



Impact of Preliminary Assessment Under the Juvenile Justice Act, 2015: A Legal Analysis

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ABSTRACT

Children are the future of each and every country/state and simultaneously vulnerable in approach therefore their interests must be protected in each way. The juvenile justice act came in light to provide for restorative justice/reformative justice instead of punitive one. For a long tenure of decades the juveniles were being tried as adult in absence of legal framework to this regard. However the Act no. 2 of 2016 covers over the lacunas in trying juveniles after preliminary assessment of a child in conflict with law who has committed heinous offence and is between the ages of 16-18 years.

The present paper focuses on preliminary assessment and cognitive capacity of a juvenile subject to Act no. 2 of 2016 and further prepares a draft of comparative analysis between U. S., the Juvenile Justice and Delinquency Prevention Act (JJDP) of 1974 and Act no. 2 of 2016 in respect of preliminary assessment of juveniles by the competent authority such as JJB in India.

Keywords: - Juvenile, restorative justice, reformative justice, cognitive capacity, child in conflict with law, delinquency.

INTRODUCTION

The juvenile justice system of India is divided into two different aspects as far as it relates to the Act no. 2 of 2016 wherein one part of the said act deals with young individuals who conflict with the law and the other part deals with those young individuals requiring care and protection. In dealing with children in conflict with law, it distinguishes offenses into petty offences, serious offences and heinous offences categories, including provisions for prosecuting some juveniles as adults depending on the nature of crime i.e. heinous offences and cognitive capacity of juvenile subject to his age i.e. 16-18 years. All accused aged under 18 were tried under the Juvenile Justice (Care and Protection of Children) Act or JJ Act, 2000. However this changed with the



Juvenile Justice (Care and Protection of Children) Act, 2015. The law created a category of the juveniles aged between 16-18 involved in heinous offences punishable with a minimum sentence under the IPC or any other law for over seven years. The Juvenile Justice (Care and Protection of Children) Act (JJ Act), 2015 has categorized the offences committed by children in three categories- petty offences, serious offences and heinous offences. The categories are defined under Section 2 of the Act as

- i) “heinous offences” includes the offences 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;
- ii) “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;
- iii) “serious offences” includes the offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is
 - a) minimum imprisonment for a term more than three years and not exceeding seven years;
 - b) Maximum imprisonment for a term more than seven years but no minimum imprisonment or minimum imprisonment of less than seven years is provided.

Though the child is defined in the JJ Act, 2015 as any person who has not completed eighteen years of age, there is a specific provision wherein to ensure fair and speedy inquiry, the initiation of an inquiry into a heinous crime has been differentiated based on age of the child. Specifically, Section 14 (5) (f) (ii) of the Act states that - for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.

Section 15(1) states that - In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children’s Court having jurisdiction to try such offences [in accordance with section 18(3)].

Another important change in the 2015 Act is with respect to the categorization in the age group of the Children in Conflict with Law (CiCL). Whereas the 2000 Act treated all CiCLs under 18 as children, Section 15 of the 2015 Act provides that in cases of heinous offences alleged to have been committed by a child who has completed or is above the age of 16 years and below 18 years, the Juvenile Justice Board (JJB) must conduct a preliminary assessment.

It further states that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

NEED OF LEGAL FRAMEWORK

In 2015, a new Juvenile Justice (JJ) Act was enacted by the Parliament of India. Among other changes from an earlier version of the act that came out in 2000, it introduced preliminary



assessment of 16- to 18-year-olds accused of heinous crimes to determine whether they should be tried as adults. The act requires the juvenile justice board to consider four aspects while assessing a minor:

- Physical capacity of the minor to commit the offence alleged against them
- Mental capacity of the minor to commit the offence alleged against them
- Ability to understand the consequences of the offence alleged
- Circumstances under which the offence was allegedly committed.

“The issue of preliminary assessments is a delicate and difficult task which requires expertise. As of now, it is being done in an arbitrary manner in the absence of any definite parameters/guidelines for the same.”

The key change brought by the juvenile justice act 2015 by replacing the juvenile justice act 2000 is being given below:-

“Introduction of preliminary assessment by JJB in heinous offence alleged to have been committed by a child who has completed or is above the age of sixteen years”

Preliminary Assessment’, as incorporated under section 15 of JJ Act, 2015, is a completely new insertion in the realm of juvenile justice. The procedures laid down in rule-12 of JJ Rules, 2007 relating to age determination has been brought into the Act itself by the JJ Act, 2015. Section 94 of JJ Act, 2015 says that where it is obvious to the Committee or Board, based on the appearance of the person brought before it, that the said person is a child, the Committee or Board shall record such observation stating the age of the child as nearly as may be, without waiting for further confirmation of age.¹⁰ 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 corporation or a municipal authority or a panchayat;
- iii. And only in the absence of those documents, the 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.

In 2022, the Supreme Court of India, followed by the National Commission for Protection of Child Rights (NCPCR) in 2023, issued guidelines governing the process of preliminary assessment. These guidelines lay down the parameters for evaluating four key aspects, which are cumulatively discussed below.

- i. First, the assessment of the child’s physical capacity to commit the alleged offence is to be framed in terms of locomotive and functional abilities, including gross motor skills such as walking, running, lifting, and throwing.
- ii. Second, the evaluation of mental capacity has to take into account the child’s ability to make reasoned social decisions and judgments. In principle, this requires a nuanced engagement with the child’s mental health and psychosocial profile,



including factors such as substance use, deficits in life skills, neglect, lack of parental supervision, exposure to poor role models, and experiences of trauma or abuse.

- iii. Third, the “circumstances” in which the offence was allegedly committed are expansively defined to include a wide spectrum of psychosocial vulnerabilities, ranging from family environment and economic deprivation to peer influences, trauma, and developmental history.

Notably, the guidelines emphasize that this inquiry must extend beyond the immediate triggering event that led to the alleged crime and instead adopt a longitudinal perspective of the child’s lived experiences.

Finally, the child’s ability to understand the consequences of the alleged offence encompasses both legal and social awareness, including the recognition of stigma, interpersonal repercussions, harm to the victim, and potential legal sanctions. This component is arguably the most normatively loaded, as it presumes a level of cognitive and moral development that may not be uniformly present across children

JUDICIAL TRENDS

The Hon’ble Apex Court has observed in *Barun Chandra Thakur v. Bholu*, (2023) 12 SCC 401, that intense emotion was likely to affect the cognitive maturation, the child with average IQ will have intellectual knowledge of the consequences of his action, but whether he will be able to control himself or his actions will depend on his level of emotional competence.

The Court stated that Emotional Intelligence Quotient or EQ is the ability to understand, use, and manage emotions in positive ways to relieve stress, communicate effectively, empathize with others, overcome challenges, and defuse conflict. Poor EQ is linked to crime and other unethical behaviors. Children who have poor emotional skills become social outcasts at a very young age, become the class bully, or react with fists rather than with reason. The path to crime starts early in life, while there is no doubt that family and environment are strong contributors, the common threat is poor emotional and social skills.

The Court further relied on *Barun Chandra Thakur* (supra), wherein the Court expressed the need to formulate the guidelines to assist the Board in making a preliminary assessment under Section 15 of the JJ Act. The assessment of adolescent mental capacity and ability to understand the consequences of the offence of the child in conflict with the law is one of the most crucial determinants of the preliminary assessment. This evaluation of ‘mental capacity and ability to understand the consequences’ of the child cannot be relegated to the status of a perfunctory and routine task, as the fate of the child precariously rested on it. The Supreme Court also directed that the expression “may” in the proviso to Section 15(1) would be mandatory, and the Board would be obliged to take the assistance of an experienced psychologist, psycho-social worker, or another expert. In a case where the Board consists of one member, who is a practicing professional with a degree in child psychology or child psychiatry, and chooses not to take such assistance, the member shall record specific reasons thereof.



While the JJB may consult experts, the final discretion remains with the Board. This often leads to a "legal vs. medical" conflict where judicial officers may overlook nuanced psychological findings in favour of the gravity of the offence, contrary to the Supreme Court's directions in *Barun Chandra Thakur v. Master Bholu (2022)*. The Hon'ble Apex Court in *Shilpa Mittal v. State (NCT of Delhi)*⁶ wherein it held, in trenchant terms, as follows:

In view of the above discussion we dispose of the appeal by answering the question set out in the first part of the judgment in the negative and hold that an offence which does not provide a minimum sentence of 7 years cannot be treated to be an heinous offence. However, in view of what we have held above, the Act does not deal with the 4th category of offences viz. offence where the maximum sentence is more than 7 years' imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, shall be treated as "serious offences" within the meaning of the Act and dealt with accordingly till Parliament takes the call on the matter.

The above pronouncement takes away majority of the offences out of the ambit of section 15, like attempt to murder, attempt to culpable homicide etc. which were hitherto perceived be 'heinous' offences, but were actually 'serious' in nature, for the purposes of their interpretation qua juveniles. It would not be out of context to state that though an authoritative ruling has come in 2020 only, majority of the JJB across the country were predicating the assessment on the basis of 'minimum seven years punishment' criteria. Their foresight, compassion and incisive interpretation is worthy of commendation.

PRELIMINARY ASSESMENT BETWEEN USA AND INDIA

The Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP) is a United States federal law providing formula grants to states that follow a series of federal protections on the care and treatment of youth in the juvenile justice and criminal justice systems.

Communities across America are looking for more effective and efficient ways to identify and help juveniles who are at risk of becoming serious, violent, and chronic offenders. Because there are many causes of juvenile delinquent behavior and many system deficiencies, support is growing for integrated service delivery systems. Communities are also working to better determine the needs of youth already in the juvenile justice system and those at risk of entering the system. Community Assessment Centers (CAC's), which complement the Office of Juvenile Justice and Delinquency Prevention's (OJJDP's) Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders, address these challenges by bringing together the fragmented elements of service delivery in a collaborative, timely, cost-efficient, and comprehensive manner. OJJDP believes that CAC's show promise to help overcome the obstacles that contribute to inefficiency and ineffectiveness in the juvenile justice system.

The Juvenile Justice and Delinquency Prevention Act (JJDP) were first authorized in 1974. It was established to ensure states and territories meet certain common standards for how youth across the country are treated in the justice system. It did this by establishing two core protections: a prohibition on the incarceration of youth charged with status offenses (conduct that is not criminal if engaged in by an adult, such as skipping school or breaking curfew),



and a requirement that youth have sight and sound separation from adult inmates. Two additional protections were added in a subsequent reauthorization: a prohibition against housing young people in adult facilities while awaiting trial as juveniles, and requiring that states address disproportionate minority contact. States receive federal formula grant funding for complying with these protections. The Act was last reauthorized in 2002, and expired in 2007. On December 13, 2018, Congress passed H.R. 6964 with broad bipartisan support.

As per *JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974 [Public Law 93-415; 88 Stat. 1109] [As Amended through P.L. 115-385, Enacted December 21, 2018]* “The term “assessment” includes, at a minimum, an interview and review of available records and other pertinent information—

(A) by an appropriately trained professional who is licensed or certified by the applicable State in the mental health, behavioral health, or substance abuse fields; and

(B) Which is designed to identify significant mental health, behavioral health, or substance abuse treatment needs to be addressed during a youth’s confinement”

It is being further submitted that the Community Assessment Centers (CAC) evaluates while the CAC concept is promising, the success of implementation and the impact of CAC programs on their clients has yet to be assessed. Although it is anticipated that the integrated approach of CAC’s will lead to positive outcomes for its clients, CAC’s should avoid stigmatizing and labeling youth, ensure due process for juvenile offenders, and be careful not to “widen the net.” The goal of CAC is not to bring more youth into the system, but to improve service delivery and, ultimately, reduce the number of juveniles who will enter or return to the juvenile justice system.

SUGGESTIONS AND RECOMMENDATIONS

- To develop friendly approach while dealing with juveniles in assessing their capacity.
- To assess the cognitive capacity of juvenile under supervision of a expert in concerned area.
- To implement guidelines issued by NCPCR while making preliminary assessment of the juvenile to make the assessment more effective and accurate.
- To use professional, up-to-date tools—like WISC-IV for intelligence or specific developmental and neuropsychological batteries normed for adolescents
- Screen for underlying factors such as trauma history, substance abuse, or neurodevelopmental disorders rather than solely evaluating IQ
- A thorough SIR (Social Investigation Report) is indispensable. It must examine the child's family dynamics, peer pressure, socio-economic conditions, and exposure to neglect or abuse.

CONCLUSION

In India, the terminology is slowly being accepted as a cause of concern and behavioral irregularity and courts are alive to that. While the expression does not appear prominently in the custody orders, the existence of such behavior can be clearly identified. The Supreme Court



had discussed and acknowledged PAS in *Vivek Singh v. Romani Singh* and underscored the psychological harm caused to the child in such a situation. PA behaviors are usually observed with the common patterns as:

1. False accusations of negligence, poor parenting, or abuse
2. Blocking communication and limiting the other parent's time (e.g., ignoring court orders)
3. Restricting involvement in routines, hiding information, and controlling access
4. Undermining authority by unilateral decisions, devaluing preferences, or demeaning the parent in front of the child.

The preliminary assessment under the JJ Act, 2015, is a significant departure from traditional Indian child rights jurisprudence. To ensure this mechanism does not become a tool for arbitrary retribution, India must adopt the following from international best practices:

1. Standardization: Development of a localized, culturally relevant psychometric framework for evaluating Indian adolescents.
2. Mandatory Expert Involvement: Shifting from "May" to "shall" regarding the inclusion of developmental psychologists in the decision-making process.
3. Appellate Rigor: Establishing a specialized bench within High Courts to review transfer orders to ensure they are not based solely on the nature of the crime.

While the United States provides a cautionary tale regarding the over-use of adult transfers, its emphasis on neuroscientific evidence and procedural due process offers a vital roadmap for refining the Indian assessment process. Juvenile justice must remain focused on the child's capacity for change, rather than the temporary shadow of their worst mistake.

In India, the Challenge of Preliminary Assessment Becoming a 'Mini-Trial' Explanation to Section 15 of the JJ Act strictly clarifies that the inquiry at the stage of Preliminary Assessment is not a trial. However, herein lays the fallacy of the 2015 Amendment. The evaluation by the Board of the mental capacity of the Child in conflict with law to commit the offence is the first step of the evaluation process, taking place before it is even proved if the offence has been committed by him or not. Thus, the preliminary assessment of the Child in conflict with law proceeds on the assumption that the alleged offence has been committed, and is thus a sentencing decision before guilt is established. While, the statutory discretion of taking help from experienced psychologists to conduct a preliminary assessment has been held as mandatory, the Board is also free to independently assess the parameter of 'circumstances' of the child independently. Sometimes, this particular evaluation lacks procedural fairness as Boards often rely on the prosecution documents and supposed statement of the Child in conflict with law in his psychological report to assess the circumstances in which the alleged offence has been committed. However, the Delhi High Court in 2022 has clarified that extracting a confession from a child is unconstitutional, violative of Art. 20(3), and goes beyond the scope of a preliminary assessment report. Thus, the Board transfers the child to be tried as an adult only when it is satisfied that the above four criteria are being met.



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