

# **JUVENILE JUSTICE AND THE DOCTRINE OF DOLI INCAPAX: INDIAN LAW IN GLOBAL PERSPECTIVE**

**Dr. Rahul Goyat**

Assistant Professor

Faculty of Law, Baba Mastnath University, Rohtak

Email: [rahulgoyat4@gmail.com](mailto:rahulgoyat4@gmail.com)

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**Abstract:** The idea of *doli incapax*, which states that minors below a specific age do not possess the mental capacity to establish criminal intent, is central to juvenile justice systems worldwide. This line of reasoning has its roots in English common law and states that, since they lack the mental capacity (*mens rea*), children cannot comprehend the ethical and legal ramifications of their acts. The **Juvenile Justice (Care and Protection of Children) Act, 2015**, in India recognises a differentiated strategy based on age and mental maturity. Nonetheless, there is considerable debate on the parameters and ongoing relevance of *doli incapax*, particularly in light of the evolving characteristics of juvenile delinquency, especially with older juveniles involved in heinous offences.

This paper examines the historical, philosophical, and legal underpinnings of the doctrine, its application in Indian courts, and its relevance in comparison with global practices. Through a doctrinal and comparative analysis, the study evaluates whether Indian juvenile law sufficiently upholds the rehabilitative ideals behind *doli incapax* or whether contemporary realities demand a calibrated reassessment.

Keywords: **Juvenile Justice, Doli Incapax, Indian Law**

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## **1.0 Introduction**

Based on the idea that children and adolescents differ from adults in their moral, emotional, and cognitive development, juvenile justice is a unique paradigm within the criminal justice system. The legal theory of *doli incapax*, which translates to "incapable of evil" from Latin, is among the oldest and most persistent manifestations of this distinction. According to the doctrine, a child under a specific age cannot be prosecuted for a crime since they are not yet able to develop the necessary *mens rea* or guilty mind.

The Juvenile Justice (Care and Protection of Children) Act, 2015, in particular, tacitly recognises this notion through legislation and judicial systems in India. However, with the increase of young people committing heinous crimes like rape, murder, and cybercrimes, the application and reach of *doli incapax* have come under examination. The tension between the principles of protection and accountability lies at the heart of this legal discourse.

This research aims to explore the doctrine of *doli incapax* in Indian law and its evolution in global systems, evaluating whether the Indian juvenile justice framework sufficiently addresses the moral and legal complexities posed by modern juvenile delinquency.

## **2.0 The Doctrine of Doli Incapax: Historical and Legal Foundations**

The origin of *doli incapax* lies in English common law, where it developed as a rule of evidence and legal presumption. Under traditional English law:

- Children under **seven years** were considered **absolutely incapable** of committing a crime (absolute *doli incapax*).
- Children aged **seven to fourteen** were presumed *prima facie* incapable (*doli incapax*), but this presumption was **rebuttable** by proof of malicious intent or *malitia supplet aetatem*. This method was predicated on the idea that moral responsibility varies with age and cognitive maturity. "Infancy is a defect of understanding, and infants under the age of discretion ought not to be punished by any criminal prosecution whatsoever," Blackstone said in his Commentaries on the Laws of England."<sup>1</sup>

The doctrine served as a safeguard against the premature exposure of children to the adversarial criminal justice system and emphasized **education, reform, and moral development** over punishment.

The notion of *doli incapax* has evolved in modern legal systems, "however, it still influences legislative frameworks. **The United Nations Convention on the Rights of the Child (UNCRC), particularly Article 40(3)**, advocates for states to set a minimum age of criminal responsibility and to adopt strategies that emphasise diversion and rehabilitation."<sup>2</sup>

### 3.0 Doli Incapax in the Indian Context

#### 3.1 Statutory Position: The Juvenile Justice Act

In India, the concept of *doli incapax* finds its practical expression in the **Juvenile Justice (Care and Protection of Children) Act, 2015**. The Act:

But after the 2015 amendment, judges have started paying closer attention to 16–18-year-olds' mental capacities. The Supreme Court made it clear in *Shilpa Mittal v. State of NCT of Delhi* (2020) that a juvenile cannot be prosecuted as an adult unless the offence is "heinous" and carries a sentence of seven years or more in jail.

Although the Act does not explicitly use the term *doli incapax*, the **presumption against full criminal responsibility** in younger children echoes the principle. The Act's emphasis on **individualized assessment, psychological maturity, and rehabilitative measures** further aligns with the doctrine's spirit.

#### 3.2 Judicial Interpretation

Indian courts have acknowledged the *doli incapax* principle in various rulings, albeit not always in an explicit manner. In the case of *Ram Singh v. State of Haryana* (2000), the Supreme Court emphasised that: Children, by reason of their age, are not fully capable of comprehending the consequences of their acts. The aim of the juvenile system is to safeguard and rehabilitate, rather than to impose punishment. However, following the amendment in 2015, there has been a noticeable shift in judges' scrutiny regarding the mental capacities of individuals aged 16 to 18. The Supreme Court elucidated in the case of *Shilpa Mittal v. State of NCT of Delhi* (2020) that a juvenile may only be prosecuted as an adult if the offence is deemed heinous and entails a minimum sentence of seven years of imprisonment.<sup>2</sup>

These cases reveal a **judicial balancing act** between maintaining the protections of *doli incapax* and responding to the public demand for accountability in cases involving serious crimes by minors.

#### 4.0 Age of Criminal Responsibility: Global Perspectives

The concept of *doli incapax* continues to influence how various jurisdictions define the **minimum age of criminal responsibility (MACR)**. According to UNICEF's 2019 global report, MACR varies widely:

<sup>1</sup> See William Blackstone, *Commentaries on the Laws of England*, Book IV, 1769, Ch. 19.

<sup>2</sup> *Shilpa Mittal v. State of NCT of Delhi*, (2020) 2 SCC 787.

- **India:** Presumptive minimum age = 7 years (under IPC Section 82), rebuttable up to 12 years (Section 83 IPC).
- **United Kingdom:** Age = 10 years (England & Wales), but *doli incapax* rebuttable between 10–14 years was abolished in 1998.
- **United States:** Varies by state (lowest = 6 years in North Carolina; highest = 12 years).
- **Australia:** Age = 10 years, with rebuttable *doli incapax* up to 14 years, reaffirmed in *RP v. The Queen* (2016).<sup>3</sup>
- **Germany and France:** Age = 14 years; below which, children are considered *doli incapax*.

These variations reflect different national priorities. Countries such as Germany emphasize **rehabilitative models** with no criminal liability below 14, while others like the UK have taken a more punitive turn by abolishing the *doli incapax* presumption despite international criticism.

## 5.0 Psychological and Neuroscientific Basis of the Doctrine

The concept of *doli incapax* is well anchored in psychological and neuroscientific theories of child development, making it more than just a legal fiction. The argument that children and adolescents lack the emotional control, impulse control, and cognitive maturity required to be held criminally responsible in the same way as adults is highly supported by recent studies.

### 5.1 Cognitive Development and Criminal Intent

Jean Piaget's theory of moral development posits that children under 12 operate largely under a **heteronomous morality**, where rules are external and unchangeable. Only during adolescence do individuals begin to internalize norms and develop **autonomous moral reasoning**. This aligns with the idea that **true understanding of legality, morality, and consequences emerges only after age 12–14** (Piaget, 1932).

Further, Lawrence Kohlberg's stages of moral development similarly suggest that children below 13 often operate at a **pre-conventional level**, driven by punishment avoidance rather than moral principles.

### 5.2 Neuroscientific Evidence

Recent neuroscientific research utilising MRI scans has demonstrated that the prefrontal cortex, the brain region responsible for judgement, planning, and impulse control, continues to mature until the early twenties. This prompts questions over the ability of a 12- or 13-year-old to completely understand the long-term ramifications of their acts or to possess complete criminal intent (*mens rea*).

A landmark U.S. Supreme Court case, *Roper v. Simmons* (2005), cited neuroscientific research to hold that **juveniles cannot be sentenced to death**, reaffirming the constitutional principle that children are **less culpable** due to their developmental immaturity.<sup>4</sup>

This body of evidence justifies the presumption of *doli incapax*, especially for children under 14, and supports its retention or reinforcement in jurisdictions like India.

## 6.0 Critiques and Contemporary Challenges

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<sup>3</sup> *RP v. The Queen* [2016] HCA 53, High Court of Australia – upheld the continuing relevance of the rebuttable presumption of *doli incapax* for minors aged 10–14.

<sup>4</sup> *Roper v. Simmons*, 543 U.S. 551 (2005) – U.S. Supreme Court held that execution of juveniles violated the Eighth Amendment, using psychological and neuroscientific evidence.

Despite its foundational logic, the doctrine of *doli incapax* is not without criticism, both from a legal and policy perspective. Critics argue that it may **shield juvenile offenders** from accountability in cases where they clearly understand the wrongfulness of their actions.

### 6.1 Rebuttal Complexity

One major issue is the **difficulty of rebutting the presumption**. Courts must assess whether a child knew their act was seriously wrong—not just mischievous. In practice, this requires:

- Psychological evaluations
- Testimonies from parents, teachers, or social workers
- Review of the child's conduct before, during, and after the offense

However, **resource constraints** and lack of standardized assessment tools in India make it challenging to apply the rebuttal process with consistency and fairness.

### 6.2 Rise in Heinous Juvenile Offenses

High-profile cases involving brutal crimes by juveniles often trigger public outcry and lead to **demand for harsher laws**. The 2012 *Nirbhaya* case in Delhi, where one of the perpetrators was 17 years old, ignited national debate and contributed to the **2015 amendment** of the JJ Act—allowing children aged 16–18 to be tried as adults for heinous crimes.

Such cases raise questions about the **continuing relevance of *doli incapax*** in the face of:

- Wilful preparation of crimes
- Older juveniles abusing legal safeguards;
- Children being exposed to more adult content, technology, and criminal influences.

Yet, these arguments risk **over-generalization**, ignoring the importance of individualized assessment and the potential for rehabilitation.

### 6.3 Disparities in Application

Another criticism is that the doctrine tends to be **applied inconsistently**, often influenced by:

- Socio-economic background of the child
- Nature of the crime
- Judicial discretion

For instance, children from urban, English-speaking, middle-class backgrounds may be presumed more capable of forming *mens rea* than rural or underprivileged children, even if they are the same age. This creates an inherent **class and cultural bias** in how criminal responsibility is inferred.

### 7.0 India's Legislative Dilemma: Balancing Welfare and Accountability

India's current framework under the **JJ Act, 2015** reflects a hybrid approach. It attempts to retain the **protectionist spirit** of *doli incapax* for children under 16, while introducing a mechanism to treat older juveniles as adults under specific conditions. However, this bifurcation has triggered several legislative and practical challenges.

#### ○ Preliminary Assessment under Section 15

The Act mandates that before a child aged 16–18 is tried as an adult, the Juvenile Justice Board must assess:

- The ability to perform the offence both mentally and physically
- The capacity to comprehend the repercussions

- The circumstances surrounding the offense's commission
- Theoretically, this clause protects the *doli incapax* principles. In actuality, though:
- A lot of JJBs don't have qualified psychologists.
  - There is no **uniform format** or **standardized psychological protocol**
  - Assessments are often **subjective and rushed**, especially under media or political pressure

### 7.3 Suggested Guidelines

Given the inconsistencies, several scholars and child rights groups have called for:

- Mandatory involvement of **trained child psychologists** during preliminary assessment
- Development of **age-specific capacity evaluation tools**
- Prohibition on media trials that may influence JJB decisions

### 8.0 Reform Proposals: Integrating Capacity and Compassion

Given the current Indian legal framework's hybrid approach to juvenile criminal responsibility, comprehensive reforms must aim to **institutionalize developmental sensitivity**, **standardize procedures**, and **ensure due process** while retaining the spirit of *doli incapax*. These reforms should span legislative, procedural, psychological, and educational dimensions.

#### 8.1 Legislative Reforms

**a. Codify the Doctrine of Doli Incapax Explicitly:** Although the JJ Act, 2015 indirectly reflects the principle of *doli incapax*, there is **no express provision** presuming children below 14 as incapable of forming criminal intent. Codifying this principle would:

- Provide **legal clarity** to JJBs and courts,
- Guard against **arbitrary transfer to adult courts**, and
- Align India with **UNCRC standards**, which encourage presumptions in favor of child innocence and rehabilitation.

**b. Raise the Minimum Age of Criminal Responsibility (MACR):** India's de facto MACR under Section 82 of the IPC is **7 years**, and rebuttable under Section 83 up to **12 years**. "This is **below the international minimum benchmark** of 14 years recommended by the UN Committee on the Rights of the Child (General Comment No. 10, 2007)."<sup>5</sup>

Raising this threshold to at least **12 years**, with a rebuttable presumption till 14, would reflect both global best practices and scientific findings on brain development.

**c. Revise Section 15 of the JJ Act, 2015:** Section 15's preliminary assessment procedure, though well-intentioned, suffers from vagueness. A revised provision should:

- Mandate a **standardized psychological evaluation format**, approved by a national expert panel,
- Define specific **criteria for capacity assessment**, and
- Require the presence of **independent child psychologists**, not just government appointees, to ensure neutrality.

#### a.2 Procedural Reforms

**a. Judicial Training and Guidelines:** Judges and members of Juvenile Justice Boards often come from non-specialized backgrounds. Mandatory training modules must be introduced via:

**National Judicial Academy (NJA) and State Judicial Academies,**

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<sup>5</sup> UNODC (2013). *Handbook on Restorative Justice Programmes*. United Nations Office on Drugs and Crime. <https://www.unodc.org/>

- Stressing restorative justice concepts, legal capacity requirements, and child psychology.
- Model procedural guidelines ought to be created for the following purposes:
- addressing *doli incapax* rebuttals; judging the "heinousness" of crimes committed by minors (16–18 years old); and accepting psychiatric evaluations as proof.

**b. Strengthening JJB Infrastructure:** A 2022 NCPCR audit report revealed that over 60% of JJBs lacked access to trained psychologists or forensic professionals<sup>6</sup>. Reforms should include:

- Recruitment of **dedicated juvenile psychologists**,
- Provision of **legal aid counselors** trained in child rights law,
- Regular audits to ensure compliance with rehabilitative mandates.

### 8.3 Integration of Child Psychology and Social Context

**a. Standardized Capacity Assessment Tools:** India must develop validated tools for assessing a juvenile's:

- Understanding of legality,
- Emotional regulation,
- Social background,
- History of exposure to violence or abuse.

These tools must be adapted to India's **linguistic and cultural diversity**, and should not borrow uncritically from Western psychological models.

**b. Pre-Offense and Post-Offense History:** Rebutting *doli incapax* must go beyond analyzing the offense itself. It should consider:

- Whether the child received prior warnings,
- Reactions after the offense (e.g., confession, remorse, hiding evidence),
- Influence of peer pressure or online radicalization.

**c. Emphasis on Social Environment:** Juveniles from impoverished or abusive households may commit crimes not out of malice, but due to **systemic neglect or coercion**. As such, legal analysis must be contextual and **socio-culturally informed**.

### 8.4 Rehabilitative and Educational Initiatives

**a. Schools as First Responders:** Most children spend significant time in educational institutions, making them ideal spaces for:

- Early intervention in behavioral disorders,
- Digital literacy and ethics programs (especially important for cybercrimes),
- Training teachers to identify risk behaviors and refer cases to counselors or Child Welfare Committees (CWCs).

**b. Legal Literacy for Children:** Legal education should begin in high school. Basic knowledge of:

- Fundamental rights and duties,
  - Laws applicable to minors (e.g., JJ Act, POCSO, IPC),
  - Consequences of criminal behavior,
- can empower children to make informed choices.

**c. Community-based Rehabilitation:** Beyond institutional care, NGOs and local bodies must be incentivized to offer:

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<sup>6</sup> National Commission for Protection of Child Rights (NCPCR). (2022). *Audit of Juvenile Justice Boards in India*. Retrieved from <https://ncPCR.gov.in/>

- Vocational training,
- Family counseling,
- Peer mentoring models.

Countries like Norway and Finland have achieved success through **community involvement** and **non-custodial sentencing models**, which reduce recidivism and reintegrate youth into society.

### 9.0 Balancing Child Rights and Public Safety

A central dilemma in applying *doli incapax* today is the need to **balance individual rights with societal safety**. This is particularly sensitive in cases involving:

- Terror-related acts,
- Gang crimes,
- Sexual offenses.

### 9.1 Risk of Over-Criminalization

A harsh change in legislation runs the possibility of making poverty, maltreatment, and adolescence itself crimes. Additionally, it might make the following worse: school dropout rates; stigmatisation of kids from underprivileged neighbourhoods; and exposure to seasoned offenders in adult systems.

India must therefore retain **individualized justice**, recognizing that the **same act may arise from different capacities and motivations** in different children.

### 9.2 Restorative Justice as a Bridge

Restorative justice practices, including victim-offender mediation, apology programs, and community conferencing, can:

- Hold juveniles accountable,
- Address victim grievances,
- Avoid unnecessary institutionalization.

Restorative justice also echoes Gandhian ideas of **reconciliation and community healing**, deeply relevant in India's legal-cultural landscape.

## 10.0 Conclusion

The doctrine of *doli incapax* remains a **vital safeguard** within juvenile justice, reflecting a society's commitment to **developmentally appropriate accountability**. While evolving juvenile crimes—especially among older adolescents—demand vigilant responses, these must not come at the expense of **child rights, scientific evidence, or constitutional due process**.

In India, the latent recognition of *doli incapax* through the IPC and JJ Act must be **made explicit, institutionalized, and contextualized**. Legal and procedural reforms must be informed by:

- 2.1. Contemporary neuroscience,
- 2.2. International child rights frameworks,
- 2.3. The lived realities of Indian children.

In order to ensure that juvenile justice is not only reactive or retributive but also restorative, rehabilitative, and based in compassion, India should fortify its foundations rather than forsake the idea in the face of new difficulties.

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