
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**TRIAL OF A CHILD AS AN ADULT OR JUVENILE: A SPECIAL
REFERENCE TO JUVENILE JUSTICE ACT, 2015**- Pallavi Bhardwaj¹

Abstract: A Child is a national asset to every State and a key factor in shaping a family's future at a basic level, society in general, and a nation in the broader domain. 'Children in conflict with law' have been treated rehabilitatively by enacting beneficial statutory legislations in light of increasing child proper awareness globally. 'The Juvenile Justice (Care and Protection of Children) Act, 2015' is a special legislation in India that comprehensively discusses the provisions relating to the procedure of treating a child as an adult or juvenile depending upon the result of inquiry conducted by the procedure as laid down in the Act and repercussions of the findings of the Board or the Children's Court. This study emphasizes the interpretation through recent judicial precedent to comprehend the legal intricacies of dealing with a child trial under the special statutory laws prevalent in India.

Keywords: Child, Juvenile offenders, JJ Act, Adult, Child trial, Children Court.

1. INTRODUCTION

Every society consists of different stakeholders and participants; for better understanding and concept clarity, a broader division based on class, as the Indian Constitution also permits the same on the foundation of "*reasonable differentia*," such as women, children, older persons, differentlyabled and specially-enabled individuals, scheduled castes, scheduled tribes, etc. This classification enables the state to recognize the needs of different segments of society and to fulfill them adequately; legislation can be made as and when required. Similarly, Children are deemed the future of every Country and play an essential role in shaping the society, economy,

¹Junior Research Scholar, Dept of Laws, Panjab University, Chandigarh.

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culture, and overall development of any nation in particular and the world at large. A child² is an ordinary individual whose rational mental faculties have not been adequately developed due to age and life experience. Hence, the determination of 'an individual' as a child is generally grounded upon the age stated in the statutory provision they are subject to. Internationally, a child is considered below the age of 18 years. However, owing to the evolution in science and technology and the growing data age, certain countries have lowered the age of children from 18 to 16 years to obtain consent over the internet/web browsing.

The word juvenile is a derivative of the Latin '*Juvenis*,' which means young. This term has been defined distinctively per a country's domestic laws. In India, a juvenile³ is defined by '*The Juvenile Justice (Care and Protection of Children) Act, 2015*' (the JJ Act). '*The Juvenile Justice Act, 2000*' repealed '*The Juvenile Justice Act of 1986*'; consequently, minor girls' (earlier 16 years) and boys' ages (18 years) have been changed. Eighteen is the minimum age set for both sexes.

According to the Act, for the purpose of the trial, a juvenile is to be treated as an adult or juvenile from the date of commission of an offense. A distinct law, the Juvenile Justice Act, handles juvenile offenders and determines their proper penalties. It offers guidance and protection for

²“Section 2(b) of the Beedi & Cigar workers (condition of Employment) Act, 1966-Child means a person who has not completed his fourteenth year of age;
Section 2(ii) of the Child Labour (prohibition and Regulation) Act, 1986-Child means a person who has not completed his fourteenth year of age;
Section 3(a) of the Dangerous Machines (Regulation) Act, 1983-Child means a person who has not completed his fourteenth year of age;
Section 2(bb) of the Minimum Wages Act, 1948-Child means a person who has not completed his fourteenth year of age;
Section 2(2) of the M.P. shops and Establishment Act, 1958- Child means a person who is below fourteen year of age;
Section 2(c) of the Factories Act, 1948- Child means a person who has not completed his fifteen year of age;
Section 2 of the Children (pledging of Labour) Act, 1933- Child means person who is under the age of fifteen years;
Section 2 (aa) of the Immoral Traffic (pledging of Labour) Act, 1933-Child means a person who is under the age of fifteen years;
Section 2(b) of the protection of woman from Domestic Violence Act, 2005-Child means any person below the age of eighteen years and includes any adopted, step or foster child;
Section 2 (k) of the Juvenile Justice (care and protection of children) Act, 2000-Juvenile or Child means a person, who has not completed eighteenth year of age;
Section 2(a) of the prohibition of child marriage Act, 2006- Child means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;
Section 2(12) of Juvenile Justice Act, 2015 “child” means a person who has not completed eighteen years of age.”
³“Section 2(35) “juvenile” means a child below the age of eighteen years.”

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kids who are in legal distress. To eliminate the negative connotation attached to the term juvenile, "children in conflict" has been used in place of the word "juvenile." The modified statute includes several additional terms that were not present in the original legislation, such as "heinous," "abandoned," "orphaned," "petty, "and" serious offenses committed by children." The JJ Act was brought with the objective of making a modification in 'the criminal justice system' of dealing with children between the age group of 16-18 years committing heinous offenses as adults, which means they can be tried before a criminal court.⁴ The Unique feature of this particular law is the introduction of newer terms such as '*abandoned child*,' '*Best interest of the child*,' '*Child in conflict of Law*,' '*Child in need of Care and protection*,' '*Child Friendly*,' '*Child welfare Officer*,' '*Children's Court*,' '*Child Care Institution*,' etc. According to the 2015 amendment to the JJ Act, 'the juvenile justice board'⁵ is required to conduct an initial assessment

⁴"Section 6 of the Criminal Procedure Code, 1973, Classes Criminal Courts-Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely:- (i) Courts of Session; (ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates; (iii) Judicial Magistrates of the second class; and (iv) Executive Magistrates."

⁵"Section 4 of the juvenile justice Act, 2015, Juvenile Justice Board.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government shall, constitute for every district, one or more Juvenile Justice Boards for exercising the powers and discharging its functions relating to children in conflict with law under this Act.

(2) A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (hereinafter referred to as Principal Magistrate) with at least three years' experience and two social workers selected in such manner as may be prescribed, of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

(3) No social worker shall be appointed as a member of the Board unless such person has been actively involved in health, education, or welfare activities pertaining to children for at least seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law.

(4) No person shall be eligible for selection as a member of the Board, if he—(i) has any past record of violation of human rights or child rights; (ii) has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence; (iii) has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government; (iv) has ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act.

(5) The State Government shall ensure that induction training and sensitisation of all members including Principal Magistrate of the Board on care, protection, rehabilitation, legal provisions and justice for children, as may be prescribed, is provided within a period of sixty days from the date of appointment.

(6) The term of office of the members of the Board and the manner in which such member may resign shall be such, as may be prescribed.

(7) The appointment of any member of the Board, except the Principal Magistrate, may be terminated after holding an inquiry by the State Government, if he— (i) has been found guilty of misuse of power vested under this Act; or (ii) fails to attend the proceedings of the Board consecutively for three months without any valid reason; or (iii) fails to attend 1 [minimum] three-fourths of the sittings in a year; or (iv) becomes ineligible under sub-section (4) during

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of a child's physical and mental capacities, abilities, and the circumstances surrounding the alleged offense if it is believed to have been committed by a 16-year-old. Many aspects and features are present in the many laws and statutes about crimes committed by juveniles or those below the age of eighteen. Article 21⁶ of the Indian Constitution guarantees a 'fundamental right to Fair trial' to both citizens and non-citizens. Thus, when a child under 18 is the subject of a First Information Report (FIR) or complaint, that youngster will be brought before a *juvenile officer* or *child welfare officer*, who is given specific authority under the Juvenile Justice Act. Subsequently, the Board will conduct a preliminary Inquiry' and 'assessment' to determine if the minor's offense qualifies as a minor or severe offense. 'The juvenile justice board' may choose the following penalties for a 'child in conflict with the law,' depending on the nature of the offense, such as advising the juvenile and then releasing them, Requesting the child to locate their parents and attend counseling, Making the juvenile to perform community service or releasing the child on probation based on his excellent behavior. If a juvenile who is older than 16 and has committed a serious crime is tried as an adult, they will not be executed or given life in prison. Instead, they will be treated as an adult.

2. ARGUMENTS AND DISCUSSION

'Article 21⁷The Indian Constitution provides for a 'fundamental right to a fair trial' to every person along with the protection enumerated by Article 22 regarding the conviction of offenses. Every person includes a child within its ambit. 'Indian Penal Code⁸' clearly restricts the position of a 'child' as *doli Incapax* when an offense is committed by a child below seven years of age and qualified immunity in case of a child aged between 7-12 years having attained sufficient maturity or understanding, which can be determined from the facts and circumstances of the case. 'The Juvenile Justice Act' talks about the innovative concept of Inquiry of the child in conflict with Law under section 14 by the Board;

his term as a member."

⁶"Article 21 of the Indian Constitution 1949, Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law."

⁷"Article 21 of Indian Constitution, 1949 Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law."

⁸Act XLV of 1860.

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1. In case of serious offense, governed by trial as in summons case provided by 'the criminal procedure code.'
2. In case of a heinous offense, a child below the age of 16 years on the date of commission of a crime is to be disposed of by the procedure as followed in the severe offense. For a child above 16 years, however, in the manner stated under section 15 of the JJ Act,

'Preliminary assessment' under section 15 requires fulfillingspecific basic requirements. The following conditions are mentioned:

1. A juvenile has reached full age (16 years old).
2. A young person is accused of committing a heinous crime.

The Juvenile Justice Board has completed the preliminary assessment if the two previously mentioned basis conditions are met. The board must now conduct a preliminary evaluation concerning the following:

1. The child's mental and physical ability to commit the offense.
2. The child's comprehension of the offense's repercussions; and
3. The circumstances surrounding the child's claimed offense.

The board must now perform a preliminary assessment while considering the above considerations. Experts such as psycho-social workers or seasoned psychologists may be needed to help create the conclusion board. Depending on the circumstances, the board may recommend that the minor see a psychologist, psycho-social worker, or other specialist. The board must determine if the youngster can commit a crime, whether he knows the consequences, and under what conditions he has committed the offense.⁹ Upon reviewing the reports, the expert board must decide whether to treat the juvenile as 'an adult or a child,' remembering that this preliminary evaluation is not a trial. *Section 3(4)* of the JJ Act stipulates, "Every child has a right to be heard and to participate in all processes and decisions affecting his interest." Therefore, the board must deal with the child per the procedure. This process of conducting the preliminary inquiry makes the trial procedure unique or different about a child. The recent judicial precedent

⁹<https://www.lawfinderlive.com/Articles-1/Article92.htm> Last Visited 1st May, 2024.

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in the case law of **Ajeet Gurjar vs. the State of Madhya Pradesh**¹⁰ Highlights the importance of conducting a preliminary assessment, after which, as per section 18(3), the board may pass an order to transfer the case to the Children's Court. Thus, the fate of the trial of the child as an adult or juvenile is based on the order of the Children's Court, which is consequent from the decision based on the findings of the Board. Section 19 states the powers of the Children's Court after compliance with section 15, which may result in;

1. Trial of the Child as an Adult as per the provisions of the Criminal Procedure Code.
2. No need for trial as an Adult.

The effect of this provision is that the child may be tried as an adult first. Appropriate orders may be passed against him/her, keeping in obedience with the other rehabilitative provisions of the JJ Act, or No trial as 'an adult' in which scenario the court may pass orders as per section 18, without sending back the child to the Board.

The Ajeet Gurjar Case¹¹, the attractive observation made in this caselaw by the Hon'ble Supreme Court brings the technicalities and ramifications of the interplay among sections 15, 18, and 19 of the Juvenile Justice Act as the order passed under section 18(3) is not final as it is based on the preliminary assessment. There exists a scope for further inquiry by the competent Children's Court under section 19(1) of the Act. Hence, the Transfer order based on the preliminary Inquiry the board conducted is incomplete. Children's Court has been given the power to change the course of the trial by conducting a further inquiry.

This harmonious construction of the JJ Act, which is beneficial, has brought into the limelight the beauty of special provisions which, although made for the ease and speedy disposal of cases but at the same time do not compromise with the constitutionally guaranteed fundamental right to the Fair trial to every person.

3. CONCLUSION AND SUGGESTIONS

¹⁰ S.L.P.(Crl.) No.4493 of 2023

¹¹Ibid.

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1. The initial evaluation before the trial commences is a precaution and a barrier for the minor. It is presumed that all children are innocent under the statute. Furthermore, in harmony with victimology, the provisions of the JJ Act permit a juvenile to be considered an adult and sent to children's court, where they would be imprisoned by Section 21 of the Juvenile Justice Act 2015, if the crime is grave.
2. According to the preliminary evaluation, the juvenile's protection is by the purpose and objective of the Act. The second scenario focuses on the victim's right to justice. This gadget doubles as both a sword and a shield. As a result, this is a creative idea. The 'preliminary assessment' attempts to strike a balance between the victim's and the child's rights.
3. On July 13, 2023, 'the State Commission for Protection of Child Rights' (SCPCR), 'the National Commission for Protection of Child Rights' (NCPCR), and the Central government were asked by the Honourable Supreme Court to think about issuing guidelines or directions to help the Juvenile Justice Boards (JJBs) with their preliminary assessment of whether a child who is 16 years old or older can be tried as an adult for a heinous offense. This suggestion must be implemented as soon as possible to strengthen this Act.
4. A few issues of concern were also raised by 'the Rajya Sabha Parliamentary Standing Committee,' which examined the matter. It had stated that the preliminary assessment would undermine the presumption of innocence and was "unconstitutional" since it required evaluation of the accused before any evidence was examined. The significant lack of qualified psychologists, psycho-social workers, and other professionals has also been brought to the attention of the parliamentary committee, which could hurt the standard of investigation and prompt case resolution. Hence, in the data age, amendments must be made in the wake of technological developments in the Act.
5. According to a 2019 study on 'the Juvenile Justice Act' conducted by UNICEF and the National Law University of Odisha, inconsistent evaluation guidelines impeded the provision's implementation.

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