



## 'DOCTRINE OF DOLI INCAPAX' (CRIME COMMITTED BY MINOR AND THEIR REHABILITATION)

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### KEYWORDS

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### ABSTRACT

In the present scenario, crime is increasing day by day in our society and it's affected the upcoming generation and also affected the ideology of youth and especially of children aged between 7 to 16 years old. Further the term 'doli incapax' it's a Latin language word also an obscure doctrine of ancient origin that provides a presumption that children over the age of criminal responsibility but under a certain age are incapable to commit a crime or offense, even an age category is defined under Indian penal Code in which a child up to the limit of age is incapable to commit any crime if done so then he will be exempted from the penalty for that crime committed by him and our Indian Penal law also further define a category of children which can commit a crime or has knowledge of criminal activity or having the capability to commit a crime that also known as 'doli capax' and there is also special category and procedure to tried that children under special law and they also kept under separate facility or observation during the trial and after the conviction.

I think it is hard to regard this ancient rule about the capacity of a child between ten and fourteen as altogether satisfactory or suited to modern conditions. Nevertheless, it is clearly the law and we have to enforce it.<sup>[1]</sup>

'No civilized society', says Professor Colin Howard in his book entitled Criminal Law, 4th ed. (1982), p 343, 'regards children as accountable for their actions to the same extent as adults'. '... The wisdom of protecting young children against the full rigor of criminal law is beyond argument. The difficulty lies in determining when and under what circumstances that protection should be removed.'<sup>[2]</sup>

### Introduction

Criminal law is organised around the scrutiny not just of particular acts, but also of the state of mind of the persons committing those acts. Like all fields of law, criminal law both relies on and actively constructs a particular understanding of 'legal personhood', human nature and personality structure. A distinction then emerges between those individuals who can be considered legally responsible for their actions - 'persons' in a legal sense - and those who cannot. At the boundaries of legal subjectivity are various categories of those who might be seen as not fitting the conception of "the ordinary person", or what in English law is referred to as "the man on the Clapham omnibus". One of the more important classes of persons in this regard is constituted by children, however childhood might be defined (Williams 1954).<sup>[3]</sup>

Childhood is particularly significant to the conception of the person in criminal law because it marks out a transition phase between an "innocence" and "partial" because criminal action linked to its partial presence in case of crime by adult not by child because in many countries children can be held responsible for their crimes before they are considered responsible as well as liable for their financial affairs or their capacity to drive a car, to drink alcohol, to vote in elections, to serve in the army or on a jury, to enter into contracts, or to see certain kinds of films and may other similar activities.

### The foundations of Doli Incapax

On Wednesday 12 January, 1977 a South Australian boy named Chris was hit several times on the head with a brick by 12-year old John, and then dragged to a place of concealment. At his trial on 4 July, 1977, the Judge directed the jury as follows: When the child is between the ages of ten and fourteen, there is a strong presumption of law that he has not the guilty mind requisite to convict him of a crime, that there is a

presumption that when he did the act which otherwise would have been a crime, he did not know the difference between right and wrong. And when I say 'wrong' I do not mean wrong as being something against the law, but wrong in accordance with the ordinary principles of reasonable men. So the onus is upon the Crown to rebut the presumption that the child does not know that what he is doing is wrong and, in this case, to satisfy you beyond a reasonable doubt that John did know that he was doing wrong when he struck Chris over the head with a brick, that he was doing wrong in the sense that ordinary people would disapprove of what he was doing.<sup>[4]</sup>

### In Indian law 'Doctrine Doli Incapax'

In India under Indian Penal Code, 1860 containing certain provisions in General Exceptions which define the term 'Doli Incapax' and where a child committed an offence immune from the conviction and penalty under Indian criminal law. A child below certain as provide under Indian Penal Code or in other criminal law (lex loci) committing an offence under the circumstances is exonerated from the criminal liability and punishment.

Sections 82 and 83 of Indian Penal Code, 1860 specifically exonerated the child from criminal liability. Section 82 deals with wrongful acts of child under seven years of age while section 83 deals with wrongful acts of child above seven years of age and under twelve of immature understanding.

### As per Indian Penal Code or any other penal law in India

Act of child under seven year of age is completely exonerated from punishment:

Nothing is an offence which is done by a child under seven year of age.

It must be noted that such an age for the doctrine of Doli Incapax was not arrived on the basis of any understanding of child psychology nor on

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maturity of child to considered the circumstances and situation nor child having observation of "mens rea" in his mind due non-capability of understanding the nature of criminal act, but is "simply an expression of public policy", "a practical working method", and not necessarily on "any observable fact. " Doli incapax" means incapability of the child to distinguish right or wrong. In India, a child below 7 years is considered to be absolutely exonerated from the criminal liability and incase of such maturity and understanding in nature of "mens rea" and "actus reus" at the time of committing crime that should be decided by the court of law. According to IPC, it is presumed that a child below the age of seven years is Doli Incapax. It means that such a child is incapable of doing a criminal act and cannot form the necessary mens rea to commit a crime. The presumption is conclusive and it emanates from the recognition of the facts that he lacks the adequate mental ability to understand the nature and consequences of his act and thereby an ability to from the required mens rea. Even though there may be the clearest evidence that the child causes actus reus with mens rea, he cannot be held guilty once it appears that he, at that time was below the seven years of age. It is absolute immunity.

As a general exception, a child under seven years of age is exempted from criminal liability. However, when a child below the age of seven years is engaged by an adult person to commit an offence, such person who engaged that child for committing an offence shall be liable for abetment.

There is no such rule where the child's parents would be held liable for their child's offences. However, in some cases, it requires very specific conditions to be met, such as instigating or abetting of child and an awareness of the child's attempt to do (allegedly) something to the victim then only the parents may be liable.

In **Lukhini Agradaninini**<sup>[5]</sup> case, the Court held that if the accused were a child under seven years of age, the proof of that fact would be ipso facto an answer to the prosecution.

#### **Section 83 in the Indian Penal Code**

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.

#### **A child above 7 years of age but below 12**

There is a partial defense from criminal liability conferred on children above the age of 7 but below the age of 12. This is based on the principle of "Doli Capax"; that is; a child between 7 to 12 years is capable of understanding the nature and consequences of his act. However, in order to hold a child liable, the prosecution needs to prove, beyond any reasonable doubt that the element of 'mens rea' was present along with the Actus reus. In other words, the prosecution needs to establish the fact that the child in question knew that his act was wrong and would have the consequences. The liability depends on his understanding and not the age.

#### **Maturity of understanding**

In Indian Criminal law a child below the age of 7 year is completely exempted from the criminal liability but in case if the child above the age of 7 years and below the age of 12 years that should be considered by the court of law that under what circumstances that child committed an offence and whether at time of committing such an offence can he has enough maturity of mind that he can understand the nature of offence or not if he committed such an offence without having the adequate maturity at the time of committing offence then that is no offence and he is completely exonerated from that criminal liability and act:

In **Krishna Bhagwan v. the State of Bihar**, Patna High Court upheld that if a child who is accused of an offense during the trial, has attained the age of seven years or at the time of the decision the child has attained the age of seven years can be convicted if he has the understanding knowledge of the offense committed by him.<sup>[6]</sup>

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In **Kakoo vs. The State Of Himachal Pradesh**,<sup>[7]</sup> Kakoo who was of thirteen years had committed rape on the child of 2 years and was sentenced to 4 years of rigorous imprisonment by the trial court, and the high court upheld the decision.

The defence counsel pleaded defence under section 82 and 83 of the Indian Penal Code.

This took place in 1976 when laws for juvenile and child delinquents were not fully developed, and Himachal Pradesh did not have any enactment in force at the time.

The court, however, stated, "taking into account all the circumstances of the case, we are of the opinion that the ends of justice will be served by reducing the sentence of the appellant to one year's rigorous imprisonment and a fine of Rupees 2,000/-, and in default of payment of fine, to suffer six months' further rigorous imprisonment. The appellant shall be detained separately from adult prisoners. He should preferably be detained in a Reformatory School, if any, for the said period. The fine, if realized, shall be paid as compensation to Shrimati Parmeshwari Devi, the mother of the victim baby."<sup>[8]</sup>

#### **What to be observed after the commission of offence by a child**

1. The immediate actions of the child after the commission offence.
2. The demeanor of the child during the course of interrogation by officer.
3. Whether the child has enough capability to understand the "mens rea" and "actus reus" and the nature of offence committed by him.
4. Previous and subsequent conduct of child and whether the child commit such an offence under instigation or with his own knowledge

#### **Concept of Rehabilitation**

In today's society crime is an aspect of life that is present whether it is acknowledged or ignored. Crime is being committed more frequently and more often by adolescents. Juvenile delinquency has been on the rise and yet as delinquency rises so does the number of delinquents that go to correctional facilities to serve time for the crimes they have committed and now a day minors are mature as like adult person and they have very much enough understanding of "mens rea" and "actus reus" and further there consequence as well. In the present scenario crime committed by the minors are most effected on our society and control to the same government always adequate measurements and in India Juvenile Justice boards has been enacted by the government to control and rehabilitate the juvenile who committed crime and they treated and rehabilitate accordance with the nature of crime they committed.

#### **Juvenile Justice Law for protecting and rehabilitation of children committing crime**

The Juvenile Justice Board established by legislature with intend to provide the proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach and disposal of matters in the best interest of children and for their rehabilitation through process provided and institutions and bodies established under the same. There are also categorized offences committed by children into three categories as listed below:

1. "heinous offences"
2. "petty offences"
3. "serious offences"

After define these category presumption and possibility of children between the ages of 16 and 18 years being tried as adults for heinous offences the procedure of their reformation and rehabilitation are separated decided under the Juvenile Justice Law and some parameters are settled for their reformation and some immunity and privileges are also defined for them.

#### **Protection of child and privileges to child by the Board of Juvenile Justice Law**

1. If the Board established under the Juvenile Justice Law satisfied in case that if Juvenile or child who committed offence, petty or serious or

he is below the age of sixteen years after considering the all facts and circumstances and observing in view of nature of offence and with an observation that child specific needs supervision or intervention and on basis of past conduct and social investigation Juvenile Justice Board may allow that child to go home or may direct child to participate in group counselling and other similar activities with purpose of reformation and rehabilitation or may order the child to perform community service under supervision of an organization and institution for wellness of child or may under to the child/parents/guardian to pay fine in case of child is working and violated provisions of Labour law or may release child on probation of good conduct after satisfying or may release child under the supervision of fit facility as think fit after satisfying and in addition to that Juvenile Justice Board may allow the child after satisfying and on the basis of past conduct to attend school or to attend vocational training or to attend therapeutic centre and also prohibited child for visiting, frequenting or appearing at specified place of his choice and allow him to undergo a de-addiction programme and if the Juvenile Justice Board get the intimation regarding the tried such child then send him to children's Court for the same.

There are two orders listed at 1 and 2 in Section 18 mentioned above that are suitable for using restorative practices and long term rehabilitation The process of rehabilitation includes a network of different professionals. These professionals have to undertake this difficult task within a limited time frame. All our strategic interventions are aimed to improving the rehabilitation process for the children in conflict with law. For successful rehabilitation and re-integration of children in conflict with law it becomes necessary to develop a multi-dimensional approach. Prevention of juvenile crimes, proper timely interventions can help strengthen the rehabilitation process. Focus should be given on addressing all the needs of a child's life: emotional, physical, relational, intellectual, creative and spiritual. We must shift our attitudes from need based approach to rights based approach while rehabilitating children in conflict with law.

### Conclusion

The complex issue which the principles of Doli Incapax and Strafunmündigkeit (criminal responsibility) were always intended to address is that of how the law deals with a transition which all human beings make, from a lack of criminal capacity to a full moral and legal responsibility for crimes we might commit. However, we all know that the law's dealings with complex issues is often contrary to common sense, but this does not usually trouble either the judiciary or legal theorists. Real, live children and young people often fit poorly within the criminal law's usual approach to legal subjectivity; some considerable conceptual, emotional and logical work has to be done to deal with the idea of moral development and transition, and it is this 'work' which is the real source of both the complaint and the significance of the Doli incapax issue for criminal law more generally.

The simple abolition of the Doli incapax presumption and the reduction of the age of criminal incapacity is unlikely to approximate this normative capacity, and simply makes particular children bear the full weight of the social disappointment in the disjunction between ideal and real children. Only a social order which promotes a considered engagement with the complexities of concepts such as "Doli incapax" and Strafunmündigkeit (criminal responsibility) within a changing social construction of childhood, one which allows us to disentangle societal concerns with the guilt and innocence of an abstract 'childhood in general' from the practical response to particular real children, will begin to provide a foundation for approaching it with some civilized integrity.

### References

1. The Queen v M [1977] 16 SASR 589 at 595, per B.
2. R (A Child) v Whitty (1993) 66 A Crim R 462 at 462, per Harper J.
3. The second of the more important categories consists of the mentally ill; for a comparison of the two, see Woodbridge 1939.
4. Likhini Agradaninini, (1874) 22 WR (Cri) 27.
5. (1874) 22 WR (Cri) 27.
6. AIR 1989 Pat 217, 1991 (39) BLJR 321, 1991 CriLJ 1283.
7. AIR 1976 SC 1991, 1976 CriLJ 1545, (1976) 2 SCC 215.
8. Ibid

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