

## THE LEGAL APPROACH TOWARDS JUVENILE OFFENDERS

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### ABSTRACT

*The recent incident of the Pune Porsche Case has caused an uproar in the whole nation. Another heinous case, which saw the involvement of a 17-year-old minor, drunk driving, has killed two young people on board a bike. The demand for the accused to be tried as an adult instead of a juvenile has spiked. This recent incident has caused doubts in people's minds about our country's judicial system. However, before framing any judgement, it is essential to understand who is a juvenile and what laws are protecting them. Let us appropriately analyse the legal system for juvenile justice in India. The Juvenile Justice (Care and Protection of Children) Act, 2015 defines a juvenile as a person who has not yet attained the age of majority, i.e. 18 years. This act lays down provisions for the care, protection, and rehabilitation of children in conflict with the law. In India, juveniles are treated differently under the JJ Act than adults. The officer in charge of the juvenile offender must exercise proper care and caution regarding the offender's safety. The child offender must not be ill-treated and shall be given the opportunity to be heard by the board<sup>1</sup>. The act ensures that a child in conflict with the law shall not be exploited and be protected from all atrocities until discharged. This is a positive and protective approach towards juvenile justice in India. It shows that the intention of the lawmakers is to rehabilitate juveniles and not punish them. This is a commendable effort towards their reintegration into society without being introduced as criminals. On the other hand, it is also opined that a child above 16 can understand the nature and the consequences of the act, but the major argument is whether a child can be treated as an "Adult" or not.*

### CAN A JUVENILE ABOVE 16 YEARS OF AGE BE TREATED AS AN ADULT?

The JJ Act 2015 creates a distinction between petty, serious, and heinous offences and proposes to try heinous crime offenders under the criminal justice system as adults. The act vests the power to determine the maturity level of the juvenile offender who is above 16 years of age to the Juvenile Justice board in case of the commission of the alleged heinous offence.<sup>2</sup> The Board

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<sup>1</sup> Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 14, India Code (2016).

<sup>2</sup> Id. § 15(1).

shall conduct a preliminary assessment under three months regarding his mental and physical capacity to commit such offence, his ability to understand the consequences of the offence, and the circumstances in which he allegedly committed the offence. If it is satisfied that there is a need for a trial of the child as an adult, it shall transfer the case to the Children's Court having jurisdiction to try such offences.

Children are the embodiment of innocence. They are not born as criminals. Their behaviour is guided by the society. There are certain factors contributing to the rise in the commission of crimes by children, such as family problems, education, and social and economic status. The habits that children pick up are learned through their peers only, and therefore, it would be wrong to say that the child, alleged to have committed such offence, is solely responsible. The law should provide scope to reform children in conflict with the law. Only in the rarest of rare cases has it been proven that there exists no possibility for the reformation of the child offender, and then he will only be tried according to the criminal justice system. But it does not mean that a child is allowed to commit heinous crimes such as rape, murder, etc and get away with it. It is the duty of the law to ensure that the juvenile offender understands the nature and consequences of his actions and must bear the responsibility for it and further abstain from doing the same act in future. The JJ Act is a comparatively more lenient and child-friendly law than other criminal laws. The main objective of the act is to deal with child offenders with proper care and caution. There is already a clear distinction between juveniles committing petty offences and heinous crimes. It is done because of the gravity of the offence, and those committing petty offences deserve to be treated with lesser punishment than juvenile offenders of heinous crimes. Therefore, they should not be clubbed together and tried differently. We can assume that the person must have put some thought while committing heinous offences like rape and murder. Those committing brutal offences, having such malicious intention to commit the same crimes again, shall not be allowed to abuse the law.

Further, even if a child is treated as an adult, he is entitled to derive all the benefits of a "child." So that his interests are protected and he is not exposed to the vagaries of the police and the normal criminal system.

In the case of **Sandeep Ayodhya Prasad Rajak v. State of Maharashtra**<sup>3</sup>, the Hon'ble HC held that "Even when a child is sent up for trial as an adult before a Children's Court, the child

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<sup>3</sup> Sandeep Ayodhya Prasad Rajak v. State of Maharashtra, 2022 SCC OnLine Bom 1825

does not become an adult or ‘major,’ but is only to be treated differently considering the heinous nature of the offence alleged and the consequent need for stricter treatment of the offender, though still as a Juvenile in conflict with the law.<sup>4</sup>”

### **THE IMPORTANCE OF PRELIMINARY ASSESSMENT**

The act states that the conduction of a preliminary assessment is necessary to assess the mental capacity of the juvenile to commit a crime. Heinous crime offenders are differentiated from petty crime offenders on the grounds of their maturity level of the offender and on this basis only; a delinquent juvenile is tried. Section 15 of the Act 2015 mandates that where a child in conflict with the law has committed a heinous offence and is above the age of 16 years, the Board would make a preliminary assessment and pass appropriate orders following the provisions of sub-section (3) of section 18 of the Act, 2015. Provided that for such an assessment, the Board may obtain the assistance of experienced psychologists, psycho-social workers, or other experts.

In the case of *Barun Chandra Thakur v. Master Bholu*<sup>5</sup>, the apex court held that Child psychology is a specialised branch of development psychology; its genesis is based on the premise that children and adults have different thought processes. The individualised assessment of adolescent mental capacity and ability to understand the consequences of the offence is one of the most crucial determinants of the preliminary assessment mandated by section 15 of the Act, 2015.

Psychology says that children under the age of 18 are more likely to react impulsively than grownups to any situation. It is because their minds have not yet attained the level of maturity and are still in the stage of development. They are moulded according to the circumstances. It is based on scientific reasoning that the psychology of a child is different from that of an adult and, therefore, should be treated differently with proper care and sensitivity. The preliminary assessment under section 15 of the Act 2015 is a delicate task that requires expertise and should be performed with caution.

It is pertinent to note that a preliminary assessment is not a “trial”; instead, it is merely an inquiry to check whether the juvenile possesses the required mental capacity and understanding

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<sup>4</sup> Id.

<sup>5</sup> *Barun Chandra Thakur v. Master Bholu And Anr* 2022 LiveLaw (SC) 593.

to commit an offence of a heinous nature. The child is presumed to be innocent unless it is proved otherwise.

Moreover, Section 14(3) states that the onerous task of preliminary assessment for the heinous offence shall be conducted within three months from the date of the first production of the child before the board. The importance of the aforesaid provision was considered by this Court in Barun Chandra Thakur's case, where the requirement of such assistance was held to be mandatory, even though the words used in proviso to Section 15(1) and Section 101(2)<sup>6</sup> Of the Act are 'may'.

Now, the question arises of whether the time limit is mandatory or a directory for the completion of the preliminary assessment. This question was answered by the Hon'ble Court in the case of Child in Conflict with Law v. State of Karnataka<sup>7</sup>.

#### **THE COURT MADE THE FOLLOWING OBSERVATIONS**

The Act as such does not provide for any extension of time and does not lay down the consequence of non-compilation of inquiry within the time permissible. In the absence thereof, the provision prescribing a time limit for the completion of the inquiry cannot be held mandatory. The intention of the legislature concerning serious or heinous offences is also available from the language of Section 14 of the Act, which itself provides for further extension of time for completion of inquiry by the Board to be granted by the Chief Judicial Magistrate or Chief Metropolitan Magistrate for the reasons to be recorded in writing. It is in addition to a two-month extension that the Board can grant itself. Also, the preliminary inquiry involves many persons, namely, the investigating officer, the experts whose opinion is to be obtained, and thereafter the proceedings before the Board, where for different reasons any of the party may be able to delay the proceedings.

Therefore, it is only reasonable to conclude that the time provided in Section 14(3) is not mandatory but a directory.

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<sup>6</sup> Juvenile Justice (Care and Protection of Children) Act, § 101, No. 2 of 2016, India Code (2016)

<sup>7</sup> Child in Conflict with Law v. State of Karnataka, 2024 SCC OnLine SC 798

## REMEDIES AVAILABLE TO JUVENILE OFFENDERS OF HEINOUS OFFENCES

The JJ Act 2015 ensures that child rights are protected and not abused in the name of law. The primary objective of the act is to reform child offenders and rehabilitate them into society. The JJ Act provides that the implementation of the Act is to be guided by the principles of the best interest of the 'child.'<sup>8</sup>

The Universal Declaration of Child Rights, adopted by the United Nations in 1948, emphasised the importance of protecting the rights of the child.<sup>9</sup> Also, the Directive Principles of State Policy in the constitution of India provides under 39(f) that the state shall direct its policy towards ensuring that childhood and youth are protected against exploitation and moral and material abandonment.<sup>10</sup>

Under Section 21 of the Act, no child in conflict with law shall be sentenced to death or life imprisonment without any possibility of release. This provision aims to protect the identity and dignity of the juvenile. In the case of *Karan Fatiya v. State of Madhya Pradesh*, the apex court recently released the accused, who was given the death penalty, after the court found out that he was a juvenile at the time of the commission of the offence.

The juvenile justice system also assures that the identity of the child is protected. This disclosure of identity amounts to an infringement of his right to privacy, which is the fundamental right of every citizen in our country. In the case of *Shilpa Mittal v. NCT Delhi*<sup>11</sup>, the Hon'ble Court held that the identity of the juvenile should not be disclosed as it violates the right to privacy and confidentiality of the juvenile, and hence, it is against the law.

Section 12 of the JJ Act provides the statutory right to bail to the child offender. It states that a child, alleged to have committed any bailable or non-bailable offence, has the right to bail, which can be rejected on reasonable grounds only and not otherwise. But it does not mean that the juvenile in conflict with the law, alleged to have committed a heinous crime, who possesses criminal intent and is likely to commit the act again in future be set free on bail. It is important to note here that the right to bail is not a mandatory provision and can be denied. A probability

<sup>8</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015, §3(iv)

<sup>9</sup> Universal Declaration of Human Rights, U.N., <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf> (last visited June 5, 2024).

<sup>10</sup> Bhattacharyya, S. K. "JUVENILE JUSTICE SYSTEM IN INDIA." *J. Indian L. Inst.*, vol. 23, no. 4, 1981, pp. 606–12. JSTOR, <http://www.jstor.org/stable/43950781>. Accessed 5 June 2024.

<sup>11</sup> *Shilpa Mittal v. NCT Delhi*, (2020) 2 SCC 787

may exist where the juvenile, allegedly involved in an offence of heinous like murder or attempt to murder, rape, or attempt to rape, gets exposed to physical, moral, or psychological danger, and therefore, in such circumstances also, the bail can be declined.<sup>12</sup>

The Allahabad HC, in the case of *Mangesh Rajbhar v. State of UP*,<sup>13</sup> held that “Merely by declaration of being a juvenile does not entitle a juvenile in conflict with law to be released on bail as a matter of right. The Act has a solemn purpose: to achieve the betterment of juvenile offenders, but it is not a shelter home for those juvenile offenders who have criminal proclivities and criminal psychology. It has a reformatory approach but does not completely shun retributive theory.”

Moreover, the right to be heard and participate in a free and fair trial is fundamental to the criminal justice system. The constitution of India confers the right to equality under Article 14<sup>14</sup>, which states that juveniles are entitled to equality before the law and equal protection of the laws, ensuring they are treated fairly and without discrimination. Also, under Article 21<sup>15</sup>, Juveniles have the right to life and personal liberty, which includes the right to a fair trial, humane treatment, and protection from arbitrary deprivation of liberty.

## CONCLUSION

In conclusion, we can say that Children are the assets of our nation. Being the future of any society and a vulnerable section of the same, children deserve laws that focus on their well-being and protection. The growth of children is as important as the development of material resources. India has a satisfactory Juvenile Justice System. One of the major principles of the juvenile justice system is to make sure that a child is corrected and re-integrated into society. In most of the circumstances, a child offender can be reformed. Therefore, if a child is being tried as an adult, the juvenile board must have reasons to believe in doing so, and since the process is long and tedious, it should be done with caution and consideration. The laws in India align with the United Nations Convention on the Rights of the Child, which safeguards the rights and liberties of children. Although restorative justice addresses the need for a system that takes into consideration the immaturity of juvenile offenders and their psychological development, it is not the best solution. It is possible that the law will be abused by habitual

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<sup>12</sup> *Manish Kumar Pandey v. State of U.P.*, 2021 SCC OnLine All 492

<sup>13</sup> *Mangesh Rajbhar v. State of U.P.*, 2018 (2) ACR 1941

<sup>14</sup> INDIA CONST. art. 14.

<sup>15</sup> INDIA CONST. art. 21.

offenders who have criminal psychology, which can deliver outcomes in favour of offenders. Therefore, it can expose society to more serious repercussions. This should not be acceptable in a civilised society.

