

Juvenile Justice (Care and Protection) Act, 2015

What is the issue?

- In 2016, a 17-year-old murdered his 3-year-old neighbour in Mumbai.
- The Mumbai city Juvenile Justice Board and a children's court directed that he be tried as an adult under the Juvenile Justice (Care and Protection) Act, 2015.
- But the Bombay High Court set aside these orders last week and directed that the accused be tried as a minor.

What is the JJ act?

- The Juvenile Justice Act 2000 (JJ act), amended in 2015 with a provision allowing for Children in Conflict with Law (**CCL**) **to be tried as adults under certain circumstances**.
- It defines a child as someone who is under age 18.
- For a CCL, age on the **date of the offence is the basis** for determining whether he or she was a child or an adult.
- The amended Act distinguishes children in the **age group 16-18** as a category which can be **tried as adults** if they are alleged to have **committed a heinous offence**.
- Heinous offence (Here) - One that attracts a minimum punishment of 7 years.
- The Act does not make it mandatory for all children in this age group to be tried as an adult.

Why was the amendment made?

- The amendment was proposed by the **Ministry of Women and Child Development** in 2014.
- This was proposed in the **backdrop of the 2012 Delhi gang-rape** of a woman inside a bus, in which one of the offenders was 17-year-old.
- The Ministry also cited an **increase in cases of offenders** in that age group.
- But the child rights activists objected to the amendment.
- **J S Verma Committee** constituted to recommend amendments also stated that it was not inclined to reduce the age of a juvenile from 18 to 16.

What the Bombay High Court do?

- In the case, the accused was a juvenile at the time of offence be tried as a minor.
- The Bombay High Court's observation - Trial as an adult is **not a default choice**; a conscious, calibrated one. And for that, all the **statutory criteria** must be fulfilled.

What are the criteria under JJ Act?

- As per **Section 15 of the JJ Act**, there are three criteria that the **Juvenile Justice Board** in the concerned district should consider while conducting a preliminary assessment to determine whether the child should be tried as an adult or under the juvenile justice system.
- The 3 criteria are,
 - a. Whether the child has the mental and physical capacity to commit such an offence;
 - b. Whether the child has the ability to understand its consequences;
 - c. Whether the child knows the circumstances in which the offence was committed.
- If the Board finds that the child can be tried as an adult, the case is transferred to a designated children's court, which again decides whether the Board's decision is correct.

How do these criteria relate to this case?

- Both the Juvenile Justice Board and the children's court had relied on,
 - a. Probation officer's social investigation report and
 - b. A Government hospital's mental health report.
- **Probation officer's report** stated that,
 - a. The child or his family did not have a criminal record, and
 - b. Called the juvenile **highly manipulative**
 - c. The child had **confessed** that the victim was killed **accidentally**.
 - d. The juvenile was counselled on focusing on his studies, and that he had taken and passed his exams while lodged in the observation home.
- **Mental health report** said the juvenile had no psychiatric complaints at present, was normal, and suffers from no mental incapacity to commit the offence.

What was the court's response?

- The High Court said that neither report brought out any exceptional circumstances to compel the juvenile to face trial as an adult.
- It also said that it had undertaken no independent assessment.

- It said, the statute permits a child of 16 years and above to stand trial as an adult in case of heinous offence, but doesn't mean that all those children should be subjected to adult punishment.
- One of the court's key observations was that the trial in the regular court is **offence-oriented** (prison is the default opinion); in the juvenile court, it is **offender-oriented** (societal safety and the child's future are balanced, prison is the last resort).

Source: The Indian Express

