

## CASE COMMENT: BARUN CHANDRA THAKUR VS MASTER BHOLU & ANOTHER 2022

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### INTRODUCTION

In the modern world, we see a lot of new cases of higher severity every day from all spectrums of our lives, and within the recent course of years, we have been witnessing several juvenile cases across the world. Juvenile cases are crimes, whether heinous or not, committed by a child who has not attained the age of 18. In India, the figures from the National Crime Records Bureau (NCRB) state that across the country, a total of 31,170 cases were registered against juveniles in 2021, showing a 4.7% increase over 2020, when 29,768 were registered. What is most disturbing is that most of them—76.2%, or 28,539—were in the age group of 16 to 18 years. The crime rate among juveniles had also risen from 6.7% to 7.0%, as per the NCRB. <sup>[1]</sup>

The juvenile justice system in India underwent significant changes in the year 2015 when the Juvenile Justice (Care and Protection of Children) Act of 2015 was introduced and especially handled cases relating to heinous crimes committed by juveniles. The act defines a juvenile as a child who is below 18 years of age <sup>[2]</sup> and has provided that depending upon the severity of the crime, juveniles between the age groups of ‘*sixteen to eighteen*’ can have the same proceedings and trials as an adult. <sup>[3]</sup>

One such case that revolved around the Juvenile Act of 2015 is a case from Gurugram where a 16-year-old juvenile was involved in a serious crime of murder. It is the case of Barun Chandra Thakur vs. Master Bholu & Another (2022). Through the lens of this case, this paper will try to assess the situation of juvenile cases in India and what steps can be further taken to strengthen this process.

### FACTS OF THE CASE

- The timeline of the case dates to September 8, 2019, when a student of 2<sup>nd</sup> class was found dead in the washroom of Ryan International School, Bhondsi, Gurugram, in Haryana.

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- The child (named 'Prince') was found brutally murdered with his throat slit in the bathroom of the school. Initially, a total of three people were suspected, including the driver of the school vehicle, and two were school officials.
- In the meantime, state police transferred the case to the CBI, and upon interrogation, it was found that the murder was done by a 'child' of Class 11<sup>th</sup> (named 'Bholu') who was aged 16 years, 5 months, 5 days on the date of the incident (i.e., September 8, 2017).
- Due to the age of Bholu, the case required the Juvenile Justice Board under *Section 15(1)* of the Juvenile Act to conduct a preliminary assessment of his mental and physical capacity to understand whether he has the capacity to conduct such a crime.<sup>[4]</sup>

### **ARGUMENTS BY THE ACCUSED**

The Juvenile Board held that the accused, i.e., 'Prince', was in a proper mental and physical state and had to be treated as an adult, and hence transferred the case to the Children's Court for further trial. Against the order, the accused filed for an appeal, as the provision states under *Section 101* of the Act. But the Children's Court upheld the decision of the Board and dismissed the appeal.

Unhappy with the judgment, he filed for criminal revision under Section 102 of the Act before the High Court. The judge favoured him and asked the board for fresh consideration of the case.

Multiple appeals were filed first in the Children's Court, then in the High Court, and finally the Special Leave Petition in the Supreme Court to examine the proceedings arising out of the preliminary assessment made under *Section 15* of the Act.

### **ISSUES BEFORE THE COURT**

The key issues that were raised before the court were as follows:

- The meaning and legal applicability of the word 'may' in Section 15 of the Juvenile Justice Act, 2015. This section allows the board to seek the assistance of experienced psychologists or other experts while assessing the child.
- The way of conducting the assessment of the mental capacity of the child was followed, which in this case was based on his IQ level.

- The need for a proper set of guidelines is required for conducting the preliminary assessment of the child under the Juvenile Justice Act of 2015.

### **JUDGEMENT**

The Supreme Court judgment in the Barun Chandra Thakur vs. Master Bholu case added clarity to the issues raised. The court interpreted the word “may” in Section 15 of the JJ Act as mandatory when the Board does not consist of a professional with a degree in child psychology or psychiatry. The Board under the Act consists of three members, one being a Judicial Officer First Class and two social workers, one of whom is a woman. The social worker appointed as a member could have a degree in child psychology or psychiatry, but it is not necessary. As such, the constitution of the board may not necessarily have an expert child psychologist. The honorable Supreme Court has interpreted the statute in this context. According to the court, when the Board is not inclusive of a practicing professional with a degree in child psychology or child psychiatry, the expression “may” in *Section 15* would operate compulsorily, and the Board would be obliged to take the assistance. However, in the event that the board comprises at least one member who is an expert in the field, the board may take such assistance as may be considered proper by it. Furthermore, if the board chooses not to seek such assistance, it would be required to give specific reasons for that. This brings a lot of clarity to the statute and places a lot of emphasis on the opinion of the expert.

The court stated that the mere mental capacity to commit an offence, as proven by an average IQ score, is not sufficient to gauge the ability to understand the consequences of the offence. The court even said that it is a grave error to consider the mental capacity and the ability to understand the consequences of the offence as the same. IQ may establish the mental capacity to commit an offence, but more is needed to prove the ability to understand the consequences of the offence.

In the end, the court also stressed that proper guidelines should be issued, and it calls on the Central Government, the National Commission for Protection of Child Rights, or the State Commission for the Protection of Child Rights to consider issuing guidelines that may assist and facilitate the Board in making preliminary assessments under S.15 of the Act.

## ANALYSIS AND CONCLUSION

As per the Juvenile Justice Act of 2015, the responsibility of making initial evaluations lies with the board and Children's Court, as mentioned in Sections 15 and 19. The Children's Court also has the authority, under Section 18(3), to determine whether the child should be tried as an adult or not. If the court decides not to try the child as an adult, then it acts as the Board and conducts an inquiry, issuing appropriate orders under Section 18. Therefore, the Board and Children's Court are responsible for conducting preliminary assessments.

In this particular case, the court concluded that there was a denial of adequate opportunity to the respondent. The respondent was not provided with the list of documents, copies of the documents, or copies of the statement, which was a violation of Rule 10(5) of the Model Rules. As a result, the High Court ordered further examination of the child's case. However, it has been over five years, and the child is now over 21 years of age. Whether new testing is useful or not is a decision that the board or the psychologist they consult needs to make. The Juvenile Justice Act of 2015 and Model Rules do not provide any guidelines or frameworks for assessment. The board can only seek assistance from experts in such cases. However, in this case, the board only obtained the child's mental IQ and not a report on their ability to comprehend the offence. This case highlights the complex obstacles that come with dealing with juvenile offences. It emphasizes the importance of having experts involved in assessing the juvenile's understanding of the crime and its aftermath and stresses the need for thorough assessment protocols. Despite the denial of Bholu's special leave petition, the child's current age of 21 years raises additional concerns about the assessment process. It is crucial to ensure that all aspects of the case are thoroughly examined and addressed to ensure fairness and justice for all parties involved.

## REFERENCES

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<sup>1</sup> Bala Chauhan, 'Why children conflict with law and order', (New Indian Express, 24<sup>th</sup> December 2022) <[2 Ministry of Law and Justice, Juvenile Justice \(Care and Protection of Children\) Act of 2015 \(No. 2 2016\), page 5 clause 35.](https://www.newindianexpress.com/opinions/2022/dec/24/why-children-conflict-with-law-and-order-2531149.html#:~:text=The%20figures%20from%20the%20National,2020%20when%209%2C768%20were%20registered.> accessed 24<sup>th</sup> September 2023</p></div><div data-bbox=)

3 Ministry of Law and Justice, Juvenile Justice (Care and Protection of Children) Act of 2015 (No. 2 2016), page 14. S.18

4 Ministry of Law and Justice, Juvenile Justice (Care and Protection of Children) Act of 2015 (No. 2 2016), page 13. S.15, sub-section 1.

