
DETERMINING AGE IN CRIMINAL LAW: A COMPARATIVE LEGAL ANALYSIS OF POCSO AND JUVENILE JUSTICE FRAMEWORKS IN INDIA

Eshanya Mishra, Maharashtra National Law University, Chhatrapati Sambhajanagar

INTRODUCTION

Widely known principle of criminal law is *Doli Incapax* which quite literally translates into ‘incapable of evil’¹ wherein a child under the age of seven years is absolved of any criminal responsibility. They are therefore exempt from criminal prosecution, cannot be officially accused of a crime by the authorities, and are not subject to any criminal law processes. However, absolute defence is not granted for age groups seven to eighteen; instead, mental ability will be the deciding element. Age is also a significant factor in evaluating criminal liability, especially when it comes to situations involving minor victims and children who are in legal trouble. It affects the severity of punishment as well as the trial's procedure. Different legal approaches for juvenile victims and juvenility claims create issues about procedural inconsistencies, despite the fact that age determination is a critical component of the criminal justice system.

While the Juvenile Justice (Care and Protection of Children) Act, 2015, under Section 94, lays down a clear statutory process for determining the age of child in conflict with the law², this process includes guidelines for medical examinations and accepted forms of documentary evidence. Judicial inconsistency arises from this absence, especially, when it comes to determining which approaches work more efficiently and ensuring a fair standard of proof. Amendments to the POCSO Act and the IPC have also added the death penalty for non-homicidal sexual offences.

A key issue arising from this legal gap is the standard of proof required in age determination

¹ Hannah Wishart, “Was the Abolition of the Doctrine of Doli Incapax Necessary”, (2012) 1 UK Law Students’ Review 50.

² The application of s 94 extends to a child in need for care and protection whose age is determined by the Child Welfare Committee.

proceedings. The Supreme Court through its catena of judgments has explored various ways of determining the age of the minors³. Section 94 of the Juvenile Justice Act accepts valid documentary evidence as conclusive proof of juvenility without questioning its authenticity.

Section 34 of the POCSO ACT, grants courts wide discretion in age determination thus, leading to varied judicial approaches. Some of them include: documentary evidence, cross-examine document creators, and in case of inconsistencies, rely on medical tests like bone ossification and dental examinations, which are often inconclusive. Since there exists a lack of lucid legal standard results in inconsistent rulings, affecting the accused's rights to a fair trial. A possible solution could be a high standard of evidence which should be applied in determining a victim's age due to its impact on sentencing and a lower standard should be applied to juvenile claims, ensuring a benefit of the doubt to minors and accused persons.

OVERVIEW OF SECTION 34 OF THE POCSO ACT, 2012

Section 34, POCSO Act merely prescribes procedure in case of 'commission of offence by child' and determination of age by Special Court. It reads as under: -

"Sec.34 (Procedure in case of commission of offence by child and determination of age by Special Court)-

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person."

A mere reading of the heading of Section 34 suggests that it applies when the offender is a child. Section 34(1) specifies that if an offence under the POCSO Act is committed by a child, they must deal with it under the Juvenile Justice Act. The purpose of this section is to protect the child's best interests by ensuring they are governed by the JJ Act, which focuses on rehabilitation and care. Section 94 and Rule 12 of the Juvenile Justice (Care and Protection of

³ Jarnail Singh v State of Haryana (2013) 7 SCC 263 ('Jarnail Singh'); Mahadeo v State of Maharashtra and Ors. (2013) 14 SCC 637 ('Mahadeo').

Children) Act, 2015 (JJ Act), provide for the presumption and determination of the age of the child. While the POCSO Act provides the court discretion in determining age, it lacks a **defined process**, unlike the JJ Act.

AGE DETERMINATION UNDER SECTION 94 OF THE JJ ACT, 2015

Section 94 of the Act, provides a **hierarchical evidentiary process**:

1. School Date of Birth Certificate
2. Birth Certificate from municipal/local authorities
3. In absence of both: Ossification or medical test

Priority is given to a school issued date of birth certificate; if unavailable, a birth certificate from the municipal authority is considered. Only in the absence of both the documents is age determined through an ossification test or any other advanced medical test as ordered by the committee or board.

The Supreme Court in *Jarnail Singh v. State of Haryana*⁴ held that Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007, is applicable in determining the age of a child who is a victim of a crime. The Special Court loses jurisdiction in such cases, and the juvenile must be dealt with under the JJ Act. The court stated '*Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law. We are of the view that the aforesaid statutory provision should be the basis for determining age. even of a child who is a victim of crime. For in our view there is hardly any difference insofar as the issue of minority is concerned between a child in conflict with law and a child who is a victim of crime.*'

COMPARATIVE ANALYSIS OF THE PROCEDURAL ASPECT

The procedure for determining a juvenile's age saw several substantial changes between the Juvenile Justice (JJ) Act of 2000 and the 2015 Act. There are significant procedural distinctions between the two Acts, despite the fact that both seek to guarantee an equitable and uniform process for figuring out the age of a child in legal trouble or in need of care and

⁴ Jarnail Singh v. State of Haryana 2013 SCC Online SC 507.

protection.

Juvenile Justice Act, 2000: Judicial Interpretation and Procedural Framework

In *Ashwani Kumar Saxena v. State of M.P.*⁵, the Supreme Court explained that an age determination investigation is different from a typical criminal prosecution and must rigorously follow the process outlined in the Juvenile Justice Rules, 2007 under the JJ Act, 2000. The Court stressed that judicial authorities, such as the Child Welfare Committee (CWC) and Juvenile Justice Board (JJB), should depend primarily on documents like school certificates rather than undertaking a comprehensive investigation into the accuracy of official records. The goal was to avoid needless hold-ups and procedural obstacles when assessing juvenility.

The basis for establishing a juvenile's age was established by Rule 12 of the JJ Rules, 2007, which gave precedence to documentation evidence (such as birth certificates and school records) over medical examinations. However, medical evaluations (such as ossification tests or dental exams) could be carried out in the absence of documentary evidence. In *Abuzar Hossain v. State of W.B.*⁶, the Supreme Court reaffirmed 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 and circumstances of each case and no hard and fast rule can be prescribed that they must be prima facie accepted or rejected*'. Judges might evaluate the veracity of age-related information on an individual basis, especially when various records had contradictory dates of birth.

The fact that Rule 12 applied to courts considering claims of juvenility under Section 7A as well as the Juvenile Justice Board and Child Welfare Committee was another crucial element of the JJ Act, 2000. This prevented minors from being unfairly charged as adults by enabling courts to perform age determination enquiries in situations where juvenility was invoked as a defence.

Juvenile Justice Act, 2015: Key Procedural Shifts and Legislative Intent

Significant modifications were made to the age determination procedure by the JJ Act, 2015, mainly through the replacement of Rule 12 of the JJ Rules, 2007 by Section 94. The absence

⁵Ashwani Kumar Saxena v. State of M.P AIR 2013 SC 553.

⁶Abuzar Hossain v. State of W.B AIR 2013 SC 1020.

of "courts" from Section 94's jurisdiction is among the most obvious distinctions. It makes it clear that the process for determining age exclusively applies to the Juvenile Justice Board and the Child Welfare Committee, in contrast to Rule 12, which also applied to courts.

This change raises questions about the continued applicability of precedents such as *Jarnail Singh v. State of Haryana*⁷ which had extended the Rule 12 framework to age determination inquiries in general criminal proceedings, '*On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules).*'

Removing courts from Section 94, the JJ Act, 2015, indicates a legislative intent to restrict the application of juvenile age determination procedures solely to cases governed by the JJ Act.

However, Section 9(2) of the JJ Act, 2015, allows juvenility claims to be raised before any court, and the proviso states that such claims should be decided under the JJ Act. This creates an apparent contradiction: while courts can entertain juvenility claims, they may not necessarily be bound by the strict procedural requirements of Section 94. This reinforces judicial discretion in cases outside the Juvenile Justice framework, particularly in instances where the age of a victim needs to be determined, such as under the Protection of Children from Sexual Offences (POCSO) Act.

Another critical implication of Section 94 is, its explicit clarification that age determination procedures under the JJ Act cannot be applied to other legal contexts. This departs from earlier interpretations that allowed courts to rely on the JJ Rules' procedures even in non-juvenile cases. Consequently, in cases where the age of a victim is a substantive element of an offence (e.g., under the IPC or POCSO Act), the courts are not bound by the procedures outlined in the JJ Act, 2015. Instead, they retain the discretion to adopt a fact-specific approach in determining age.

DOCUMENTARY VS MEDICAL EVIDENCE: JUDICIAL TRENDS

Section 34 of the POCSO Act governs the determination of age. While a plain reading of the provision may suggest that it applies solely to individuals accused of offences under the Act,

⁷ Jarnail Singh v. State of Haryana AIR 2013 SC 3467.

clause 2 specifies that any questions regarding the age of “any person” shall be determined by the Special Court, thereby encompassing victims as well.

Notably, no specific age determination procedure exists under other statutes where the victim's age is a substantive element of the offence, such as the IPC, the Immoral Traffic (Prevention) Act, 1956, and the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. For eg; a 17-year-old accused of rape under POCSO Act submits a school certificate showing age as 17. Medical test shows 18–20 years. If benefit of doubt isn't given, the accused could face a minimum **20 years or death**—despite being a minor.

*The Supreme Court in the case of **Arnit Das v. State of Bihar**⁸ advocated for a liberal interpretation favoring juveniles in borderline cases. The Court noted that the Act does not specify a reference date for age determination and thus the order of the competent authority regarding the age of the juvenile is final, subject to appeal. Enquiry into the age of the juvenile must be conducted when they appear before the competent authority. It also stated that the competent authority, not the police or a magistrate, determines the age based on available documents and evidence.*

*While emphasizing that the relevant date for determining juvenility is to be the date of the offence, not the date of trial, the court in the case of **Pratap Singh v. State of Jharkhand**⁹ overruled the decision in **Arnit Das's case** and upheld the view in **Umesh Chandra**¹⁰ that the date of occurrence is the relevant date for determining juvenility.*

One of the primary sources of age determination is medical evidence. The ossification test is used to determine age based on the fusion of bones and this has been legislatively referred under Section 94(2)(iii) of the 2015 JJ Act and Rule 12(3) of the 2007 JJ Rules.

Although the ossification tests are not held to be conclusive and the “*opinion of a medical officer is advisory in nature.*”¹¹ This has been further reiterated in the case of **Ram Suresh Singh v. Prabhat Singh**¹² and **Jyoti Prakash Rai v. State of Bihar**¹³ that the ossification test is not conclusive for age determination because it does not reveal the exact age of the person.

⁸Arnit Das v. State of Bihar AIR 2001 SC 3575.

⁹Pratap Singh v. State of Jharkhand AIR 2005 SC 2731.

¹⁰Umesh Chandra vs State Of Rajasthan 1982 AIR 1057.

¹¹Vishnu v. State of Maharashtra AIR 2006 SC 508.

¹²Ram Suresh Singh v. Prabhat Singh (2009) 6 SCC 681.

¹³Jyoti Prakash Rai v. State of Bihar (2008) 15 SCC 223.

However, regardless of whether the ossification test of multiple joints is performed or not, the radiological examinations allow a margin of two years on either side of the age range as specified by the test. The Indian courts have acknowledged that the ossification test is no longer a reliable method of determining age beyond the age of thirty. It goes without saying that the degree of probability, not proof beyond a reasonable doubt, is the standard of proof for determining age.

Further stressing upon the medical tests to determine the child's age, the court in the case of *Vinod Katara v. State of U.P.*¹⁴, clarified that, when documentary evidence is unreliable, the sessions court may order a medical examination, including an ossification test, to determine the age of the accused.

Second important source is the documentary evidence in the form of certificates. The Supreme Court in the case *Rishipal Singh Solanki v. State of U.P.*¹⁵, ruled that Section 94 of the 2015 JJ Act does not prioritize matriculation certificates over other forms of age determination. If the ossification test is unreliable, other available documents must be considered. However, in 2023, the court further reiterated that “*school transfer certificate is not acceptable for age determination of victims in POCSO Act.*”¹⁶

Therefore, based on the aforementioned case laws and relevant sections, it can be inferred that the courts while determining the age of the minor rely on the ‘principle of benefit of doubt in age determination’. If the ossification test provides an age range (e.g. 17-19 years), the benefit is given to the accused, considering the upper limit (19 years). By applying a margin of errors of two years on either side, the age range may fall between fifteen to twenty-one years. If the margin of error is not applied, the upper estimated limit is taken as the final age.

CONCLUSION:

The determination of age in criminal law is not just a procedural necessity but a crucial factor in ensuring justice for both victims and juveniles accused of crimes. The lack of a consistent and standardized approach across different legal frameworks—such as the Juvenile Justice Act and the POCSO Act—leads to procedural inconsistencies, raising serious concerns regarding

¹⁴ Vinod Katara v. State of U.P (2022) 9 S.C.R. 836.

¹⁵ Rishipal Singh Solanki v. State of U.P. (2021) 12 S.C.R. 502.

¹⁶ P. Yuva Prakash v. State 2023 SCC OnLine SC 846.

fair trial rights, evidentiary standards, and judicial discretion. While courts have evolved jurisprudence that leans towards the "benefit of doubt" principle in age determination, discrepancies in documentary and medical evidence continue to create legal uncertainty.

The need for reform in this domain is urgent. A few key recommendations can bridge the existing legal gaps: A singular, standardized method applicable across all legal frameworks should be established to reduce judicial inconsistencies. This should clarify the weightage of documentary evidence versus medical tests and minimize reliance on discretionary judicial interpretation. Given the limitations of ossification and dental examinations, forensic advancements such as DNA-based age estimation should be explored to improve accuracy. Special courts dealing with juvenile cases must undergo rigorous training in handling age-related claims to ensure consistent and fair application of the law. In cases of doubt, a legal presumption in favor of juvenility should be strictly applied, ensuring minors are not unjustly subjected to adult legal consequences. A centralized and digitized database for birth certificates and school records can prevent discrepancies in documentary evidence, ensuring authenticity and reducing fraudulent claims.

The balance between protecting child rights and ensuring justice for victims is delicate. As legal frameworks evolve, India must adopt a child-centric, scientifically informed, and procedurally consistent approach to age determination. By implementing these reforms, the legal system can ensure that no child is wrongfully prosecuted as an adult and no victim is denied justice due to procedural ambiguity. The goal must always be to uphold the fundamental principles of fairness, rehabilitation, and justice in every case involving children in conflict with the law.