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SHOULD JUVENILES TRIED AND TREATED AS AN ADULT IN INDIA

~Priyansi Panigrahi¹

“Old enough to do the crime, old enough to do the time”.

ABSTRACT

This common mantra simplifies complicated realities into platitudes. It's incorrect as well. Juvenile justice is in place specifically to ensure that minors who commit major crimes are held accountable. More children being funnelled into the adult system is detrimental and does no help. It is not true to suggest that juveniles are adults just because you say so. Furthermore, we don't actually mean it when we say that: we don't consider them adults for other purposes, like voting or drinking, even if we trial them in criminal court. We are aware that kids are still in their formative years; rather than being more responsible and mature, they are more impulsive, unpredictable, and susceptible to harmful peer pressure.

Keywords – Juvenile, adult system, criminal courts.

INTRODUCTION

On December 22, 2015, the Parliament enacted the Juvenile Justice (Care and Protection of Children) Act, 2015 (2015 Act), which brought in a whole new set of rules for kids who are over sixteen and are suspected of serious offences. Its debut was against the horrific backdrop of a teenage student's rape in 2012. The administration argued that the measure would prevent future minor offenders. Rekindling the controversy over juvenile age limitations was the gang rape and murder of a female physiotherapy intern in Delhi in December 2012 by six men, one

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of whom was a seventeen-year-old juvenile. Regardless of the severity of the offence, the maximum term allowed under present law for children was three years in a detention facility.

The JJ Act, 2000 and the idea of establishing the age of juvenility at eighteen years old were upheld by the Supreme Court in the decisions of *Salil Bali v. Union of India* (2013)² and *Dr. Subramanian Swamy v. Raju* (2014)³. To investigate the shortcomings in the present criminal law framework controlling sexual assault against women, the Committee on Criminal Law Amendments was constituted under the direction of Justice J.S. Verma. The Committee categorically opposed to allow children to become sixteen years old. Rather, it made the case that the 2000 JJ Act should be vigorously implemented and that there was an urgent need to reform and reorganise the current juvenile justice and welfare system. It concluded that there was no basis for reducing the age at which minors are criminally responsible for certain acts, noting among other things that recidivism had dropped from 8.2% in 2010 to 6.9% in 2011.

Nevertheless, the government disregarded these recommendations and, in response to popular pressure, passed the Juvenile Justice (Care and Protection of Children) Act, 2015, which attempts to protect the rights of victims while imposing deterrent measures on juvenile offenders. The 2015 Act makes a distinction between severe, minor, and heinous acts. It also suggests that juvenile offenders who commit "heinous offences" between the ages of sixteen and eighteen should be prosecuted as adults in the criminal justice system. Juveniles over sixteen may be legally moved to adult courts under the 2015 Act if the Juvenile Justice Board (JJB) finds that the juvenile's maturity level indicates that he committed the heinous crime as an adult rather than a kid.

In 2016, the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (JJMR) were also amended and introduced according to the JJ Act 2015. Another important legislation in India in the protection of children is the Protection of Children from Sexual Offences Act 2012.⁴

India Today delves further into the matter.

² Salil Bali v. UOI & anr, AIR 2013 SUPREME COURT 3743.

³Dr. Subramanian Swamy and Ors v. Raju the Member Juvenile Justice, 2014 AIR SCW 2021; 2014 (8) SCC 39.

⁴ Kishita Gupta, Treatment of children as adults under India's Juvenile Justice (Care and Protection of Children) Act, 2015, blog. ipleaders, (4th June. 2024, 09:45am), <https://blog.ipleaders.in/treatment-of-children-as-adults-under-indias-juvenile-justice-care-and-protection-of-children-act-2015/>.

The Juvenile Justice Act was modified in response to public uproar to punish the juvenile involved in the 2012 Nirbhaya tragedy. In 2015, the Juvenile Justice Act was amended to allow minors, ages 16 to 18, to stand trial as adults in the event of a serious criminal charge. According to the legislation, "any offence punishable with more than 7 years imprisonment" is considered a "heinous crime." These include, but are not limited to, rape, robbery, acid assaults, killing government officials, drug trafficking, and human trafficking. In addition, Section 15 of the Act mandates that before bringing the accused before an adult court, the Juvenile Justice Board do an initial evaluation of three factors⁵

MEANING OF HEINOUS OFFENCES

Petty offences, severe offences, and heinous offences are the three primary categories into which the JJ Act of 2015 separates offences. The JJ Act, 2015 introduced a new provision based on the alleged offence that a child in conflict with the law must be treated for: treatment of a child in conflict with the law must determine the nature of the alleged offence. As a result, identifying the kind of violation is crucial, especially for "heinous offences," as minors who break the law may be prosecuted as adults in accordance with Section 18(3) of the JJ Act, 2015.

According to Section 2(33) of the JJ Act 2015, "heinous offences" are defined as offences for which the Indian Penal Code, 1860, or any other applicable legislation, imposes a minimum punishment of seven years in prison or more. A crime must be imprisoned for a minimum of seven years or more in order to qualify as a "heinous offence." Because the minimum term for the crime of "rape" is seven years in prison, it would be deemed a "heinous offence. "Rape is penalised by imprisonment "for a duration of not less than seven years, but which may extend to life imprisonment."

When a child's alleged criminal activity does not fit neatly into one of the JJ Act, 2015's categories, it should be considered to belong in a category that supports the young person who is in trouble with the law.⁶

The Supreme Court has held in a very recent case of *Shilpa Mittal vs the State of NCT of Delhi (2020)*⁷ that an offence that does not carry a minimum penalty of seven years cannot be

⁵Indiatoday, <https://www.indiatoday.in/law/story/why-supreme-court-called-for-guidelines-to-put-juveniles-under-trial-as-adults-1976670-2022-07-17>, (4th June. 2024, 09:56 am).

⁶ Kishita Gupta, Treatment of children as adults under India's Juvenile Justice (Care and Protection of Children) Act, 2015, blog. ipleaders, (4th June. 2024, 10:06am), <https://blog.ipleaders.in/treatment-of-children-as-adults-under-indias-juvenile-justice-care-and-protection-of-children-act-2015/> .

⁷ Shilpa Mittal v. The State of NCT of Delhi, AIR 2020 SUPREME COURT 405.

considered terrible. However, in light of the foregoing, the Act does not address the 4th category of offences: the maximum sentence is more than 7 years in prison but no minimum sentence or a minimum sentence of less than 7 years is provided. These offences shall be treated as “serious offences” within the meaning of the Act and dealt with accordingly until Parliament takes the call.

DETERMINATION OF AGE OF A JUVENILE

A juvenile in trouble with the law must have turned sixteen or older in order to be released from the juvenile justice system. Because of this, the JJB is required to decide whether a minor who is accused of committing a "heinous crime" has really achieved the age of sixteen in each instance involving the minor. Rule 10A (1) of the JJ Model Rules, 2016 states that "the Board shall determine whether the child is sixteen years of age or older in the first instance" with regard to a preliminary assessment. Given the dire repercussions, age determination at this time must be done carefully: If a juvenile makes a mistake, they could be considered adults.

Are minor be treated as an adult in India?

“Minor is only be treated as adult if he / she commits any heinous crime like murder, rape, etc. and their crime is proved (only in heinous offences) decided by JJB on preliminary assessment (Section15)

1. Mens rea and physical capacity
2. Ability to understand the consequences of offences
3. Circumstances in which offences are committed”⁸

“Over the years, several legal and constitutional questions have been raised-

1. What does comprehension of consequences mean?
2. Does the assessment process deprive the child of natural justice?
3. Is the use of psychological assessment tests legally valid?
4. What about Constitutional rights to privacy, right against self-incrimination?”⁹

⁸ MD Salman Khan, Trial of Juvenile in Heinous Offences, legalserviceindia, (4th June. 2024, 10:22 am), <https://www.legalserviceindia.com/legal/article-14514-trial-of-juvenile-in-heinous-offences.html> .

⁹ Indiatoday, <https://www.indiatoday.in/law/story/why-supreme-court-called-for-guidelines-to-put-juveniles-under-trial-as-adults-1976670-2022-07-17> , (4th June. 2024, 10:23 am).

PROCESS REGARDING THE TRIAL OF THE OFFENDERS:

Step 1: JJB preliminary assessment

1. A quasi-judicial organisation called the Juvenile Justice Board (JJB) handles situations involving kids who are in legal trouble.
2. Initial evaluation: An evaluation has been carried out to determine the juvenile's mental and physical aptitude for committing this type of crime, as well as their comprehension of the repercussions of their actions and the circumstances surrounding their alleged commission.
3. Psychologists' aid: The JJB must enlist the aid of professionals with expertise in working with children during trying times and who have completed training in relation to Section 15 of the JJ Act, 2015.
4. Social Investigation Report: After speaking with the kid and his family, a probation officer or social worker must create a Social Investigation Report or Social Background Report, which the JJB must also take into account. A copy of the order must be sent by the JJB to the kid, his family, and his legal assistance attorney.

Step 2: Transfer of case to the Juvenile Court (Children's Court):

1. If the JJB passes an order that there is a need for the trial of the child as an adult, then it may order the transfer of the case to the Juvenile Court having jurisdiction to try such offences.
2. The Children's Court is a designated court that deals with cases transferred by the JJB under Section 18 of the JJ Act, 2015.
3. The Children's Court has to conduct a trial in accordance with the regulations of the Code of Criminal Procedure, 1973 and may pass any verdict authorized by law apart from the death penalty or life imprisonment without the possibility of release.¹⁰

ROLE OF THE CHILDREN'S COURT IN DEALING WITH A CHILD IN CONFLICT WITH THE LAW

It is important to underline at the outset that the General Principles to be observed in the administration of the JJ Act also apply in the Children's Court. The Children's Court is governed by the Juvenile Justice (Care and Protection of Children) Act of 2015. Simply because

¹⁰ MD Salman Khan, Trial of Juvenile in Heinous Offences, legalserviceindia, (4th June. 2024, 10:31 am), <https://www.legalserviceindia.com/legal/article-14514-trial-of-juvenile-in-heinous-offences.html> .

a child in conflict with the law has been sent to the criminal justice system does not indicate that he or she should be treated as an adult in every way.

When the case of a child in conflict with the law is transferred, the Children's Court must decide whether "there is a need for the child to be tried as an adult" or whether "there is no need for the child to be tried as an adult and the Board may undertake an inquiry."

- If the Children's Court makes an order under Section 19(1)(i) of the JJ Act, 2015, it must hold a trial and issue appropriate orders "while taking into account the child's special needs, the principles of a fair trial, and preserving a child-friendly environment." A juvenile who is found guilty by the Children's Court will be transported to a "safe location."
- If the Children's Court makes an order under Section 19(1)(ii), it must hold a JJB hearing and issue orders under Sections 18(1) and (2) of the JJ Act, 2015. Because the case of the child has not been referred to the JJB for inquiry under Section 8(2), the Children's Court can employ the JJB's powers "when the proceedings come before them under Section 19."
- The Children's Court must guarantee that, in the case of a child in conflict with the law, the final order includes an individual care plan for the child's rehabilitation, which includes follow-up by the probation officer, the District Child Protection Unit, or a social worker.
- The Children's Court shall ensure that the probation officer, the District Child Protection Unit, or a social worker, as required, submits a periodic follow-up report every year to evaluate the child's progress in the place of safety and to ensure that the child is not subjected to any form of ill-treatment.

"No child in conflict with the law shall be sentenced to death or life imprisonment without the possibility of release," according to Section 21 of the JJ Act, 2015. As a result, while punishment for an offence may be "death" (Section 302, IPC) or "imprisonment for life, which may mean imprisonment for the remainder of that person's natural life" (Section 376-A, IPC), such a sentence cannot be imposed on a child.¹¹

¹¹Kishita Gupta, Treatment of children as adults under India's Juvenile Justice (Care and Protection of Children) Act, 2015, blog. ipleaders, (4th June. 2024, 10:38am), <https://blog.ipleaders.in/treatment-of-children-as-adults-under-indias-juvenile-justice-care-and-protection-of-children-act-2015/>.

VIOLATION OF THE DOCTRINE OF FRESH START

The goal of reintegrating juvenile offenders into society is the foundation of the fresh start concept, which supports the expungement of a juvenile offender's criminal record. It stems from the juvenile delinquents' right to privacy, as guaranteed by the Convention on the Rights of the Child (CRC), which applies to all juvenile offenders equally and at all times. Its goal is to prevent the juvenile offender from being stigmatised and labelled, which might hinder his ability to get housing, work, or school in the future. The idea behind fresh start is to provide young people who have committed crimes a second opportunity and a clean slate without the social or financial consequences that come with a criminal record. The court in *United States v. Dancy*¹² noted that "the stigma of a criminal conviction may itself be a greater handicap in later life than an entire misspent youth," emphasising the necessity of an expungement procedure. The juvenile justice system's therapeutic goals, which include ensuring the reintegration of juvenile offenders into society, are aligned with the expunging of juveniles' records. The 2015 Act, which mandates the expungement of juvenile offenders' records, upholds the idea of a fresh start. There is a disclaimer attached to this clause, nevertheless, that permits an exception to the norm in "special circumstances." However, the specifics of these unique conditions remain unclear, leaving a very sensitive matter entirely undefined. Because the clause is so vague, there is concern that the perpetrator may be subjected to "racial profiling" because of his caste, religion, community, or family history. Additionally, the 2015 Act spares young offenders from any disqualification that would result from breaking the law⁹³ if they commit a crime. This section does not, however, provide protection for minors who have committed horrible crimes and are older than sixteen. This suggests that they would be subject to legal disqualifications, which would leave a lasting mark on their future lives. Such exclusion runs counter to the juvenile policy's rehabilitation goals and the fresh start premise.¹³

ROLE OF JUVENILE JUSTICE BOARD

The Board is charged with assessing the juvenile offender's guilt and is a significant participant in India's juvenile justice system. The Board has been given the unusual authority to carry out a preliminary investigation to ascertain whether the juvenile is mature enough to commit the crime under the 2015 Act. Despite the Board's authority to seek advice from seasoned psychologists or psycho-social workers in order to make this assessment, we have previously

¹² *United States v. Dancy*, 640 F 3d 455 (1st Cir 2011).

¹³ Manupatra, <https://docs.manupatra.in/newsline/articles/Upload/0A6F7370-9CF9-4A96-8E88-5B8195F5DD83.pdf>, (4th June. 2024, 10:43am).

maintained that the Board is unable to reach a fair judgement regarding the offender's maturity. Alternatively, we suggest using the risk principle to ensure that subjective factors do not affect the Board's functioning. This theory makes use of risk assessment instruments that are frequently used to create such a categorization, such as the gravity of the juvenile's crime and their prior record. The higher risk juvenile offenders are subsequently given access to more intense treatment programmes. Consequently, the gravity of the juvenile offender's crime is utilised to determine the type of danger that the juvenile poses rather than serving as a gauge of the juvenile's maturity. The degree of danger is directly correlated with the rehabilitation plans' severity. When a young criminal who has been charged with a horrific crime is brought before the Board, the Board should first ascertain if the offender indeed committed the crime.

In contrast to the 2015 Act, this conclusion adheres to the basic presumption of innocence and will be made using child-friendly adjudication procedures as outlined in the 2000 Act and the applicable Rules. The risk concept should be used by the Board to assess whether the offender is classified as low, medium, or high risk if it finds that the offender has committed the crime. The process of determination is devoid of arbitrariness since the instruments of assessment—the severity of the offence committed and the juvenile's prior record—are completely objective. Following this conclusion, the young offenders ought to be sent to safe havens with treatment plans tailored to each offender's individual risk profile. Therefore, the subjectivity added by the 2015 Act is eliminated by adopting the risk concept to guide the Board's operations. Furthermore, the CRC's demand that the treatment provided to offenders be commensurate with the severity of their offences is likewise in line with the application of the risk principle.¹⁴

CONCLUSION

The law indicates that the offender knew that his actions would be against the law and that he would be punished if he did the offence with conscience or will. Youngsters who are old enough to comprehend men's behaviour but under 16 shouldn't be seen as innocent. The idea that children are not as mature as adults led to the development of the juvenile justice system across the world. They are unaware of the implications and nature of what they are doing. The principle behind the theory is known as "doli incapax," which holds that minors are incapable

¹⁴ Manupatra, (4th June. 2024, 10:50am).

of committing crimes. Additionally, a revised strategy will be used to accomplish the protective goals that the 2015 Law seeks to accomplish.¹⁵

¹⁵ MD Salman Khan, Trial of Juvenile in Heinous Offences, legalserviceindia, (4th June. 2024, 10:52 am), <https://www.legalserviceindia.com/legal/article-14514-trial-of-juvenile-in-heinous-offences.html> .
