

## **Can a Juvenile be sentenced to Life Imprisonment?**

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It is not uncommon to hear that a sentence of life imprisonment cannot be imposed on a juvenile. However, a close scrutiny of the provisions will go to show that the thinking prevalent is wrong. Juvenile Justice (Care and Protection of Children) Act, 2015 has created a class of juvenile offenders who may be tried as an adult for certain offences which are considered to be heinous in nature in terms of the definition provided therein. What would be those offences is not the matter of consideration here as the same would properly be considered in some other paper. Presently we will be discussing the sentencing regime for such juveniles who are required to be dealt with as an adult.

2. We know that a children's court has to conduct the trial in respect of a juvenile charged with heinous offence and who was found to a person requiring to be treated as an adult. It is Section-19 of JJ Act which deals with the situation and therefore the same is reproduced as: "Section-19. Powers of Children's Court.—(1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that— (i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere; (ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker. (3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail: Provided that the reformative services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety. (4) The Children's Court shall ensure that there is a periodic follow up report every year

by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form. (5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required".

3. Most significant provision is clause-1(i) which says "there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere". This provision authorizes the court to pass such orders as may be appropriate but the same should firstly be subject to the other provisions of the same Section-19 and then also to the provisions of Section-21.

4. At this stage, it would be proper to look into the provisions of Section-21 reading as "Order that may not be passed against a child in conflict with law.- No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force". This provision, as its heading suggests, is prohibitory in nature and asks the court not to pass an order of two types, first, a sentence of death and second, a sentence of life imprisonment without the possibility of release. There is no other prohibition contained in this provision. We will be concentrating on the second prohibition only.

5. It is this second prohibition which is causing confusion in the minds of persons in the legal field. They assume that a juvenile cannot be visited with life imprisonment. A bare look at the provision however goes to show that it does not say so. The expression "life imprisonment" is not absolute but it is qualified by the other expression "without the possibility of release". If we accept that a juvenile cannot be sentenced to life imprisonment, it would render the second expression futile. The only thing that this prohibition signifies is that though there can be a sentence of imprisonment for life but there shall always be a possibility of release.

6. Any other view would result in disastrous situation. For example, punishment for murder is either life imprisonment or death. Section-21 clearly prohibits a sentence of death and if we accept that even life imprisonment cannot be given, there will remain no other punishment prescribed for committing murder. A fertile mind may say that since the JJ Act overrides any other law and even the punishment to juveniles is to be as per the Act itself, the punishment prescribed for murder under IPC cannot be followed. This assumption however cannot stand scrutiny.

7. Section-1(4) deals with the overriding effect and to the necessary extent reads as “Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including-(i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law”. It can be said with certainty that this subsection says that if there is a provision in the Act governing a particular matter then only that provision will govern that matter irrespective of the fact that some other law provides otherwise. The particular matter, of course may be anything relating to a child in conflict with law and penalty is not out of consideration of this Act. In that view of the matter, if the Act provides for punishment of murder committed by a person who is required to be tried as an adult, then certainly we cannot go to search any other law including the IPC. Like Section-18 deals with other juvenile offenders irrespective of the other laws and therein a systematic procedure is laid down for all offences. As such for those juveniles, we cannot adopt the punishment provided in the laws creating the offence such as Section-302 IPC. However, a bare glance at Section-18 would show that the provisions prescribed therein is not applicable to a juvenile who is required to be tried as an adult. There is no provision other than Section-19 and 21 providing for penalty to those juveniles who are to be tried as an adult.

8. As seen earlier, Section-21 really does not prohibit a life imprisonment. Section-1(4) really does not override the other laws creating offences so far as adult juveniles are concerned. Expression “life imprisonment without the possibility of release” has been used in

Section-21 to really override Section-433A of CrPC which puts a bar on release of life convicts before completion of a minimum 14 years (extendable at by the Constitutional Courts to any other period and may be till the last breath. This concept of expanded sentencing jurisprudence is the subject matter of some other article written by the author). Meaning thereby that irrespective of any prohibition on remission, commutation etc., a juvenile cannot be denied a possibility of release in his life time according to the available laws. It is in this context that the life imprisonment has been prohibited under Section-21 and not as an absolute prohibition.

9. We may now come to the other provisions of Section-19. Clause-2 talks about care plan. Clause-4 & 5 talk about periodic follow up. These really have no concern with any prohibition on giving a sentence of life imprisonment. Clause-3 to the relevant extent reads as “The Children’s Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail”. This provision simply says that the child firstly shall be in the place of safety till 21 years of age and then shall be transferred to jail. Even this provision does not say that there cannot be life imprisonment for juveniles.



10. It is clear from the above that a sentence of life imprisonment can be imposed on a juvenile who have been tried as an adult by the children's court. However, how the said life imprisonment can be undergone by the juvenile offender is to be regulated by the other provisions of the Act to some extent. It is Section-20 which deals with the situation and reads as “Section-20. Child attained age of twenty-one years and yet to complete prescribed term of stay in place of safety.-(1) When the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay, the Children’s Court shall provide for follow up by the probation officer or the District Child Protection Unit or a social worker or by itself, as required, to evaluate if such child has undergone reformative changes and if the child can be a contributing member of the society and for this purpose the progress records of the child under sub-section (4) of section 19, along with evaluation of relevant experts are to be taken into consideration. (2) After the completion of the procedure specified under sub-section (1), the Children’s Court may-(i) decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay; (ii) decide that the child shall complete the remainder of his term in

a jail: Provided that each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed”.

11. Naturally, if a juvenile is sentenced to life imprisonment, his term of stay shall be remaining even when he attains the age of 21 years. In such situation, as per Section-20, the Court has to the progress of the juvenile and if it finds sufficient reformatory progress, the court may release the juvenile and certainly this may be done irrespective of the sentence imposed in the case. Here Section-1(4) will apply and override all other laws including the sentencing regime and irrespective of the fact that the juvenile was sentenced to life imprisonment for committing murder, he will be entitled for release. Otherwise, he shall be transferred to jail to undergo his remaining term of the sentence and in that case he will have to be treated as any other offender in the jail.

12. But the matter does not end here. The JJ Act was enacted for the benefit of juveniles in conflict with law. The exception of adult trial of juveniles has to be read as a rare, extra ordinary creation of the Parliament and has to be strictly considered and therefore, the provisions of JJ Act cannot override a law which otherwise provides certain beneficial treatment to the juveniles. In such circumstances, if there is any other law which provides for early release of offender or requires that an offender of tender age may not be sent to jail, the same shall have to be given precedence over the JJ Act in respect of imposing sentence on a juvenile tried as an adult. However, we will deal with this concept in some other paper.

13. Presently, we may say that if the offence creating statute provides for life imprisonment, an adult juvenile can be sentenced to the life imprisonment by the children's court subject however to the fact that the juvenile shall not be denied an opportunity of possibility of release in his life time irrespective of any law for the time being in force. Further, the imposed sentence even of life imprisonment shall be subject to a special review at the age of 21 years wherein if some special reformatory circumstances exist, the juvenile may be released and may not be required to undergo any further imprisonment in jail.