CHAPTER II

WHO IS A JUVENILE?

2.1.1. Who is a Juvenile?

The term "Juvenile" is commonly used to denote all persons belonging to a certain age-group which generally covers a period midway between childhood and youth. By common consent it includes all "teen-agers", male or female. As a subject matter of sociological interest, the juvenile when he turns delinquent, is featured as a problem. We speak of the "adult criminal" but the "juvenile delinquent". We donot usually speak of the "problem adult" but of the " problem child". Hence there is need to distinguish delinquency from crime, on the one hand, and to enquire, on the other, why is the concept of delinquency, not crime, associated with the juvenile and why we donot wish to make a "criminal" of him. This distinction should first engage our attention.

2.1.2. From the point of view of most parents, teachers and others who deal extensively with young persons, virtually all children are in a sense"problems". All children have to be taught to curb selfish and aggressive tendencies, to respect social values, to differentiate between right and wrong and in general to behave " decently" in civil society. It is, ofcourse, generally accepted that very young children cannot always be held accountable for their early behaviour because their sense of responsibility is not yet fully developed. Roman law, for instance, held that a child under seven years of age was in no sense accountable for its acts, or that those from seven to puberty were accountable only if they understood the nature of their acts, and that the punishment of those under twentyfive
years of age should take their youthfulness into account. Thus from a legal standpoint, the youthful offender is classified, according to his or her age, either as a 'child', or a 'young person'. A 'child' is anybody under fourteen and a young person is anybody between 14 and 18. A child cannot be committed to prison for any offence, but a young person can (and may). The latter, is however, not eligible for penal servitude. The vast majority of the laws dealing with juvenile delinquency throughout the world prescribe an age-limit beyond which special procedures meant for juveniles are inapplicable.

2.1.3. There is considerable variation as between different states regarding the specification of the age range of juveniles who come under the jurisdiction of statutory authorities such as the juvenile court. Although state laws vary from state to state, most states regard an adolescent as a 'juvenile' if he is under 16 (or 18) years of age; adolescents over these ages are usually treated as adults if they commit crimes. Again, an adolescent offender might be considered a delinquent in one state but not in another.1 In some countries, law sub-divides young offenders into two major categories, namely, child and young person, or, child and juvenile.

2.2.1. Lower age limits: Most laws employ a lower age limit below which criminal responsibility, in accordance with common law tradition, cannot be attributed to juveniles. A large number of countries throughout the world accept either seven or eight years as the lower age limit, often in conjunction with the rebuttable presumption concerning discernment, although there are some countries where it is higher, apparently the highest being

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found in Finland where the lower age limit is sixteen years. The limit in Asia ranges from 15 years in some countries like Syria and Lebanon to 20 years as in Japan. In Burma\(^2\), Ceylon\(^3\), India and Pakistan, "nothing is an offence which is done by a child under seven years of age". In Japan, acts of persons under fourteen years of age are not punishable\(^4\). Persons under nine years of age in Philippines\(^5\) and children under seven years of age in Thailand\(^6\) are exempted from criminal responsibility. In Soviet Russia, juveniles are those persons who are under sixteen years of age. In India\(^7\), "nothing is an offence which is done by a child above seven years of age and under twelve, if the child has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion."

2.2.2. There are differences in the definition of the lower age limit, the upper age limit and age considerations relating to the use of the concept of discernment, not only in the different countries of Asia, America and the Far East but also in various states within one and the same country.

2.2.3. In India, the Whipping Act IV of 1909 defines a juvenile Offender as an offender found to be under 16 years of age, but the Reformatory Schools Act, 1897, defines youthful offender as any boy who has been convicted of any offence punishable with transportation or imprisonment and who at the time of such conviction, was under the age of 15 years.

2.2.4. The concept of discernment is used in some of the countries in conjunction with the definition of the lower age

\(^2\) Section 82, Penal Code of Burma, India and Pakistan.
\(^3\) Section 72, Penal Code of Ceylon.
\(^4\) Article 41, Penal Code of Japan.
\(^5\) Article 12 (2), of the Revised Penal Code of the Philippines Republic.
\(^6\) Section 4, The Children and Juvenile Courts Constitution Act, B.E.2494 (1951) of Thailand [B.E. stands for 'Buddhist'era].
\(^7\) Section 83, India Penal Code, 1860.
limit of juvenile offenders. In Burma, Ceylon, India and Pakistan, nothing is an offence which is done by a child above 7 years of age and under 12, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion. In the Philippines, a person over 9 years of age and under 15, unless he has acted with discernment, is not held to be criminally responsible for his acts.\(^8\)

2.2.5. Within juvenile age limits, some of the countries employ sub-classifications. The Thailaw defines a child as a person who has reached the age of 7 full years or more but not exceeding 14 full years, and a juvenile as a person who has reached the age of 14 full years or more but not exceeding 18 full years, excluding any person who has become sui juris through marriage. In the eyes of the English Law, 'a child' is a person under 14, a 'young person' is one from 14 to 16; a 'young adult' is a person from 18 to 21; and the measure of responsibility differs from stage to stage.\(^9\)

2.2.6. In India, the Bengal Children Act (Act of 1922), the Madras Children Act (Act of 1920), the Bombay Children Act (Act of 1924) sub-divided juvenile offenders into two major categories; namely 'child' meaning a person under the age of 14 years and 'young person' meaning a person who is 14 years of age or over but under the age of 16 years.\(^10\) The Bombay Children Act, 1948\(^11\) defined a child as one who is under sixteen years of age

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\(^9\) Cyril But, The Young Delinquent (1925), p 15.

\(^10\) Section 3(1) and Section 3(6) of the Bengal Children Act, 1922; Sections 3(1) and 3(2) of the Madras Children Act, 1920; and Section 3(a) and (b) of the Bombay Children Act, 1924.

\(^11\) Section 3(1) and (6) of the Bombay Children Act, 1948.
and the Juvenile Courts were empowered to try cases of children under 16 years of age. The Factories Act defined an adolescent as a person who has completed his 15th year but not his 18th year and a child as a person who has not completed his 15th year.

Under the Plantations Labour Act, an adolescent is a person who has completed his 15th but not his 18th year and a child is a person who has not completed his 15 years while the Mines Act, 1952, provided that an adolescent is a person who has not completed his eighteenth year, but has completed his 15th year.

2.3.1. UPPER AGE LIMITS: In America, "the age limit of original juvenile court jurisdiction in delinquency cases ranges from under sixteen to under twenty-one years of age. The majority of jurisdictions (25 states, Alaska, Hawaii, and the District of Columbia) set eighteen years as the age limit, seven states and Puerto Rico set sixteen years, six states set seventeen years; and four States set twenty-one years......

In the remaining six states jurisdiction differs according to sex. Jurisdiction in dependency and neglect cases covers the same age as in delinquency cases except for five states in which it is lower than the latter and one state in which it is higher. The Federal Juvenile Delinquency Act applies to juveniles seventeen years of age and under". The Juvenile court Law of Illinois, 1899, officially stated, the words 'delinquent child' shall include any child under the age of 16 years who violates any law of this state. In Latin America, the range is from 14 years in Haiti to 20 years in Chile, with the majority of the republics fixing it at 18 years. In Europe, the variations range

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from 16 years in Belgium to 21 years in Sweden. The majority of European countries, however, fix the age limit at 18 years. In Newzealand, the age-group of the population over which the children courts have complete jurisdiction is that of seven to seventeen, that is, from the seventh birthday to the eve of the seventeenth birthday. The upper age limit for a juvenile offender is sixteen years in Burma, Ceylon and the Philippines. In Japan, the term 'juvenile' means any person under twenty years of age. The upper 'age limit' not exceeding eighteen full years has been established for juvenile delinquents in the Thai legislation. The West Bengal Children Act of 1959 provided that 'adult' means a person who is not less than eighteen years of age, 10 'child' means a person who has not attained the age of eighteen years 17 and 'juvenile delinquent' means a child who has been found to have committed an offence. 10 According to the Children Act of 1960, a child has been defined as "a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years". 18 The Juvenile Justice Act, 1986 defines a juvenile in the same way as the Children Act of 1960 does a child in Section 2(e) of that Act. 'Juvenile' means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years". 20

2.3.2. The co-existence of different acts in India such as the Special Children Acts, the Reformatory Schools Act and the Whipping Act, as well as such discrepancies in terminology as the use of the term 'juvenile Offender' in the Whipping Act and of the terms 'young offender', 'young person' and 'child' in other acts;

10 Section 2 (a), The West Bengal Children Act, 1959.
17 Ibid, Section 2 (d).
18 Ibid, Section 2 (h).
18 Section 2 (e), The Children Act, 1960.
20 Section 2 (h), The Juvenile Justice Act, 1986.
and the various age limits fixed in the different laws, not only make the definition of the upper age limit somewhat confusing but indicate that in actual practice the sex, the age and the area in which a juvenile commits an offence, may make all the difference in the treatment he may receive from the courts and institutions. Thus a boy below sixteen but above fifteen years of age will receive special care and treatment if he commits an offence in one of the areas where the Children Act is in operation. But if the same boy commits an offence in an area where the Reformatory Schools Act operates, he will not be treated as a juvenile as he is over fifteen years of age.

2.3.3. Again if a girl commits an offence in an area where the Reformatory Schools Act is in operation, she may not be sent to a reformatory even though she may be below fifteen years of age, because this act covers boys only. Also for the same offence for which a boy is sent to a reformatory, a girl may be released on recognizance or, if the offence is more serious, she may be sent, for lack of a special institution, to an ordinary prison where she would run the risk of being influenced by adult offenders. On the other hand, if the same girl were to commit an offence in an area where the Children Act operates she would receive specialized treatment.

2.3.4. The Bombay Children Act, 1948 was not only quite clear in defining a youthful offender as any child who has been found to have committed an offence but adds a special proviso, namely, "provided that if during the course of the proceedings under this Act such person attains the age of sixteen years, the proceedings already commenced shall be continued and orders may be passed in respect of such person under this Act as if such person was a child notwithstanding anything to the contrary in
Such a provision acts as a safeguard against depriving the juvenile of special treatment on reaching the upper age limit during protracted trials.

2.3.5. In the Philippines law also, the age of the juvenile is calculated at the time of commission of the offence and not at the time of conviction, as it provides for suspension of proceedings in the case of a "minor of either sex, under sixteen years of age at the date of the commission of a grave or less grave felony".

2.3.6. Thus in Japan, Thailand, the Philippines and in different states of India specially in State of West Bengal the fact that the age of the juvenile is calculated at the time of the commission of the offence and not at the time of conviction, acts as a safeguard against depriving the juvenile of special treatment on reaching the upper age limit during protracted trials. The Full Bench of the Calcutta High Court observed, "age of juvenile accused at the time of commission of the offence is relevant for attracting the provisions of the Act and not the age at the time of trial."

2.3.7. Usually the Juvenile court's jurisdiction is exclusive and has no limitations placed upon it, but in some states the judge of the juvenile court may transfer the cases of more serious offences to the Criminal Court. In India, certain state laws like the West Bengal Children Act, 1959 provide that if the offence committed by the juvenile delinquent is of so serious a nature, the court may sentence him to imprisonment. In such cases, the criterion of age may not be accepted as the

21 Section 4(5) and Section 5, The Bombay Children Act, 1948.
22 Article 80 of the Revised Penal Code, the Philippines Republic.
24 Section 24(2), West Bengal Children Act, 1959.
mark of distinction between the criminal and the delinquent. As Paul Tappan has said", the use of chronological age as a criterion of delinquency may seem oddly arbitrary, and out of place in an era of individualization. It is unfortunate, certainly, to hold a dull or emotionally unstable first offender criminally responsible if he is a young adult and to treat more leniently or with greater care an habitual, sophisticated, intelligent and tough recalcitrant of fifteen (in some states sixteen, eighteen, or even twenty one)."28 From a psychiatric or casework point of view, the individual''s diagnosis and treatment should depend not on his years perse but on numerous more individuated factors, such as emotion, temperament, experiences and physical condition. What, for instance, about a feeble-minded adult of 40 years of age with the mental development of a 7-year old child? Many young offenders are also in various stages of retarded development. Such are the "problem children". Obviously, the psychiatrist or the sociologist will have to go beyond the legal categories of mere age and determine each case on its own merits. Inspite of the apparent arbitrariness in fixing the criterion of age, particularly in borderline cases, where the child is just under or over the age prescribed by the statute, it should, however, be recognised that the law has to rely upon systems of rather definite classification to cover large number of cases. Juvenile statutes have been subjected to criticism primarily because certain categories of acts which are defined as delinquent are extremely broad and can be interpreted to include almost any type of deviant behaviour by those under the age of eighteen. Law enforcement officials are given much more latitude in dealing with youthful offenders than they are able to exercise

on the adult level.

2.3.8. It is now coming to be increasingly recognised that children and young persons differ greatly in their physical, mental, and social age levels, especially the last. Delinquency is more directly associated with social age than with either the physical or mental age level, for social age involves emotional stability and maturity, attitudes and habits, understanding and socialisation. A sense of guilt, of course, depends upon psychological as well as social factors. Juvenile, the transition from childhood to adulthood, consists of a biological constant and a cultural variable. The biological constant is the period of puberty, from about 12 to 16 years of age, when the boy or the girl develops into the biologically adult male or female. The timing of puberty varies under changing conditions of diet and race, but in India, for instance, puberty comes much earlier than in the Western countries, and this is generally true of all tropical countries. It also varies among individuals, presumably because of congenital factors. It is erroneous to assume that the child is passing through the fish or reptile or lower mammalian stages of mental and moral development. Thy physical, mental, and moral differences between the child and the adult are due to the fact that they are at different stages in the ontogenetic development. The child is still in the throes of this process while the adult is in the main through with it. Consequently, several traits are peculiar to childhood and early youth which may be stated as follows: In the first place, the child is subjected to the strain of growth which uses up much of his energy. In the second place, the sexual instincts and feelings are almost entirely lacking during childhood. In the third place, at the time of puberty comes a crisis due to the great changes
caused by the awakening of the sexual nature, and throughout the period of juvenile, while the sexual nature is coming to full maturity, there is much instability of mind and character. In the fourth place, the child begins his life after birth in total ignorance, owing to lack of experience and education, and without any moral training, and acquires knowledge and moral character to the extent that his congenital traits and the environment permit of such acquisition.

2.3.9. Owing to the physical strain of growth, puberty and adolescence, even the healthy young person may temporarily be in a somewhat abnormal and pathological state, which in some cases may arouse to criminal instincts, but may later pass on to a normal and healthy adulthood. If, however, the child has inherited any congenital weakness, he is much more likely to develop abnormal and pathological traits which may remain with him throughout life. These traits of childhood and early youth may or may not prove to be traits of adulthood as well. On the other hand, criminal conduct on the part of children may be due to ignorance of the law or due to a bad company or lack of suitable guidance, that is, to social, rather than biological, reasons.

2.4.1. Sociological Analysis: To the sociologists, the juvenile is set in that period of his life when the society in which he functions ceases to regard him (male or female) as a child but, on the other hand, does not accord to him full adult status, roles and functions. In terms of behaviour, the juvenile is committed to the social roles a young person is expected to play, is allowed to play, is forced to play, or prohibited from playing, because of his status in society. It is not marked by a specific point in physiological development such as puberty,
since its form, content, duration and period in the life cycle are differently determined by various cultures and societies. 'Sociologically, the important thing about the adolescent years is the way the maturing individual is regarded by his society. The development of the physical manifestations of adolescence in the female, and the less obvious physical changes in the male connected with sex maturation, such as rapid growth, voice changes, the appearance of labial, axial and pubic hair, derive their significance for the sociologist from the way they are regarded by the society in which the adolescent lives.

2.4.2. The phrase 'adolescent behaviour' refers to the social action patterns of young people. Adolescent behaviour is a type of transitional behaviour which is dependent, in part, upon the society, more particularly, upon the position the individual occupies in the social structure, and in part upon the bio-psychological phenomena. This is not to assert that anatomical, physiological and psychological processes, connected with this phase of the life cycle, have less influence on behaviour than the social system. The sociologist merely takes the position that their functional importance for the maturing individual is defined by the culture in which he lives. Adolescents are particularly vulnerable to conflicts in the socio-cultural matrix which surrounds them in our society. The adolescent is no longer a child, but he has not reached adult social, legal or economic status. As a quasi-child, yet simultaneously a quasi-adult, he is faced with many dilemmas. He must act, and react to adults, other adolescents, and to the social situations in which he finds himself. A juvenile is also determined by what is called the 'cultural variable'. One relevant factor is the change in status role brought about by marriage and the establishment of a family,
but marriage does not necessarily mark the end of adolescence. Self-support and the establishment of a separate home are surer signs of the beginnings of adulthood. Marriage is a truer mark of the ending of juvenile for girls than for boys. But in societies where girls are married as children, some other event is a better indicator of adulthood. In contemporary America, the most useful social definition of the end of juvenile is that of self-support. The most useful psychological definition is that of the establishment or achievement of a sense of personal identity.

2.5.1. Psychological analysis: From the viewpoint of the psychologist, the age of the juvenile is that period of life which lies between childhood and adulthood. The juvenile is not just a child, nor yet is he a mature human being. It is generally recognised that these are the transitional years, when the boy or girl can no longer be treated as a child, when they themselves do not like to be treated as such, although not yet fully grown. Juvenility is both a way of life and a span of time in the physical and psychological development of an individual. It reflects a fundamental change in attitudes and behaviour. It represents a period of growth and change in nearly all aspects of the child’s physical, mental, social and emotional life. It is a time when the individual becomes conscious of himself as a separate entity and wants to have new experiences, new responsibilities, and new relationships with adults as well as peers. Juvenile is much more than one rung up the ladder from childhood. It is a built-in, necessary transition period for ego development. It is a leave-taking of the dependencies of childhood and a precocious reach for adulthood. A juvenile is a traveller who has left one place and has not reached the next. Approximately, juvenile is the period of “the teens”, thus
covering about seven years of a person's progress towards maturity. It is to be understood that there is no clear-cut or well-defined stages of this process. The child grows by imperceptible degrees into the juvenile, and the juvenile turns by gradual degrees into the adult. The gradualness of the change makes it hard for parents to realise that it is taking or has taken place, and this failure to perceive in time the transition from childhood brings many problems of adjustment into the life of the youth and of his parents as well.

2.6.1. Conclusion: The concept of the juvenile is thus a complex of several inter-connected issues. To the phenomena of growth in the physio-metabolic sense culminating in the discovery of a more or less definite range, a stage midway between childhood and adulthood, are to be added the sociological implications of growth in which the larger social as well as the more intimate group matrices play an important part. This latter results in problems of maladjustment, of deviant behaviour, of disturbed emotions, of anti-social impulses and tendencies (sometimes a product of hereditary factors), which ultimately turn him into a delinquent within the meaning of law. The cultural factors that affect or influence the transition from juvenility to adulthood add a new dimension to the problem. Family life in a well-ordered community plays a deterrent to deviant behaviour by providing a regulatory social mechanism and offering a socially useful scope for the exercise of responsibility, on the other hand, a disorganized family life may create new problems like desertion and non-support of family, broken marriages and uncared for children. Finally, an essentially unstable industrial civilization creates fresh problems of adjustments in which the young of age, frustrated and
disillusioned, may ultimately become defiant of all accepted norms and standards and of legal restraints. It is no wonder that in a world of cross-motivations, as in present permissive society, values are tumbling down with no check posts to guide the bewildered youth. Doctors, lawyers, police officers and magistrates openly express their worry that the younger people are increasingly turning 'anti-social'. It further underlines the failure to perceive the growing pains of the transition from childhood to youth and accentuates the many problems of adjustment brought into the life of the youth and of the parents as well. It is a wise father who knows his own child. But he cannot put back the clock. The change of scene, the growing gap, between the generations can hardly ever have been greater than it is to-day. Delinquency, viewed in this perspective, is a symptom, rather than a disease.