

TRYING JUVENILES AS ADULTS IS NOT THE ANSWER

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Paper - II
(Indian Polity)

In May, a speeding car, allegedly driven by a teenager, killed two young techies in Pune. As prescribed by the Juvenile Justice (Care and Protection of Children) Act, or the JJ Act, 2015, the adolescent was initially brought before the Juvenile Justice Board (JJB), which granted him bail under seemingly lenient conditions. This decision, coupled with the tragic outcome of the incident and emerging accusations of privilege being used to tamper with the investigation, sparked public outrage. Following the backlash, the JJB modified its order, directing the adolescent's detention in an Observation Home. This was challenged before the Bombay High Court, which directed his release on the ground that he was granted bail in accordance with due procedure.

The High Court noted that the JJ Act is “not only a beneficial legislation, but is also a remedial one.” The push by some to prosecute the adolescent as an adult raises broader questions about the power of the juvenile justice system to address severe offences like drunken driving and the demand for accountability in cases involving young offenders.

Being tried as an adult

The JJ Act allows for the possibility of trying adolescents above 16 as adults if they are accused of committing a “heinous” offence. A “heinous” offence is one with a minimum punishment of seven years or more. Offences such as culpable homicide and causing death by negligence, which are common in drunken driving cases, are not “heinous” offences because they do not have a prescribed minimum punishment. The JJ Act, amended in 2021, now categorises an offence that has no minimum sentence but has a maximum sentence of more than seven years as a “serious offence” which, nonetheless, does not merit the transfer of a case to the adult criminal justice system.

In any case, when an adolescent above 16 years of age is accused of a “heinous” offence, the JJB, a quasi-judicial body, conducts a preliminary assessment to determine if they should be tried as an adult. If it concludes that there is such a need, the adolescent is transferred to a sessions court, which independently assesses the suitability of trying the adolescent as an adult.

These protections are based on the understanding that adolescence is a temporary developmental stage characterised by immature judgement and underdeveloped impulse control. This is recognised by the Supreme Court in *Dr. Subramanian Swamy v. Raju* (2014) and by the UN Committee on the Rights of the Child. Consequently, the juvenile justice system emphasises rehabilitation and social reintegration over punishment, acknowledging that adolescents, due to their high neuroplasticity, are more receptive to change.

Seeking accountability

Nonetheless, the juvenile justice system is rooted in holding offenders accountable for their actions. When an adolescent is found to have committed a crime, the JJ Act empowers the multidisciplinary JJB to tailor a response befitting the circumstances and the adolescent concerned. A conviction can result in institutionalisation of the offender, but with the express goal of rehabilitation. The JJBs can prescribe interventions such as therapy, psychiatric support, and de-addiction during and after institutionalisation. An individual care plan is prepared for the adolescent's rehabilitation keeping in mind their socioeconomic conditions and the circumstances of the crime. This approach has the potential to foster accountability and healing, creating opportunities for justice that are often unattainable within the rigid confines of the punitive adult justice system.

Specifically in cases of deaths caused by motor accidents, innovative approaches have been attempted in Indonesia and the U.S. that enable offenders to face their victims and focus on personal accountability. In some jurisdictions, convicted drunk drivers are required to face a victim impact panel (VIP) of relatives of victims who express how the incident affected their lives. A report released in 2022 by Kevin Thompson and Sarah Joyce found a reduction in recidivism amongst offenders exposed to VIPs in North Dakota. While this can never change the life-altering incident itself, it personalises the loss and grief experienced by the victim and gives an opportunity to the offender to express regret.

Practices like this recognise the victim and their family as central to the process of justice dispensation in contrast to the traditional penal system where the victim is reduced to a witness or is not involved at all as the state takes over prosecution. They create space for the needs of the victims that may range from compensation to an apology or explanation or acknowledgement of responsibility by the offender. They also expose adolescents to an education regarding accountability and sensitivity to fellow human beings to foster their transformation into responsible adults. Facing the victims or their families can be a powerful and transformative experience for offenders. Responses of the juvenile justice system can include the family members and communities of both the offender and the victim and can involve counselling the offender's family. This approach recognises that crime is often the outcome of a complex interplay of societal and psychological factors.

However, the potential of the juvenile justice system remains unfulfilled. Trying adolescents as adults sidesteps the problem of weak implementation of the juvenile justice system. The issue lies not in the perceived leniency or "misuse" of the system, but rather in the failure to fully implement its foundational principles.

Expected Question for Prelims

Que. Consider the following statements with reference to the Juvenile Justice (Care and Protection of Children) Act-

1. The Juvenile Justice (Care and Protection of Children) Act 2015 itself is called the J.J. Act.
2. The JJ Act provides for the possibility of prosecuting juveniles above 16 years of age as adults if they are accused of committing any "heinous" crime.

Which of the statements given above is/are correct?

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

Answer : C

Mains Expected Question & Format

Que.: Discuss the main provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and also mention the shortcomings present in it.

Approach to answer:

- ❖ In the first part of the answer, discuss the main provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.
- ❖ In the second part, also mention the shortcomings present in the Juvenile Justice (Care and Protection of Children) Act, 2015.
- ❖ Finally give a conclusion giving suggestions.

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.