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IMPORTANCE OF MEDICOLEGAL ASPECT OF AGE

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ABSTRACT

External inspection of the dead permits only an approximate estimate of age. It is a primary characteristic in the identification and its estimation is of considerable importance. The skeleton and the teeth are the principal sources of information towards the age estimation. In present article we are discussing regarding the medico legal aspect of age.

Keywords: Age, Ayurveda, estimation

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INTRODUCTION

In law, responsibility means liability to punishment. Under section 82 IPC, a child under the age of seven is incapable of committing an offence. This is so because the action alone does not amount to guilt unless it is accompanied by a guilty mind and a child of that tender age cannot have a guilty mind or criminal intention with which the act is done.³ This presumption, however, is only confined to offences under the IPC but not to other Acts e.g. the Railway Act {Act IX of 1890}. Thus, a child of this age will be punished if it does anything maliciously to wreck or attempt to wreck a train, to hurt or attempt to hurt persons traveling by railway by or to endanger the safety of persons traveling by railway by willful act or by omission or by way of rash or negligent act or omission. In a case where a lad of about 6 years of age, was sent to the Sessions Court, Badaun for trial under ss 127-180 of the Indian Railways Act 1890, on charges of pelting stones at the engine of the 10-down mixed train, the learned district judge held the accused guilty; but taking the lad's tender age into consideration, the judge ordered him to be let off with admonition, on his father executing a bond of a sum of Rs 100, binding himself in such penalty to prevent the minor accused from again being guilty of any of the acts referred to in ss 127 and 180 of the Indian Railways Act 1890.⁴ In India under section 83 IPC, a child above seven and below twelve years of age, is presumed to be capable of committing an offence if he

has obtained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. The law presumes such a maturity in a child of that age, unless the contrary is proved by the defense. On the other hand, according to English law, the incapacity to commit a crime by a child between eight and fourteen years is to be presumed until the contrary is proved.⁵ Under section 89 IPC, a child under 12 years of age cannot give valid consent to suffer any harm which can occur from an act done in good faith and for its benefit, as for example, a consent for a surgical operation. Only, a guardian can give such consent. Under section 87 IPC, a person under eighteen years of age cannot give valid consent, whether express or implied, to suffer any harm which may result from an act not intended or not known to cause death or grievous hurt, as for example, a wrestling contest.

The Bombay Children Act 1948 provides that a child means a boy or a girl who has not attained the age of 16 years, and a youthful offender means any child who has been found to have committed an offence, and who shall not be sentenced to death or life imprisonment. A child charged with the commission of an offence shall be tried by the Court of a Chief Judicial Magistrate or in any court specially empowered under the Children's Act 1960 or any other law for the time being in force providing for the treatment,

training and rehabilitation of youthful offenders, and, on, conviction, may be sent to certified school or a fit person institution, but must not be detained there beyond the age of 18 years. The state government may order a youthful offender who has attained the age of 16 years, detained in a certified school, to be transferred to a Borstal School established under the Borstal School Act 1929, in the interest of discipline or for other social reasons. A youthful offender may also be committed to the care of his parent or guardian or any other adult relative, who will be required to execute a bond to be responsible for the good behavior and the wellbeing of the youthful offender for a period of at least three years. If the offence committed by a youthful offender is punishable with fine, and youthful offender himself is over the age of 14 years, the offender may be ordered to pay the fine. Under the Children and Young Persons Act 1933, of England, a person under the age of 18 years cannot be sentenced to death. Age itself is not generally enough to reduce the sentence of death to life imprisonment, though there are now some cases where the youth of the offender has been accepted as a mitigating factor.⁶ 3] Kidnapping- This means carrying away a person from, lawful guardianship by illegal means. Under section 369 IPC, to constitute a crime of kidnapping or abducting a child with the intention of taking dishonestly any moveable property from its person, the age of such a child should be under ten years. Section 361- 366 IPC lay down that it is a crime to kidnap or abduct a minor

from lawful guardianship if the age of boy is under sixteen and that of a girl under eighteen years.⁷ Section 366A, 372, 373 IPC lay down that it is an offence to procure a minor girl for illicit intercourse or to sell or buy a minor girl for purpose of prostitution, If her age is under eighteen years. Section 366B IPC lies down that it is an offence to import into India from foreign country a girl for purpose of illicit intercourse, if her age is less than twenty-one years. 4] Rape-Under section 375IPC Rape is defined as unlawful sexual intercourse by a man with a woman without her consent and against her will or with her consent and when the consent is obtained by force, fear or fraud or sexual intercourse with any woman below the age of 15 years even with own wife.⁸ or any other girl under sixteen years of age even with her consent constitutes the offence of rape. According to the law of England, a boy under 14 years of age is presumed to be incapable of committing rape. In India, there is no such limit of age at which a person may be presumed to be physically incapable of committing rape, however the court is guided in this respect by ss 82 and 83 of the Indian Penal Code 1860

Attainment of majority- Under Indian Majority Act {Act IX of 1875} person domiciled in India attain majority on completion of eighteen years, except when under a guardian appointed by a court, or under a Court of Wards, when the individual attains majority on completion of twenty- one years. Persons under this age are minors. After attainment of majority, a

person acquires full civil rights and responsibilities. A minor cannot make a valid will, sell his property, or serve on a jury. Under the Bombay Prevention of Hindu Bigamous Marriage Act 1946, a minor means any person who is under 16 years of age. 7] Employment- Twenty five years is ordinarily the limit for entering into government service. The constitution of India 1950 provides that a child below the age of 14 years shall not be employed to work in any factory or mine or engaged in other hazardous employment. Under the Factories Act 1948, an 'adult' is defined as a person who has completed his eighteenth year, an 'adolescent' is defined as a person who has completed his fifteenth year but has not completed his eighteenth year, and a 'child' is defined as a person who has not completed his 15th year. A young person means a person who is either a child or an adolescent. A child who has not completed his 14th year shall not be required or allowed to work in any factory. A child who has completed his 14th year or an adolescent shall not be required or allowed to work in a factory unless a certificate of fitness granted to him by a certifying surgeon is in the custody of the manager of the factory, and such a child or adolescent carries, while he is at work, a token giving a reference to such a certificate. While at work in the factory, an adolescent who is granted a certificate of fitness to work in a factory and carries a token giving reference to the certificate shall be deemed to be an adult for all purposes. No child shall be employed or permitted to work in any factory for more

than four and half hours in any day and between the hours of 7 pm and 6 pm. No adult worker shall be required or allowed to work in any factory for more than nine hours in any day and for more than 48 hours in any week. The period of work of adults employed in a factory shall be so fixed in each day, that no period shall exceed five hours and no worker shall work for more than five hours before he has had an interval of at least half an hour. India has ratified the convention concerning night labour of young person's employed in an industry, which was adopted by the International Labour Conference as its thirty-first session held in 1948. This convention provides that young person's between 15 & 17 years of age shall not be employed in factories, mines, railways and ports for a period of at least 12 consecutive hours, including an interval of at least seven consecutive hours between 10 pm and 7 am.¹⁰ The Bombay Shops and Establishment Act 1948, provides that a child who has not completed 12 years shall not be employed in these establishments. No employee shall be allowed to work in any shop or commercial establishment for more than nine hours in a day and 48 hours in any week. Women shall be prohibited from work before 6 am and after 7 pm.

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