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An examination of the Juvenile Justice Act critically in relation to age determination

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Research Article

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Abstract
According to Nehru, children are the nation's greatest asset and should be nurtured. In support of this, the constitution has given children a number of rights, including the fundamental right to life, the right to education, the freedom of thought and conscience, and the right to be protected from various forms of exploitation and abuse.
Articles 15 (3), 21, 24, 39 (e) & (f), 45 & 47, and other articles of the Indian Constitution serve as the foundation for the country's juvenile justice policy. The UN Convention on the Rights of the Child, Beijing Rules, and UN Standard Minimum Rules for the Administration of Juvenile Justice are only a few of the international covenants that serve as guidelines for the policy.
The process to be followed when a claim of juvenility is brought before any court is outlined in Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000. However, the interpretation of the provision does not address a number of concerns with the age determination dilemma. Additionally, the courts have differing views on these matters. The administration of the Juvenile Justice Act seems to be rather challenging in situations where the age determination is a significant concern because of the ambiguity around the interpretation of this clause.
The Juvenile Justice Act's revisions and court rulings on age-related matters will be the primary secondary sources used in this paper. The following research questions are the focus of this paper: (a) Who has an obligation to inquire about the age of a kid, an accused person, or a magistrate? (a) What evidence is used to determine age? In the event of contradictory evidence, how should the court resolve the age issue? (c) When determining age, what date is relevant?

Keywords: Juvenile justice, age determination, evidence, and pertinent date

Introduction

Determining a juvenile's age has been a conundrum with several approaches. The process to be followed when a claim of juvenility is brought before any court is outlined in Section 7A. The court has utilised different responses to queries about a juvenile's age determination in the following cases:

Who owes a duty to raise the question of age among child, accused and magistrate?

The juvenile justice act's provisions are complicated to apply since courts have responded to this subject in a variety of ways via their rulings. The Bombay High Court requested the prosecution to demonstrate that a person was not a minor in one instance [1] when medical evidence showed that the individual was under a certain age. In another example [2], however, the accused was required to demonstrate whether he was a kid when it was shown that he was older than the age limit. Nonetheless, the Bombay High Court's rationale seems to be more trustworthy and adheres to Section 7A of the Juvenile Justice Act, which expressly states that the court has the authority to evaluate whether an individual is a juvenile or not. Andhra Pradesh [5], Rajasthan [4], and Allahabad [3] have all strengthened this stance. High courts in other rulings.

1 State v. Dungaria Mahala 1961 Cri LJ 815
2 Hawaldar Singh v. State of UP AIR1985, SC 955 and Nazir Hossain Halder v. State of West Bengal 1998 Cri LJ 1720 (Cal)
3 State of Uttar Pradesh v. Milap Singh 2000 Cri LJ 3059 (All)
4 Balbir Singh v. State of Rajasthan 1994 Cri LJ

2750 and Arjun Ram v. State of Rajasthan 1998 Cri LJ 4375 (Raj)
5 State of Andhra Pradesh v. Bandella Allaiah Cri LJ 1083 (AP) 1995

What evidence is relied upon for determination of age? How should the court decide the question of age if there are conflicting evidences?

The statute prescribes a four-pronged strategy in the following order: A certificate of matriculation or its equivalent, A certificate of birth from the first school attended,
A certificate of birth issued by a corporation, municipal authority, or panchayat
In the event that neither of the aforementioned is available, a medical opinion from a properly constituted Medical Board will be acquired.
The aforementioned procedure solely relies on the later prescription in the event that the previous prescription is not provided. The main focus is on a Matriculation Certificate; if this isn't available, the attention would go to a Birth Certificate from the school where the student initially went; if that isn't available, the emphasis would then move to a Birth Certificate from a Corporation, Municipality, or Panchayat. And a medical examination may be trusted if the aforementioned is not produced.

This requirement raises an important question as to how reliable and safe is the aforesaid legislative mandate?

In Ashwani Kumar Saxena v. State of Madhya Pradesh [6], the Hon'ble Supreme Court ruled that "once the Court, following the above-mentioned procedure, passes an order, that order shall be the conclusive proof of the age as regard such child or juvenile in conflict with law." "We fail to see what types of enquiries are being conducted by the Trial Courts and the Appellate Court, when the question regarding the claim of juvenility is raised," the Supreme Court further stated in Ashwani Kumar Saxena, rejecting various forms of inquiry used by the lower courts. The Supreme Court should not have adopted this strategy because it ignores the following factors: On the surface, the Matriculation or Equivalent Certificate's first exam seems to be illogical and unreasonable. In India, where 55.8% or 63% of juvenile offenders are either uneducated or only have an elementary education, it is an absurd exam. It is unrealistic to expect the great majority—nearly 56%—to be eligible for the first prescription. Once again, the second criteria of a date of birth certificate from the first school attended is illogical. Since a parent would record his child's precise date of birth upon admitting him to formal education, creating unimpeachable proof that leaves little to no space for challenging its validity, the Supreme Court wisely interpreted this clause to indicate authenticity. However, the Supreme Court neglected to acknowledge that in a nation where 63% of people are illiterate and have little to no access to formal education. It is unrealistic and idealistic to expect them to produce a diploma from any official school if they have never attended any. Only 41% of children under five had their birth recorded with civil authorities, according to the National Family Health Survey III, which was performed in 29 states. Only one in ten homes in the lowest economic strata possessed a birth certificate, and only 25% of births were registered [7]. The bulk of minors dealt with under the JJ Act are from the lowest socioeconomic strata, lack a birth certificate, and have not attended formal education, yet the Supreme Court ignored this fact. Once again, the Third Test of a Date of Birth Certificate from the Corporation, Municipality, or Panchayat is illogical. In Abuzar Hossain Alias Gulam Hossain v. State of West Bengal [8], the Hon'ble Supreme Court acknowledged that "there may be cases in which the accused may not be in a position to provide a birth certificate from the corporation, the municipality, or the panchayat, for we know that the registration of births and deaths may not be maintained and if maintained may not be regular and accurate, and at times truthful." These certificates are susceptible to widespread tampering. It is no secret that certificates in India are readily obtained via the use of undue influence or financial advantages, and they are subject to widespread manipulation and forgery. The merits of this requirement cannot be re-examined. There is no room for re-examining and re-looking to make sure that the advantages of welfare law are only accessible to those who deserve them, not to those who do not.

Another important question arises as to which evidence will be given priority over the other?

The juvenile justice act's requirements are complicated to apply since courts have provided varying solutions to the issue of whether evidence should take precedence.
In State of U.P. v. Bhoop Ram [9].The appellant's school certificate was denied by the Sessions Judge on the grounds that "it is not unusual that in schools ages are understated by one or two years

for future benefits." Nevertheless, the Supreme Court disregarded the medical opinion in favour of documentary evidence. The court said that the medical evidence was an estimate based on physical characteristics and radiological testing, and that it is impossible to completely rule out the possibility of a mistake in the conclusion. The court additionally said that there was insufficient evidence to conclude that the appellant had nothing to do with the school certificate or that the information on it was inaccurate. The Sessions Judge dismissed it based only on the presumption that it is common for parents to understate their children's age by one or two years at the time of their admission to schools in order to benefit them later in life, even in the absence of any evidence to cast doubt on the entries in the school certificate.

7 THE TIMES OF INDIA, November 5, 2007, New Delhi, 17.
8 (2012) 10 SCC 489 9 AIR 1989 SC 1329
In Ramdeo @ Rajnath Chauhan v. State of Assam [10], the accused's argument that he was under the legal age on the day of the offence was backed by both the school register and the medical evidence, but the Sethi J. did not rely on either. The defendant in this case had killed many people. The accused showed the school register of the second school, where he was accepted based on a transfer certificate from the first school attesting to his age of fifteen on the day of the incident. The trial court acknowledged that the entry did pertain to the accused even though it believed that the school entry was improperly maintained. On the grounds that this material could not be trusted and that the first school's admissions criteria were unknown, it declined to accept it. In order to determine his age, the trial court sent him to a medical board. The accused was older than fourteen but not older than fifteen, according to the medical report. Because the medical examination had a two-year margin of error, the trial court rejected the medical evidence. Despite the fact that the accused's statement to the police is not admissible as evidence, the trial court chose to rely on the father's testimony during cross-examination.
In Babloo Pasi [11], the Supreme Court ruled that the medical evidence was insufficient to establish age, citing Ramdeo Chauhan [12]. The information on file and the evaluation of the evidence presented by the parties will be used to ascertain the date of birth. Even while medical data is a very helpful guide, it must be taken into account in conjunction with other information.
But in State v. Lal Mohd. [13]. The school record "lost much of its evidentiary value," the court said. The Medical Board's conclusion that the petitioner was older than 21 was cited by the court.
The Medical Board's assessment that the accused petitioner was between the ages of 16 and 18 was not taken into account by the Court in Mohammed Arif v. State of Rajasthan [14]. The age listed in the voters' list and the court's assessment of his physical appearance served as the primary foundation for the court's conclusions. The court did not take into account the relevant evidence that was on file or give the witnesses a chance to be cross-examined. As a result, the High Court overturned the trial court's judgement and instructed it to finish determining the accused petitioner's age on the day of the incident after providing both parties with a hearing opportunity.
A public school's registry was shown in Umesh Chandra v. State of Rajasthan [15]. According to the Court, a public school's register would be admissible as evidence provided it is kept in the regular course of business.
The Supreme Court ruled in Jaya Mala v. Home Secretary, Government of J&K [16] that age determined by a medical examination is not definitive evidence of age. It's just

10 (2001) 5 SCC 714 11 Babloo Pasi vs. State of Jharkhand (2008) 13 SCC 113 12 (2001) 5 SCC 714 13 119 (2005) DLT 353 14 RLW 2003(2) Raj 867 15 1982 AIR (SC) 1057 16 AIR 1982 SC 1297.
The school leaving certificate, mark sheet, and medical report were deemed adequate in Jitendra Singh alias Babboo Singh and others v. State of Uttar Pradesh [17]. The court decided that the court may act upon such papers for the purposes of Section 7A and conduct an inquiry to determine the age if they prima facie inspire trust in the court.

Another important evidentiary question that requires to be considered is how should the court decide the question of age if there are conflicting evidences?

There is no definitive answer, and the evidence must be considered in the context of the case. However, determining whether or not the accused was a kid should never be based on the kind of offence they committed. Beneficial appraisal of evidence should be the guiding concept in order to

bring borderline instances into the JJ Act's protective purview. The Ramdeo @ Rajnath Chauhan v. State of Assam [18] case raised a number of issues, such as how to calculate age without a birth certificate. Should medical evidence be subordinated to documentary evidence? How should the medical evidence be used? Can the preponderance of the evidence be used to establish age, or is proof beyond a reasonable doubt the standard of proof? Should someone whose age is unknown be treated as a kid and given the benefit of the doubt?

In Arnit Das [19], the Supreme Court demonstrated that the court should not use a too technical approach when evaluating evidence to determine the accused's age. In circumstances when there are conflicting opinions, the court ought to support declaring the accused to be a minor. The Supreme Court further supported this method in Rajendra Chandra [20], where it established that the degree of likelihood, not evidence beyond a reasonable doubt, is the standard of proof for determining age.

What is the relevant date for age determination?

The kid must be less than the designated age in order for the JJA to be applicable. But for many years since the original Children Act, the courts have struggled with the issue of when the accused should be younger than the required age. Although the Acts specified the age of a child, they were either silent or inconsistent on whether the Act's applicability was determined by the date of the offence, the arrest, the initial production, or the trial.

For the first time, the Supreme Court held in Umesh Chandra v. State of Rajasthan [21] that the Children Act's application was decided by the offender's age at the time of the offence. In State v. Arnit Das [22]. At the time, it was 17 (2010) 13 SCC 523 18 (2001) 5 SCC 714 19 Arnit Das v. State of Bihar AIR 2000 SC 2264.

20 State of Chhatisgarh v. Rajinder Chandra, (2002) 2 SCC 287; 21 (1982) 2 SCC 202.

22 Ved Kumari, "In Defence of Arnit Das v. State of Bihar: A Rejoinder." (2002) 2 SCC (Jour) 15; R.D. Jain, "In Defence of Arnit Das v. State of Bihar: A Critique," (2001) 2 SCC (Jour) 9; Chandrashekhar Pillai, "Editorial Comments," (2001) 2 SCC (Jour); B.B. Pande, "Rethinking Juvenile Justice: Arnit Das Style," (2000) 6 SCC (Jour) 1; Ved Kumari, "Relevant Date for Applying the JJ Act." The case was examined by a five-judge panel in Arnit Das-II [23] and was the focus of several scholarly remarks. In contrast to the full bench's ruling in Umesh Chandra, it was ruled by a two-judge bench that Arnit Das-I was per incurium.

The issue was also brought up in Pratap Singh v. State of Jharkhand, where the accused was under sixteen on the day of the offence but had grown older by the time he was brought before the juvenile court in accordance with the JJ Act. After considering the dispute between Arnit Das-I and Umesh Chandra, the Supreme Court declared that Arnit Das-I could not be considered to have established sound law. It affirmed the ruling in Umesh Chandra that the JJ Act's application was decided by the offender's age at the time of the offence.

By adding the phrase "and has not completed eighteen year of age as on the date of commission of such offence" to the definition of "juvenile in conflict with law," the JJ Act has put an end to this debate.

In the case of Vimal Chadha v. Vikas Choudhary and Others [24], it was determined that a different perspective was required. The defendant was charged with both extortion and murder. Even after the captive was slain, he continued to demand a payment. The accused was one day older than eighteen when he made the final call. The Supreme Court ruled that the date of the most recent conduct is a relevant factor in determining age in cases of ongoing offences. The Supreme Court ruled that the JJ Act did not apply since the accused was eighteen years and one day old on the day of the last ransom demand.

The court ought to have handled the two crimes independently in the aforementioned instance, in my view. The accused should have been prosecuted under the JJ Act for the murder as he was a minor at the time of the crime. The JJ Act prohibits a child and an adult from being prosecuted together, thus he should have been tried separately for the extortion charge that persisted until he was no longer a minor. This principle ought to be applicable even in situations when an individual commits many crimes, some of which were committed while he was still a minor.

Whether the magistrate not empowered to deal with juveniles also determine the age or should they always transfer the matter to the Juvenile Justice Board as provided for in section 7 of the JJA 2000

The phrase "when any Magistrate... is of the opinion" seems to provide an explicit answer, as it implies that the magistrates should transfer the case if they have formed an opinion based on the appearance of the person brought before them or on any other seemingly trustworthy piece of evidence that suggests the person is likely to be a juvenile. The magistrate may decide the age himself if he believes the individual in front of him may not be a juvenile but may be younger than twenty-one. The Allahabad High Court followed this strategy, ruling in 23 2001 (7) SCC 657 that the high court or the court of sessions may use the power of inquiry when proceedings came before them in appeal, revision, or otherwise. 24 2008 (9) SCR 911 and did not mandate that only the appropriate authorities conduct the investigation [25].

What should a session judge, or other courts do if the plea of child status is raised for the first time when the matter comes before them after committal or in appeal or revision or otherwise

This issue must be addressed using the recently added section 7A, which is read in conjunction with the discussion above. "A claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, even if the juvenile has ceased to be so on or before the date of commencement of this Act," according to Section 7A. Therefore, it doesn't matter when the plea of child status is raised; the court must make a decision on the plea even after the case has been resolved. All courts with the authority to admit evidence should only conduct their own investigation if they believe the person in front of them is not a child, but not if they believe the person may be.

Conclusion

Numerous child-centered laws and constitutional safeguards notwithstanding, many Indian children are subjected to prejudice and hardship.

The Supreme Court's contradictory and limited interpretations of age-related concerns have produced a tangle that has limited the JJ Act's application to a growing number of situations that go against both the legislation's goal and its scheme.

The Juvenile Justice Act's poorly drafted provisions have simply made matters worse. The dependence on birth certificates is the most obvious example. It is unreasonable to rely the determination of age on Matriculation or Equivalent Certificate.

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