

Issues on Preliminary Assessment

NJA MARCH 17.

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- **Under the Penal Code nothing is an offence when done by a child under seven years of age. (Section 82)**
- **An act of a child above seven years of age and under twelve is not an offence if the child has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. (Section 83) Doli Incapax**

- categorical incapacity (minors may never receive serious punishment) versus categorical capacity (minors who commit heinous crimes must be punished).

Some critical concerns in the JJA

- Section 10-Apprehension? Who determines- extreme police power as a child alleged to be in conflict with law can be apprehended by police.
- C, a juvenile went on a rampage in response to the attack on persons of Bihar origin in Maharashtra, and broke railway property causing injury to a few persons in Patna. He was charged under section 147, 148, 353, 357, 427, 395, 436, 332, 323, 307, 27 (A) Arms Act**

- **Two children were charged on extortion on the ground that they collected twenty rupees from railway passengers for blocking seats in unreserved compartments.**
- **A child plucked mangoes from an orchard and was charged under section 341, 323, 379, 389, 504 IPC.**
- **Another child plucked leaves from the complaint's tree to feed goats. He was charged under section 380 IPC**

Preliminary assessment of mental and physical capability of juveniles

- Section 15- applicable to heinous offences
 - criteria mental and physical capacity to commit such offence;
 - Ability to understand the consequences of the offence
 - Circumstances in which the offence was committed by the juvenile
- (assistance of psychologists, psycho- social workers or other workers)

Understanding preliminary assessment

- Knowing, intelligence and voluntariness are fluid till adulthood-
- Board is required to determine cognitive ability on these issues

Preliminary assessment

- The process envisaged in the Act rebuts the presumption of Doli Incapax.
- Understanding Capacity-some principles-
A fifteen year old murdered his brother in law and disposed the body in the river. (Thompson vs Oklahoma) He stood trial as an adult as the judge found him competent as he knew and appreciated the wrongfulness of his conduct.

- On appeal the court took a review of the state laws. Went by the fact that children of fifteen years as a class could not enter into a contract, vote, drive, marry without a parent's consent, buy cigarettes or alcohol- (the plurality concept of childhood.)

The doctrine of plurality

- *the very assumptions we make about children when we legislate on their behalf tells us that it is likely cruel, and certainly unusual, to impose on a child a punishment that takes as its predicate the existence of a fully rational, choosing agent, who may be deterred by the harshest of sanctions and toward whom society may legitimately take a retributive stance (Thompson vs Oklahoma)*

- *Inexperience, less education, and less intelligence make the teenager less able to evaluate the consequences of his or her conduct while at the same time he or she is much more apt to be motivated by mere emotion or peer pressure than is an adult. The reasons why juveniles are not entrusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult*

- The plurality approach was criticised by Justice Scalia of the US Supreme Court;

It is surely constitutional for a State to believe that the degree of maturity that is necessary fully to appreciate the pros and cons of smoking cigarettes, or even of marrying, may be somewhat greater than the degree necessary fully to appreciate the pros and cons of brutally killing a human being

Principles evolved in other jurisdictions

- *R vs Folling* Exparte Supreme Court of Queensland –

Factors considered for Rebutting the presumption of Doli Incapax-

- age and education of the juvenile
- False denials of the juvenile when he/she asserts a false alibi.
- Surrounding circumstances of the offence including rendering the complainant incapable of identifying the perpetrator.

- Observation of speech and demeanour.

V and T vs UK two children tried to kill a 2 year old

“ child understood that what he or she did was seriously wrong as opposed to naughty or frivolous.”

- Assessment therefore has to be based on the child's capacity and not on the shocking or heinous nature of the offence.