 1973, s 374(2).

²⁷ Juvenile Justice (Care and Protection of Children) Act 2015, s 2(13).

²⁸ Sections 15(1) and 15(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 relate to the power of the Juvenile Justice Board to conduct a preliminary assessment of children aged 16-18 years accused of heinous offences to determine if they're to be tried as adults or not. Section 18(3) further deals with the assessment outcome allowing the transfer of the child to a children's court if the board fails in its objective.

²⁹ *Ajeet Gurjar v. State of Madhya Pradesh*, SCC OnLine SC 1255 (India).

considered to be in gross violation of the mandate under the Juvenile Justice Act.³⁰

Exploring on the same lines, several landmark judgements by the Supreme Court and various High Courts support the notion of MACR, helping promote balance in the juvenile justice system by emphasizing the concept of rehabilitation over deterrence. In *Sheela Barse vs Union of India*³¹, the Supreme Court condemned the detention of children in jails and insisted on a proper mechanism of legal aid and inquiry, eventually advocating a uniform national standard for juvenile trials. Similarly, in *Gopinath Ghosh vs. State of West Bengal*³², the Supreme Court ruled that juvenile welfare laws should apply based on age at the time of offence, regardless of the trial delay, thus directing the attention towards the requirement and legal validity of MACR, situating the child at the heart of legal mechanisms and provisions in this regard. Furthermore, in *Hari Ram vs. State of Rajasthan*³³, the Supreme Court ruled that juveniles must be treated and tried under the appropriate laws if their age tends to be below the prescribed age at the time of offense, reinforcing and enhancing the MACR provisions. All in all, the core foundation of such decisions rest in the implementation of legislative policies and judicial mindset in a manner that focuses on a rehabilitative, balanced, progressive, and child centric juvenile justice system.

CONCLUSION

The notion of MACR seems to transcend a mere statutory threshold and embody the moral and developmental recognition denoting that children differ fundamentally in their cognitive and emotional maturity. The philosophy of reform and reintegration overriding punitive instincts has been the core of the juvenile justice delivery system over the past few years. The future of the juvenile justice system, thus, lies in fostering a balanced system that seeks to harmonize the principles of protection, accountability, and international compliance. The comparative and analytical stance taken in this research has proven that for an ideal legislative and judicial system, there must be a balanced intersection of the reformative policies and procedural fairness, as cited by various judgements of the apex court and various high courts, as discussed herein. On a critical analysis, it could be said that while deterrence and accountability form the structural support of any criminal justice system, when it comes to juveniles, protection and

³⁰ *Id.*

³¹ *Sheela Barse v. Union of India*, (1986) 2 SCALE 865; (1986) CriLJ 1736; (1987) 1 SCC 76 (India).

³² *Gopinath Ghosh v. State of West Bengal*, Supp. SCC 228 (India).

³³ *Hari Ram v. State of Rajasthan*, 13 SCC 211; 2009 (6) SCALE 695; 2009 (57) BLJR 2333 (India).

rehabilitation form the moral foundation of any procedure. The concept of having a standard MACR is rooted in the developmental, psychological, and social understanding of justice not only being done but also being delivered by the preservation of the sanctity of childhood and promoting the protection balances to juveniles in the criminal justice system, both nationally and internationally.