

Juvenile justice law:

A person with maturity must not get blanket immunity from the criminal process

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- ❖ If the offender is of sufficient maturity, he should be tried in a criminal court and punished if found guilty.

The Supreme Court (SC) made an observation in its judgment of November 16 in the infamous Kathua rape-murder case: "... the rising rate of juvenile delinquency in India is a matter of concern and requires immediate attention. There is a school of thought, existing in our country that firmly believes that howsoever heinous the crime may be, be it single rape, gangrape, drug peddling, or murder but if the accused is a juvenile, he should be dealt with keeping in mind only one thing i.e., the goal of reformation. The school of thought, we are talking about, believes that the goal of reformation is ideal. The manner in which brutal and heinous crimes have been committed over a period of time by juveniles and still continue to be committed, makes us wonder whether the [Juvenile Justice (Care and Protection of Children)] Act, 2015 has subverted its object. We have started gathering an impression that the leniency with which the juveniles are dealt with in the name of the goal of reformation is making them more and more emboldened in indulging in such heinous crimes. It is for the government to consider whether its enactment of 2015 has proved to be effective or something still needs to be done in the matter before it is too late in the day."

Propensity for violence in children

Indeed, a "child in conflict with law" or juvenile offender could become so hardened — say, on account of exposure to dehumanizing poverty and violence that he/she is beyond reform. Such hardening could, of course, occur in children for reasons other than socio-economic circumstances. At the same time, one feels uneasy at the prospect of handing over children of any age to the police. Sending children, as a matter of course, to adult prisons for heinous crimes (which attract imprisonment of seven years or more) would rule out reformation, let alone rehabilitation and reintegration into society. Rather, the working of our criminal justice system would ensure that such a person WOULD come out (if the person comes out alive) equipped to commit more crimes. Police reforms have yet to take place, notwithstanding the directions of the SC issued in this regard way back in 2006 (Prakash Singh). Custodial violence, abuse, and torture are rampant. The majority of the jail population in India still consists of undertrials, waiting for years for their trial to commence. One

would simply be writing off children if routinely sent to trial by the criminal court like adults.

According to juvenile law

Let us now consider what our juvenile law says in this regard. The law, contained in successive Juvenile Justice (Care and Protection of Children) Acts (JJ Acts), places a blanket ban on the power of the criminal court to try and punish a person below the specified age for committing any offense. But then, should a person, who has sufficient maturity of understanding to judge the nature and consequences of his/her action, get blanket immunity from the criminal process without the fear of being prosecuted, tried, and punished, merely because that person is below the specified age? Under the existing law, such a person, at best, could be subjected to a child-friendly inquiry by a Juvenile Justice Board (JJ Board) and reformation for a maximum period of three years in a correctional home. The parents of the December 2012 Delhi gangrape and murder victim had challenged before the Supreme Court the constitutional validity of such blanket ban in the JJ Act of 2000, and sought that the juvenile involved should at least be tried by the competent criminal court for the offences against their daughter (Badrinath, 2014). With the disclaimer that I was the lawyer for the parents in this matter, I believe that the legal argument was quite conclusive.

Cognizable and non-cognizable offences:

The Code of Criminal Procedure lays down the rules for the conduct of proceedings against any person who has committed an offense under any criminal law.

- ↳ Cognizable offence: A cognizable offense is an offense in which a police officer may arrest the offender without a warrant as per the first schedule or under any other law for the time being in force and initiate investigation without the permission of the court. Cognizable offenses are usually heinous or serious in nature such as murder, rape, kidnapping, theft, dowry death etc. First Information Report (FIR) is registered only in case of cognizable offences.
- ↳ Non-Cognizable Offence: A non-cognizable offense is an offense listed under the First Schedule of the Indian Penal Code and is bailable in nature. In case of non-cognizable offence, police cannot arrest the accused without warrant and also cannot start investigation. A criminal complaint is filed with the Magistrate, who orders the concerned police station to start an investigation. Offenses like forgery, cheating, defamation, public nuisance etc. come under the category of non-cognizable offences.

Juvenile Justice (Care and Protection of Children) Act, 2015

- ↳ Parliament passed the Juvenile Justice (Care and Protection of Children) Act, 2015 to replace the Juvenile Offences Act and the Juvenile Justice (Care and Protection of Children) Act, 2000. The Act allows juveniles between the age of 16-18 years involved in heinous crimes to be tried at par with adults. Also, the eligibility of parents for adoption and the method of adoption have been included in this act. The Act replaced the Hindu Adoptions and Maintenance Act (1956) and the Guardians of Wards Act (1890) with more universally accessible adoption legislation.
- ↳ The Act makes the Central Adoption Resource Authority (CARA) a statutory body for matters relating to adoption, to act as a nodal agency for foster care and adoption of Indian orphans. does.
- ↳ Child Care Institutions (CCIs): All Child Care Institutions, whether run by the State Government or voluntary or non-governmental organizations, must compulsorily register under the Act within 6 months from the date of enactment of the Act.

Nature of crime and justice

The Constitution differentiates the functions of the executive, legislature and judiciary. It falls within the domain of judicial function to try and punish a person committing penal offences — with judicial discretion regarding the award of sentence keeping in view, amongst other factors, the nature and gravity of the offence. It is well settled that the assessment of whether or not an offender has attained sufficient maturity of understanding to judge the nature and consequences of his/her conduct is to be done by the court with the help of experts, and is a judicial function as exemplified by Section 83 of the Indian Penal Code, 1860 and Order XXXII of the Code of Civil Procedure, 1908. There are precedents in which the SC has held that Parliament cannot make law to oust the judicial function of courts or even judicial discretion in a matter falling within the judicial function of courts. Thus, the JJ Act 2000 — to the extent it deprived the criminal court of the power to try and to punish a person below the age of 18 years for committing an offence, when such a person could be assessed to have attained sufficient maturity to judge the nature and consequences of his/her conduct — encroached upon the judicial domain and was, therefore, unconstitutional. The current JJ Act, 2015, suffers from the same defect, except that the age of criminal responsibility for heinous offences has been reduced to 16 years.

Badrinath Case and JJ Act, 2000

The SC inter-alia took the view in Badrinath that nothing as sweeping and as drastic had been introduced by the JJ Act, 2000 that “sets at naught all the essential features of the criminal justice system and introduces a scheme which is abhorrent to our constitutional values”. Unfortunately, the SC lost an opportunity to rationalise the juvenile justice law — which would have simply required a finding that instead of the conferral of blanket immunity from criminal process upon a juvenile offender, there should be a case-by-case assessment by a competent court (and not the JJ Board) as to whether or not such juvenile had attained sufficient maturity of understanding to judge the nature and consequences of his/her action.

Now what next

It has been overlooked that the fundamental premise of juvenile justice law is that a juvenile offender who lacks such maturity should not be sent to a criminal court to be tried for the commission of an offence, and instead, should be sent to a correctional home for reform and rehabilitation. Conversely, therefore, should the offender have such maturity, he/she must be prosecuted before the criminal court, tried and, if found guilty, punished. The age of the juvenile offender alone cannot, therefore, justify a blanket immunity from the criminal process — rather, the question of such immunity must be assessed on a case-by-case basis depending on the maturity of such offender.

This does not necessarily mean that a “child in conflict with law” who possesses sufficient maturity would be tried with adults. Indeed, Section 23 of the JJ Act, 2015 mandates that notwithstanding anything contained in Section 223 of the Code of Criminal Procedure of 1973 or in any other law for the time being in force, “there shall be no joint proceedings of a child alleged to be in conflict with the law, with a person who is not a child”. Nor does it necessarily mean that such a child should be housed with undertrials or should serve

sentence with convicts. Provisions already exist in the JJ Act, 2015, as to how a child who has attained the age of 16 years could be tried and punished for a heinous offence. The same provisions could be extended to all juvenile offenders, regardless of age or nature of the crime, once it is found by the competent court that any such offender had sufficient maturity of understanding to judge the nature and consequences of his/her actions.

If the government appreciates the above observation of the SC and reconsiders the existing juvenile justice law, it should, in my view, amend such law along the lines indicated in this article. Such an amendment would go a long way in providing the requisite balance between the rationales underlying the juvenile justice system and the criminal justice system and realising the objectives professed by both.

Expected Question

Que. Consider the following statements -

1. The Juvenile Justice (Care and Protection of Children) Act, 2015 allows juveniles between the ages of 16-18 years involved in heinous crimes to be tried at par with adults.
2. The Juvenile Justice (Care and Protection of Children) Act, 2015 makes the Central Adoption Resource Authority (CARA) the statutory body for matters related to adoption.

Which of the above statements is/are true?

- (a) Only 1 (b) Only 2
(c) Neither 1 nor 2 (d) Both 1 and 2

Answer : D

Mains Expected Question & Format

Que.: Critically examine the Juvenile Justice (Care and Protection of Children) Act, 2015 in the light of recent observations made by the Supreme Court on Juvenile Justice Act. Also suggest suitable measures to make this Act effective.

Answer Format :

❖ **Introduction (30-40 words)**

State the observation made by the Supreme Court recently.

❖ **Main Body (150-160 words)**

Mention the major provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and also point out its shortcomings.

❖ **Conclusion (40-50 words)**

Suggest suitable measures to make this act effective.

Note: - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.