

# DETERMINATION OF AGE AND PRELIMINARY ASSESSMENT

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# LET'S UNLEARN AND THEN LEARN

- ◉ We need to unlearn many things that we learnt like gospel truth
- ◉ We need to unlearn that a child offender is like “any other offender”
- ◉ We need to unlearn many provisions in many legislations that we have been practicing
- ◉ We need to learn that the JJ Act 2015 (or the JJ Act 2000) is a self-sufficient legislation in all matters pertaining to children in conflict with law and children in need of care and protection.

# CONTD....

- ◉ It has been prescribed and held that the claim of juvenility can be raised before any court at any stage and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the juvenile had ceased to be so on or before the date of commencement of the Act. It was held that a juvenile, who had not completed 18 years of age on the date of commission of the offence, was also entitled to the benefits of Juvenile Justice Act, 2000 as the provisions of section 2(k) had always been in existence even during the operation of the 1986 Act.

[Hari Ram v State of Rajasthan, MANU/SC/0744/2009 : (2009) 13 SCC 211 while examining the scope of Section 7A of the JJ Act, 2000]

# CONTD...

- ◉ Ashwani Kumar Saxena v. State of M.P.  
(2012)9 SCC 750
- ◉ Hari Ram v. State of Rajasthan and Anr.  
MANU/SC/0744/2009 : (2009) 13 SCC 211
- ◉ Dharambir v. State (NCT of Delhi) and Anr.  
MANU/SC/0290/2010 : (2010) 5 SCC 344

# CONTD....

- ◉ Section 7A, obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the JJ Act. Criminal Courts, JJ Board, Committees etc., proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code. Statute requires the Court or the Board only to make an 'inquiry' and in what manner that inquiry has to be conducted is provided in JJ Rules. Few of the expressions used in Section 7A and Rule 12 are of considerable importance and a reference to them is necessary to understand the true scope and content of those provisions.
- ◉ Section 7A has used the expression "court shall make an inquiry", "take such evidence as may be necessary" and "but not an affidavit". The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates etc. as evidence need not be oral evidence.

# CONTD...(UNDER THE NEW LAW)

○ S. 94. (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 undertake the process of age determination, by seeking evidence by obtaining —

## CONTD...

- (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.

CONTD...

An important case on the issue of stage at which age determination should be done is Shri Ganesh v State of T.N., (2017) 3 SCC 280.



## CONTD....

- ◉ Even a magistrate or a court not empowered to exercise the powers under the JJ Act 2015 has to follow the same procedure as the JJ Board or the CWC shall, in determination of age. [S. 9 of JJ Act 2015].
  
- ◉ But what should you advise in view of apparent inconsistency in Cl (1) & Cl (2) of S. 9?

# AGE DETERMINATION OF VICTIM

- The same process to be followed in age determination of the victim as prescribed for the CICL
- *Jarnail Singh v State of Haryana*, (2013) 7 SCC 263.
- *State of M.P. v Munna*, (2016) 1 SCC 696
- If the age of the survivor/victim cannot be determined with exactitude, benefit of doubt shall go to the accused- *Rajak Mohd. v State of H.P.*, (2018) 9 SCC 248.
- If the medical examination gives a range, the age of the victim is to be read on higher side.

# SOME IMPORTANT RULINGS

- ◉ Rules existing at the time of taking of plea and NOT at the time of commission of crime to be followed in age determination- Gaurav Kumar @ Monu v State of Haryana, (January, 2024) which modified its earlier order reported in (2019) 4 SCC 549
- ◉ Question of age can be raised at ANY stage, even after the FINAL DISPOSAL of the case- Vinod Katara v State of U.P. (12/09/2022); Sagar Behara v State of W.B., (2022) 3 SCC 526.
- ◉ However, the plea should be raised in a bonafide and truthful manner- Manoj @ Monu v State of Haryana, [Criminal Appeal No. 207 of 2022] (15/02/2022)
- ◉ The Court said that the date of birth certificate has been arranged to claim benefit under the Juvenile Justice (Care and Protection of Children) Act, 2000, and hence, date of birth certificate produced by the appellant cannot be relied upon as it was obtained after filing of the application u/s 7A of the JJ Act, 2000

## CONTD...

- Rishipal Singh Solanki v State of U.P., 2021 SCC OnLine SC 1079, [decided on 18-11-2021] elaborately lays down the principles of age determination.
- Though plea may be raised at ANY stage, it cannot be re-agitated after rejection- Pawan Kr Gupta v State (NCT of Delhi), (2020) 2 SCC 803.

## CONTD...

- ◉ School leaving certificate not sufficient to prove DoB in absence of examination of the officer recording the DoB in school register- C. Doddanarayan Reddy v C Jayaram Reddy, (2020) 4 SCC 659
- ◉ *Sanjeev Kumar Gupta v. State of Uttar Pradesh*, [\(2019\) 12 SCC 370](#), wherein it was observed that that the date of birth reflected in the matriculation certificate could not be accepted as authentic or credible, as the records maintained by the CBSE were purely on the basis of the final list of the students forwarded by the Senior Secondary School where the second respondent therein had studied from class 5 to 10, while there was clear and unimpeachable evidence of date of birth recorded by the school attended by the respondent till class 4 and which was supported by voluntary disclosure made by the accused therein while obtaining both, Aadhaar Card and driving license. Therefore, there was clear and unimpeachable evidence of date of birth which had been recorded in the records of the school which the respondent therein had attended till class 4

# PRELIMINARY ASSESSMENT (PA)

- ◉ India, being signatory to the United Nations Convention on Rights of the Child, 1989 (UNCRC), deals with juvenile delinquency under a separate legal mechanism embodied in the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015).
  
- ◉ Under the JJ Act, 2015 a “child in conflict with law” or a delinquent juvenile is not amenable to adult criminal justice system except in those cases where the child is in the age bracket of 16 to 18 years and has allegedly committed a “heinous offence”.

## CONTD...

- ⦿ For all other offences punishable with up to seven years imprisonment, there is a self-sufficient juvenile justice system which provides for “inquiry” into the alleged offence and there is no “adversarial trial” to determine the guilt or otherwise of the child
- ⦿ Even in those cases where the child between 16 to 18 years has allegedly committed a heinous offence, there is a provision for two-stage assessment to determine the delinquent child’s mental capacity to stand trial in a Children’s Court

## CONTD....

- ◉ Where the offence allegedly committed by the child in the age group of 16-18 is a heinous offence, Section 18 (3) of the JJ Act, 2015 authorises the JJB to pass an order of transfer of such child to the Children's Court for trial as an adult.
- ◉ The order to transfer the child to the Children's Court can be passed only after a preliminary assessment as provided in Section 15 of the JJ Act, 2015 and aimed at assessing the mental and physical capacity of the child to commit such offence, his ability to understand the consequences of the offence and also the circumstances in which the offence was committed.



# CONTD....

- ◉ If the JJB, upon preliminary assessment, is satisfied that the child should not be transferred to the Children's Court to be tried as an adult, it shall proceed to deal with such child in accordance with the procedure prescribed for inquiry and may pass a dispositional order as provided in Section 18 of the JJ Act, 2015.
- ◉ It is important to note that the JJ Act, 2015 was silent on the question of orders that may be passed on a child in the age group of 16-18 years alleged to have committed a serious offence but not transferred to the Children's Court on account of mental and physical incapacity etc.
- ◉ However, under Rule 11 of the Juvenile Justice (Care and Protection of Children) Rules, 2016 (JJ rules 2016), the JJB may proceed to pass orders against such child as provided in Section 18 of the JJ Act, 2015. The JJ Rules, 2016 were notified by the Government of India in the official gazette on September 21, 2016. U.P. Has adopted these rules in toto.

## CONTD...

- ◉ The JJB may, after preliminary assessment, take a decision to transfer a child between the age of 16-18 alleged to have committed a heinous offence to the Children's Court for trial as an adult.
- ◉ However, the Children's Court may further decide about the mental suitability of the child to be tried as an adult and may take any of the following two courses:
  - (a) It may decide that there is need for trial of the child as an adult in accordance with the provisions of the CrPC. In this case, it may pass appropriate orders after trial subject to Sections 19 and 21 of the JJ Act, 2015. In passing the dispositional orders, the Children's Court is obligated to consider the special needs of the child, the tenets of fair trial, maintaining the child friendly atmosphere during trial.
  - (b) The Children's Court may decide that there is no need to try the child as an adult and thereupon may conduct an inquiry as a JJB and pass appropriate orders in accordance with the provisions of Section 18 of the JJ Act, 2015.

# CONTD....

## *Case Study*

- ◉ In April 2017, a Children's court in Jhabua district (M.P.), tried two minors as adults and convicted them to life imprisonment for committing murder on February 28, 2017.
- ◉ The matter dates back to December 5, 2016 when two 16-year old children attacked another 14 year old child with a knife in broad daylight and inflicted eight wounds on the victim over a fight regarding money. The victim, a student of Class IX, was returning from school when the incident took place. The victim died within few hours of the incident at the government hospital in Jhabua and told his brother about his attackers before he died.

## CONTD...

- The two accused were arrested the next day and weapons were seized from them. When the matter was brought before the JJB, a social investigation report was submitted by the probation officer stating that both the convicts were addicted to drugs and had also had a criminal history. Based on the report of the probation officer, the JJB handed over the matter to the Children's Court on January 4, 2017 and the court sentenced them to life imprisonment on February 28, 2017.
- However, an appeal was moved to the Madhya Pradesh High Court against the judgment of the Children's Court on the ground that the latter had ignored to provide a proper care plan for the convicts, without following the procedure for their care till they attain the age of 21 and without fully appreciating the social investigation report while deciding the mental capacity of the children to commit the offence.

## CONTD...

- ◉ In Ryan International School case, a 16 year old child allegedly murdered a 7 year old in the school toilet
- ◉ The JJB, after PA, transferred the case to the Children's Court for trial
- ◉ HC did not agree with the JJB's decision and the matter reached the SC
- ◉ Barun Chandra Thakur v Master Bholu , (13/07/2022)

# CONTD...

- ◉ What did the SC hold on PA?
- ◉ What does the SCPCR prescribe for PA?

**Thanks**