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## A Detailed Analysis on Act of Child under Indian Penal Code, 1860

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*The development of the nation greatly depends on the growth and success of the children. Children should be guided towards becoming responsible citizens of the country. A child is considered to be innocent and devoid of any intention to cause harm to another person. However, the problem arises when the child acts against his nature and inflicts harm on another person. The question in such cases is whether the child should be punished like an adult or should be protected against punishments. The act of a child is a defense under the Indian Penal Code. It protects the child who acts unlawfully without understanding the nature of such an act. The current paper will include a detailed analysis of the act done by a child as a general defense under the Indian Penal Code, 1860<sup>1</sup> (hereinafter referred to as IPC). It will also assess if a child should be punished like an adult if he has committed a heinous crime. It will study the scope of immunity provided to child offenders via sections under IPC. It would also highlight the constitutional basis for such protection provided to children under IPC. Lastly, the article studies the provisions provided for children under Juvenile Justice Act<sup>2</sup>. It also includes the process of determining the age of juveniles while deciding their punishment. It is important to ensure that innocent children are protected from strenuous punishments and the children who act with wrongful intentions are punished.*

**Keywords:** *act of a child, men's rea, actus reus, juvenile justice act.*

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<sup>1</sup> Indian Penal Code, 1860

<sup>2</sup> Juvenile Justice Act, 2015

## INTRODUCTION

An unlawful act that is forbidden by law and punishable by state can be seen as a crime. Criminal law regulates society, protects individuals and the state, and ensures the survival and peace of its citizens. It can be seen as a body that governs the law of imposing punishments for the crimes committed. It is built on the theory that any person should be punished only if he committed the act with a guilty mind. IPC provides certain exceptions in acts where men's rea, i.e., intention, is missing. The reason behind this exception is that sometimes even though the actus reus is present, the accused did not have any intention to cause harm but it occurred due to certain circumstances. If the accused is able to prove any one of the general exceptions mentioned in IPC, he will be given a complete defense. The exceptions provided in chapter IV of the IPC can be divided into two groups, excusable exception, and justifiable exception. The excusable exception can be defined as an exception where the bad character or intention of the accused cannot be inferred. They include mistake of fact, infancy, accident, insanity, and intoxication. On the other hand, justifiable exceptions are those where the acts committed are wrongful in normal conditions but due to certain circumstances, it was acceptable and tolerable. He/ she has to prove that the act done by him was struck down under general exceptions or some special provisions. The current paper would focus on the general exception of infancy. Children are generally regarded as humans who are incapable of committing any crime. A child is considered to be innocent and any wrongful act done by the child is not seen as an offense because of lack of men's rea/ guilty mind. Infancy is taken as a defense and the accused cannot be held criminally responsible because of the age of the accused. The defense of infancy was first raised before the supreme court in *Gopinath Ghosh v State of West Bengal*<sup>3</sup>. The study of infancy is incomplete without juvenile justice. Juvenile delinquents are not tried in ordinary courts, instead, they are tried in juvenile courts.

Exempting child offenders has become a matter of discussion after the Nirbhaya case, where a minor was also involved in the offensive act. There are mixed opinions on this matter by

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<sup>3</sup> *Gopinath Ghosh v State of West Bengal* (1984), AIR 237

scholars and society at large. Some opine that a child offender should be protected from harsh punishments and from bad influence from hard-end criminals in the usual jails. On the other hand, some opine that if a child has committed an offense like an adult, he should be punished like an adult and should not be favored just because of the child's age.

### **ACT OF A CHILD UNDER SEVEN YEARS OF AGE**

Infancy is a general exception that is provided to child offenders as a way to escape from criminal liability. Even though it was accepted that it is not right to impute liability on children, there was still a lack of clarity concerning at what age the child should be held criminally responsible. "Earlier, age of twelve was set as an age for criminal responsibility."<sup>4</sup> But now the law became more severe and the age for termination of absolute immunity is restricted to age seven. Section 82 under IPC provides immunity from criminal liability to children below seven years of age. It states, "Nothing is an offense which is done by a child under seven years of age."<sup>5</sup> This section is built on the principle of *doli incapax*. It denotes that the child under such young age cannot form the required intention to comprise such a crime since the child does not possess the adequate understanding at such a young age for his deeds. Hence, the mere fact that the child is under 7 years is enough to claim the defense of infancy and be exempted from criminal responsibility. This is because the law presumes that a child under such age cannot possess the maturity to differentiate between which act is right or wrong. The scope of immunity under the doctrine of *doli incapax* or absolute immunity under section 82 of IPC is so wide that it not only provides immunity to child offenders from prosecution under IPC but also under special and local laws.

In *March v Loader*<sup>6</sup>, the defendant caught a child stealing a stick from his territory. The court held that child had not attained the age of seven, the child was unable to understand the consequences of his actions. Hence, he was not held guilty. In *Shyam Bahadur Koeri v State of Bihar*<sup>7</sup>, a child below 7 years found a gold plate but he did not report it to the collector. The

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<sup>4</sup> J. W. Cecil Turner, *Kenny's Outlines of Criminal Law* (17<sup>th</sup> edition, Cambridge University Press 1996) 78-79

<sup>5</sup> Indian Penal Code, 1860, s 82

<sup>6</sup> *Marsh v Loader* (1863) 14 [CBNS] 535

<sup>7</sup> *Shyam Bahadur Koeri v State of Bihar* AIR 1967, Pat 312

collector was ordered to prosecute the child under the Indian Treasure Trove Act, 1878. Here the court held that the child is under 7 years so he is entitled to immunity under section 82 of IPC.

### **ACT OF A CHILD ABOVE SEVEN AND UNDER TWELVE YEARS OF AGE**

Section 83 of IPC, exempts a child above seven years and under twelve years from criminal liability on a condition that the child has not attained adequate maturity of understanding. It states that “*Nothing is an offense 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.*”<sup>8</sup> Section 83 provides qualified immunity to children between seven and twelve years of age depending upon various circumstances. If a child has not attained maturity and does not understand the nature and consequences of his conduct then he would be exempted from criminal liability. In order to hold the child criminally responsible, the prosecution has to establish that the child had the men's rea to cause such actus reus. “The presumption of innocence of a child depends on the principle, ‘the younger the child in age, the lesser the probability of being corrupt’. This denotes that malice makes up for age, i.e., *militia supplet aetatem.*”<sup>9</sup>

In *Hiralal Mallick v State of Bihar*<sup>10</sup>, a child aged 17 years along with his elder brother participated in a planned action. He used a sharpened weapon to strike blows on the deceased's neck. After this, he ran with the other two to conceal himself. The entire action proves that the child was mature enough to realize the nature and repercussions of his actions. Here, the court held that the child is criminally responsible for his conduct as him taking the weapon and stabbing the victim proves that he attained sufficient maturity.

In *Ulla v King*<sup>11</sup>, a 10-year-old girl was scolded by her father-in-law. Her husband attempted to beat her. After a few days, the girl struck her husband with a sharpened weapon while he was asleep, as a result of which he died. After this incident, she escaped and concealed herself.

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<sup>8</sup> Indian Penal Code, 1860, s 83

<sup>9</sup> K.D. Gaur, *Indian Penal Code* (5<sup>th</sup> edition Universal Law Publishing 2015)

<sup>10</sup> *Hiralal Mallick v State of Bihar* (1977), AIR 2236

<sup>11</sup> *Ulla v King* AIR 1950, Ori 261

After observing her conduct, the court held that she was guilty of murder. Here, the court opined that the girl was doli incapax.

In *R v Krishna*<sup>12</sup>, a 9-year-old child stole a watch worth Rs. 280 and sold to B for 5 annas. Here, the court held that the child was guilty of theft as the child did not have enough maturity to realize the nature and repercussions of the actions.

In *R v Marimuthu*<sup>13</sup>, a 10-year-old girl picked up the silver button and gave that to her mother. The court held that the girl was not liable for theft since she did not have the maturity to realize the repercussions of her actions.

### CONSTITUTIONAL BASIS FOR DIFFERENT PROVISIONS FOR CHILDREN

Section 82 and 83 of IPC provides special protection to children from criminal responsibility. The constitution itself allows making special provisions for children. The constitutional basis for these provisions lies in article 15(3), article 39(e)<sup>14</sup>, and (f) of the Indian constitution. Article 15(3) states that “*Nothing in this article shall prevent the state from making any special provision for women and children.*”<sup>15</sup> The present article entitles the state to make special provisions for both, women and children. Article 39(e) states that “*the health and strength of the workers, men, and women, and tender age of children should not be abused and that the citizens should not be forced by economic necessity to enter avocations unsuited to their age or strength.*”<sup>16</sup> As per Article 39(f), “*the children should be given opportunity and facility to develop in a healthy manner and their childhood and youth should be protected against exploitation and moral abandonment.*”<sup>17</sup> Article 39(e) and (f) are the directive principles of state policy that aim to provide a safe environment with all the facilities for the children to develop.

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<sup>12</sup> *R v Krishna* (1883) 6 Mad 373

<sup>13</sup> *R v Marimuthu* (1909) 9 Cr.LJ 392 (Mad)

<sup>14</sup> Constitution of India, 1950, art. 39(e) and (f)

<sup>15</sup> Constitution of India, 1950, art. 15(3)

<sup>16</sup> Constitution of India, 1950, art. 39(e)

<sup>17</sup> Constitution of India, 1950, art. 39(f)

## **PROVISIONS FOR CHILDREN BETWEEN TWELVE YEARS AND EIGHTEEN YEARS- JUVENILE JUSTICE**

As per the Indian Penal Code, a child above twelve years attains complete liability for his conduct and he/she is liable under criminal law to the same extent as an adult criminal. However, in contractual obligations, he/she can be liable only when they attain the age of majority as provided under the Indian Majority Act, i.e., 18 years. In order to protect the interest of delinquent juveniles and to provide them care, education, upbringing, and maintenance, various social and welfare acts and statutes have been enacted. To protect the interests of children against social exploitation, the parliament enacted the Juvenile Justice (Care and Protection of Children) Act, 2000<sup>18</sup>. The act was later replaced by the Juvenile Justice (Care and Protection of Children) Act, 2015<sup>19</sup> which allowed the trial of juveniles who were in the age group of 16-18 years and whose acts were in conflict with the law. It states that those children who are alleged or found to be in conflict should be produced before Juvenile Justice Board (JJB). As per the act, if a child is below 16 years and is found to have committed an offense, then the board will have the discretion of how to deal with the case. The board may advise the child and send him home, or ask the child to take part in group discussions, or ask the child to carry out community service, or direct the child/ his parents/ guardian to pay a fine, or send the child to a special home for a maximum period of 3 years. If a child between the age of 16-18 years is found to have committed a heinous crime, then he/ should be first produced before the juvenile justice board and then the board conducts a preliminary assessment of the case. In this assessment, the court tries to learn if the child is in the position to commit a crime and if the child understands the nature and consequences of the act. After this assessment, only the court decides whether the child needs to be treated as an adult or not. If the court finds that the child has an understanding of the nature of the act, he/she committed then it can treat and punish them like adults.

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<sup>18</sup> Juvenile Justice (Care and Protection of Children) Act, 2000

<sup>19</sup> Juvenile Justice (Care and Protection of Children) Act, 2015

## DETERMINATION OF AGE OF JUVENILE

One of the major topics that have been a matter of discussion in courts is the determination of the age of a juvenile who has been accused of a criminal act. According to section 2(12) and section 2(35) of the Juvenile Justice Act, 2015, a child/juvenile is someone who has not completed eighteen years of age. There are three major points that the court takes into consideration while determining the age of the accused. Firstly, while determining the age of the juvenile, his/ her age on the date at which the offence was committed is taken into consideration. In *Pratap Singh v State of Jharkhand*<sup>20</sup>, a five-judge bench laid down a law regarding the determination of the age of the juvenile accused. It held that the date at which the offence was committed will be considered for determining the child's age and not the date on which he first appears or is brought before the juvenile justice board or court. The court opined the same observation in the case named "*Umesh Chandra v State of Rajasthan*"<sup>21</sup>. Secondly, the nature of the evidence must be laid down before the court manifests the age of the juvenile. Thirdly, the point at which the appeal of being a juvenile can be taken. In "*Bhola Bhagat v State of Bihar*"<sup>22</sup>, the supreme court observed that whenever the plea of infancy is raised, the court is under obligation to examine the case with proper caution and awareness and it should not dismiss it without finding positive information on this regard.

## CONCLUSION

Infancy is a criminal defense, derived from Common Law that attempts to disprove liability for a crime because of the accused's young age. The reason behind this is that the accused is very young and does not have the maturity to realize the nature and repercussions of his act. from the above study, it is apparent that both the judiciary and legislature are thoughtful and tolerant towards child offenders in India. The child is completely immune to prosecution because of the belief that the child does not have the required mens rea for the crime. However, this immunity is subject to certain conditions like if during the prosecution the court observes that the child knows the nature and consequences of the act and yet, he performed it,

<sup>20</sup> *Pratap Singh v State of Jharkhand* (2005), AIR 2731

<sup>21</sup> *Umesh Chandra v State of Rajasthan* (1982), AIR 1057

<sup>22</sup> *Bhola Bhagat v State of Bihar* (1998) (2) ALD Cri 645

then the child will be prosecuted and be criminally responsible. If a child above twelve and below eighteen has committed a heinous act, the court has the discretion to decide if that child has to be treated as an adult or not. The law is prudent enough to make a special procedure for children like juvenile courts and rehabilitation of juveniles who are in conflict with the law. The state is determined to make every effort to not impose harsh punishments on child offenders. However, the success of the law depends on its implementation. It is on the courts to fulfill the goal of the constitution of rehabilitating the juveniles and making them responsible members of society.