

Determination of age of child under the juvenile justice (care and protection of children) act, 2015: problems and suggestions

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The child is the father of man, said Wordsworth. Pt. Jawahar Lal Nehru described the children as national assets. They are human being and noblest gift of mankind. The child of a certain age is called 'JUVENILE'. Juvenile or child is the most vulnerable group in any population and in need of the greatest social care and protection. On account of their vulnerability and dependence on other, they may be exploited.

Until the nineteenth century, it was only the family or the community which was responsible for the care and protection of the child. Every home afforded protection to their children, where he/she was cared for, looked after, educated and brought up in affectionate homely environment. In the last stage of nineteenth century the position of the children was changed due to the industrialization, urbanization and migration from rural to urban areas. Therefore, the State has started its intervention for the care and protection of the children or juveniles.

Constitution of India clause (3) of Article 15 enables the State to make special provisions for children and Article 24 provides that no child below the age of 14 years shall be employed to work in the factory or mine or engaged in any other hazardous employment. Clause (e) and (f) of Article 39 provide that the State shall direct its policy towards securing that the tender age of children is not abused, that children are not forced by economic necessity to enter avocations unsuited to their age and strength and that children are given facility to develop in the healthy manner and in condition of freedom and

dignity and that childhood and youth are protected against moral and material abandonment. These Constitutional provisions reflect the great anxiety of the Constitution makers to protect and safeguard the interest and welfare of children in the country.

The Supreme Court has also observed¹ that if the child is the national asset, it is the duty of State to look after the child with a view to ensure full development of its personality. The Supreme Court has also said that² - "That there can be no two opinions that these children of today are the citizens of tomorrow's India and the country's future would necessarily depend upon their proper hygiene, physical and mental condition. The problem is, therefore, gigantic; at the same time, there is a demand for immediate attention. Children require the protective umbrella of the society for better growth and development as they are not in a position to claim their entitlement of attention, growing up, food, education etc. It is permanent duty of those who are in charge of governance of the country today to attend the children to make them appropriate citizens of tomorrow."

Age of Juvenile or child varies from place to place for purpose to purpose. In United States, it is sixteen year to twenty one years, while eighteen years is most common. In England a child below ten years cannot commit any offence due to absence of mens-rea, but the person between the ages ten to fourteen years are responsible in case they understand that

¹ In Sheela Barse Vs. Union of India AIR 1986 SC 1773

² In Supreme Court Legal Aid Committee vs. Union of India (1989) 2 SCC 325.

their act was wrong³. In France and Poland, the age limit is thirteen, while in Australia, Germany and Norway, it is fourteen years. In Denmark and Sweden it is fifteen years while in Israel, it is nine years and in Greece it is twelve years. International world recognizes it a human being up to the age of eighteen years.⁴ In India section 82 of the India Penal Code, 1860 says nothing is an offence which is done by person under seven years of age, while section 83 says that nothing is an offence which is done by person above seven years of age but under twelve years, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on the occasion. Section 27 and 437 of the Code of Criminal Procedure, 1973 provides age of juvenile to sixteen years for the purpose of jurisdiction for trial of offences and for the bail in non-bailable offences. Before 1986, there were number of Children Acts providing the age of child between sixteen to eighteen years. The Juvenile Justice Act, 1986 defined the 'juvenile' and says that a male child who has not attained the age for sixteen years and female child who has not attained her age of eighteen years, is a juvenile.⁵

General Assembly of the United Nations had adopted the *Convention on the Rights of the Child - 1989* on 20 November 1989. It is *MAGNA CHARTA* for the children because it codified all the rights of children which were available in several instruments. The convention has come in to force on September 02, 1990. It has prescribed the set of standards to be adhered to by all the State Parties of the Convention in securing the best interest of the child. The Convention has defined the 'Child' which means every human being below the age of eighteen years, unless under the law applicable to the child majority is attained earlier.⁶ It provides that the child shall be

registered immediately after birth and he/she has right from birth to his name, the right to acquire a nationality, right to know and right to be cared for by his or her parents,⁷ every child has the inherent right to life and maximum extent possible, the survival and development,⁸ safeguard to the children in conflict with law.⁹ Our country has ratified the Convention on 11 December 1992 and it has, therefore, enacted the Juvenile Justice (Care and Protection of Children) Act, 2000 – in short 'Act of 2000' - in order to fulfill the needs of the Convention. It covers *all the male and female children who have not completed their eighteen years of age under the conception of 'juvenile' or 'child'*.¹⁰ The Juvenile Justice (Care and Protection of Children) Act, 2015 – in short Act of 2015- defines the child as well as the juvenile separately. The "child" means *a person who has not completed eighteen years of age*¹¹, while "juvenile" means *a child below the age of eighteen years*.¹²

Provisions for age determination of child

The provision for preemption and determination of age of the child has been provided in the Act of 2015 as under:

¹³Presumption and determination of age (1)

Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall

³ GIGlanville L. Williams, *The Criminal Responsibility of Children*, Cr.L.R. 1954 pp. 493-94

⁴ Ibid.

⁵ Section 2(h).

⁶ Article 1 of the Convention.

⁷ Ibid Article 7.

⁸ Ibid Article 6.

⁹ Ibid Article 40.

¹⁰ Section 2(k)

¹¹ Section 2 (12).

¹² Section 2 (35).

¹³ Section 94.

undertake the process of age determination, by seeking evidence by obtaining —

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board: Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

¹⁴This Act has also made a provision that the State Government shall, by notification in the Official Gazette, make rules to carry out the purposes of this Act. Provision has also been made that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government is required to make rules and where any such model rules have been framed in respect of any such matter, they shall apply to the State mutatis mutandis until the rules in respect of that matter are made by the State Government and while making any such rules, they conform to such model rules. Central Government, though, has framed the model rules for the State Governments. However Uttar Pradesh Government has still not notified its rules. It is known that the process for notification of rules is in active consideration with the Government.

Difficulties in determination of age of child

Juvenile Justice Act, 1986 was repealed in 2001 and in its place Act of 2000 has come into force w.e.f. 1.4.2001. Now Act of 2000 has also been repealed,

and in its place The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act no. 2 of 2016) has been enacted on 31.12.2015 and notified in the gazette on 1.1.2016. Central Government though has framed the model rules for the State Governments. However Uttar Pradesh Government has still not notified its rules. Likewise some other State Governments have also not notified their rules. The provision for presumption and determination of age has been incorporated in section 94. It has been specifically provided that the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.¹⁵

It is re-called that various State Governments had earlier notified their rules for the enforcement of Act of 2000, and provision for determination of age of juveniles or children was mentioned in those rules. The procedure for age determination varies States to State according to their rules prior to enforcement of Act of 2015. Now it has been united and provided in the Act itself. It shall be applicable to all over the India. It has been provided that in case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining — (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof; (ii) the birth certificate given by a corporation or a municipal authority or a panchayat; (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test

¹⁴ Section 110.

¹⁵ Section 94 (1).

conducted on the orders of the Committee or the Board: provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.¹⁶

The provision which was provided in section 7-A of the former Act of 2000 that “the claim of juvenility which may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case” is also available in section 9 of the Act of 2015. However in order to declare the finality in the matter of the age determination, it has been provided that the age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.¹⁷

Moreover the old provision provided in the rules of States for the benefit of margin of one year to the child or juvenile by considering his or her age on lower side, is now absent in the provision of section 94. According to section 2 (20), “Children’s Court” means a court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act.

In spite of all efforts in the new legislation, the difficulties in determination of age are still there. It has failed to provide clear-cut basis for the determination of age. It has reproduced the same things i.e. matriculation certificate, school certificate at first stage, while certificate issued by corporation, municipal authority or panchayat as the second stage, as was provided in the rules of various States including State of Uttar Pradesh. It is only when the certificates required at first and second stage are not available, then only it has been provided that age shall be determined by an ossification test or any

other latest medical age determination test. Thus Act of 2015 shall also face several difficulties in determination of the age of the child, which the Act of 2000 was facing.

In *Ram Deo Chauhan alias Rajnath Chauhan v. State of Assam*¹⁸ Apex Court held that the entry in school register, however, not shown to be maintained by a public servant in discharge of his official duty or any other competent authority as such the entry in school register cannot be accepted as a positive proof regarding date of birth of accused petitioner.

It is a matter of common experience that the parents reduce or enhance the age of the juvenile at the time of admission to school for various reasons and the correct date of birth is seldom recorded. In actual life it often happens that persons give false age of the boy at time of his admission to a school so that later in life he may have an advantage while seeking public service.¹⁹

It has also been revealed from series of cases that inquiry for determination of age of juvenile was initiated during the juvenility of the accused and during the course of such inquiry the juvenile ceased to be juvenile and spent sufficient period of his life i.e. the accused become 25 to 40 years of age in litigation of age determination. Consequently the purpose of laws with respect to protection of juveniles becomes futile and resulted to quash the sentences. In *Bhoop Ram v. State of Uttar Pradesh*²⁰ the Supreme Court has observed that since the appellant is now more than 28 years of age, there was no question of the appellant being sent to an approved school under the UP Children Act, 1951 for being detained there. The court while holding the conviction under all the charges framed against him, quashed the sentence awarded and released forthwith. Further in *Krishna Kant v. State of Uttar Pradesh*,²¹ the Supreme Court observed that at the time of granting special leave, appellant produced

¹⁶ Section 94 (2).

¹⁷ Section 94 (3).

¹⁸ 2001 Cr.L.J. 2002

¹⁹ Brij Mohan v. Priya Vart 1965 SC 282.

²⁰ A.I.R. 1989 SC 1329.

²¹ A.I.R. 1994 SC 104.

High School Certificate, according to which he was about 15 years of age at the time of occurrence. Appellant produced horoscope which showed that he was thirteen years of age. Medical report, which was called for by this Court disclosed that his date of birth is January 7, 1959 on the basis of various tests conducted by the medical authorities. Thus the accused had completed sixteen years of age on the date of occurrence. Since the appellants are now aged more than thirty years, there is no question of now sending them to an approved school for detention. Accordingly the court held their conviction under all the charges but quashed the sentence and released them forthwith. In *Upendra Kumar v. State of Bihar*²² appellants were convicted and sentenced to life imprisonment apart from other minor punishment under the provisions of Arms Act. Supreme Court, relying on the juvenility of the accused on the date of occurrence as well as on the date of their production before the court, did not refer the accused before the Juvenile Board. Instead it has sustained the conviction and quashed the sentence with the direction to release them forthwith.

Moreover fabrication in such certificates create another problem and make them doubtful, when they are produced in support of the age of the child. Two judge's bench in *Ashwani Kumar Saxena V State of Madhya Pradesh*²³ Apex Court held that there may be a situation where the entry made in the matriculation certificate or equivalent certificates, date of birth certificate from the school first attended and even in the birth certificate given by the corporation or a municipal authority or a Panchayat may not be correct. But Court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be

fabricated or manipulated, the court, the Juvenile Justice Board or the Committee need to go for medical report for determination.

Soon thereafter three judge's bench considered the problem in *Abuzar Hossain alias Gulam Hossain v State of West Bengal*²⁴ the apex court has observed that the credibility and/ or acceptability of the documents like the school leaving certificate or the voters' list, etc., obtained after conviction would depend on the facts a circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected.

Both the above judgments have also been considered by two judge's bench of Apex Court in *Prag Bhati v State of Uttar Pradesh*²⁵ and it has been observed that it is a settled position of law that if the matriculation or equivalent certificates are available and there no other material to provide the correctness of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then as laid down by this Court in *Abuzar Hossain (Abuzar Hossain) v. State of W.B. (2012) 10 SCC 489: (2013) 1 SCC (Cri.) 83*, an enquiry for determination of the age of the accused is permissible which been done in the present case.

Relying on the above observation, the apex court in a latest case of *Sanjeev Kumar Gupta v. The State of U.P.*²⁶ did not accept the date of birth i.e. 17 December 1998 mentioned in the matriculation certificate of the second respondent. Court stated that it is evident from the above analysis that the date of birth which was forwarded in the roll of students of Maa Anjani Senior Secondary School, Sikohabad was the sole basis of the date of birth which was recorded in the matriculation certificate. The date of birth in the records of Maa Anjani Senior Secondary

²² (2005) 3 SCC 592.

²³ (2012) 9 SCC 750.

²⁴ (2012) 10 SCC 489: (2013)1 SCC (Cri.) 83.

²⁵ (2016) 12 SCC 744.

²⁶ Criminal Appeal No. 1081 of 2019 decided on July 25, 2019.

School where the second respondent was a student from class V to class X is without any underlying documents, as stated by the Principal in the course of the enquiry before the JJB. On the other hand there is a clear and unimpeachable evidence in the form of the date of birth which has been recorded in the records of Saket Vidya Sthali school, where the second respondent attended until the fourth standard, which is supported by the voluntary disclosure made by the second respondent while obtaining both the Aadhaar card and the driving licence. Holding the date of birth of the second respondent as 17 December, 1995, further held that he was not entitled to the claim of juvenility as of the date of the alleged incident which took place on 18 August 2015.

So for method of radiological examination for determination of age is concerned, it defeats the provisions of the Criminal Law providing punishment for various offences. If the medical officer gives his opinion on such examination that the age of a particular person is twenty years, the accused can take shelter of the various dictum of the Supreme Court that margin of error in the age ascertainment by radiological examination may be of two years.²⁷ Therefore in the absence of rules, the persons are entitled for two years benefit of their juvenility i.e. up to their twenty years of age under the court dictum. Moreover, the basic principle of the jurisprudence is that the penal law should be interpreted in favour of the person to be punished and whenever there is doubt regarding the interpretation of any law, or where two views are possible on the same evidence or set of circumstances, the view beneficial in favour of culprit should be taken and court should lean in favour of holding the accused to be juvenile in border-line cases.²⁸ Therefore in view of the accepted provisions of the ascertainment of age and criminal jurisprudence, a person up to nineteen or twenty years of age may safely get declared as child,

which causes injustice to the litigants as well as defeats the provisions of the Criminal Law providing punishment for various offences.

Regarding ossification test Justice R.P. Sethi in *Ram Deo Chauhan alias Rajnath Chauhan v. State of Assam*,²⁹ observed that the statement of the doctor is no more than an opinion An X-Ray ossification test may provide a surer basis for determining the age of an individual than the opinion of a medical expert, but it can by no means be so infallible and accurate a test as to indicate the exact date of birth of the person concerned.

Conclusion and suggestions

Convention on the Rights of the Child – 1989 provides that *the child shall be registered immediately after birth and he/she has right from birth to his name, the right to acquire a nationality*.³⁰ In view of this requirement, the existing law relating to registration of marriages as well as the Registration of Birth and Deaths Act, 1969 is to be implemented strictly and all the marriages, births and deaths is to be registered compulsorily at any cost before the authority concerned immediately after marriages, births, and deaths and issued a certificate to this effect without further delay. Non registration of marriages, births and deaths is to be declared 'misconduct' on the part of the 'servant' or person responsible, for which a suitable punishment should be provided in the law. It should be declared offence on the part of the 'parent or guardian or other responsible person, as the case may be', for which suitable sentence and fine should be provided and offence should be made cognizable and bail able, because it relate for protection of the rights of those who are actually innocent children. Other certificates like matriculation, other school certificates or other documents relating to date of birth should be in conformity with the birth certificate issued by the independent registration authority. Such marriage,

²⁷ Jai Mala v. Home Secretary A.I.R. 1982 SC 1279.

²⁸ Rajender Chandra v. State 2002 A.I.R. SCW 385 (SC).

²⁹ 2001 Cr.L.J. 2002.

³⁰ Article 7 of the Convention.

birth and death certificates are declared public documents and conclusive proof of age, leaving the others, to avoid uncertainty, ambiguity and confusion and to avoid undue litigations for the determination of age. An independent mechanism is to be created for this exercise.

The existing requirement provided in sub-clause (i), (ii), and (iii) of clause (2) of section 94 (2) Act of 2015, relating to determination of age, is to be modified to the extent that only the birth certificate issued from the independent registration authority shall be admissible for determination of age of the child, in place of requirement mentioned in sub-clause (i), (ii), and (iii) of clause (2) of section 94.

There is a big gap between what the law wants to do and what is actually being done. It is responsibility of Executive including Police, Legislature and Judiciary to ensure for the proper implementation of the provisions with regard to the benefit of child under Juvenile Justice (Care and Protection of Children) Act, 2015.