

ANALYSING THE NEED FOR AGE DISTINCTIONS IN LAW

LIEW JIN XUAN

I. INTRODUCTION

In law, there are four main considerations taken into account by the Court when sentencing: retribution (or, more aptly, the punishment needing to fit the crime), deterrence, protection of the public, and rehabilitation. The weight accorded to each of these considerations varies with the age of the offender. Particularly for young offenders, the dominant consideration has been said to be rehabilitation.¹ As explained by Yong CJ, the basis for this is that youths have supposedly better chances of reform in their formative years.² A further consideration would be the aspect of culpability, which would fall under the retributive factor – impressionable teens may be “slightly less responsible than older offenders”.³

As a result, where youth and children are concerned, the law often adopts a more rehabilitative approach to sentencing. The law would look upon their mistakes more sympathetically,⁴ and this view that age is a measure of maturity is one adopted worldwide. While understandable, there are inherent flaws in such an approach. Firstly, it fails to consider instances where a person is a juvenile at the time of crime, but is past the age limit for juveniles at the time of trial. Secondly, the inconsistency of standards in law pertaining to what age limit to impose on each stage of maturity undermines the rationale behind prioritising rehabilitation for ‘minors’. Lastly, such a distinction acts as an overly blunt tool of justice and is, in fact, unnecessary.

II. DIFFERENTIATING BETWEEN THE TIME OF OFFENCE AND TIME OF TRIAL

¹ *Public Prosecutor v Mok Yuen Ping Maurice* [1998] 3 SLR(R) 439 at [21].

² *Ibid.*

³ *Ibid.*

⁴ *Parliamentary Debates Singapore: Official Report*, vol 87 at cols 2105-2106 (10 January 2011) (Minister for Community Development, Youth and Sports Dr Vivian Balakrishnan).

In Singapore, a person can be considered a juvenile at the time of crime and yet still be held to the standard of an adult. As set out in the *Children and Young Persons Act*,⁵ age is calculated on the date when the Juvenile Court commences the hearing of the charge, not on the date when the offence was committed.⁶ The clearest manifestation of this would be that a 15-year-old can be charged in an adult Court instead of the Juvenile Courts if the case is not heard until he or she reaches 16 years of age.⁷ In effect, the rehabilitative consideration would be accorded lesser weight by the Courts if at the time of the trial, the person has grown past the age limit defining a 'juvenile'.

If the law truly views the follies of youth more tolerantly as the young "don't know any better",⁸ it is incomprehensible why sentencing should focus on the time of the trial, merely because a person has *ex post facto* become older. It is precisely because the offence was committed when the juvenile was young and ignorant that the sentence should be lighter. This problem is exacerbated because of the possible time lapse between initiation of criminal charges and actual prosecution in Court.

III. ADULTHOOD VS. CHILDHOOD – INCONSISTENCY OF MEASUREMENT

Currently, inconsistencies between different Singapore statutes result in the odd outcome where a person can be both an adult and a child in the eyes of law.

For instance, the *Children and Young Persons Act*⁹ states that where a person is 16 or above at the time of trial, he or she is no longer under the jurisdiction of the Youth Court, and will be charged in the Subordinate Court like all adults. However, they are not yet considered adults according to the *Civil Law Act*,¹⁰ which states that a person must be at least 18 years of age before they can enter into a contract. As aptly explained in *From Children to Citizens*, "a 17-year-old may be treated as an

⁵ Cap 38, 2001 Rev Ed Sing, s 33(6).

⁶ (2010) 8:3 BJCJ 63 at 64.

⁷ *Ibid.*

⁸ *Supra* note 1.

⁹ *Supra* note 5.

¹⁰ Cap 43, 1999 Rev Ed Sing, s 35.

adult on charges of committing a violent crime ... but the same person could well be treated as a child for purposes of employment and other contractual relations, including marriage”.¹¹

If the basis for prioritising rehabilitation in youth offender cases is because they are in their ‘formative’ years and vulnerable, this very basis is undermined by the varying standards held in general in law of how old, say, an ‘impressionistic teenager’ should be. The multiple standards suggest that even the law itself is confused as to the precise distinctions it should make between the age of a person who is still vulnerable and one who is already independent. One potential explanation for the plural standards in law could be that different concepts require different degrees of maturity to grasp. For instance, it is easier for the younger minds to understand that killing is wrong, but perhaps not why a marriage contract is more complicated than two people agreeing to live together. Yet if this is the true rationale, it would appear that the law is acting on the presumption of what a child can and cannot understand.

IV. CONCLUSION: AGE LIMIT AN OVERLY BLUNT TOOL

Ultimately, it would appear that the distinction between ages is a somewhat arbitrary distinction. Is a person who becomes 16 truly more mature than he was just one day prior?

Children under 7 years of age are immune from criminal liability¹². At 15, one gets charged in the juvenile court; turn 16, however, and the hearing commences in the subordinate court.

It is understandable that usage of age as a defining line roughly identifies those people who are deserving of a second chance. According to the Ministry of Social and Family Development, the recidivism rate of juveniles under rehabilitation schemes have been quite low – generally under 20% across the board – indicating its great success.¹³ Yet this gives the impression that law tends to judge the ‘worthiness’ of a person to whom a second chance would be provided based on his or her age and the correlated ‘probability’ of success.

¹¹ Francis X. Hartmann, *From Children to Citizens Volume II: The Role of the Juvenile Court*, 1st ed (New York: Springer-Verlag, 1987) at 4.

¹² *Penal Code* (Cap 224, 2008 Rev Ed Sing), s 82.

¹³ Ministry of Social and Family Development, “Juvenile Delinquents: Recidivism Rate” (14 April 2016), online: <<https://www.msf.gov.sg/research-and-data/Research-and-Statistics/Pages/Juvenile-Delinquents-Recidivism-Rate.aspx>>.

Also, the current state of law provides discretionary powers both to deny rehabilitative approaches for young offenders¹⁴ and to grant probation to adult offenders. The use of age distinctions is hence not only unnecessary, but even encumbers judicial fairness. In *PP v Muhammad Nuzaiban bin Kamal Luddin*,¹⁵ the District Court merely sentenced the convict to 30 months' probation. This was aptly reversed by Yong CJ upon appeal to reflect the seriousness of cyber-crime and Parliamentary intention to deter such behind the *Computer Misuse Act*.¹⁶ The method by which the Court reached its decision is one that should be widely adopted: rather than deciding solely based on age, each individual should be allowed rehabilitative approaches based on the overall merits of their case. Arbitrary age distinctions are unnecessary as sentences can be prudently determined without it. The age of the accused should only constitute one of several factors, and should vary in importance depending on the precise factual matrix. Indeed, it is noted that children between ages 7 and 12 are protected from criminal liability under s 83 of the *Penal Code*¹⁷ as long as they have not "attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion". In fact, it is proposed here that children should be protected only if they have not attained the requisite maturity as judged on a case-by-case basis.

The law is not a catch-all safety net: there are bound to be people who will fall through the cracks. The situation today continues to be flawed, but hopefully, things may just change for the better. The age distinction may arguably more practical than having to judge each case on a case-by-case basis, and it has been effective thus far. However, it is proposed that rather than having it written in the statute itself, age distinctions can simply serve as a useful guide in deciding the culpability of the offender, rather than usually acting as a free ticket to forgiveness for the 'young', and a bias against the 'adult' – who may just be a year apart.

¹⁴ *PP v Muhammad Nuzaiban bin Kamal Luddin* [1999] 3 SLR(R) 653 at [16].

¹⁵ *Supra* note 14.

¹⁶ Cap 50A, 1993 Ed.

¹⁷ Cap 224, 2008 Rev Ed Sing.