

ABSTRACT

A CRITICAL STUDY OF THE PLEA OF INFANCY AS A SPECIES OF EXCUSABLE EXCEPTION UNDER THE INDIAN PENAL CODE

***RIYA RAY**

The element of mens rea as an indispensable ingredient of a crime has been approved by the modern philosophy of penology. In the yesteryears, punishment for crimes had a predominant retributive effect, and both the victim and the society at large gratified their proclivity for revenge or retaliation by imposing barbarous punishments on the offender. However, with the evolution of penological jurisprudence, the reformatory theory of punishment has gained a firm ground on the principle that an opportunity for improvement should be given to the offender for his correction and improvement. It views the criminal as a patient who needs to be treated. Closely entwined with this reformatory approach of penological interest, is another cardinal principle of criminal jurisprudence that an act to be culpable and in order that it may attract penal consequences should be an act which is committed with a guilty mind. If the mind of the offender does not depict a criminal intention he cannot be held to be guilty of the consequences of his misconduct. A person is presumed to intend and know the consequences of his actions; this is the general rule adhering to which the state holds the offender guilty for his actions. But there are certain exceptions to this general rule which are exhaustively enumerated in Chapter IV of the Indian Penal Code 1860, captioned as "General Exceptions". Chapter IV negatively recognizes the doctrine of mens rea as an essential component of criminal liability. It makes certain offenses excusable on the ground that even if the doer of the act committed the offence but if it was done without any blameworthy condition of mind such as criminal intention, criminal knowledge, recklessness, rashness and without the want of due care and caution, and without being in an intellectual capacity to fathom the illegal nature of his deed and its scarring effect on the victim and the moral conscience of the society, then he will not suffer any punishment. The justification for exempting such acts from the purview of penal sanctions is the absence of mens rea. If the offender never intended to procure evil consequences by his misdeeds he cannot be subjected to the wrath of the state. One such excusable defense under the Indian Penal Code is the Act of infants. A child is presumed to have not attained that development of

maturity that will aid his mind to form a guilty intention. But with the heralding of the age of technology and the exposure of a child to various obscene influences on the internet, maturity sets in at an early age or during puberty. Additionally, the incompatible environment in which a child grows up, the extent and impact of lack of parental care, his association with peer groups, his economic needs and lack of fulfillment, and exposure to violence and abuse endangers his innocence at a budding age and criminal tendencies overpower his intellect prompting him to commit delinquent acts. This sets the judicial mind in ambivalence because the incarceration of a child accused at a tender age will limit his possibilities to progress as a potentially responsible member of the society. Again the redress to the victim and the security of the society in larger interest must also be considered. At the same time, the judge has to ensure effective strategies for reformation and aftercare of the child accused so that his criminal proclivities are diminished and he is reclaimed back into the mainstream of society as a responsible citizen without any social stigma. To this end, the subjective satisfaction of the trial judge as regards the determination of the age of the child offender and whether he really intended the consequences of his acts at the time of committing the crime becomes crucial and the judge must consider and appreciate all material evidence on record to arrive at a sanguine conclusion of fact before convicting the child offender. This article focuses a study on the defense of infancy under the Indian Penal Code, the determination of age of the offender and the process involved in dealing with the juvenile in conflict with law.