

## Provisions To Assess Age and Its Actual Implemnetation by The JJ Board Gorakhpur and Khalilabad: A Critical Study

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### Abstract

Administration of juvenile justice become insignificant where the assessment of the age of juvenile was not made according to the provisions contained in The Juvenile Justice (Care and Protection of Children) Act, 2015(JJ ACT). It is of common experience that the Boards are insensitive regarding assessment of age and highly conservative. The reason underlined is not legal but is driven by extraneous apprehensions. The trial Courts in general and JJ Board in particular are always afraid of in boldly assessing the age of “Child In Conflict with Law”<sup>1</sup> as per Law. The reasons that motive may be attached if they resort to the straight provision of declaring a person to be juvenile. One eason also Can be attributed to the members having no experience of Court working and lack of legal knowledge. The members are just social workers and not a legal luminary. The Principal Magistrate is also a beginner in the service who lacks experience and is career conscious.

**KEY WORDS:** Juvenile Justice, Assessment of age, Mindset of Board Members, Court Working,

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### I. Introduction

In this paper we discuss the basic issue of Juvenile Justice System. The benefit of The Juvenile Justice (Care and Protection of Children) Act, 2015, will begin only after it is proved that the person accused of some offence is a minor below 18 years<sup>2</sup> of Age. In other words the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2015 shall apply only to the minor below 18 years otherwise he would be treated as an adult. Here we deal with the child who is accused of some offence and thereby he is known as a Child in Conflict with Law.

The Indian Penal Code now BNS provides that a person below seven years is exempt from prosecution and punishment. As in this ACT the mens rea<sup>3</sup> is absent i.e. acts of those at the time of commission of crime he/she was ignorant as to what is right and what is wrong. In this case the responsibility of the The Juvenile Justice Board has to be highly sensitive regarding assessment of age. Law presumes that upto certain age the concerned person has no intention to commit a crime. Like-wise the Law lays down that the child below the seven years of age and above seven years of age and under twelve who is yet to attain maturity of understanding to judge of the nature and consequences of his conduct on that occasion, shall not be prosecuted and the Juvenile Justice System will not treat him as a juvenile in conflict with Law. We find that only child above twelve years upto the age of 18 years are covered by the Juvenile Justice System.

Thus it is crystal clear that the assessment of age is the foremost condition to attract the Juvenile Justice system.

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<sup>1</sup> Sec 2 (13) of THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 “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;

<sup>2</sup> (12) of THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 “child” means a person who has not completed eighteen years of age;

<sup>3</sup> Doctrine of *mens rea*, a fundamental principle of criminal law, delves into the state of mind of the perpetrator at the time of committing a crime.

## **PLEA OF JUVENILITY**

### **Who is Juvenile:**

Child above 12 years (other than those falling under section 83 IPC) upto the age of 18 years are covered by the juvenile justice system. In case of heinous<sup>1</sup> offences by a child above 16 years of age. There is also provision of maturity of the child, and if such a child has mental and physical capability commit an offence and has capability to understand the consequences thereof, he may be tried as an adult by the children Court under section 15 read with 19 of JJ ACT. This provision is completely based on assessment of age and the mental status corresponding to the age. In other words it may be said that the backbone of Juvenile justice is the assessment of age. Without assessment the JJ Act cannot be invoked. Rather due to the status of age the other Law of the Land is barred from taking cognizance on the basis of age. Unless the age is not assessed at the first appearance of the child before the JJ BOARD any further proceedings stand vitiated as per Law. During case study it has been noticed that Juvenile Justice Law and inquiry therein commences without assessment of age at the first appearance. Lengthy procedure is adopted by the JJB for assessment of age which takes month and months and the child who is presumed to be innocent is languishing in jail with adult offenders or is detained in reform home. Thereby liberty of a child who is generally without a supporting guardian is infringed by the Board for its failure to follow the appropriate provisions.

## **RELEVANT PROVISIONS**

**JJ ACT SECTION 94.**<sup>2</sup>Presumption 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 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.

The legislature has used the word shall which means there is no option for the JJ Board but to follow the provision under Section 94 (1). Under this provision when a person appears or brought before the JJ Board, it obviously, appears to the Board to be a child the Board shall record such observation stating the age of child as nearly as may be. This amounts to final assessment of the age and without delay the Board shall proceed with the inquiry (Trial) under section 14 or 36, as the case may be without waiting for further confirmation of the age.

It is a matter of common experience that a prudent person can Physically observe the Child and reach to the conclusion that the person is a juvenile or not. Almost in all the cases the JJ Boards skips its responsibility assigned under section 94(1) for whatever reason best known to them. The different reasons may be attributed as follows:

- Hostile and sedative mindset
- The immature presumption that the person brought before it is not innocent,
- Under influence of the Police administration for gaining petty favours like refilling of LPG cylinders, without ticket watching films in cinema halls etc,
- Lack of experience of the members and the Principal Magistrate who started working without proper training and sensitization,
- Members being social worker and stranger to the legal provisions who do not understand the intricacies and delicacies of a highly sensitive provisions.
- They take it lightly

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<sup>1</sup> Section (33) of THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 “heinous offences” includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;

<sup>2</sup> THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

- Preoccupied and prejudiced mindset.
- Afraid of accusation of partiality and attachment of motive,

If there is actual situation where obviously any doubt or is a border line case, in exceptional matters, the Board is authorized to rely upon school certificates in which date of birth is recorded. Here again it has been observed in several cases that more than one school certificate is on record with conflicting entries regarding date of birth. In such a circumstance the board has to judiciously arrive at an appropriate conclusion regarding age. Generally one such certificate is relied upon by the Board and the other contradictory certificates are ignored. The welfare law is meant to be interpreted in favour of the person accused but the age is decided at the whim of the Board.<sup>1</sup>

There is no provision to make any inquiry regarding date of birth if a matriculation certificate or any other school certificate can be relied upon. But unfortunately the Boards have evolved their own extraneous procedure against the provisions of Law. They again resort to lengthy procedures. The school teacher is recalled as a witness which takes several months. Such teacher is called upon to prove the certificate issued by the school, resulting into detention of innocent person for one to two years without inquiry (trial).

The next alternate to assess the age under section 94 (2) (ii) is to rely upon birth certificate issued by Municipal authority or the panchayat. The background of the children are from an illiterate and poor family. They generally do not have such certificates.

Section 94 (2) (iii)<sup>2</sup> provides that where the age could not be assessed from appearance, school certificate or municipal certificate, last alternative is that the Board shall base its decision on an ossification test.

In a recent case the JJ Board Gorakhpur has passed a unique order regarding assessment of age of the prosecutrix. In this case Prosecutrix declared in her statement under section 164 CrPc to be an adult of 19 years of age. She approached the Board to declare her a major who can take decisions of her own. Her four date of birth of school certificate are placed on record which had conflicting date of birth. She did not have a certificate issued by municipal authority. She applied for assessment of her age by the Board so that an innocent person is not unnecessarily prosecuted. The Board at Gorakhpur rejected the request of the prosecutrix on the ground that there is no provision of assessment of age of prosecutrix. Board can assess the age of juvenile delinquent only.

The Board grossly failed to interpret the Law and consequently an innocent person accused of offence under POCSO Act has to suffer, despite the prosecutrix being major. This is as a result of in-experience and limited knowledge of Law. There is no differentiation between an accused and the prosecutrix and the same provision applies to both regarding assessment of age.

## **II. CONCLUSION**

It is mandatory that the Board can take cognizance of a matter where the accused is a Juvenile otherwise it has no jurisdiction. Assessment of age by the JJB is foremost condition to invoke the JJ Act. Unless the Juvenile in conflict with law is declared juvenile by the Board, no proceeding can commence. The legislature has clearly laid-down as to how the age of a person brought before JJ Board shall be assessed. In the first instance the physical appearance observed by the Board will determine the age. This provision is not followed by JJB. The JJB never mentions in its order that the person brought before it has been observed physically on first appearance and is not found to be a child. This mandatory provision under section 94 (1) is overlooked and ignored by the JJB. Even the effort to follow this section is never brought on record. There is no need to mention that any person, unless, proved guilty is innocent. This applies more to a child who is vulnerable to abuse of Law as he cannot lead his defense before JJB himself. Any legal aid by the JJB or the DLSA is provided after only the inquiry (TRIAL) commences which is a very late stage. For the lack of wisdom of the JJB to assess the age at the first appearance, the child is to suffer several months and even years without inquiry (Trial).

From the field study and experience in such matter it is conclusively stated that the JJ Board should have its members with legal background sufficient experience and adequate training. Without this the miscarriage of justice shall continue.

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<sup>1</sup> SECTION 2 (10) OF JJ ACT 2015 "Board" means a Juvenile Justice Board constituted under section 4;

<sup>2</sup> THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015