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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
J.B. PARDIWALA; J., UJJAL BHUYAN; J.**

July 21, 2026

CRIMINAL APPEAL NO. 3299 OF 2026 [Arising out of SLP (Crl.) No. 5633 of 2026]

X versus STATE OF BIHAR & ANR.

Juvenile Justice (Care and Protection of Children) Act, 2015; Section 2(33) and Section 2(54) — Indian Penal Code, 1860; Section 302 — Classification of Offences — Whether Murder is a "Heinous Offence" or "Serious Offence" for Juveniles - An offence punishable under Section 302 of the IPC (now Section 103(1) of the Bharatiya Nyaya Sanhita, 2023) which prescribes the punishment of "death or imprisonment for life" carries life imprisonment as its minimum statutory punishment - A court convicting an accused under Section 302 IPC has no discretion to impose any lesser sentence than imprisonment for life - The disjunctive word "or" merely confers discretion to choose between death and life imprisonment based on gravity, but does not permit a sentence below life imprisonment - Section 302 IPC qualifies as a "heinous offence" under Section 2(33) of the JJ Act since its minimum punishment is seven years or more. It cannot be classified as a "serious offence" under the fourth category of offences wrapped into Section 2(54)(b) by the 2021 Amendment - The modulation of life imprisonment under Section 21 of the JJ Act (prohibiting life imprisonment without the possibility of release for juveniles) applies only at the stage of sentencing and does not alter the statutory classification of the offence for determining the forum of trial. [Relied on Babasaheb Maruti Kamble v. State of Maharashtra, (2019) 13 SCC 631; Distinguished from Shilpa Mittal v. State (NCT) of Delhi, (2020) 2 SCC 787; Paras 31, 32, 33, 36, 39, 40, 41, and 85(i)]

Juvenile Justice (Care and Protection of Children) Act, 2015; Section 101(2) vs Section 15(1) Proviso — Nature of Appellate Power — Whether the word "May" is Mandatory or Directory - The expression "may" used in Section 101(2) of the JJ Act, which states that the Sessions Court *may* take the assistance of experienced psychologists and medical specialists while deciding an appeal against a preliminary assessment order, is directory/permissive and not mandatory - The rule laid down in *Barun Chandra Thakur*—interpreting "may" as mandatory under the proviso to Section 15(1) when the Juvenile Justice Board lacks an expert member cannot be mechanically transplanted to appellate proceedings under Section 101(2) - The Sessions Court as an appellate court stands on a completely different footing; its object is to examine the legality and correctness of the Board's order based on the existing record (including any expert reports already obtained) - While the Sessions Court has the independent power and discretion to seek fresh expert assistance if the facts and circumstances necessitate it, it is not legally mandated to do so in every single appeal. [Relied On State of U.P. v. Babu Ram Upadhyya, 1960 SCC OnLine SC 5; Julius v. Lord Bishop of Oxford, (1880) 5 App Cas 214; Official Liquidator v. Dharti Dhan (P) Ltd., (1977) 2 SCC 166; Paras 46-59, and 85(ii)]

Juvenile Justice (Care and Protection of Children) Act, 2015; Section 15 — Juvenile Justice Model Rules, 2016; Rules 8(5), 10(5), 10(9), 11(2) — Preliminary Assessment Protocol — Materials to be Considered by the Board - The sole purpose of a preliminary assessment under Section 15 is to evaluate a child above 16 years across four distinct parameters: (i) mental capacity, (ii) physical capacity, (iii) ability to understand consequences, and (iv) the circumstances of the alleged offence -

The process is not an adjudication of guilt or innocence - While carrying out this assessment, the Juvenile Justice Board is not bound by the sole opinion or recommendation of the expert psychologist - The Board must apply its mind independently to the *totality of the circumstances* - The Social Investigation Report (SIR) and the Social Background Report (SBR) are not merely supplementary inputs; they are mandatory statutory considerations that must be evaluated alongside witness statements and expert reports - The Board cannot abdicate its judicial duty by mechanically rubber-stamping the expert's conclusion. [Relied On *Pradeep Kumar v. State (NCT of Delhi)*, 2019 SCC OnLine Del 8251; *Child in Conflict with Law v. State of Gujarat*, 2023 SCC OnLine Guj 3119; Paras 64-79, 82, 84, and 85(iii)]

For Petitioner(s): Mr. Sachin Patil, Adv. Mr. Kailas Bajirao Autade, AOR Mr. Amaresh Narayan Singh, Adv. Mr. Muhammed Risvi, Adv. Mr. Shobhit Dwivedi, Adv. Mr. Shivkumar Jangwad, Adv. Mr. Shoaib Akhter, Adv. Ms. Vishnu Priya, Adv. Mr. Sadanand, Adv.

For Respondent(s): Mr. Samir Ali Khan, AOR Mr. Pranjal Sharma, Adv. Mr. Kashif Irshad Khan, Adv. Mr. Prashant Bhardwaj, AOR Mr. Rishi Bharadwaj, Adv. Mr. Aditya Pratap Singh, Adv. Mr. Rahul Mehalwal, Adv.

J U D G M E N T

J.B. PARDIWALA, J.

For the convenience of exposition, this judgment is divided into the following parts:-

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1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Judicature at Patna dated 24.07.2025 in Criminal Revision No. 300 of 2024 (hereinafter, “**the impugned judgment**”) by which the High Court dismissed the revision application preferred by the appellant herein and thereby affirmed the judgment and order passed by the Additional District and Sessions Judge, Chapra in CrI. Juvenile Appeal No. 29 of 2022 holding that there is a need for trial of the appellant as an adult, and accordingly directing the Juvenile Justice Board (hereinafter, “**the JJ Board**”) to transfer the trial of the Juvenile Case No. 1838 of 2022 to the Children’s Court.

3. In conformity with the mandate of Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, “**the JJ Act**”), the identity of the appellant has been concealed throughout the judgment.

I. FACTUAL MATRIX

4. It appears from the materials on record that the complainant, mother of the deceased, filed a complaint with the police stating that on 01.05.2022 at about 10 AM, the deceased had gone outside with the appellant and one another boy in a vehicle. Thereafter, at about noon, the deceased’s mobile phone was found to be switched off. The complainant started searching for her son but he was not found anywhere. On 02.05.2022, at about 7 AM, the complainant was informed by some cowherds that a dead body of a boy had been found in the fields. When the complainant reached the spot, she identified the dead body to be that of her son. She named the appellant and the other boy as prime suspects.

5. In such circumstances, the said complaint was reduced in the form of a First Information Report and was numbered as Cr. No. 72 of 2022 with the Kopa Police Station for the offence under Sections 302, 201 read with Section 34 of the Indian Penal Code, 1860, respectively (for short, “**the IPC**”).

6. Upon completion of the investigation and filing of the chargesheet against the appellant and one another juvenile for the offences enumerated above, the appellant raised the plea of juvenility as per Section 9 of the JJ Act. Thereafter, Magistrate forwarded the child along with the record of the proceedings to the Board.

7. The jurisdictional Board determined the age of the appellant to be 16 years 4 months on the date of commission of the alleged crime. As a result, the appellant was declared juvenile under Section 94(2)(i) of the JJ Act. Thereafter, the JJ Board called for the Social Investigation Report (SIR) and Social Background Report (SBR), respectively, of the appellant.

8. The record reveals that the appellant was apprehended while he was attempting to flee. The alleged role of the appellant in the offence was that he slit the throat of the deceased with a knife. The weapon used in the commission of the offence was discovered at the behest of the appellant during the investigation.

9. As the case was allegedly for the offence under Sections 302, 201 r/w Section 34 of the IPC, respectively, and the appellant was above the age of 16 years, the JJ Board conducted the preliminary assessment under Section 15 of the JJ Act.

10. From the perusal of the questions asked and the answers given by the appellant, the counselling report, and the social investigation report, respectively, the majority opinion of the JJ Board observed that the case of the appellant be disposed of by the Board itself as the appellant did not have the mental and physical capacity to commit the alleged offence. Whereas, the minority opinion by the Presiding Magistrate was in the negative. The Presiding Magistrate disagreed with the majority opinion. It was recorded that the appellant had been found capable to understand the act done by him. As a result, he should be tried as an adult.

11. The complainant being dissatisfied with the decision of the JJ Board preferred Crl. Juvenile Appeal No. 29 of 2022 before the Additional District and Sessions Judge-XII, Civil Court Saran at Chapra. The Appellate Court *vide* order dated 21.12.2023 set aside the order of the JJ Board and held that the appellant be tried as an adult.

12. The appellant questioned the legality and validity of the aforesaid order by filing Criminal Revision No. 300 of 2024 before the High Court substantially on the ground that while deciding the appeal, the Appellate Court failed to take assistance of experienced psychologists and medical specialists in terms of Section 101(2) of the JJ Act.

13. The High Court adjudicated the criminal revision application filed by the appellant and dismissed the same *vide* the impugned judgment and order dated 24.07.2025. The order reads thus: -

"The father of the Juvenile has filed the instant criminal revision under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015, challenging an order dated 21st December 2023, passed by the learned Additional District Judge XII, Civil Court, Saran at Chapra on 21st December 2023. In Criminal Juvenile Appeal No. 29/2022, instituted against the order passed by the Juvenile Justice Board, Saran at Chapra, an order was passed on 24th June 2022, holding, inter alia, that the CiCL was aged about 16 years 4 months on the date of commission of the alleged offence. Since the offence alleged against the petitioner was committed under Sections 302/201/34 IPC, the Board made a preliminary assessment of a heinous offence as provided by Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015. After preliminary assessment, with regard to the mental and physical capacity of the juvenile's ability to understand the consequence of the offence and the circumstances in which he allegedly committed the offence, the Board, on majority, passed an order that, although the petitioner was more than 16 years of age on the date of commission of the offence, his mental ability was not at par with his age, and therefore the Board decided to try the case on its own.

2. *The informant filed an appeal against the aforesaid decision, which was registered as Criminal Juvenile Appeal No. 29/2022. The said appeal was taken up for hearing by the learned Additional Sessions Judge XII, Saran at Chapra. The appellate court found that the offence allegedly committed by the CiCL along with a co-accused was heinous in nature. Secondly, the appellate court held that the juvenile had no interest in his life; he did not care to die and he is a follower of 'Ravana'. The Children's Court further held that the counselor reported that the juvenile had no proper understanding of the offence. However, the court of appeal found that the Board decided the issue without considering the report of the counselor. Therefore, the Children's Court allowed the appeal, set aside the order passed by the Board and remitted back the case to the Board directing it to proceed with the case regarding prescribed trial procedure in accordance with law.*

3. *It is submitted by the learned Advocate for the petitioner that the petitioner is aggrieved against the said order passed by the appellate court without making the preliminary assessment into a heinous offence under Section 15 of the Act and the appellate court while deciding the appeal failed to take assistance of experienced psychologists, medical specialists, other than those whose assistance have been obtained by the Board in passing the order under the said Section.*

4. *The learned Advocate on behalf of the opposite party, on the other hand, submits that, after the impugned order dated 21st December 2023 was passed, the Board transferred the case to the Children's Court, the trial against the petitioner commenced, charges were framed, and five witnesses have been examined. At this stage, the instant revision becomes infructuous.*

5. *I have duly considered the subsequent development of the case. It is further found from the record that, while the CiCL was in the Children's Home, he, along with three other CiCLs, committed the murder of the guard of the said home. The subsequent fact is also taken into consideration by this Court. Since the trial of the case has already commenced, I do not find any merit in the instant criminal revision.*

6. *Accordingly, the instant criminal revision is dismissed on contest. There shall, however, be no order as to costs."*

II. SUBMISSIONS ON BEHALF OF APPELLANT

14. Mr. Kailas Bajirao Autade, the learned counsel appearing for the appellant would submit that the case of the appellant falls within the definition of “serious offence” under Section 2(54)(b) and not under “heinous offence” under Section 2(33) of the JJ Act. He submitted that since the alleged offence is punishable under Sections 302, 201 r/w 34 of the IPC, respectively, where the maximum sentence is more than seven years but no minimum sentence is provided or minimum sentence of less than seven years is provided, the case of the appellant must be treated as one of “serious offence”.

15. He further submitted that the Appellate Court while deciding the appeal failed to follow the mandatory procedure, as laid down in Section 101(2) of the JJ Act, of taking assistance of experienced psychologists and medical specialists to assess the mental and physical capacity of the juvenile. To fortify his submission, he relied on the decision of this Court in **Barun Chandra Thakur v. Bholu**, reported in **(2023) 12 SCC 401**.

16. In such circumstances referred to above, the learned counsel would submit that there being merit in his appeal, the same may be allowed and the impugned judgment passed by the High Court may be set aside.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENTS

17. Mr. Samir Ali Khan, the learned counsel appearing for the State of Bihar would submit that since imprisonment for life constitutes a minimum sentence of more than 7 years, the alleged offence under Section 302 would qualify as a “heinous offence” under Section 2(33) of the JJ Act.

18. In addition to the aforesaid submission, Mr. Prashant Bhardwaj, the learned counsel appearing for the complainant mother would submit that the decision of this Court in **Shilpa Mittal v. State (NCT) of Delhi**, reported in **(2020) 2 SCC 787**, requires reconsideration. He argued that if the fourth category of offences i.e., where the maximum sentence is more than seven years but minimum sentence is less than seven years or there is no minimum sentence prescribed, are dealt as “serious offence” then it would cause grave injustice.

19. In the same breath, Mr. Bhardwaj submitted that the “minimum punishment” threshold in the definition of the “heinous offence” under Section 2(33) of the JJ Act must be construed as “at the very least”. He further submitted that severity of the offence could be seen by the punishment provided under Section 302 i.e., punishment of death or imprisonment for life.

20. In the last, both the learned counsel submitted that no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned judgment and order.

IV. ISSUES FOR CONSIDERATION

21. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:-

- a. Whether an offence prescribing punishment of “*death or imprisonment for life*” could be said to be an offence falling within the phrase “*maximum imprisonment for a term more than seven years but no minimum imprisonment*” under Section 2(54) of the JJ Act?
- b. Whether, the expression, “*may*” used in sub-section (2) of Section 101 of the JJ Act should be construed as mandatory or directory?

c. What type of material and other factors should be considered by the Juvenile Justice Board while conducting a preliminary assessment under Section 15 of the JJ Act?

V. ANALYSIS

22. It is apposite to take notice of the Statement of Object and Reasons of the JJ Act, more particularly, the purpose behind introducing the Act. The legislature, in enacting the JJ Act, acknowledged the rise in the number of juveniles in conflict with law and the manifest inadequacy of the existing regime to address the complexities of such cases. In such circumstances, the legislature thought it fit to treat the children between the age of 16-18 years as a separate class so as to balance the rehabilitative rights of the juvenile on one hand, and the broader interest of societal deterrence on the other.

23. In the aforesaid context, we must acknowledge that children today are exposed at an early age to complex information, graphic content, and adult experience that were inaccessible to previous generations. There is no doubt that proliferation of technology and the pervasive influence of social media has altered the cognitive and psychological development of children.

24. In such circumstances referred to above, courts as living institutions must be responsive to this reality. The approach of courts, or the juvenile justice boards dealing with a child in conflict with law cannot remain stagnant since the legislation came to be enacted. It must bear a balanced approach towards the evolving nature of juvenile and legitimate demands of the society.

A. Classification of Offences

25. This Court in *Shilpa Mittal* (*supra*) took note of the gap in the statutory framework of the JJ Act. It recognized the fourth category of offences i.e., offences where the minimum sentence is less than seven years, or there is no minimum sentence prescribed but the maximum sentence is more than seven years, and suggested its inclusion within the definition of “serious offence”. After the decision, the legislature thought it fit to include the fourth category of offences as clause (b) of sub-section 54 of Section 2 of the JJ Act through the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 (“**2021 Amendment**”). The provision prior and subsequent to the 2021 Amendment read thus:-

Prior to the amendment	Subsequent to the amendment
(54) “serious offences” <i>includes the offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is imprisonment between three to seven years.</i>	(54) “serious offences” <i>includes 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,—</i> (a) <i>minimum imprisonment for a term more than three years and not exceeding seven years; or</i> (b) <i>maximum imprisonment for a term more than seven years but no minimum imprisonment or minimum imprisonment of less than seven years is provided.</i>

26. At the cost of repetition but for better exposition, we must now look into the definitions of “petty offences”, “serious offences” and “heinous offences”, respectively, as provided under the JJ Act. It reads thus:-

“2. In this Act, unless the context otherwise requires,—

(33) “heinous offences” includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more; xxx

(45) “petty offences” includes the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years; xxx

(54) “serious offences” includes 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,—

(a) minimum imprisonment for a term more than three years and not exceeding seven years; or

(b) maximum imprisonment for a term more than seven years but no minimum imprisonment or minimum imprisonment of less than seven years is provided.’.”

27. The JJ Act categorizes offences into three categories, namely petty, serious, and heinous based on the term of imprisonment prescribed for each offence. In such circumstances, to determine the category of an offence, the first question to be asked is what is the minimum punishment prescribed for the offence.

I. If the minimum punishment is seven years or more, the offence straightaway qualifies as a **heinous offence** under Section 2(33) of the JJ Act.

II. Whereas, if the minimum punishment is less than seven years, or no minimum punishment is prescribed at all, one must then look at the maximum punishment prescribed for the offence.

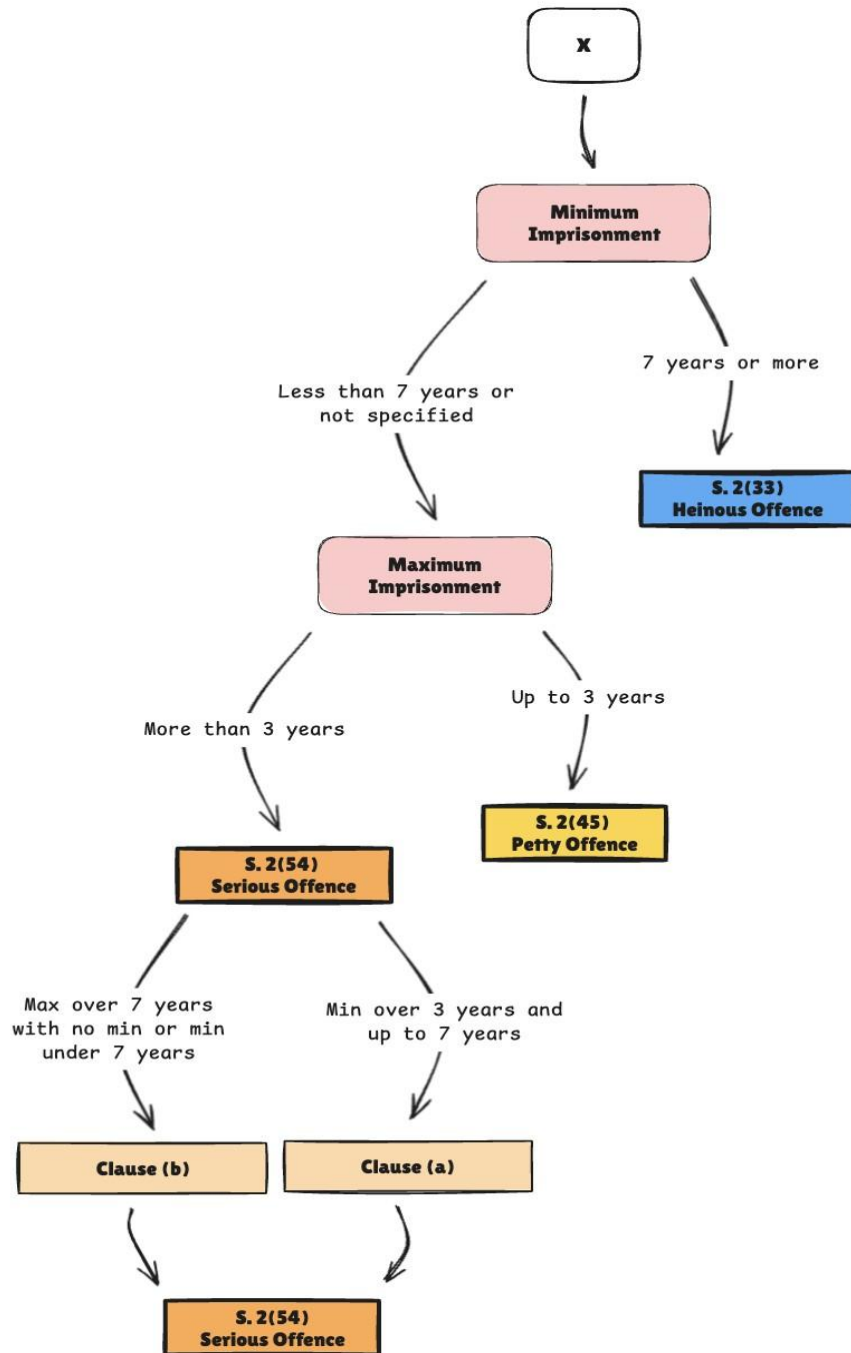
i. If the maximum punishment is up to three years, the offence qualifies as a **petty offence** under Section 2(45) of the JJ Act.

ii. If the maximum punishment is more than three years, the offence qualifies as a **serious offence** under Section 2(54) of the JJ Act, which is further divided into two clauses:-

a. Where the minimum punishment prescribed is more than three years and up to seven years;

b. Where the maximum punishment is more than seven years but either no minimum punishment is prescribed, or the minimum punishment prescribed is less than seven years.

28. The following flowchart would further elucidate the classification of offences under the Act.



29. The learned counsel appearing for the appellant herein vehemently contended that the appellant is alleged to have committed offence under Sections 302, 201 r/w 34 of the IPC, respectively, which fall in the fourth category of the offences as described by the decision in **Shilpa Mittal** (*supra*), which now find its place in clause (b) of Section 2(54) of the JJ Act. In other words, the alleged offence must be treated as a serious offence under the JJ Act, as Section 302 does not prescribe a minimum punishment.

30. We are of the considered opinion that the contention put forth by the learned counsel on behalf of the appellant is completely misconceived, meritless, inconceivable and deserves to be rejected at the threshold.

31. The question that falls for our consideration is whether Section 302 of the IPC, now, Section 103(1) of the Bharatiya Nyaya Sanhita, 2023, which prescribes punishment of “*death or imprisonment for life*”, could be said to be an offence falling within the expression

“where the maximum imprisonment being more than seven years but no minimum imprisonment has been prescribed”.

32. We would be stating the obvious that a court convicting an accused of an offence under Section 302 of the IPC cannot impose any lesser sentence than imprisonment for life. The statute does not provide any discretion to the courts to award any punishment below imprisonment for life. Thus, life imprisonment is, by implication, the minimum punishment prescribed under Section 302 of the IPC. [See: **Babasaheb Maruti Kamble v. State of Maharashtra, (2019) 13 SCC 631**; **The State of Madhya Pradesh v. Nandu @Nandua, Crl. Appeal No. 1356/2022**]

33. Even if we attempt to look at the aforesaid submission from one another angle, it falls flat on its face. Could it be said that because of the use of the disjunctive “or” between “death” and “imprisonment for life” in Section 302, there is no minimum punishment prescribed. The answer is an emphatic ‘No’. We say so because the word “or” merely confers upon the court the discretion to choose between the two punishments having regard to the gravity of the offence. It does not open any avenue for the imprisonment to be lesser than imprisonment for life.

34. In the aforesaid context, the reliance placed by the appellant on the decision of this Court in **Shilpa Mittal (supra)** is also misconceived. The fourth category of offences carved out by this Court were intended to address offences where no minimum sentence is prescribed or where the minimum sentence is less than seven years. It refers to those provisions where the courts have discretion to impose sentence below seven years. In other words, it was a remedial measure to ensure that offences which were left unaddressed between the category of “serious” and “heinous” due to their sentencing structure were not left unclassified. Section 302 is not such a provision.

35. It is a well settled rule that simply because the legislature prescribed the punishment without using the word “minimum”, it cannot be said that no minimum punishment exists. In interpreting a provision, legislative drafting style cannot override the object of the provision.

36. Thus, we have no hesitation in saying that an offence punishable under Section 302 cannot be placed in the same category as offences which do not prescribe any minimum sentence under the definition of “serious offence” under Section 2(54) of the JJ Act.

37. One very unusual contention was raised by the learned counsel appearing for the appellant as regards classification of offence punishable under Section 302 as “serious offence”. It was urged that since Section 302 prescribes punishment in terms of either death or imprisonment for life and Section 21 of the JJ Act provides that no child in conflict with law can be sentenced to death or to imprisonment for life without the possibility of release, the maximum imprisonment which can be awarded would be read as per Section 433A of Code of Criminal Procedure, 1973. The argument is that since a juvenile cannot be confined for the remainder of his natural life, life imprisonment cannot be said to be the minimum punishment under Section 302 for the purposes of classifying the offence as a “heinous offence”. According to the learned counsel, the definition of life imprisonment would be transposed to the maximum imprisonment of 14 years, and hence, the offence under Section 302 would fall within the expression, *“maximum punishment is more than seven years but either no minimum punishment is prescribed”*.

38. We do not find any merit in the aforesaid submission canvassed on behalf of the appellant herein.

39. The plain reading of the provision indicates that what it proscribes is the imposition of the sentence of life imprisonment without the possibility of release. It does not bar the award of the sentence of imprisonment for life altogether. What it means is that the provision does not erase or modify the punishment prescribed under Section 302 of the IPC, rather it modulates the manner in which that punishment is to be served in the case of a juvenile. What Section 21 ensures is that a juvenile is not incarcerated for the entirety of his natural life in order to give him a chance to participate in the mainstream.

40. Although, the sentence awarded would be subject to Section 21 of the JJ Act, yet it automatically does not mean that the classification of the offence is to be determined reference to the period of premature release or the completion of 14 years of imprisonment. The benefit conferred by Section 21 operates specifically at the stage of sentencing. It comes into picture once the guilt is determined and the court has to decide upon the sentence to be imposed. It cannot be imported into the question of classification of offences for the purposes of determining the forum of trial. Categorization or classification deals with what punishment the offence would ordinarily yield under the statute. To conflate the two would be to confuse the nature of the offence with the consequence to be faced by the offender.

41. The contention raised by the learned counsel appearing for the respondent that the decision of this Court in **Shilpa Mittal** (*supra*) requires reconsideration is also rejected. The decision merely identified a lacuna in the statutory framework and declared the law, which the legislature itself accepted and formally codified within the definition of “serious offence” under Section 2(54) of the JJ Act. The contention is absurd to say the least, since Section 302 falls squarely within the definition of “heinous offence”, placing it beyond the ambit of the fourth category of offences contemplated by **Shilpa Mittal** (*supra*).

B. Section 101(2) of the JJ Act – Mandatory or Directory

42. Before adverting to the rival submissions canvassed on either side, we must look into the relevant provision. Section 101 of the JJ Act reads as follows:-

“101. (1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children’s Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate:

Provided that the Court of Sessions, or the District Magistrate, as the case may be, may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of thirty days.

(2) An appeal shall lie against an order of the Board passed after making the preliminary assessment into a heinous offence under section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said section.

(3) No appeal shall lie from,—

(a) any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years; or

(b) any order made by a Committee in respect of finding that a person is not a child in need of care and protection.

(4) No second appeal shall lie from any order of the Court of Session, passed in appeal under this section.

(5) Any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973."

(Emphasis is ours)

43. The learned counsel appearing for the appellant herein vehemently submitted that the Appellate Court committed an egregious error by not taking assistance of experienced psychologists and medical specialists which is mandatory under the provision of Section 101(2) of the JJ Act. In this context, the learned counsel submitted that the issue is squarely covered by the decision of this Court in **Barun Chandra Thakur** (*supra*) wherein this Court has said in so many words that *proviso* to Section 15(1) is mandatory, and the Board would be obliged to take assistance of psychologists or psycho-social workers where the Board does not comprise of a professional with a degree in child psychology or child psychiatry.

44. The learned counsel laid much emphasis on the observations made by this Court in **Barun Chandra Thakur** (*supra*) as contained in paragraphs 79 and 83 of the judgment respectively. Taking a clue from the observations made by this Court in the aforementioned paragraphs, the learned counsel submitted that *proviso* to Section 15(1) would apply *mutatis mutandis* to Section 101(2). This, according to the learned counsel, casts a duty on the Appellate Court to take assistance of experienced psychologist and medical specialists while deciding the appeal.

45. At this stage, we may refer to the relevant observations made by this Court in **Barun Chandra Thakur** (*supra*) on this issue. It reads thus:-

"79. As already noticed, the Board consists of three members, one is a Judicial Officer First Class and two social workers, one being a woman. The social worker appointed as a member could be having a degree in child psychology or psychiatry but it is not necessary. As such, the constitution of the Board may not necessarily be having an expert child psychologist. It is for all the above reasons that it has been provided not only in Sections 15 and 101(2) but also under the Model Rules that assistance may be taken from an expert psychologist. Having regard to the framework of the 2015 Act and the Model Rules and the purpose of preliminary assessment in terms of Section 15 as also looking to the varied composition of the Board, we are of the view that where the Board is not comprising of a practising professional with a degree in child psychology or child psychiatry, the expression "may" in the proviso to Section 15(1) would operate in mandatory form and the Board would be obliged to take assistance of experienced psychologists or psycho-social workers or other experts. However, in case the Board comprises of at least one such member, who has been a practising professional with a degree in child psychology or child psychiatry, the Board may take such assistance as may be considered proper by it; and in case the Board chooses not to take such assistance, it would be required of the Board to state specific reasons therefor. xxx

83. Therefore, looking to the purpose of the 2015 Act and its legislative intent, particularly to ensure the protection of best interest of the child, the expression "may" in the proviso to Section 15(1) thereof and the requirement of taking assistance of experienced psychologists or psycho-social workers or other experts would operate as mandatory unless the Board itself comprises of at least one member who is a practising professional with a degree in child psychology or child psychiatry. Moreover, in case the Board, in view of its own composition with at least one member, who is a practising professional with a degree in child psychology or child psychiatry, chooses not to take such assistance, it would record specific reasons therefor."

(Emphasis is ours)

46. The reliance placed by the learned counsel on the decision in **Barun Chandra Thakur** (*supra*) to extend the mandatory character of the *proviso* to Section 15(1) to Section 101(2) of the JJ Act is, in our considered opinion, misconceived for more than one reason.

47. *First*, on a plain reading, it is limpid that Section 101(2) does not, by its own language, incorporate or import the *proviso* to Section 15(1). Sub-section (2) of Section 101 stipulates two things. First, an appeal against an order of the Board under Section 15 would lie before the Sessions Court. Secondly, while deciding the said appeal, the Court may take assistance of psychologists, medical specialists, or other experts other than those whose assistance has been obtained by the Board.

48. At this stage, we may address ourselves on whether the word “may” in Section 101(2) should be construed to mean “shall” in this context. The first rule in interpreting a statute is that regard must be had to the language employed by the statute. This rule may be supplanted upon a consideration of the intention of the legislature, which could be ascertained from the nature and design of the enactment, and the consequences flowing from construing it one way or the other. This was conveyed by the Constitution Bench decision in **State of U.P. v. Babu Ram Upadhyaya**, reported in **1960 SCC OnLine SC 5**. The relevant observations read thus:-

“29. The relevant rules of interpretation may be briefly stated thus : When a statute uses the word “shall”, prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.”

(Emphasis supplied)

49. A *prima facie* reading of the Section 101(2) suggests that it does not mandate the Court to seek assistance in every appeal arising from an order passed under Section 15.

50. In the aforesaid context, we may discuss the meaning and import of the word “may”. The word “may” is an enabling or permissive expression which confers capacity, power or authority and also implies discretion. As a general rule, where such a power is conferred upon a court, it is left to the court to decide, in its discretion, whether or not to exercise it. However, this power to exercise discretion is guided by the four corners of the statute, more particularly, by the object it seeks to achieve.

51. When upon careful reading of the object of the statute and other provisions, it is manifest that a power has been conferred to the court to achieve a definite legislative purpose, such power becomes inseparably linked to the facts of the case that call for its use. In such circumstances, the term “may” does not simply provide a court discretion to whether act, or not to act. Instead, it requires the court to decide when it should act. In this context, the only duty cast on the Session Court is to examine, as per the facts of each case, whether circumstances necessitating the exercise of that power exist.

52. The exercise of power conferred by an enabling provision was discussed at length in **Julius v. Lord Bishop of Oxford**, (1880) 5 App Cas 214, wherein the House of Lords noted that for power in such cases to be exercised, it is not pronounced by the words

employed by the statute but rather circumstances compelling its exercise. The relevant observations read thus: -

"The question is, under these words "it shall be lawful" Is the bishop bound on the application of any party to issue a commission,' or has he a discretion as to whether he will issue it or not? The question has been argued, and has been spoken of by some of the learned judges in the courts below, as if the words "it shall be lawful" might have a different meaning, and might be differently interpreted, in different statutes, or in different parts of the same statute. I cannot think that this is correct. The words "it shall be lawful" are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so.[...]"

(Emphasis supplied)

53. In the aforesaid context, it would also be apposite to refer to the decision of this Court in **Official Liquidator v. Dharti Dhan (P) Ltd.**, reported in (1977) 2 SCC 166, wherein this Court noted that while exercising a power conferred by the statute, regard must be given to the object of the statute and the provision, and an examination of totality of facts. Such power, in a given circumstance, gives rise to an obligation to exercise the power in a certain way. It was observed that the purpose for which the power was conferred must be seen to determine the scope of the discretion. The relevant observations read thus:-

*"8. Thus, the question to be determined in such cases always is whether the power conferred by the use of the word "may" has, annexed to it, an obligation that, on the fulfilment of certain legally prescribed conditions, to be shown by evidence, a particular kind of order must be made. If the statute leaves no room for discretion the power has to be exercised in the manner indicated by the other legal provisions which provide the legal context. Even then the facts must establish that the legal conditions are fulfilled. A power is exercised even when the court rejects an application to exercise it in the particular way in which the applicant desires it to be exercised. Where the power is wide enough to cover both an acceptance and a refusal of an application for its exercise, depending upon facts, it is directory or discretionary. It is not the conferment of a power which the word "may" indicates that annexes any obligation to its exercise but the legal and factual context of it. This as we understand it, was the principle laid down in the case cited before us: *Frederic Guilder Julius v. Right Rev. Lord Bishop of Oxford: Re v. Thomas Thellusson Carter* [5 AC 214] .*

9. Dr Julius, in the case mentioned above, had made an application to the Bishop of Oxford against the Rector of a parish, asking the Bishop to issue a commission under the Church Discipline Act to enquire against certain unauthorised deviations from the ritual in a church by the Rector. The relevant statute merely conferred a power by laying down that "it shall be lawful" to issue a commission. The Courts of Queens Bench and of Appeal in England had differed on the question whether a mandamus from the Court could go to the Bishop commanding him to issue a commission for the purpose of making the enquiry. The House of Lords held that the power to issue the commission was not coupled with a duty to exercise it in every case although there may be cases where duties towards members of the public to exercise a power may also be coupled with a duty to exercise it in a particular way on fulfilment of certain specified conditions. The statute considered there had not specified those conditions. Hence, it was a bare power to issue or not to issue the commission. Lord Blackburn said: (at p. 241)

"I do not think the words 'it shall be lawful' are in themselves ambiguous at all. They are apt words to express that a power is given; and as, prima facie, the donee of a power may either exercise it

or leave it unused, it is not inaccurate to say that, prima facie, they are equivalent to saying that the donee may do it; but if the object for which the power is conferred is for the purpose of enforcing a right, there may be a duty cast on the donee of the power, to exercise it for the benefit of those who have that right, when required on their behalf. Where there is such a duty, it is not inaccurate to say that the words conferring the power are equivalent to saying that the donee must exercise it. It by no means follows that because there is a duty cast on the donee of a power to exercise it, that mandamus lies to enforce it; that depends on the nature of the duty and the position of the donee."

10. The principle laid down above has been followed consistently by this Court whenever it has been contended that the word "may" carries with it the obligation to exercise a power in a particular manner or direction. In such a case, it is always the purpose of the power which has to be examined in order to determine the scope of the discretion conferred upon the donee of the power. If the conditions in which the power is to be exercised in particular cases are also specified by a statute then, on the fulfilment of those conditions, the power conferred becomes annexed with a duty to exercise it in that manner. This is the principle we deduce from the cases of this Court cited before us: *Bhaiya Punjalal Bhagwandin v. Dave Bhagwatprasad Prabhuprasad* [(1963) 3 SCR 312 : AIR 1963 SC 120 : (1963) 2 SCJ 441], *State of Uttar Pradesh v. Jogendra Singh* [(1964) 2 SCR 197 : AIR 1963 SC 1618 : (1963) 2 Lab LJ 444], *Sardar Govindrao v. State of M.P.* [(1965) 1 SCR 678 : AIR 1965 SC 1222 : (1966) 1 SCJ 480], *Shri A.C. Aggarwal, Sub-Divisional Magistrate, Delhi v. Smt Ram Kali* [(1968) 1 SCR 205 : AIR 1968 SC 1 : 1968 Cri LJ 82], *Bashira v. State of U.P.* [(1969) 1 SCR 32 : AIR 1968 SC 1313 : 1968 Cri LJ 1495] and *Prakash Chand Agarwal v. Hindustan Steel Ltd.* [(1970) 2 SCC 806 : (1971) 1 SCR 405]"

(Emphasis supplied)

54. The net effect of the aforesaid discussion is that Section 101(2) confers a power upon the Appellate Court to seek the assistance of experts, the exercise of which remains within the discretion of the Court, to be assessed by weighing the factors discussed above on the facts of each case. To give context for better exposition, for instance, where the Board has failed in taking the assistance of experts while conducting the preliminary assessment, the Court considering the facts and circumstances before it would seek assistance of experts. In such circumstances, the decision of the Court would again be governed by the Act, more particularly, the principle of best interest of the child, and sensitivity of time in psychological evaluation.

55. We are of the considered view that the ratio of **Barun Chandra Thakur** (*supra*), rendered in the context of *proviso* to Section 15(1), cannot be mechanically transplanted onto Section 101(2) so as to render the latter mandatory in every case. The observations of this Court in **Barun Chandra Thakur** (*supra*) were rendered specifically on the issue whether the *proviso* to Section 15(1) of the JJ Act could be said to be directory or mandatory. The observations made by this Court were based on the objectives of the JJ Act and the legislative intent behind the statute as well as the provision. It was rendered to ensure that the psychological evaluation of the juvenile is not undertaken in the absence of any expertise. We say so as it would run against the best interest of the child, which is the fundamental principle guiding the implementation of the Act.

56. Secondly, the Sessions Court as an appellate court stands on an entirely different footing. The Appellate Court is fully equipped to appreciate the material on record including any psychological or counsellor's report obtained by the Board without necessarily having to conduct a fresh and independent assessment through its own panel of experts. We say so because the expression "*other than those whose assistance has been obtained by the Board in passing the order under the said section*" that the legislature has introduced within the text of Section 101(2) is of some significance. The expression indicates the presumption that the Board has either taken assistance of experts or at least one member

of the Board is a practicing professional with a degree in child psychology or child psychiatry. There is no denial that it also indicates that the Sessions Court can independently further take assistance in deciding the appeal.

57. *Thirdly*, the object of an appeal under Section 101(2) is materially different from preliminary assessment under Section 15. Section 15 contemplates a first-hand determination of the mental and physical capacity of the child to commit the alleged offence, the child's ability to understand the consequences of the offence alleged to be committed, and the circumstances in which he allegedly committed the offence. Whereas, an appeal under Section 101(2) is concerned with the correctness of the Board's order on the basis of the material gathered including the opinion of the expert. It examines whether the Board's preliminary assessment was conducted in accordance with law and whether the material already on record was properly considered.

58. In the facts of the present case, the Board has obtained the report of the counsellor while undertaking the preliminary assessment under Section 15. The Appellate Court in its order records that it is not the case that no expert assistance was called but that the Board erred in weighing the materials on record correctly while arriving at its conclusion. This is a wholly different vice from the one contemplated in **Barun Chandra Thakur** (*supra*).

59. Having regard to the case law discussed above and for reasons to be recorded, we are not inclined to take the view that the word "may" used in sub-section (2) of Section 101 means "must" or "shall".

C. Considerations before the Board while carrying out preliminary assessment

60. At this stage of our exposition, it would be apposite to explain the correct approach to be adopted by the juvenile justice boards while carrying out preliminary assessment under Section 15 of the JJ Act.

61. Before advertent to the correct legal position, it would be necessary to consider the order passed by the JJ Board, dated 24.06.2022, whereby it was held that the appellant need not be tried as an adult. It is evident on the perusal of the said order that an opportunity of hearing had been granted to the appellant. The order passed by the JJ Board records that in the preliminary inquiry conducted, the juvenile did not reveal anything that would indicate that he intentionally committed the crime. It further recorded that there are no direct allegations against him in the FIR. The order stated that the JJ Board considered the counseling report and social investigation report and concluded that the juvenile did not possess the mental and physical capacity to commit the crime.

62. Having carefully gone through the material on record, we are of the considered view that the JJ Board has erred in analyzing or rather assessing the totality of the circumstances of the case and all the materials collected for the purpose of conducting the preliminary assessment as contemplated under Section 15 of the JJ Act. The JJ Board appears to have approached the preliminary assessment without bringing to bear upon the material before it the degree of careful and calibrated scrutiny that the provision demands.

63. Before we discuss the order of the JJ Board in detail, it would be appropriate to first examine what Section 15(1) actually requires the Board to do. It reads thus:-

"15. (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the

consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.[...]

64. The sole purpose of preliminary assessment is to ascertain whether the child in conflict with law, who is aged more than 16 years, should be tried as an adult. It is needless to mention that the fundamental principles stated in Section 3 of the JJ Act permeate and govern every stage of the proceedings before the Board, including the preliminary assessment. Section 15(1) stipulates that the Board shall conduct the preliminary assessment with regard to the following:-

- i. The mental capacity of the child in conflict with law to commit the alleged offence;
- ii. The physical capacity of the child in conflict with law to commit the alleged offence;
- iii. The ability of the child in conflict with law to understand the consequences of the offence;
- iv. The circumstances in which the child in conflict with law committed the alleged offence.

65. Each of these four parameters referred to above is distinct and must be considered independently and collectively. The import of the *proviso* to Section 15(1), more particularly, the nature of expert assistance has been lucidly explained by this Court in **Shilpa Mittal** (*supra*).

66. Rule 10A of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, (for short, “**the Model Rules**”), respectively, further provides guidance to the Board on preliminary assessment. Sub-rule (4) of Rule 10A mandates that the Board must assign reasons while passing an order in furtherance of preliminary assessment. This requirement is not a mere procedural formality. It acts as a safeguard that ensures the decision of the Board is capable of judicial scrutiny.

67. At the outset, we must underscore that the Board at the time of assessment is not concerned with the guilt or innocence of the child in conflict with law. In other words, the Board must not express any view, draw any inference, or make any observations regarding the guilt or innocence of the child. The Board must be mindful that any such observation would be against the right to a fair trial as well as presumption of innocence. The process of preliminary assessment shall not deviate from its statutory purpose and transgress into adjudication.

68. For a better exposition, it would be apposite to first understand the individual parameters of assessment. “Mental capacity” refers to the child’s ability to make social decisions and judgments. It encompasses a range of cognitive abilities, developmental disability, comprehension, decision-making and reasoning, more particularly, the child’s understanding of conflict and his understanding of the consequences of his actions.

69. It is pertinent to mention that the aforementioned factors cannot be assessed in isolation but in the context of the alleged offence. The overall assessment would answer whether the child had the mental capacity to commit the alleged offence. This is a complex exercise and requires expertise. It is for this reason that the *proviso* to Section 15(1) contemplates the assistance of experts.

70. The assessment of “physical capacity” would not be restricted to locomotor abilities of the child. It would be assessed having regards to the nature of the act involved in the alleged offence. The assessment would constitute examination of whether the child, given his age, and physical development was physically capable of committing the offence in the manner alleged.

71. The third and the fourth parameter were discussed in sufficient detail by this Court in **Barun Chandra Thakur** (*supra*). We shall refer to the relevant observations:-

“70. The language used in Section 15 is “the ability to understand the consequences of the offence”. The expression used is in plurality i.e. “consequences” of the offence and, therefore, would not just be confined to the immediate consequence of the offence or that the occurrence of the offence would only have its consequence upon the victim but it would also take within its ambit the consequences which may fall upon not only the victim as a result of the assault, but also on the family of the victim, on the child, his family, and that too not only immediate consequences but also the far-reaching consequences in future. Consequences could be in material/physical form but also affecting the mind and the psychology of the child for all times to come. The consequences of the offence could be numerous and manifold which cannot be just linked to a framework; and, for this purpose, the overall picture as also future consequences with reference to the facts of the case are required to be consciously analysed by the Board.

71. Consequences for the victim could be his death, or permanent physical disability, or an injury which could be repaired or recovered; the impact of the offence on the mind of the victim may be prolonged and continue for his lifetime; the impact on the family and friends of the victim, both mental and financial; consequence on the child going into incarceration; mental impact on the child, it could be repentance or remorse for life, the social stigma cast on the child and his family members; the consequences of litigating and so many other things which would be difficult to adumbrate.

72. A child with average intelligence/IQ will have the intellectual knowledge of the consequences of his actions. But whether or not he is able to control himself or his actions will depend on his level of emotional competence. For example, risky driving may result in an accident. But if emotional competence is not high, the urge for thrill seeking may get the better of his intellectual understanding.

73. Children may be geared towards more instant gratification and may not be able to deeply understand the long-term consequences of their actions. They are also more likely to be influenced by emotion rather than reason. Research shows that young people do know risks to themselves. Despite this knowledge, adolescents engage in riskier behaviour than adults (such as drug and alcohol use, unsafe sexual activity, dangerous driving and/or delinquent behaviour). While they do consider risks cognitively (by weighing up the potential risks and rewards of a particular act), their decisions/actions may be more heavily influenced by social (e.g. peer influences) and/or emotional (e.g. impulsive) tendencies. In addition, the lack of experience coupled with the child's limited ability to deeply understand the long-term consequences of their actions can lead to impulsive/reckless decision-making.

74. Coming to the last count i.e. the assessment regarding the circumstances in which the offence is alleged to be committed is again an attribute which could have many factors to be considered before such an assessment could be made. There could be a number of reasons for a person to commit a crime. It could be enmity, it could be poverty, it could be greed, it could be perversity in mind and many others. There could be coercion. There could be threat to one's life and property. There could be allurements in terms of the material and physical gains. Crime could be committed on account of stress or depression also. It could be on account of the company that one keeps. One could commit crime in order to help his family and friends. All these and many more could be termed as circumstances leading to the commission of crime.”

(Emphasis supplied)

72. Further, the factors to be weighed under each parameter is elaborately illuminated in the detailed study on preliminary assessment referred by this Court in **Barun Chandra Thakur** (*supra*) in paragraphs 75 and 76, respectively, as well as in the 'Guidelines for conducting Preliminary Assessment under Section 15' formulated by the National Commission for Protection of Child Rights (NCPCR) in April 2023. The *Guidelines* propose suggestive questions to show the understanding of the exercise to be undertaken while conducting the preliminary assessment.

73. In this regard, the observations of Gujarat High Court in **Child in Conflict with Law v. State of Gujarat**, reported in **2023 SCC OnLine Guj 3119**, remain noteworthy. The relevant observations read thus:-

"71. The preliminary assessment as explained under proviso to section 15(1) of the J.J. Act, clarifies that preliminary assessment is not a trial, but it is conducted to assess the capacity of such child to commit and understand the consequences of, the alleged offence. Thus, while making a preliminary assessment, the J.J. Board/Children's Court has to specifically deal with all four criteria by assigning reasons to explain the capacity of such child to commit offence. Such assessment of capacity is in terms of physical capacity of the child to commit alleged offence and mental capacity of child to commit alleged offence. The facts of the case has to be dealt with to understand the circumstances in which the child allegedly committed the offence. The circumstances to be referred are not merely the immediate circumstances of the offence itself, but also to other circumstances cumulative in nature to have led to the immediate circumstances related to a long period occurring in the child's life, and finally the ability to understand the consequence of the offence."

(Emphasis supplied)

74. The Board, in light of the aforesaid parameters, arrives at a conclusion with the aid of all the materials and circumstances before itself. We shall now look into the material that is available to the Board in order to arrive at its decision at the end of the preliminary assessment. We shall now proceed to look into the materials that are placed before the Board for its consideration.

a. Social Background Report

75. Section 13(1)(ii) of the JJ Act stipulates that the probation officer, or where a probation officer is not available, the Child Welfare Police Officer (CWPO), record information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the Board. Rule 8(5) of the Model Rules also state that the officer recording the information would gather information regarding the social background of the child, and the circumstances of his apprehension. This is referred to as the Social Background Report (SBR).

b. Social Investigation Report

76. Where the Board does not exercise its powers under Rule 10(1)(i) of the Model Rules to dispose of the case, it is empowered to direct a social investigation. The Social Investigation Report (SIR) contains information pertaining to the circumstances in which the alleged offence was committed, the child's economic, social, psycho-social and other relevant factors, and the recommendation thereon. Rules 10(9) and 11(2), respectively, clearly mandate that before passing any order, the Board takes the findings of the SIR into consideration.

c. Statement of Witness

77. Rule 10(5) of the Model Rules mandates that the CWPO must place the statement of witnesses recorded by him and prepared during the course of investigation before the Board.

d. Report of the Expert

78. This Court in **Barun Chandra Thakur** (*supra*) painstakingly dealt with the significance of an expert's assistance while conducting preliminary assessment and the circumstances under which their assistance would be rendered necessary.

79. We may with a view to obviate any confusion, clarify that the report by an expert in accordance with the *proviso* to Section 15(1) is one significant input among several considerations. In other words, it could not be the sole consideration in the Board's decision. The expert opinion must be read and assessed along with its interaction with the child, the SBR, the SIR, the statement of witness, and other material placed before the Board, if any. The members of the Board are required to apply their mind independently on all such materials. We emphasize that the Board cannot abdicate its responsibilities by mechanically adopting the conclusions of the expert without examining whether the conclusions reached are supported by the totality of the material before it.

80. In the aforesaid context, we may look into the decision of the Delhi High Court in **Pradeep Kumar v. State (NCT of Delhi)**, reported in **2019 SCC OnLine Del 8251**, wherein the Court while deciding a challenge to the order of the Board as well as the Appellate Court observed that the Board is not bound by the opinion of the expert. The Board is required to apply its mind independently to all the other considerations and arrive at a conclusion, which could differ from the opinion of the expert. The relevant observations read thus: -

"10. The JJB-II as well as the Appellate Court has taken into consideration, all the parameters and factors mentioned in Section 15 of the Act while passing the impugned order and judgment, respectively. Further, the JJB-II has given a careful thought and consideration to the submissions of both the parties as well as the legal position in this regard. Similarly, the Appellate Court has also given careful thought and consideration to the submissions of the learned counsel for the petitioner. There is no doubt that the JJ Board may seek the opinion of an expert regarding the mental and physical capacity of a CCL to commit an offence and it is not necessary that if an expert opined that the mental and physical capacity of a CCL and his ability to understand the consequence of the offence are positive, then the JJ Board is bound by the expert opinion. It is well within the jurisdiction of the JJ Board to agree or disagree with the preliminary assessment report of the CCL submitted by such a psychologist to the JJ Board. But the circumstances, in which the alleged offence was committed has to be considered by the JJ Board independently, in which the alleged offence was committed and the JJ Board has to apply a judicial mind."

(Emphasis supplied)

81. In **Child in Conflict with Law** (*supra*) the Gujarat High Court listed factors, other than those written in the SBR or SIR, to be considered during the course of preliminary assessment. The overarching idea flowing across the factors remain that an overall assessment, more particularly, the past conduct, of the child should be undertaken. The Court further noted that while dealing with an appeal, the Appellate Court may call for assistance by expert and are not bound by the report of the expert placed before the JJ Board. The relevant observations read thus: -

"99. The children are treated as an adult offenders because of offence category. Thus, the provisions of the section invoked, would also require consideration during the course of preliminary assessment alongwith, the record and previous history of the child in the present jurisdiction or other jurisdiction including:

- (i) the number and nature of the previous cases of the child with the Board;
- (ii) The number and nature of prior period of probation;
- (iii) the number and nature of prior commitments to child correctional centers;
- (iv) the number and nature of previous residential and community - based treatments;
- (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and;
- (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;
- (vii) Whether the juvenile has previously absconded from the legal custody of a juvenile correctional entity in this or any other jurisdiction;
- (viii) The degree of intellectual disability or mental illness;
- (ix) The juvenile's school record and education;
- (x) The juvenile's mental and emotional maturity; and
- (xi) The juvenile's physical condition and physical maturity. xxx

103. Here, in the impugned order, the Children's Court has placed reliance on the reports placed before the J.J. Board. The Children's Court while dealing in appeal under section 101(2) of the J.J. Act, can independently deal with the case of child by taking assistance of experienced psychologists and medical specialists other than those, whose assistance, has been obtained by the Board in passing the order under the section 15 of the J.J. Act. The appeal provision makes, thus, clear that the Sessions Judge are not bound by the report of the psychologist or medical specialists obtained by the Board and can independently call for assistance of experienced psychologists and medical specialists, to deal with the order passed under Section 15 of preliminary assessment by the Board."

(Emphasis supplied)

82. The final report of the Board must contain a reasoned decision on whether the child in conflict with law is to be tried as an adult, together with the reasons for accepting or rejecting the observations and recommendations contained in the SIR, the SBR, and the witness statements. Such an exercise must be hooked to the four parameters stipulated under Section 15(1).

83. With a view to dispel any doubt and lend clarity, we deem it appropriate to observe that our observations on the order of the JJ Board would be limited to whether the material before the JJ Board was duly considered for the purpose of preliminary assessment, and would have no bearing on the trial. The trial shall proceed uninfluenced by our observations in this regard.

84. In the present case, the JJ Board arrived at the conclusion solely on the basis of expert opinion obtained in accordance with proviso to Section 15(1). The majority opinion of the JJ Board makes no mention whatsoever of the SIR or the SBR. It erred in failing to consider the SIR and the SBR, more particularly, the antecedents and recommendations made by the Probation Officer and the CWPO, respectively. We underscore or rather emphasize that the SIR and the SBR reports are not supplementary material, they constitute pertinent inputs for the preliminary assessment and must be accorded due weight alongside the expert opinion.

VI. CONCLUSION

85. A conspectus of our discussion in the aforesaid section is as follows:-

- i. The offence punishable under Section 302 of the IPC, which prescribes punishment of “death or imprisonment for life”, carries life imprisonment as its minimum punishment. It would therefore be categorized as a “heinous offence”.
 - ii. The power vested in the Sessions Court as an appellate court is to be exercised having regard to the object of the statute, the provision concerned, and upon an examination of the totality of facts. The Sessions Court may exercise its power under Section 101(2) of the JJ Act where the circumstances occasion the necessity of assistance from an expert.
 - iii. For the JJ Board to arrive at its conclusion at the end of the preliminary assessment, it is not bound by any opinion or recommendation and must independently apply its mind to all the material available to it. In order to arrive at a conclusion, it must assess all the material together, keeping in mind the four parameters stipulated under Section 15 of the JJ Act.
- 86.** For all the foregoing reasons, we have reached the conclusion that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned order.
- 87.** As a result, the appeal stands dismissed. Parties shall bear their own cost.
- 88.** Pending applications, if any shall stand disposed of.
- 89.** The Registry shall forward one copy each of this judgment to all the High Courts.

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