

Chapter-1

AGE DETERMINATION



Is 'age' just a number as we say or much more. What is the significance of age, especially in the context of a criminal trial and more specifically with respect to inquiries conducted of the Children in Conflict with Law¹. 'Age' is the focal point and the fulcrum upon which the entire inquiry proceedings of a juvenile revolve. It is the **"jurisdictional fact"** that imparts jurisdiction to the Juvenile Justice boards to deal with and try children alleged or found in conflict with law. Only a child can be produced and tried by the Juvenile Justice Boards. Section 2(12) of the Juvenile Justice Act, 2015 defines a child to be a person below the age of 18 years. Every person who has not completed the age of 18 years, and is alleged to have committed any offence can only be produced and tried by the Board. The need for a completely separate trial for children vis-à-vis the adults have been felt and imbibed as early as in the year 1860 itself when the concept of *Doli Incapax*, i.e., incapable of committing crime, was incorporated under Sections 82 and 83 of the Indian Penal Code, 1860². Section 82 of IPC states, that, *"Nothing is an offence which is done by a child under seven years of age"*. Further, Section 83 of the IPC states, *"Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion"*. Now, though these provisions provided protection to children, yet it left many questions unanswered and was considered quite inadequate. For instance, how are we supposed to try children between the age of seven and twelve who have attained sufficient maturity? How are we supposed to try children between the age group of twelve to eighteen. Can and should such children be tried as adults?

1 Children in conflict with law—Section 2(13) of the Juvenile Justice (Care and Protection of Children) Act, 2015 states that a "Child in conflict with law" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.

2 Corresponding to erstwhile Act. Now refer sections 20 and 21, respectively of Bharatiya Nyaya Sanhita, 2023 (45 of 2023).

William Wordsworth famously stated, “*The Child is the father of the man*”. Children are the future and they need to be shaped, nurtured and tendered. Their young minds are impressionable and personality evolving. Therefore, the entire focus of the Juvenile Justice system is upon their course correction and rehabilitation. Their trial methodology has to be different from that of an adult. Even the dispositional orders are non-punitive, focus being on vocational training, non-formal education, psychiatric support, counseling, community service, etc. Therefore, a child found on the wrong side of the law is not even addressed as an accused but a child in Conflict with Law. Section 2(13) of the Juvenile Justice Act, 2015 defines a child in Conflict with Law to be a child who is below 18 years of age on the date of the commission of the offence and who has allegedly committed an offence.

Why earmark eighteen? India is a signatory to the UN convention on the rights of the child, 1989, and also the UN standard minimum rules for the administration of the Juvenile Justice, in short, the Beijing Rules wherein the age of 18 has been laid down to be the age of maturity and a separate legal system has been prescribed for the trial of such children. Even the voting rights and the right to marry procure at the age of 18 stemming from the understanding that relative maturity is attained at that age. Even medically it has been proved that until before 18 years, the prefrontal cortex of the brain, i.e., the front portion of the brain does not fully develop leading to immaturity, engagement in risky behaviour, identity crisis, increase in sensation seeking, peer influence and impulsivity. Though, a strict demarcation is impossible neither in law nor in medical science yet it is widely established so far in the medical sciences that from the age of 18, some level of emotional regulation, response inhibition, the ability to plan and also to foresee the future consequences of one’s behavior and some level of maturity develops.

December 16, 2012 brought about a paradigm shift in the discourse of the Juvenile Justice jurisprudence. The brutal gang rape of a 23-year-old woman, a para-medical student in a bus by six men of whom one was a juvenile in the notorious Nirbhaya Case, shook

the conscience of an entire nation. The sheer barbarity of the manner in which the offence was committed brought the entire nation out on streets leading to major amendments in the Act. An option was created by the legislature in its wisdom to try some children as adults between the age group of 16 to 18 years in cases of heinous offences. The provision of preliminary assessment under section 15 of the Act, was introduced to assess whether the child had an “adult mind” at the time of commission of offence and if found so, the matter was to be transferred to the Children’s Court for a fresh assessment and further trial, in an attempt to balance the right of the victims vis-à-vis the rights of the juveniles.

Now, delving into the apposite provisions of the Act. Section 9 of the Act lays down the procedure to be followed by a Magistrate, i.e. a regular area MM¹ who is not empowered under the Juvenile Justice Act, 2015. Section 9 states,

“(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

1 M.M : Metropolitan Magistrate or JMFC. i.e., Judicial Magistrate First Class.

(3) *If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.*

(4) *In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety".*

Thus, a claim of juvenility can be raised at any stage even after final disposal of the case and delay in raising the claim of juvenility cannot be a ground for rejection of such claim. If the claim is raised after conviction, the claimant must produce some material which may *prima facie* satisfy the court that an inquiry into the claim of juvenility is necessary and the initial burden has to be discharged by the person who claims juvenility. When a person is found to be a child after conviction, section 9 explicitly states that any sentence passed shall have no effect. Further, it was held in "**Jitendra Singh @ Babboo Singh & Anr. v. State of UP (2013 Latest Caselaw 508 SC)**" by Hon'ble Supreme Court of India that, "*.....appropriate course of action could be to remand the matter to the jurisdictional Juvenile Justice Board for determining the sentence*".

Section 94 of the Act, lays down the complete procedure in the manner in which the age inquiry or age determination is to be conducted:—

" (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, be 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”.

Further, Section 7(3) of J.J. Act, 2015, provides that, the decision of the Board regarding age, preliminary assessment and final disposition shall be taken by a majority including Principal Magistrate.

Section 94(3) of J.J. Act, 2015 provides 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.

Before commencing with an inquiry on age, it is pertinent to note that the age determination of a child has to be done from the “date of the incident and not the date of cognizance or the date of appearance of the child before the Board as also held by Hon’ble Supreme Court of India in *“Pratap Singh v. State of Jharkhand [(2005) 3 SCC 551]”*. Again, in *“Vikas Chaudhary v. State (NCT of Delhi) & Another ((2010) 8 SCC 508)”*, it was held, “that in cases of continuing offence like kidnapping, the date of commission of offence would be the date on which the Last ransom call was made even if it was after the death of the victim”.

Various kinds of documents are admissible under section 94 of the Act, to prove the date of birth of a CCL¹ including the school leaving certificate, admission form, admission register, mark-sheet, matriculation certificate, Aadhaar Card, certificate of religious institution, etc. However, various judgments have come on record *qua* different kinds of documents that can be considered as admissible or non-admissible under Section 94 of the JJ Act for determining the age of the CCL or the victim. Very recently Hon'ble Supreme Court of India in "*P. Yuvaprakash v. State Rep. by Inspector of Police*", (2023 10 S.C.R. 478) while dealing with the issue of determination of age of the minor under POCSO Act laid down that the school transfer certificate cannot be considered to be the date of birth certificate or matriculation certificate under Section 94 of the JJ Act. It held that since the transfer certificate did not answer to the description of any class of documents mentioned in Section 94(2), it cannot be relied upon by the prosecution and in such a case there is need for the bone ossification test. Again, in "*Karan Kumar v. State*", dated 03.06.2025, very recently Hon'ble High Court of Delhi (Crl. A. 1067/24) has quite explicitly elucidated on the nature of documents which can be considered admissible under Section 94 of the JJ Act.

In the above case, the document produced on record was a school admission register and the entries made in the said register were not on the basis of the proof of birth documents issued by any corporation or MCD or Panchayat. It was held that in such a scenario, the burden was on the prosecution to prove on what basis the parents had given the date of birth which was mentioned in the admission register of the school. It was further held that in absence of documentary proof of the date of birth as laid down in Section 94 of JJ Act, the ossification test ought to have been conducted and therefore, in the above case, Hon'ble High Court had reversed the entire judgment of the trial court while rejecting the school admission register as proof of date of birth of the victim.

The Act clearly mandates that the age has to be determined strictly in the order prescribed in Section 94, i.e., in the very first instance, if the age appears to be clear by appearance itself, no further

1 CCL : Child in Conflict with Law

inquiry is required. If that is not the case, Section 94(2) provides “stepped methodology” of age determination. The first priority has to be given to the date of birth certificate from school or any other matriculation or equivalent certificate. In its absence, next the Board can rely on the birth certificate issued by Municipal Corporation or Panchayat, etc. Only when both the above are not available, the age shall be determined by ossification test or any other latest medical age determination test. In the case titled **“Abuzar Hossain @ Gulam Hossain v. State of West Bengal,”** ((2012) 10 SCC 489), it was held, *“ It is axiomatic that the use of the expression and the contest in which the same has been used strongly suggests that “ absence” of the documents mentioned in Rule 12(3)(a)(i) to (iii) may be either because the same do not exist or the same cannot be produced by the person relying upon them. Mere non-production may not, therefore, disentitle the accused of the benefit of the act nor can it tantamount to deliberate non-production giving rise to an adverse inference unless the Court is in peculiar facts and circumstances of a case of the opinion that the non-production is deliberate or intended to either mislead the Court or suppress the truth”.*

Again, in the case titled, **“Birad Mal Singhvi v. Anand Purohit”,** (AIR 1988 (SC) 1976), it was held that *“the entry contained in the admission form or in the school register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the school register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value”.* In the case titled **“Mrs. X (through mother Vijendera v. State and Anr”,** (Crl. Rev. P 59/2017), by Hon’ble Delhi High Court, it was held that the Board simply cannot rely on the school register in the absence of any foundational document. The same was further exemplified in the case titled **“ Babloo Pasi v. State of Jharkhand &Anr, ((2008) 13 SCC 133)”**, wherein it was held that an entry in the register of the school Ist attended is relevant, however, said entry would not be of much evidentiary value in the absence of proof of material being produced before the Court based on which the age is recorded. The foundational documents are also to be examined by

the Board, prior to returning a finding based on the entry in the register of the school”.

The credibility or acceptability of the documents like the school leaving certificate or the voters list, etc. would depend on the facts and circumstances of each case and no hard and fast rule can be prescribed that they must be *prima-facie* accepted or rejected. In the case titled **“Parag Bhati v. State of UP” (Cr. Appeal No. 486 of 2016, dated 12.05.2016)**, it was held that *“It is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of incident and the documentary evidence at least prima facie proves the same, he would be entitled to the special protection under the J.J. Act but when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the Courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice.*

It is settled position of Law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of 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, an enquiry for determination of the age of the accused is permissible which has been done in the present case”.

In a landmark judgment titled **“Ashwani Kumar Saxena v. State of MP” ((2012) 9 SCC 750)**, Hon’ble Supreme Court held that, *“Section 7A (Act of 2000) obliges the Court only to make an inquiry, not an investigation or a trial, an inquiry not under the Cr.P.C. but under the J.J. Act. Further, it was observed that the Court or 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 and that age determination inquiry contemplated under the JJ Act and Rules has nothing to do with an inquiry under other legislations like entry in service.*

There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But Court, JJ Board or a committee functioning under the JJ Act is not expected to conduct such a roving inquiry and to go behind 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 Board need to go for medical report for age determination.

The reasoning that the parents could have entered a wrong date of birth in the admission register, hence not a correct date of birth is equal to thinking that parents would do so in anticipation that child would commit a crime in future and, in that situation, they could successfully raise a claim of juvenility”.

Further, in the matter titled **“Om Prakash v. State of Rajasthan”, (2012, Crl. L.J. 2266)**, it was held that

“where the documents raise doubt, the accused cannot be allowed to abuse the statutory protection by attempting to prove himself a minor when the documentary evidence to prove his minority gives rise to a reasonable doubt about his assertion of minority. Under such circumstances, the medical evidence based on scientific investigation will have to be given due weight and precedence over the evidence based on school admission records which gives rise to hypothesis and speculation about the age of the accused”

Where, two views are possible on the basis of the evidence furnished on record during the process of age inquiry, the Board has to lean in favour of holding the CCL to be a juvenile in border line cases. The above point was clarified in **“Arnit Das v. State of Bihar”, ((2005), 5 SCC 488)**, where it was also held that:—

“while dealing with question of determination of age of accused for the purpose of finding out whether he is a juvenile or not, a hyper technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile”.

The process of age inquiry starts immediately upon the apprehension of a child when the IO has to make inquiries about

the age of a person if he appears to be a minor. It was laid down by Hon'ble Supreme Court of India in "*Gopi Nath Ghosh v. State of West Bengal*", (AIR 1984 (SC) 237), that the steps taken by the IO *qua* the age inquiry of a child has to be mentioned in the final report and that police officials should try to obtain documentary information and if there is any doubt regarding the age, benefit of doubt has to be given to the person apprehended and he should be treated as a child and produced before the Board. In "*Court On Its Own Motion v. Department of Women & Child*", (W. P. (C) No. 8889 of 2011), Hon'ble High Court of Delhi, has issued a number of directions to the Juvenile Justice Board *qua* the procedure with respect to the conduct of an age inquiry before the Board. It was held that,

"(1) JJB shall conduct the proper age inquiry of each child brought before it as per the procedure laid down in Rule 12 of Delhi JJ Rules, 2009.

(2) On every occasion, when the case of a juvenile is transferred from the adult Court to JJB and the juvenile is transferred from jail to concerned OHB, the JJB shall interact with the juvenile and record his/her version on how he came to be treated as an adult. If from the statement of the juvenile and after appropriate inquiry from IO, it appears that the juvenile was wrongly shown as an adult by the IO, then the JJB shall intimate the concerned DCP. This intimation shall be done in all those cases which are received from the JJB by way of transfer from the adult Court and shall be done even in all those cases in which the declaration of juvenility has been done by adult Court.

(3) JJBs shall determine the age of a person by way of recording the evidence brought forth by the juvenile and the prosecution/complainant and the parties shall be given an opportunity to examine, cross-examine or re-examine witnesses of their choice.

(4) In case of medical age examination, the parties shall be given copies of the medical age examination report immediately by the JJBs. The parties shall have the right to file objection thereto, including the right to cross-examination before final age determination is done.

(5) While declaring the age, the order of age declaration shall also state the age as nearly as possible as on the date of commission of offence.

(6) Before commencing the age inquiry, a notice thereof shall be served upon the complainant by the JJB or the Court concerned, which shall also accord opportunity to the complainant of being heard on the issue including producing evidence, however, the age inquiry will be concluded within the stipulated time limit of one month.

(7) It shall be the duty of the Board to ensure that every juvenile in whose respect age inquiry is being conducted is being represented by a Counsel and in those cases, where there is no lawyer present before the Board at the time of hearing of case, Board shall provide a Legal Aid Lawyer.

(8) JJB shall give copy of age declaration to JWO¹ to get it recorded with Nodal Officer of SJPU². A certified copy of the age declaration shall be mandatorily given to the juvenile or his parents on the same day along with a copy to the concerned juvenile or CWO³".

Importance and procedure of bone ossification test: — Doctor K.S. Narayan Reddy in his authoritative book, "The Essentials of Forensic Medicine and Toxicology", has explained in detail the method by which the age estimation is conducted. The bone ossification test is generally conducted by a Medical Board comprising of a dentist who studies the structure and eruption of the teeth from 14 to 20 years.

Dental age estimation is based upon the stage of development of third molar. If third molars are fully erupted, it indicates that an individual is above 17 years of age. Then the board comprises of a general physician who does the clinical and physiological examination and is able to estimate age by the methodology of tanner staging. Between the age of 15 and 16 years, significant sexual growth and puberty takes place. From the age 13 itself, physiological changes can be seen in the physical examination of both the genders including voice change, pubic hairs, etc. The third doctor included in the Board is the radiologist whose examination of the various peripheral joints in the body can roughly predict the age of the child. The medical board also comprises of the Chief Medical Officer who then opines upon the correct age of the child

1 JWO : Juvenile Welfare Officer

2 SJPU : Special Juvenile Police Unit

3 CWO : Chief Warrant Officer

after going through the assessment made by the medical board. The bone ossification test is of course not full proof or conclusive as there can be significant variations due to the variety of reasons including factors like nutrition, genetic, race, religion, etc. A lot of times a child can develop early puberty and even wisdom teeth is becoming rudimentary by way of evolution. Another setback of the process is the range of X-ray exposure that a child undergoes. In a very recent judgment in case titled, **“Vinod Katara v. State of UP” (Writ Petition (Criminal) No. 121 of 2022, dated 12.09.2022)**, it was held that, *“..... bone age is an indicator of the skeletal and biological maturity of an individual which assists in the determination of age. The bone ossification test varies slightly based on individual characteristics, therefore, the ossification test though is relevant, it cannot be called solely conclusive. The Courts in India have accepted the fact that after the age of 30 years, the ossification test cannot be relied upon for age determination. It is trite that the standard of proof for the determination of age is the degree of probability and not proof beyond reasonable doubt. If a person is around 40-55 years of age, the structure of bones cannot be helpful in determining the age.”*

The bone ossification test as already discussed is not a conclusive test for age determination. The exact or the true age of a person cannot be accurately assessed but a somewhat approximate age can be predicted in the absence of any other certain document. The variation in the test results leaves a margin of two years approximately within which the age of a person can be predicted. Hon'ble Supreme Court of India has taken judicial notice of the fact that the margin of error in age ascertained by radiological examination is two years on either side in a number of its decisions. In **“Shweta Gulati v. State (GNCTD) (Crl. Revision Petition 195/2018)”** it was held by Hon'ble High Court of Delhi that, *“Now the question that arises for consideration is as to whether the lower of the age or the higher of the age is to be taken. If benefit of doubt has to go to the accused than one would have to take the higher limit and if benefit of doubt has to go in favour of the prosecutrix than the lower of the two limits would have to be taken. It is also settled position of law that benefit of doubt, other things being equal, at all stages goes in favour of the accused”*.

It is interesting that while on the one hand, when it comes to the age of an accused, the lower limit of the bone ossification result is taken to declare the age, on the other hand, with respect to the victim, the benefit again goes to the accused and the higher limit of the age bracket is taken to declare the age of the victim. In *“Jarnail Singh v. State of Haryana [(2013) 7SCC 263]”*, it was held that, *“There is hardly any difference insofar as the issue of minority is concerned between a CCL and a victim and therefore in our considered opinion, it would be just and appropriate to apply the same rules to determine the age of a minor victim”*. Again, in *“Mahadeo v. State of Maharashtra”, [(2013) 14SCC 637]*, it was held that, *“JJ Rules apply in case of age determination of the prosecutrix in criminal cases”*.

In a discussion on age inquiry, it is pertinent to note that the timelines mandated in the Act is to be complied with by the investigating officials and Juvenile Justice Boards. In this context it is important to discuss the elaborate guidelines issued by the Hon'ble High Court of Delhi in various decisions. In *“Court On Its own Motion v. State”; (Crl. Reference 1/2020)*, vide order dated 01.10.2021, it was held, *“(1) the determination as to whether the subject of an inquiry is a child, is a jurisdictional factor, which must be answered at the very threshold by the JJB, failing which the process of inquiry cannot even begin. (2) section 14 contemplates a maximum of 06 months within which the entire inquiry must be completed, it cannot be said that the 06 month period would only commence once the subject is declared to be a child; or, that the time taken for age determination would be in addition to the 06 month period provided for completion of the inquiry under section 14. (3) In our view, the age determination process must be completed within the 04 month period, extendible by 02 months, stipulated in section 14 and cannot extend beyond that period. (4) Since section 14 says that the period of 04 months shall run from the date of first production of the child before the JJB, we direct that in consonance with the spirit of section 10, the child must be so produced before the JJB, whether or not apprehended or otherwise detained, without any loss of time but in any case within a period of twenty-four hours of the child becoming subject of processes under the JJ Act. (5) Section 94 stipulates that determination of age is to be made, in the first instance, by the obvious appearance of the subject brought before the JJB;*

and if the appearance leaves any doubt as to age, then by the stepped methodology contained in section 94(2), beginning with the specified date of birth certificate and, if required, ending with an ossification test. (6) It is to be noted that the proviso to section 94(2)(iii) stipulates that age determination by an ossification test conducted on the orders of JJB, shall be completed within 15 days from the date of such order, from which it is only logical that age determination by other methodologies contemplated in section 94(1) and 94(2) cannot take months-on-end. (7) Since even age determination is required to be made, in the first instance, by the obvious appearance of the subject, it is inconceivable that the production before the JJB itself can be delayed beyond the 24 hour period stipulated in section 10. (8) On a plain reading of section 14(4), if an inquiry relates to a 'child'; and the allegation is that the child has committed a 'petty offence'; and a period of 04 months has elapsed from the date of the child's first production before a JJB; but the inquiry remains inconclusive, by operation of law, that is to say automatically, such inquiry proceedings are to 'stand terminated'. (9) In our view, beyond the stipulated period, the very jurisdiction of a JJB to continue with such an inconclusive inquiry, ceases, without any further requirement. (10) It goes without saying that this period of 04 months can be extended by a maximum of 02 more months but only after recording reasons in writing for such extension".

Similarly, in **"Court On Its own Motion v. State", (Crl. Reference 1/2020)**, vide order dated 27.10.2021, it was held in Para 11,

"(a) In all cases pertaining to juvenile in conflict with law, regardless of the nature of offences alleged, upon directions issued by a JJB after production of a juvenile before it, the Investigating Officer of the case shall collect and file before the JJB requisite documents towards proof of age of the juvenile within 15 days from the date of issuance of such directions;

(b) In all cases pertaining to juvenile in conflict with law, regardless of the nature of offences alleged, upon directions issued by a JJB after production of a juvenile before it, the Investigating Officer of the case shall ensure that the ossification test in relation to the juvenile is completed, a report is obtained and filed before the JJB within 15 days from the date the ossification test is ordered by a JJB;

(c) *In all cases pertaining to juvenile in conflict with law, regardless of the nature of offences alleged, the JJB shall ensure that the process of age-determination of the juvenile is completed within 15 days from the filing of documents relating to proof of age/ossification test report by the Investigating Officer, as the case may be.*

(d) *It is further directed that all persons/educational institutions/medical institutions/governmental authorities to whom a request is made by an Investigating Officer for providing documentation towards age-determination or for conducting ossification test on a juvenile, shall give priority, co-operate and undertake necessary procedures and processes to enable compliance with the timelines set out above”.*

It is pertinent to know that very recently in another judgment of Hon’ble High Court of Delhi, i.e., ***Raju Yadav v. State of NCT of Delhi* (2023 SCC Online Del. 2782)** it was held that for determining the age of a child victim under POCSO Act, “.....the inclination of the court should be towards considering the lower side on the margin of error as that would be in consonance with the objection of the POCSO Act. It was further held that it could not be the intention of POCSO Act to treat a victim, a border line minor as a major in case victim did not have a proper date of birth proof and had under gone bone age ossification test”. Thus, in this judgment, it was laid down that the benefit of age inquiry must go to the victim child so as to advance the objective of the POCSO Act.

However, the above judgment was completely contradictory to the earlier law laid down in ***Shweta Gulati & Anr. v. State of NCT Delhi*, 2018 SCC Online Del 10448** (as discussed above). The above controversy has now been settled and said to rest in the current division bench judgment of the Hon’ble High Court of Delhi, i.e., “***Court on its own motion v. State of NCT of Delhi*”, (Crl. Ref. 2/2024)**, wherein Hon’ble High Court relying upon the judgment of Hon’ble Supreme Court of India namely “***Rajak Mohammad v. State of Himachal Pradesh*”, (2018 SCC Online SC 1222)** has clearly held that, “.....the age established by radiological examination or the ossification test

is not precise and therefore sufficient margin of error must be allowed. It is further held that in cases of sexual assault, whenever the court is called upon to determine the age of victim based on bone age ossification report, the upper age given in the reference range must be considered as the age of the victim. It further held that the principle of margin of error of two years is also applicable in cases under POCSO Act where the age of the victim is to be determined". Thus, vide above judgment dated 02.07.2024, the Hon'ble High Court of Delhi has clearly laid down the law regarding the calculation of age of the victim in bone ossification test cases.

Despite the elaborate specific directions issued by Hon'ble Supreme Court of India as well as Hon'ble High Court of Delhi, there is lack of awareness regarding the same amongst the stakeholders and specially the investigating officers including child welfare officers. Not only is there minimal compliance but also the utter lack of knowledge, competence and awareness on the part of the investigating officers can often lead to prejudice. Standing orders and regular training schedules can go a longway in addressing the malaise.

The above discussion on age inquiry would be incomplete without a reference to a very recent judgment of Hon'ble Supreme Court of India in case titled as "***Rajni v. The State of Uttar Pradesh***", (Criminal Appeal No. 603 of 2025) decided on 20th May, 2025 wherein it has been held that the Juvenile Justice Board lacks the power to review its own prior decisions thereby clarifying the procedural limitations of the Juvenile Justice Board and ensuring that the JJBs cannot contradict its own earlier rulings in subsequent proceedings. Therefore, if JJB has made the declaration of age once, it cannot be reviewed at a later stage by the Board.

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THE AGE OF CONSENT:— A CONTINUING CHALLENGE

With the rise in sexual offences, particularly against minor victims, The Protection of Children from Sexual Offences Act, 2012 was enacted. A welfare legislation, it aimed to provide protection to minor victims from sexual abuse, exploitation and child trafficking. To address the rigors and wide repercussions of sexual offences, further trauma, social labeling and moral burden upon the minor victims, the above act incorporated the presumption of offences in favour of the victims and more importantly made the 'consent' of minor victims totally irrelevant. The age of consent, therefore, becomes pivotal for protection under the Act. The age of consent, which is fixed at 18 years is rooted in constitutional mandates, international obligations and child protection measures consistent with India being a signatory to the U. N. Convention on the Rights of the Child (UNCRC) and International Covenant on Civil and Political Rights (ICCPR). Circumventing all the personal laws and social customs, universally, in India 18 years has been earmarked as not just the age of majority but also as the age of 'consent'. The above 'bright-line rule' substitutes subjective assessments of consent and free will with an objective rule aimed at protecting minors where the State acts as *parens patriae*. The above rule is based on the understanding that minors do not possess the legal or developmental capacity to give well-informed consent in matters of sexual activity and thus, reflects the legislative intent to provide an unambiguous zone of protection for minors from sexual exploitation. Further, recent trends show that a majority of sexual offences against children are committed by persons in positions of trust including family members, neighbours, teachers, care-givers, physicians and mentors. Most of these abusers are people known to the child and in such situations, the child's emotional dependence and inability to resist or report the abuse invalidates any notion of consent.

Now, the challenge that confronts the criminal justice system and looms large is an increase in and growing romantic relationships prevalent among the adolescents in India. A perfectly consensual and romantic relationship between two adolescents between the age groups of 16 to 18 years is threatened with oversimplified criminalization of their sexual autonomy, personal choices and right to privacy. While in a situation where both the accused and the victim are minors, the accused do tend to get the protection under the welfare legislation of The Juvenile Justice (Care and Protection of Children) Act, 2015. But, in a situation where the victim is a minor between the age group of 16 to 18 years and the accused is an adult, say, between 18 to 20 years, the POCSO Act is attracted with serious consequences for the accused and making the consent of the minor totally irrelevant. To treat such cases in a similar pedestal as other serious offences of sexual exploitation of the minor victims presently poses a serious challenge to the justice delivery system.

The object and purpose of the POCSO Act was never to criminalize consensual sexual relationship or penalize individuals for engaging in consensual intimacy. While it is important to provide protection to minor victims from undesired sexual offences yet, it is equally important to recognize their rights and freedom of consent and free will in consensual matters. There has been a growing concern to read an exception excluding sexual activity between consenting adolescents between the age groups of 16 and 18 years from the scope of POCSO Act by introducing a legislative close-in-age exception or reducing the age of consent to 16 years. With an increase in misuse of the law in cases of love affairs gone wrong or disapproving parents in a patriarchal set-up unable to come to terms with the sexual independence of the woman in the family, statutory dilution by lowering the age has been strongly felt recently. A strictly technical approach towards the POCSO Act with respect to consensual relationships among adolescents with negligible age differentia would only do more injustice than justice in an ever evolving society. The fix age rule calls for a reconsideration and a guided judicial discretion becomes necessary in such cases for an effective dispensation of justice and balancing the rights of the minor victims *qua* sexual exploitation on the one hand and sexual autonomy on the other hand.

Chapter-3

ROLE OF POLICE IN THE JUVENILE JUSTICE SYSTEM



"I don't hate the police. I just feel safer when they are not around". Dario Fo in "Accidental Death of an Anarchist".

What is the role of police in our society and specially vis-a-vis children found in conflict with law or difficult circumstances:¹—

To begin with, very early in my posting as a Principal Magistrate, Juvenile Justice Board, Delhi, I had a brush with two very uncomfortable situations. A very seasoned and senior child welfare police officer produced a young child aged about 17 years, say Lucky (name withheld), who was under the influence of smack and stated that the child Lucky is a BC, i.e., Bad Character in the area and has committed a series of robberies in not only his 'area' but also adjoining areas. He further stated that on some previous occasion the said Lucky had even broken an observation home and had escaped from the protective custody. The child was standing with his mother and seemed to be still under the influence of the drug. Perusal of the entire case file including the medical papers of the child did not reveal anything significant. However, the mother of the child suddenly started crying and stated to the Board that her child was severely beaten up by the police officials, he was picked up from his house and not the spot as reflected in the apprehension memo and further stated that the police officials had even thrown acid on his private parts. The officer present before the Board completely and obviously denied all the allegations. Given the seriousness of the accusations, I was compelled to request the male staff present in the Board including the Public Prosecutor to verify the same. There were evidently burn injuries and fresh simple injuries in his entire body. He was immediately taken for medical examination and treatment under the supervision of Welfare Officer and necessary orders were passed for preservation of CCTV footage at the concerned police station as well as to the disciplinary authorities to take necessary action against the delinquent officers.

A very similar case of police excess and atrocity came up before me just a few days later when on a gazetted government holiday when the Board was not sitting, I was informed by way of virtual

1 A Child in conflict with law is also said to be a child in difficult circumstances.