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Preliminary Assessment - Section 15 Juvenile Justice (Care and Protection) Act 2015: View Point of Legal Aid Counsel

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ABSTRACT

This paper discusses Section 15 of the Juvenile Justice (Care and Protection) Act, 2015, From the perspective of Legal Aid Counsel , Preliminary assessment holds significant implications for safeguarding the rights and well-being of juveniles. Legal aid counsel advocates for due process and fair treatment during the preliminary assessment, emphasizing the juvenile's right to legal representation and the presumption of innocence. A child-centric approach is crucial, considering the unique vulnerabilities and developmental aspects of juveniles. The best interest of the child should guide decision-making, promoting rehabilitation over punitive measures. Legal aid counsel plays a pivotal role in ensuring effective communication and collaboration among stakeholders, advocating for alternatives to the transfer of juveniles for adult sentencing. The counsel's viewpoint underscores the importance of upholding justice, fairness, and the principles of juvenile justice to protect the rights and futures of children entangled in the legal system.

Keywords: Preliminary assessment, child in conflict with law, legal aid, JJ act 2015.

I. INTRODUCTION

The evolution of India's legal framework for juvenile justice, influenced by both domestic judicial decisions and international developments². Here are some key points based on the information provided:

(A) Origins and International Influence:

- The legal regime on juvenile justice in India has been shaped by Supreme Court judgments and international developments.

- The UN Guidelines on Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules) in 1985 played a crucial role in triggering the introduction of the Juvenile Justice Act, 1986.³

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² Sheela Barse vs. Union of India, 1986 SCALE (2) 230

³ Committee on the Rights of the Child, Consideration of Reports submitted by State Parties under Article 44 of

1. UN Convention on the Rights of the Child (UNCRC):

- India's accession to the UN Convention on the Rights of the Child in 1992 marked a significant milestone.

- The UNCRC perspective led to the realization that the Juvenile Justice Act, 1986, was incompatible, resulting in the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act, 2000).

2. Progressive Legislation - Juvenile Justice (Care and Protection of Children) Act, 2000:

- The JJ Act, 2000, aimed to provide a uniform legal framework for children across the country, offering protection for vulnerable, neglected, abused children, and those in conflict with the law.

- This legislation was amended in 2006 to address concerns raised by the Committee on the Rights of the Child regarding the determination of juvenility.

3. Amendments in 2011:

- Further amendments to the JJ Act, 2000, in 2011 aimed to align with international standards and guidelines, ensuring better care and protection for children.

- Notable amendments included changes in the definition of 'juvenile in conflict with law' and the establishment of Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs) in each district.

a) Key Features of 2011 Amendments:

- Redefinition of 'juvenile in conflict with law' as someone alleged to have committed an offense and not having completed the eighteenth year of age at the time of the offense.

- Establishment of Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWCs) in every district.

- Prohibition of handcuffing juveniles and placing them in police lock-ups or jails, emphasizing the need for a more protective and rehabilitative approach.

In summary, the evolution of India's juvenile justice system reflects a commitment to aligning domestic legislation with international standards and ensuring the protection and well-being of children in conflict with the law or in need of care and protection.

the Convention- Concluding Observations: India, CRC/C/15/Add.228, 26 February 2004, para 78.

Continuing from the previous points, here are additional key features of the amendments made to the Juvenile Justice (Care and Protection of Children) Act, 2000, as highlighted in the passage:

b) Amendments for Case Review and Speedy Disposal:

- Regular review of pending cases every six months.
- Special powers granted to magistrates to facilitate the speedy disposal of pending cases, emphasizing the importance of timely justice for juveniles.

4. Establishment of Child Protection Units (CPUs):

- Creation of Child Protection Units (CPUs) at both the State and District levels, indicating a decentralized approach to child protection.

5. Focus on the 'Best Interest' of Children:

- Prime importance given to the "best interest" of children, underlining the overarching principle that decisions and actions should prioritize the well-being and interests of the child.

6. Setting Minimum Standards for Child Care Institutions:

- Specification of minimum standards for child care institutions, ensuring that these institutions adhere to prescribed norms for the well-being and development of children.

7. Registration of Child Care Institutions:

- Mandatory registration of all child care institutions, promoting accountability and ensuring that these institutions meet the required standards.

8. Confidentiality of Identity:

- Prohibition on disclosing the identity of juveniles in conflict with the law to the media, safeguarding the privacy and confidentiality of the individuals involved.

9. Sentencing Restrictions:

- Prohibition of life imprisonment or any form of imprisonment for juveniles, recognizing the need for a rehabilitative rather than punitive approach.

10. Rehabilitation and Social Re-Integration:

- Special emphasis on rehabilitation and social re-integration of juveniles in conflict with the law, highlighting the goal of reintegrating them into society after appropriate rehabilitation measures.

11. Transfer of Mentally Ill or Addicted Juveniles:

- Transfer of juveniles or children who are mentally ill or addicted to alcohol or other drugs in accordance with the provisions of the Mental Health Act, 1987, ensuring appropriate care and treatment.

12. Widening Scope of Adoption:

- Widening the scope of adoption for children under institutional care, potentially making the adoption process more accessible and inclusive for a broader range of children.

These features collectively reflect a comprehensive and child-centric approach in the legal framework, aiming to address the diverse needs of children in conflict with the law or in need of care and protection.

The passage highlights key changes introduced in the Juvenile Justice (Care and Protection of Children) Act, 2015, following the Delhi gang rape case in 2012. Here are the notable amendments and features of the JJ Act, 2015:

1. Change in Nomenclature:

- The term 'juvenile in conflict with law' was replaced with 'child in conflict with law' throughout the Act. This change aimed to remove negative connotations associated with the term 'juvenile.'

2. Strengthening the Rights Framework

- The Act incorporated fundamental principles to guide stakeholders in the implementation of the Act, reinforcing a rights-based approach.

3. Clarity in Powers and Responsibilities

- The Act provided clarity in the powers, functions, and responsibilities of Juvenile Justice Boards (JJB) and Child Welfare Committees (CWC). Clear timelines for inquiries by JJB were established to enhance accountability in the juvenile justice system.

4. Definition and Classification of Offences:

- Offences committed by children were classified into petty, serious, and heinous categories, providing a clearer framework for addressing different levels of offenses.

5. Preliminary Assessment in Heinous Offences:

- Introduction of a preliminary assessment by JJB in cases of heinous offences allegedly committed by a child who has completed or is above the age of sixteen years.

6. Transfer System for Heinous Offences:

- The Act introduced a 'transfer system' allowing for the trial and sentencing of children alleged to have committed heinous offences as adults.

7. Recognition of Dual Status:

- Acknowledgment that a child in conflict with the law can also be a child in need of care and protection, recognizing the dual status of children in the legal system.

8. Inclusion of New Offences Against Children:

- The Act included new offences against children, such as the sale and procurement of children, corporal punishment, use of children by militant groups, employment of children for begging, and other offenses against disabled children.

9. Procedures for Age Determination:

- Procedures for age determination were incorporated into the Act to address any uncertainties about the age of the child.

10. Accountability of Child Care Institutions:

- Mandatory registration of all child care institutions, whether run by the state government or voluntary/non-government organizations, within six months from the commencement of the Act. Stringent penalties were introduced for non-compliance to strengthen accountability.

11. Separate Chapter on Adoption:

- A separate chapter on 'Adoption' was included to streamline the adoption process for orphaned, abandoned, and surrendered children.

12. Expanded List of Functionaries:

- The list of functionaries dealing with children in conflict with the law was expanded, providing role clarity among these functionaries.

These changes reflect a comprehensive effort to address shortcomings in the previous legislation and strengthen the legal framework for the care and protection of children in India. The amendments aim to enhance accountability, provide clear guidelines, and ensure the well-being of children involved in the justice system.

Police	<ul style="list-style-type: none"> - Apprehend a child in conflict with the law. - Transfer the case to the Special Juvenile Police Unit immediately.
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Special Juvenile Police Unit	<ul style="list-style-type: none"> - Apprehend child in conflict with law - Fill First Information Report/Record information in the Daily Diary - Inform probation officer - Inform parents/guardians - Provide medical assistance, interpreter, or special educator as needed - Inform District Legal Services Authority - Prepare Social Background Report - Produce child before Juvenile Justice Board - Conduct case investigation - Coordinate and support probation officer
Juvenile Justice Board	<ul style="list-style-type: none"> - Produce the child before the JJB as per the JJ Act 2015 - Produce the child before an individual member when the Board is not session. Ensure child-friendly procedures. - Ensure informed participation of the child. - Protect the child's 'best interests'. - Provide legal aid. - Request a social investigation report. - Ensure the child's safety. - Issue bail orders. - Place the child in appropriate child care institutions. - Link the child with CWC for care and protection if necessary. - Conduct a preliminary assessment for heinous offences committed by children aged 16-18. - Adjudication and rehabilitation orders for children - Inspection of Observation/Special Homes to assess service quality and propose improvements.
District Child Protection Unit	<ul style="list-style-type: none"> - Maintain a report on children in conflict with the law. - Follow up on individual care plans as directed by the Children's Court for heinous offenses. - Organise counselling and community services for children. - Conduct a review of children placed in places of safety and report to

	the Children's Court.
PROTECTION OFFICER	<ul style="list-style-type: none"> - Conducting Social Investigation Reports - Preparing Individual Care Plans - Observing and reporting child behaviour under probation supervision - Conducting follow-up - Attending JJB proceedings.
Child Care Institutions	<p>Observation homes, special homes, and places of safety for children in conflict with the law must provide basic necessities like food, shelter, clothing, and medical attention in accordance with prescribed standards during the rehabilitation and reintegration process. 10 recommendations include appropriate education, skill development, mental health interventions, Recreational activities, and legal help.</p>

II. CLASSIFICATION OF OFFENCES

The JJ Act of 2000 did not explicitly classify offences committed by children. The JJ Rules, 2007, distinguish between serious offences in Rule 11(7) and 'non-serious offences' in Rule 11(9). 'Serious offences' were defined as those punishable by more than seven years in jail for adults. Non-serious offences were defined as those that resulted in fewer than seven years of imprisonment for adults. According to Rule 13(2) of the JJ Rules 2007, tiny infractions can be resolved by summary processes or inquiry. Serious violations need a trial in most instances, while heinous felonies require due process of inquiry. So ambiguity in JJ Act 2000 and Rules-2007 was the first.

The JJ Act 2000 and Rules-2007 lack provisions for trial of 'serious offences' and 'petty offences' or 'heinous acts'. The Juvenile Justice (Care and Protection of Children) Act, 2015 categorises acts as minor, severe, or heinous based on the punishment specified.

1. The term 'petty offences'⁴ refers to offences that can result in imprisonment for up to three years under the Indian Penal Code or other applicable laws.

⁴ JJ Act, 2015, Section -2(45)

2. 'Serious Offences'⁵ refers to offences punishable by imprisonment for three to seven years under the Indian Penal Code or other applicable laws.

3. The term 'heinous offences'⁶ refers to offences that carry a minimum seven-year sentence under the Indian Penal Code or other laws. The list of horrific crimes is provided in Annexure-1.

III. PRELIMINARY ASSESSMENT⁷

Section 15 of the JJ Act, 2015 introduces a new concept called 'Preliminary Assessment' in juvenile justice. This applies to 16-18 year old children accused of committing terrible crimes. The JJB has the option to transfer.⁸

Cases of grave acts committed by such children are referred to the children Court following preliminary assessment .

The JJ Act of 2015 requires JJB to evaluate a child's mental and physical capability, understanding of the consequences, and circumstances surrounding the accused crime.

6 The JJB must first confirm that the child in conflict with the law is at least 16 years old but under 18 on the day of the crime. Second, determine if the child's claimed crime fits under a "heinous offence" under the applicable law. Third, examine the criteria indicated in Section 15(1) and provide a reasoned order.

The JJ Act of 2015 states that preliminary assessments are not trials and must be completed within three months of the child's first appearance before the Board⁹. However, no guidelines exist to guide JJB in determining the child's mental capacity to commit and understand the consequences of the alleged offence. The JJB may seek help from professional psychologists, psycho-social workers, or other specialists for this examination.

The JJB may seek help from professional psychologists, psycho-social workers, or other specialists for the examination. The JJB's preliminary assessment can be appealed to the Court of Session, who may consult with competent psychologists and medical professionals beyond those provided by the JJB (9).

(A) Age Determination

The processes given forth in rule-12 of JJ Rules, 2007 pertaining to age determination has been

⁵ JJ Act, 2015, Section- 2(54)

⁶ JJ Act, 2015, Section -2(33)

⁷ JJ Act, 2015, Section 15(1)

⁸ Explanation u/s 15(1)

⁹ JJ Act, 2015, Section 14(3)

included into the Act itself by the JJ Act, 2015. According to Section 94 of the JJ Act, 2015, if the Committee or Board determines that a person is a child based on their appearance, they must record this observation and state the child's age as accurately as possible without waiting for further confirmation¹⁰. If the Committee or Board has reasonable doubts about a person's juvenility, they will seek evidence to determine their age.

Under the JJ Act 2000, the age inquiry must be completed within 15 days after the child's initial appearance before the Board, rather than the previous month (12). When a juvenile between the ages of 16 and 18 is accused of committing a serious act, age determination can have significant ramifications. JJBs must be cautious when determining the age of minors entering the juvenile justice system, as many are not enrolled in school or have a birth certificate.¹¹

The JJ Act 2015 establishes inquiry methods according on the nature of the offence.¹² The Board will conduct summary procedures for 'petty crimes'. Inquiries into 'serious offences' committed by children under the age of eighteen and 'heinous offences' committed by children under the age of sixteen will be handled by the Board in accordance with the Code of Criminal Procedure, 1973.

If the Board is pleased with the preliminary assessment, it will proceed with the trial procedure for summon cases. If the Board determines that a child should be tried as an adult, the matter will be sent to the children's court (16).

(A) Principles of proportionality and preliminary assessment :

Children's troubles stem from their parents' failure to instil pro-social principles.¹³ It is unfair to assume that "children in conflict with the law" have no effective solutions. To effectively re-socialize vulnerable children, such as street children and those in trouble with the law, it is crucial to develop and select an appropriate treatment plan. Failure of the system indicates a failure to develop effective tactics.

(B) An overview of section 15 jj act through judgements

Ashish vs. State of Haryana¹⁴. The child was 17 years and 6 months old when they committed the act. He was accused of murdering the complainant's husband. The offence in this case is severe.

The JJB performed a preliminary assessment as per section 15 of the JJ (CPC) Act, 2015. The

¹⁰ JJ Act, 2015, Section 101(2)

¹¹ JJ Act, 2015, Section 101(2)

¹² JJ Rules, 2007; Rule 12(1)

¹³ Children and Crime by Saju Parackal and Rita Panicker, 2016

¹⁴ CrI. Revision No.851 of 2017, Punjab & Haryana High Court at Chandigarh, Decided on March 22, 2017

Board learned from the final report that the child in conflict with the law voluntarily committed the offence. The Social Investigation Report indicated that the child in confrontation with the law was developed enough to grasp the implications of their actions. The appeal argued that the JJB's inquiry did not follow the spirit of Section 15(1) of the Act. The Board's queries to the child were generic and did not address the specific offence or its repercussions, which contradicted the law.

The Hon'ble Court found no legal or factual flaws in the Juvenile Justice Board's ruling, which was upheld by the Appellate Court below, to warrant any interference. The revision petition was rejected.

In **Bholu vs. Central Bureau of Investigation**¹⁵, a seven-year-old Class-II pupil was found wounded in the school's washroom. He was rushed to the hospital and confirmed dead. The Central Bureau of Investigation took up the case investigation. The inquiry revealed that a student over 16 from the same institution was suspected of committing the violation.

The Board performed a preliminary assessment in accordance with Section 15 of the JJ Act, 2015, and determined that he should be tried as an adult under Section 18(3). The appeal against the Board's assessment order was denied by the Additional Session Judge, who found no illegality or perversity. The petitioner filed a revision case in the High Court of Punjab and Haryana, challenging the Additional Session Judge's judgement. The revision petition before the Hon'ble Court argued that:

- a. The Board's inquiry before making the challenged decision did not follow the spirit of Section 15(1) of the Act.
- b. The assessment report used outdated tests, Coloured Progressive Matrices (CPM) and Malin's Intelligence Scale for Indian Children (MISIC), designed for children aged 5-15, to determine a child's mental capacity at the age of 16 and a half.
- c. After conducting two tests, the clinical psychologist recommended sending the juvenile to the Institute of Mental Health at the University of Health Sciences in Rohtak for further examination.
- d. The petitioner did not get copies of the reports for cross-examination with the psychologist.
- e. The adolescent has a right to privacy and secrecy, which must be respected. However, the Board and lower Appellate Court misconstrued this right.

¹⁵ CrI.Revision No.2366 of 2018, High Court of Punjab and Haryana

- f. The petitioner, parents, and guardians were not provided with a list of witnesses and papers, indicating that the Board and Appellate Court's decision violated Section-15 of the Act.
- g. The court overturned the Juvenile Justice Board's and Additional Session Judge's orders based on the facts and arguments presented.

The matter was remanded to the Board for further review based on the child's intellect, maturity, and physical fitness, as well as their understanding of the implications of the offence.

Saurabh Jalinder Nangre and others vs. the State of Maharashtra¹⁶ The petitioners are accused of attempting to commit murder, which is punishable under Section 307 of the IPC. The defendants, all 17 years old at the time of the incident, were classified as 'children in conflict with the law' under the Juvenile Justice (Care and Protection of Children) Act of 2015.

The Juvenile Justice Board sent them to a psychologist for examination. The Board determined that CCL had the mental and physical competence to conduct the offence, were aware of the consequences, and engaged freely. The Board forwarded the issue to the Children's Court under section 18(3) of the JJ Act, 2015. The Board's order was challenged by petitioners in the High Court. The petitioners highlighted the following issues:

- a. Can a child who has not committed a terrible offence be moved to Children's Court?
- b. An offence punishable under Section 307 of the IPC cannot be classified as heinous.

Therefore, Section 15 of the J Act, 2015 (preliminary assessment) cannot apply in this situation.

b. Transferring a matter to the Children's Court under section 18(3) of the JJ Act 2015 may cause harm to a child in legal dispute.

The Court determined that the alleged act committed by the petitioners was severe, but not heinous. The assailed decree was annulled and set aside. The Board was directed to conduct an inquiry under Section 18(3) of the JJ Act, 2015.

The High Court asked the Board to take the following actions during the preliminary assessment.

- a. Determine the age of the child. Determine if the offender is above 16 but under 18 years old. Also, determine the nature of the offence. Whether the offence is horrible, serious, or small.
- c. If the offence is heinous and committed by a juvenile aged 16-18, the JJB will conduct a

¹⁶ Criminal Writ Petition No. 4044 of 2018; High Court of Judicature at Bombay; 2019 ALL MR (Cri) 438; Decided on December 10, 2018

preliminary assessment under Section 15 of the JJ Act, 2015.

d. Section 15 allows JJB to seek assistance from psychologists or psychosocial professionals.

e. If a child needs to be tried as an adult, the JJB may transfer the matter to the Children's Court [u/s 18(3)].

f. The kid will be tried in accordance with Section 19 of the Act.

Pradeep Kumar vs. the NCT of Delhi¹⁷

Two minors were accused of violating Sections 363/302/201 and 34 of the IPC. The Additional Session Judge affirmed JJB's order to try the defendants as juveniles. The petitioner filed a case with the Delhi High Court. The Hon'ble Court interpreted section-15 of the JJ Act 2015 as follows: "The JJ Board may seek the opinion of an expert regarding the mental and physical capacity of CCL to commit an offence. It is not necessary that an expert opined that the mental and physical capacity of CCL and his ability to understand the consequences of the offence are positive."

Manas Kumar Khuntia vs. State of Orissa¹⁸.

The petitioner faces charges under Sections 363-366/376 of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012. The petitioner was about 17 years and 3 months old when they committed the act. The offence met the description of a 'heinous offence', requiring a preliminary assessment under Section 15 of the JJ Act, 2015.

The case focused on whether the child might be released on bond under Section 12 of the Act. The Court ruled that while the term 'may' was used in the proviso to sub-section (1) of Section 15 of the 2015 Act, it should be interpreted as a 'command' when combined with an obligation and duty to maintain the purpose of the statute.

IV. FINDINGS AND SUGGESTIONS

Being a legal aid counsel appointed by Delhi state legal services authorities i have found the The Board schedules a preliminary assessment and a Clinical Psychologist or Psychiatrist to help with the examination. The technique is based on invariability, and professionals lack precise instruments for preliminary assessments. To comply with the legislation, experts were contacted. However, their reports may not be scientific.

Psychologists and professionals seldom address the subject of children in dispute with the law,

¹⁷ SCC Online Del 8251

¹⁸ CRLREV No.517 of 2016; High Court of Orissa; MANU/OR/0406/2016

who are assumed innocent. Experts provide their perspectives based on their attitude, responses, and knowledge of the topics. Invariably, children in dispute with the law are unaware of sexual abuse and exploitation laws and policies. Boards evaluate their own observations and expert reports when deciding whether to move a case to the Children's Court.

Boards evaluate their own observations and expert reports when deciding whether to move a case to the Children's Court. When there are no standard operating procedures, rules, or indications to follow during a preliminary assessment , professionals apply their skills and present their findings.

V. CONCLUSION

Concluding this paper in the capacity of being legal aid counsel . I draw a conclusion that a preliminary assessment in the context of juvenile justice is pivotal. It determines the course of action for a child alleged to have committed a heinous offense. This assessment , conducted by the Juvenile Justice Board, aids in decision-making, guiding whether the case proceeds within the juvenile justice system or undergoes transfer for trial and sentencing as an adult. The conclusion significantly influences the fair and just treatment of the juvenile, ensuring an appropriate balance between accountability and the rehabilitation of the child in conflict with the law.
