

## Fourth Offence under the Juvenile Justice Act 2015: A new addition by Shilpa Mittal vs. State of NCT of Delhi

Dr. Divya Khurana

Associate Professor, University School of Law, Desh Bhagat University, Mandi  
Gobindgarh

E-mail- [divya@sharmas.biz](mailto:divya@sharmas.biz)

Ms. Rupinder Kaur

Associate Professor, University School of Law, Desh Bhagat University, Mandi  
Gobindgarh

### Abstract

The Juvenile Justice Act of 2015 introduced the classification of offences in such a manner which hitherto was not a known concept. The Act categorised the offences into three parts which included- petty, serious and heinous offences and the provisions also detailed the manner in which the inquiry into these shall be held when a child in conflict with law is apprehended. However, when the Act came into force, the jurists argued that the legislature has left a loophole in the classification of offences so made and a fourth category of offences have been left out. Thereafter, in some cases it was argued that the left out offences can be dealt in under the category of 'heinous offence' but the High Courts of Bombay, Patna and Punjab and Haryana rejected the contention. Recently, while approving the view taken by these High Courts, the Supreme Court has filled in the gap in *Shilpa Mittal vs. State of NCT of Delhi*, (2020) 2 SCC, 787, where the Court has held that till the legislature acts upon the matter, fourth category offences shall be treated as 'serious offences' within the meaning of the Act. The present article discusses the view taken by the Supreme Court in *Shilpa Mittal*.

**Key Words:** Juvenile Justice Law, Adult Criminal Justice System,

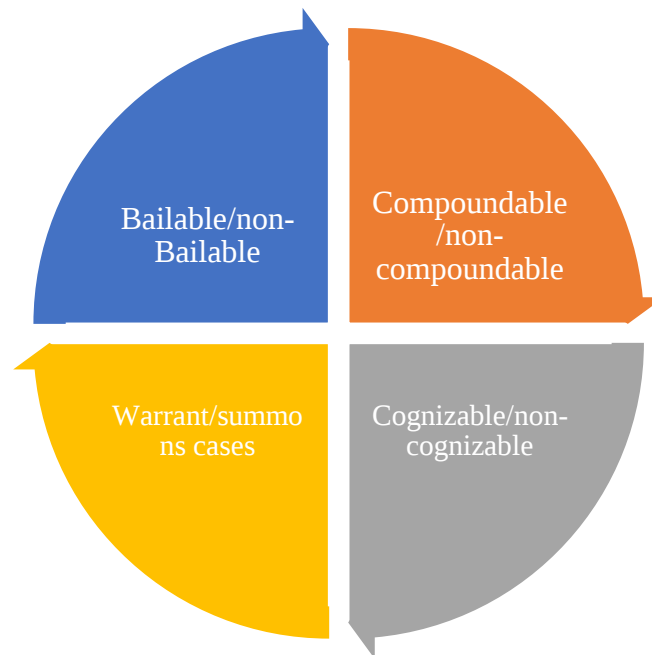
### Introduction

The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act of 2015) while repealing its predecessor made a sweeping shift from all the previous legislations on the topic. The Act of 2015 not only categorised the offences, introduced the possibility of

transfer of children aged 16-18 years into the adult criminal justice system, it also embedded the provisions of rehabilitation and re-integration of children back into the society as its main intent and objectives. Though the Act comprehensively dealt with all the matters relating to children, at many places certain gaps were felt to be left out by the legislature. With the coming into force of the Act and on its becoming functional the gaps so left out also started to have arisen. One of these gaps has been relating to the classification of offences so made within the Act. The Act categorised the offences into three parts which included- petty, serious and heinous offences and the provisions thereafter, have also detailed the manner in which the inquiry into these shall be held when a child in conflict with law is apprehended. However, when the Act came into force the jurists argued that the legislature has left a loophole in the classification of offences so made and a fourth category of offences have been left out. Thereafter, in some cases it was argued that the left out offences can be dealt with under the category of 'heinous offence' but the High Courts of Bombay, Patna and Punjab and Haryana held that such offences cannot be included within heinous offences as the definition provides otherwise. Recently, while approving the view taken by these High Courts, the Supreme Court has filled in the gap in *Shilpa Mittal vs. State of NCT of Delhi*, (2020) 2 SCC, 787, where the Court has held that till the legislature acts upon the matter, fourth category offences shall be treated as 'serious offences' within the meaning of the Act.

### **Offences under the Act of 2015**

Under the Act of 2015 classification of offences has been made which '*hitherto*' has been an unknown concept. The Indian Criminal Penal Code (CrPC, 1973) till date classifies the offences in categories as:



### Classifies the Offences

In case a child below 16 years has committed an offence other than an offence punishable with death penalty or life imprisonment then he may be sent to the children's court.<sup>1</sup> Further the Supreme Court in *Raghubir vs. State of Haryana*<sup>2</sup> had held that irrespective of the offence committed children may be sent to the children' court.<sup>3</sup> Later, in *Sheela Barse vs. Union of India*, the Supreme Court had held that if an inquiry in matters relating to children who allegedly has committed an offence punishable with less than 7 years of imprisonment is not completed within 3 months then such a case must be treated as closed. Except from these said categorization of offences no other categorization of offences was made on the basis of punishment until the passing of the Act of 2015.

However, now the Act of 2015 has specifically classified the offences in three parts based on which the offence committed by a juvenile would be dealt in. these three categories are:

<sup>1</sup> Section 27, CrPC; also, *Rohtas vs. State of Haryana*, (AIR, 1979 SC, 1839).

<sup>2</sup> 1981 Cri, 1497 (SC).

<sup>3</sup> The Children's Court here referred has been now renamed as Juvenile Justice Board under the Act of 2015.

**Petty Offences- (Section 2(45)):** Petty offences include the offences for which the maximum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment up to 3 years.

**Serious offences- (Section 2 (54)):** Serious offences include the offences for which the punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment between three to seven years.

**Heinous offences- (Section 2 (33)):** Heinous offences include the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more.

Some jurists are of the view that all the three definitions the term “includes” has been used which indicates that these definitions are not exhaustive of the categories of offences mentioned there under.<sup>4</sup>

### Gap in the Definitions

When the definitions are read in a literal sense, one could easily sniff the gap left in these definitions where a fourth category of offence has been left out. This fourth category includes

*“those offences where the minimum sentence is less than 7 years, or there is no minimum sentence prescribed but the maximum sentence is more than 7 years ”*<sup>5</sup>

The High Court of Bombay in *Saurabh Jalinder Nangre & ors vs. State of Maharashtra*<sup>6</sup> while deciding the question whether offence under section 307 IPC be taken as heinous offence under the JJ Act held that as the definition of heinous offences under the Act restricts to *minimum punishment of 7 years or more* hence the offence committed under section 307 of IPC could not be brought within the preview of heinous

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<sup>4</sup> Ved Kumari, *The Juvenile Justice (Care and Protection of Children) Act 2015: Critical Analysis*, Universal Law Publishing, 2017, pg 37. However, now the view taken by Prof. Kumari has been rejected by the SC in *Shilpa Mittal*.

<sup>5</sup> *Shilpa Mittal vs. State of NCT of Delhi*, (2020)2 SCC 787.

<sup>6</sup> 2019 (1) Crimes 253 (Bom).

offences under the Act of 2015.<sup>7</sup> However, the Court did not introduce any other category into the provisions of the Act and had left the matter open.

The Supreme Court recently in *Shilpa Mittal vs. State of NCT of Delhi*<sup>8</sup> has in detail discussed the issue relating to the left out offences in the Act of 2015. The contention in this case was- “whether an offence prescribing a maximum sentence of more than 7 years imprisonment but not providing any minimum sentence or providing a minimum sentence of less than 7 years can be considered to be a heinous offence within the meaning of section 2 (33) of the juvenile Justice Act, 2015 ?”

The Juvenile ‘x’ in this case had alleged to have committed an offence punishable under section 304 of IPC. The Juvenile Justice Board in its preliminary inquiry had held that juvenile ‘x’ has committed a heinous offence and therefore should be tried as an adult before the Children’s Court. However, the Juvenile ‘x’ appealed in the High Court against this order contending that such offence does not fall within the ambit of section 2(33) of the JJ Act of 2015. The contention of the juvenile ‘x’ was upheld by the High Court.

The matter went up to the Supreme Court for resolving the jigsaw puzzle of the fourth category. The Court assessed the matter in the light of the object and reasons of the Act and also analysed the intention of the legislature while enacting the law on the subject. Answering to the contention mentioned above the Court held that the offences left out by the three categories of offences could not be adjusted within any of the offences so mentioned including ‘heinous offences’. The Court while deciding not to include these offences within the ambit of heinous offences took into account the justifications made by Mrs. Maneka Gandhi during the deliberations in the Parliament. The Minister had specifically mentioned that by heinous offences they refer to offences like rape, murder, etc. therefore, the Court out rightly rejected that these offences could not be adjusted as heinous offences as by heinous offences the legislature meant gravest of the offences.

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<sup>7</sup> Similar views were taken by the High Courts of Patna and Punjab and Haryana High Courts in *Rajiv Kumar vs. State of Bihar*, 10Cr (Sj) No. 1716 of 2018 and *Bijender vs. State of Haryana*, 2018 (CrR )1615 of 2018.

<sup>8</sup> Ibid.

Further the Court recognised the fourth category which will be dealt in as per the provisions of the ‘serious offences’ till the Legislature acts upon the matter.

The following points could be culled out from the judgement of the Court:

1. From the object and the reasons of the act and intention of the legislature it could not be referred that the term “heinous offences” would include all offences having a punishment of more than seven years. The section is restricted in its application to the offences for which a minimum sentence of seven years of imprisonment is provided.
2. There is a gap in the legislation and this gap could not be filled by putting all the left out offences into the category of “heinous offences”.
3. The scheme of the Juvenile Justice Act, its objects and reasons point to one theme “children should be protected”. Treating children as adults is an exception which as per the principles of statutory interpretation has to be given restricted meaning.
4. The term “includes” in the 3 definition clauses is “surplusage”<sup>9</sup> and there is nothing else which could be included therein. The definitions are complete in themselves.
5. The collaborative reading of section 14, 15 and 18 of the Act of 2015<sup>10</sup> give a clear message that in case a juvenile is to be tried as an adult a very detailed study into the matter is required. The child cannot be automatically tried as an adult if heinous crime is committed. Hence the definition of “heinous crime” cannot be expanded in any case.
6. Till the legislature acts upon the matter in the fourth category of offences that is an offence where the maximum sentence is more than seven years imprisonment but no minimum sentence is provided or minimum sentence of less than seven

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<sup>9</sup> (Merriam Webster Dictionary defines Surplusage as- matter introduced in legal pleading which is not necessary or relevant to the case)

<sup>10</sup> Section 14 of the Act of 2015 relates to ‘Inquiry by Board regarding child in conflict with law’; Section 15 of the Act of 2015 relates to ‘Preliminary assessment into heinous offences by Board’; Section 18 of the Act of 2015 relates to ‘Orders regarding child found to be in conflict with law.’

years is provided shall be treated as serious offences within the meaning of the act.

7. The decision applies retrospectively i.e. from the date when the act came into force. All the children falling under the fourth category of offences shall be dealt in the same manner as children committing serious offences are dealt in with.

In 2022, the Supreme Court of India has **Barun Chandra Thakur vs Master Bholu**<sup>11</sup> addressed critical aspects of the Juvenile Justice (Care and Protection of Children) Act, 2015, particularly concerning the preliminary assessment under Section 15 for juveniles aged 16 to 18 accused of heinous offences.

### Key Findings:

1. **Mandatory Assistance from Experts:** The Court emphasized that if the Juvenile Justice Board lacks a member with a professional degree in child psychology or psychiatry, it is mandatory to seek assistance from experienced psychologists or psycho-social workers during the preliminary assessment. This ensures a comprehensive evaluation of the juvenile's mental and physical capacity to commit the offence, their ability to understand its consequences, and the circumstances of its commission.
2. **Provision of Relevant Documents:** The Court held that the child in conflict with law, or their guardian or counsel, must be provided with copies of all relevant reports, including the Social Investigation Report and psychological assessments. Denial of these documents constitutes a violation of the principles of natural justice and the right to a fair hearing.
3. **Comprehensive Understanding of 'Consequences':** The term "consequences" in Section 15(1) was interpreted broadly to include not only the immediate outcomes of the offence but also its long-term effects on the victim, the juvenile, and their respective families. The Court highlighted the importance of considering the full spectrum of repercussions, both immediate and future, in the assessment.

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<sup>11</sup> 2022 SCC OnLine SC 870.

4. **Critique of Lower Courts' Approach:** The Supreme Court found that the Juvenile Justice Board and the Children's Court erred by relying solely on an IQ test to assess the juvenile's mental capacity, neglecting the psychologist's recommendation for further evaluation. The Court stressed that such assessments should not be superficial and must delve into the juvenile's comprehensive psychological profile. **Reaffirmation of High Court's Decision:** The Supreme Court upheld the Punjab and Haryana High Court's decision to remand the case for a fresh preliminary assessment, acknowledging procedural lapses and the necessity for a thorough and fair evaluation process.

This judgment underscores the imperative for meticulous and just procedures when determining whether a juvenile should be tried as an adult, ensuring adherence to the principles of natural justice and the rights of the child.

## Conclusion

The judgement of the Court is appreciable not only for filling in the gap left out in the legislation but also for rightly pointing out the main objective of the Act as welfare and rehabilitation of the children in all circumstances. The judgement well guides all the stakeholders under the Act specially the Juvenile Justice Boards to keep the objective of the Act i.e. rehabilitation and welfare of children at top priority when deciding any matter under the Act. The judgement also gives a positive assurance to the opponents of the Act of 2015 who had been arguing that the possibility of transferring the child in conflict with law to the adult criminal system is a step backward for the juvenile justice system.