

An Overview of Juvenile Justice Act, 2015 With Regard To Child In Conflict With Law

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Change is the natural phenomenon and this phenomenon applies in every sphere of life so the law can not be an exception to this. In the same way, the laws relating to child, having its seeds right from enactment of the Constitution of India in the form of fundamental rights under Article 15(3) read with Directive Principles of State Policy under Article 39(e) & (f) along with fundamental duties under Article 51A, was the need of the society. The laws relating to the child was also expedient to be enacted due to accession by the Government of India to the Convention on the rights of the child, 1992, the standards set in UN rules for the administration of justice, 1985, UN rules for protection of juveniles deprived of their liberty, 1990 and Hague Convention on Adoption, 1993. And therefore, the law was enacted in the year 1986 in form of Juvenile Justice Act and the same was, as per the above said natural phenomenon of changes, changed time to time accordingly i.e. Juvenile Justice (Care and Protection) Act, 2000 and Juvenile Justice Act, 2015.

The present Act came into existence on 15 January, 2016 after a nationwide agitation and much hue and cry over the limitation of age of the child in cases of heinous crime which was the result of Nirbhaya incident and its aftermath developments. In other words, the present Act is the result of post Nirbhaya's incident development. In this backdrop, the present Act has to be analysed and discussed.

The present Act places its reliance on following principles which have also been enumerated in Act itself:- principle of presumption of innocence; principle of dignity and worth; principle of participation' principle of best' principle of family responsibility' principle of safety' Positive measures' Principle of non-stigmatising semantics' Principle of non-waiver of rights' Principle of equality and non-discrimination' Principle of right of privacy and confidentiality'

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Principle of institutionalisation as a measure of last resort' Principle of non-stigmatising semantics' Principle of repatriation and restoration' Principle of fresh start' Principle of diversion and Principle of natural justice.

The J.J. Act, 2015 provides provisions for both children in need of care and protection and children in conflict with law. Some key provisions include: across the Act to remove the negative connotation associated with the word "juvenile"; inclusion of several new definitions such as orphaned, abandoned and surrendered children' and petty, serious and heinous offences committed by children' clarity in powers, function and responsibilities of Juvenile Justice Board (JJB) Child Welfare Committee (CWC); clear time lines for inquiry by Juvenile Justice Board (JJB); special provisions for heinous offences committed by children above the age of sixteen year; separate new chapter on "adoption" to streamline adoption of orphan, abandoned and surrendered children; inclusion of new offences committed against children; and mandatory registration of Child Care Institutions. This article, mainly focus on the provisions related to Juvenile in conflict with law.

An Overview of Juvenile Justice Act, 2015

Who is Child or Juvenile?- A "child"¹ or "juvenile"² means a person who has not completed eighteen years of age and a "child in conflict with law"³ means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence. From the very beginning, all the juvenile Acts were framed in accordance with the international standards laid down in various conventions and followed the principle of 'once a juvenile, always a juvenile'. This principle has been adopted in section 5 and 6 of the Act, 2015. According to these provisions, if on the date of the offence, a person was a child then he shall be treated like a child during the course of inquiry, even if he became a major on his date of apprehension. Similarly, when a person on his apprehension was a child but attains the age of majority

1 Section 2(12)

2 Section 2(35)

3. Section 2(13)

during the course of inquiry, he will also be governed by the provisions of J.J. Act.

Determination of Age of Child or Juvenile- Earlier, there was no provision in procedure for determination of age of a juvenile was given in rule-12 of J.J. Rules, 2007. The new J.J. Act, 2015 now adapted the same rule with a minor change. Section 94 of J.J. Act, 2015 says that where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it, that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry as the case may be, without waiting for further confirmation of the age⁴. In case, the Committee or the Board has reasonable grounds for doubt regarding juvenility, the Committee or the Board, shall undertake the process of age determination, by seeking evidence by obtaining-

- (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
- (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
- (iii) and only in the absence of those documents, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.⁵

Unlike the rule-12, this new provision neither requires a certificate from first attended school nor prohibit a certificate from a play school. Thus, a birth certificate from any school is sufficient to determine the true age of a child. However, there is no settled criteria behind the entry of age in these certificates. It has been found that age of a person in one certificate is different from another certificate. Therefore, a complete reliance on these certificates without any check may lead to misuse of these provisions.

4. Section 94(1)
5. Section 94(2)

J.J Act, 2015 also prescribes that age determination test shall be completed within fifteen days from the date of such order.⁶ The age recorded by the Committee or the Board, shall, for the purpose of this Act, be deemed by the true age of that person. It is pertinent to mention that Supreme Court has held that age of a victim shall also be determined according to the rule-12 of Juvenile Justice (Care and Protection of Children) Rules, 2007.⁷ The law laid down by Apex court is still applicable even after coming into effect of this new J.J. Act, 2015 because in substance, the provision for determination of age of a child is still the same as contained in Rule-12.

Categories of Offences and Procedure of Inquiry- In the old Act of 2000, there was no category of offences. The latest Act clearly defines three types of offence committed by the children.

1. **Petty offences**⁸- “petty offences” includes the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years.
2. **Serious offences**⁹-“serious offences” includes the offences for which the punishment under the India Penal Code or any other law for the time being in force, is imprisonment between three to seven years.
3. **Heinous offences**¹⁰-“heinous offences” includes the offence for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more.

Earlier a reference was there in rule-11(7) and 11(9) of Juvenile Justice(Care and Protection of Children) Rules, 2007 regarding serious and non-serious crimes. Serious offences were those entailing punishment of less than seven years of imprisonment. The rule-13 (2) of J.J. Rules, 2007 provided that petty offences shall

6. Section 94(2) proviso

7. Jarnail Singh vs. State of Haryana, (2013) 7 SCC 263

8. Section 2(45)

9. Section 2(54)

10. Section 2(33)

be tried in summary manner and in serious crime, procedure of trial in summon cases shall be followed. But there was no provision for trial in non-serious crimes. The rules were not clear enough to prescribe the proper and detail procedure to deal with different categories of offences committed by a juvenile. A clear mandate has been given in the new Act regarding procedure of inquiry in different categories of offences. Accordingly, cases of petty offences, shall be disposed of by the Board through summary proceedings;¹¹ inquiry of serious offences committed by a child below the age of eighteen years and inquiry of heinous offence committed by the child below the age of sixteen years shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973.¹²

Under the new Act of 2015, special provisions have been made to tackle child offenders committing heinous offences in the age group of 16-18 years. The Juvenile Justice Board is given the option to transfer cases of heinous offences by such children's Court after conducting preliminary assessment. Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequence of the offence and the circumstances in which he allegedly committed the offence.¹³ If Board is satisfied on preliminary assessment that the matters should be disposed of by the Board, it shall follow the procedure of trial in summon cases.¹⁴ Where after conducting such inquiry the Board pass an order that there is a need for trial of the said child as an adult, then it will transfer the case to children's court.¹⁵

The Act, 2015 again maintain the old policy of Act, 2000, that proceeding under Chapter VIII of the Code of Criminal Procedure for offences against maintaining peace and good behaviour, shall not apply against children.¹⁶

11. Section 14(5)(d)

12. Section 14(5)(e)&14(5)(f)(i)

13. Section 15(1)

14. Section 15(2)

15. Section 18(3)

16. Section 22

Categories of children for the purpose of Inquiry- In the repealed Act of 2000, no category was made among the children for the purpose of inquiry. In the Act of 2015, children are divided in two categories. The first category relates to the child below the age of 16 years on the date of commission of the offence. Second category relates to the child who has completed the age of 16 years or above the age of 16 years and who has committed a heinous offences. Irrespective of the offence committed by a child below the age of 16 years, the inquiry authority is always a Board. A child of 16 or above, who has committed a heinous crime shall be inquired by the Board or by Children Court on reference of Board.

Apprehension of juvenile-As soon as a child is apprehended by police, he shall be placed under the charge of special juvenile police unit or designated police officer, who shall produced the child before the JJB within 24 hrs.¹⁷ Soon after apprehension he has a duty to inform the guardian or parent of the child.¹⁸ The child shall not be kept in jail or lock-up.¹⁹ He shall be kept in place of safety like observation home or in the custody of fit person or institution.²⁰ These provisions are same as contained in the old repealed Act of 2000.

Bail of a child-Section 12 and the principles regarding bail of juvenile is also same as were given in old repealed Act of 2000. When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person but such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the board shall record the reasons for denying the bail and circumstances that led to such a

17. Section 10(1)

18. Section 13(1)(i)

19. Section 10(1) proviso

20. Section 9(4)

decision.²¹ When a child is released on bail, the probation officer or child welfare officer shall be informed by the Board.²² If unable to fulfill the conditions of bail, he shall be produced before Board for modification of conditions of bail.²³

Production of child before a magistrate not empowered under JJ Act, 2015-Again, no deviation is made from the old Act of 2000. New Act also provides that when a person is brought before a magistrate, and he is of opinion that the person produced before him is a child, he shall without any delay, record an opinion, and forward the child immediately along with the record of such proceedings to the Board having such jurisdiction. Here, the magistrate need not to hold a detail inquiry regarding the age of a child. Where a person apparently appears as a child, magistrate may forward the child to the Board on the same obvious reason, but when there is a person who may be between 16-19, his opinion must be based on some substantive material.

Claim of Juvenile before a Court-In case a person claims juvenility before a court, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be.²⁴ Such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.²⁵ Thus, the court is also bound to determine the age of a person and that he has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the

21. Section 12(1) proviso

22. Section 13(2)

23. Section 12(4)

24. Section 9(1)

25. Section 9(2)

26. Section 9(2) proviso

court shall be deemed to have no effect.²⁷ Here again, no change is made regarding claim of juvenility before a court. New Act emphasises that the court can not determine the age casually or in cavalier manner. Unlike the magistrate, a court is bound to record a finding as to the age of the person.

Juvenile Justice Board²⁸ - It is the duty of State to constitute in every district, a Juvenile Justice Board(JJB) to deal with the matters of child in conflict with law. It consists of a principle magistrate and two social workers of whom one shall be a woman. In appointing a principle magistrate, it shall be kept in mind that a Judicial Magistrate and two social workers of whom one appointed as Principal Magistrate.²⁹ The logic behind this provision is perhaps the supervisory power of CJM.CJM has been given supervisory functions over the Board.

The object behind constituting a Board is same as contained in old Act that the matters of children should not be dealt by regular courts. The purpose is to keep the children away from the atmosphere of regular courts which may adversely affect the psychology of a child. A joint proceeding of an adult accused and a child is also not permitted.³⁰ Board shall not conduct a trial but an enquiry of the offence committed by a child and the same shall be completed within four months unless it is extended for a further maximum period of two months for reasons to be recorded.³¹ If inquiry of a petty offence remains inconclusive even after the maximum period, the proceeding shall be terminated.³² However, inquiry of serious and heinous offences shall not be terminated and inquiry period shall be further extended by CJM if Board requires.³³

Orders that may be passed by the Board- Irrespective of the age of a child in petty offences, serious offences and heinous crime committed by a child below 16 years, if Board finds that child has

27. Section 9(3)

28. Section 4

29. Section 4(2)

30. Section 23

31. Section 14(2)

32. Section 14(4)

33. Section 14(4) proviso

committed an offence, then the board may pass an order to go home after advice or admonition³⁴, or group counselling³⁵, or community service³⁶. Board may order the child or parent of the child to pay fine.³⁷ A child may be released on probation and placed under the care of guardian or fit person or fit facility but he shall be kept only for three years.³⁸ Board may also direct the child to be sent to special home having reformatory services, for such period not exceeding three years.³⁹ In addition, it may also order to attend school; or attend a vocational training; or attend a therapeutic centre; or undergo a de-addiction programme.⁴⁰ Where a Board is satisfied on inquiry that the child brought before it has not committed any offence, then the Board shall pass order to that effect.⁴¹

In case of heinous crime committed by children between 16-18 years Board shall complete a preliminary assessment within a period of three months from the date of first production.⁴² After preliminary assessment Board may either itself conduct the trial or it may transfer the trial of the case to Children Court.⁴³ If Board pass an order that there is no need for trial of the child as an adult, it shall follow the procedure of summon trial.

Children Court-Unlike the repealed Act, the present Act introduces altogether a new concept of Children Court. The Children Court means a court established under the Commissions for Protection of Child Right Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act.⁴⁴ Children Court hear the matter of children between 16-18 years who have committed heinous offences. But it has no original jurisdiction. It can exercise

34. Section 18(1)(a)
35. Section 18(1)(b)
36. Section 18(1)(c)
37. Section 18(1)(a)
38. Section 18(1)(e)&(f)
39. Section 18(1)(g)
40. Section 18(2)
41. Section 17(1)
42. Section 14(3)
43. Section 18(3)
44. Section 2(20)

the jurisdiction only on transfer of the case by Board. Children Court is also empowered to hear the appeal against the orders of Board.⁴⁵

Orders that may be passed by Children Court- After the receipt of preliminary assessment from the Board, the Children's Court may decide that there is a need for trial of the child as an adult or there is no need for trial of the child as an adult.⁴⁶ When Court decide to try the child as an adult, it may pass appropriate orders after the trial considering the special needs of the child.⁴⁷ A wide discretion has been given to the Children Court in passing any order against a child tried as an adult. However, there is a limitation on the discretion of Children Court that no child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force.⁴⁸ While conduction the trial of a child as an adult, the child shall not be tried with a person who is not a child. The provisions provide for placing children in a 'place of safety' both during and after the trial till they attain the age of 21 years and thereafter, the person shall be transferred to a jail.⁴⁹ After attaining the age of 21 years, a child shall be evaluated by the Children Court.⁵⁰ On the evaluation, the child may be released on probation but if the child is not reformed then the child will be sent to a jail for remaining term.⁵¹

If Court decides that there is no need for trial of the child as an adult, then it may conduct an inquiry as a Baord and pass same appropriate orders i.e.advice, admonition, probation, fine etc. that may be passed by the Board.⁵²

These provisions are aimed to focus on rehabilitation and reformation of a child in conflict with law but the lack of proper infrastructure and supporting system has always frustrated the

45. Section 101

46. Section 19

47. Section 19(1)(i)

48. Section 21

49. Section 19(3)

50. Section 20(1)

51. Section 20(2)

52. Section 19(1)(ii)

purpose. Whenever a child is apprehended, the big issue is keeping the child in place of safety because in many districts, still there is no home or place of safety. The home or institutions lack rehabilitative services, training programmes and basic facilities. Implementation of orders of probation or community service is still not practicable due to lack of effective machinery.

Punishment for non-payment of fine or security-In the old Act of 2000, no child could be punished for non-payment of fine or security⁵³ but in the new Act of 2015 there is no prohibition clause. Hence, for recovery of fine or in default of giving security, the provisions of code of criminal procedure will be applicable. However, where a child is not earning or have no means to pay the fine or security, any proceeding against the child will not serve the purpose.

No Punishment for run away children-If a child runs away from the custody of parent or guardian or fit person or fit institution, any police officer may take charge of that child.⁵⁴ Such child shall be produced before the Board which passed the original order or the nearest board where the child is found.⁵⁵ The Board shall ascertain the reasons for the child having run away and pass appropriate orders for the child to be sent back either to the institution or person from whose custody the child had run away or any other similar place or person, as the Board may think fit.⁵⁶ No additional proceeding shall be instituted in respect of such child.⁵⁷

Removal of disqualification-A child who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attached to a conviction of an offence under such law.⁵⁸ This benefit has not been extended to a child who is sixteen years or above and is found to be in conflict with law by the Children's Court and also tried by the court as an adult.⁵⁹

53. Section 16(1) of J.J. Act, 2000

54. Section 26(1)

55. Section 26(2)

56. Section 26(3)

57. Section 26(4)

58. Section 24(1)

59. Section 24(1) proviso

Reports to be Confidential-All the reports related to the child and considered by the Board or Children Court shall be treated as confidential.⁶⁰ Board or Children Court shall direct the destruction of relevant records after the expiry of period of appeal.⁶¹ However, Children Court shall retain the records in matters of heinous crimes committed by children who were tried as an adult.⁶²

Appeal⁶³ - An appeal against order passed by the Board shall lie to the Children's Court.⁶⁴ But there is an exception to this general rule that where an order is passed by Board after making the preliminary assessment into a heinous offence under section 15 of the Act, an appeal shall lie before the Court of Sessions. No second appeal shall lie from any order of the Court of Session, passed in appeal under this section.⁶⁶

No appeal shall lie from any order of acquittal made by the Board in respect of a child alleged to have committed a petty offence, serious offence and heinous offence committed by a child below 16 years but an appeal shall lie against the acquittal order of Board in case of heinous offence committed by a child who is between 16-18 years.⁶⁷

In case of orders of the Children Court, the appellate authority is High Court.⁶⁸

Shortcomings of The New J.J.Act

Treatment of child as an adult- A Vague Criteria- In the new Act, the children between the age of 16-18 years committed heinous offence, has been categorised as a child: i) who can not be treated as an adult and it) who should be treated as an adult. The criteria while deciding the adulthood of a child is a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence

60. Section 99

61. Section 24(2)

62. Section 24(2) proviso

63. Section 101

64. Section 101(1)

66. Section 101(4)

67. Section 101(3)(a)

68. Section 101(5)

and the circumstances in which he allegedly committed the offence.⁶⁹ Even after the preliminary assessment and referral order of Board, the Children court is again bound to determine the adulthood of the referred child. The Board or the Children Court may for this purpose take the assistance of experienced psychologists or psycho-social workers or other experts.⁷⁰ Therefore, availability, of experienced psychologist or psycho-social workers is a question mark before the practicability of this provision. Even if, there is any such availability, an opinion about the adulthood of a child is still a subjective opinion. If an order is challenged regarding the preliminary assessment of a child, the appellate body is bound to take assistance of another expert and in this process again the opinion may be different. This yardstick is neither practicable nor objective.

No clear provision with regard to the orders to be passed by Board after enquiry in heinous crimes committed by children between 16-18 years- Board is empowered to pass any of those orders such as advice, admonition, probation, fine, community service, etc. as prescribed in section 18, against the child who has committed either a petty offence, or a serious offence, or a heinous offence being under the age of 16 years. But there is no provision in the Act as to what orders the Board shall pass after enquiry in heinous offence which has been done by a child between 16-18 years. On this point, the Act is silent and needs to do clarified. The power is given to central government to remove any difficulty.⁷¹

The new Act provides that in cases of children between 16-18 years, who has committed heinous crimes, if the Children Court decides that the child should not be tried as an adult, it may pass the orders of advice, admonition, probation, fine etc. as prescribed in section 18. An inference can be drawn from this sentencing power of Children court and would be safe to say that Board may also pass the same orders of advice, admonition, etc, in matters of heinous offence committed by children between 16-18 years.

Lack of clarity on Appellate Powers-According to section 101(1),

69. Section 15(1)
70. Section 15(1)
71. Section 112

except an order of preliminary assessment under section 15, all order passed by Board may be challenged before the Children Court. But the proviso to this subsection says that in case of any delay in filing appeal, delay can be condone only by a session court.⁷² It is a general principle of criminal law that an appellate court is empowered not only to hear the appeal but also empowered to condone the delay. But in the new Act of 2015, this power has been divided between the Session Court and Children Court. According to this provision, it seems that if there is a delay in filing the appeal, appellant has to approach Session Court. If Session Court condones the delay then again appellant has to approach Children Court for filling the appeal. It would have been better to confer both the powers on Children Court only. The object behind this provision is not clear. Either it is the deliberate intention of legislature or a clerical mistake which led to the use of term 'Court of Session' instead of 'Children Court'.

Conclusion- At the very outset, it has been pointed out that the only intention to introduce the new Act was to make them subject and letting them face the full tune of law applicable to common offenders who commits a heinous crime with complete knowledge and full intention being aware of the nature, effect and consequences for the offence committed or act done by them though they are of tender age but they, being matured enough, carry the mens rea for doing the same. From this point of view, the new Act has drew a new line differentiating other children from those who are of 16 years or more and has committed a heinous offence. Procedure for their enquiry also appears to be perfect in black and white unless tested for some period in practice.

Point to be focused is the age limit of 16-18 years in heinous offence. Why the age of child is minimised to 16 years and not to either 17 or 15 or 14 or 13 etc? The basic parameter to shorten the age to 16 years or more, is explained nowhere either in its preamble or in the body of the Act. Once the State (India) took courage to withdraw from the minimum age provided for child in all International Legal

72. Section 101(1)proviso

Documents (i.e. 18 years) then it should have minimised it to less than 16 years. And for this sake, had it been fixed to 14 years it would have got its legal sanctity from the Constitution of India and other prevalent laws. Constitution of India, being 'The Grundnorm', initially takes care of children upto 14 years which further gets support from section 58-83 of IPC where noting is an offence which is done by a child under the age of 12 years. Secondly, the priority of methods fixed for determination of age of a child needs to be considered much more because in a country like ours' reliance on certificate (mentioned in the Act) may, sometimes, defeat the ends of justice. In the blooming era of science and technology, ossification, though having margin of (+/-) 2 years, appears to be more reliable being a scientific one. Thirdly, so far the procedures invented and adopted in the new Act for enquiry/trial of a child (being of the age of 16 years or more) involved in a heinous crime is concerned it would be very early to predict about its merit or demerits unless the same is being tested on floor for a considerable period.

Thus, to conclude, I am of the view that in spite of pros and cons mentioned in above going paragraphs, the new Act is a step forward and a leap ahead to bring the matured offenders (having mens rea) under the scrutiny of full fledged legal process (for common offenders) eliminating the chances of misuse of a law (relating to child) which is very pious in its intention and is also an attempt to strike a balance between offenders in general and the best interests of children.
