

Legal Provisions & Practices for Age Determination of 'Child in Conflict with Law' and Presumptions Thereto

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- 1. Juvenile Justice (Care & Protection of Children) Act, 2015 :** Repealing the Juvenile Justice (Care & Protection of Children) Act, 2000, the Parliament has now enacted the Juvenile Justice (Care & Protection of Children) Act, 2015. Sub-section (3) of Section 1 of the JJ Act, 2015 provides that the new JJ Act, 2015 shall come into force on such date as the Central Government may, by notification in the official gazette, appoint. The Central Government issued its notification on 12.01.2016 with the direction that the said Juvenile Justice Act, 2015 shall come into force w.e.f. 15.01.2016. The new JJ Act, 2015 has thus come into force w.e.f. **15.01.2016**. The relevant notification dated 12.01.2016 issued by the Ministry of Women & Child Development is quoted below.
- 2. Applicability of the new JJ Act, 2015 to the pending(old) cases as on 15.01.2016 i.e. the date of enforcement of the new JJ Act, 2015 :** Section 25 of the JJ Act, 2015 reads thus : "Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or Court **as if this Act had not been enacted.**"
Juvenile : According to Sec. 2(35) of the Juvenile Justice (Care & Protection of Children) Act, 2015, "juvenile" means a child **below the age of eighteen years.**
Child : According to Section 2(12) of the Juvenile Justice (Care & Protection of Children) Act, 2015, "child" means a person who has **not completed eighteen years of age.**

Child in conflict with law : According to **Section 2(13)** of the Juvenile Justice (Care & 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.**

- 3. Providing opportunity to parties for producing evidence during enquiry to decide juvenility mandatory** : While holding enquiry to decide juvenility of a person under the JJ Act, 2000, the court is bound to give opportunity to the parties to lead their evidence. See---**Nafees Ahmad Vs. State of U.P., 2010(70) ACC 305 (All)**

- 4. Rule 12 of JJ Rules, 2007 to apply both to the juvenile & to the victim of crime** : Even though Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is strictly applicable only to determine the age of a child in conflict with law, the aforesaid statutory provision should be the basis for determining age even of a child who is a victim of crime. For, there is hardly any difference in so far as the issue of minority is concerned between a child in conflict with law and a child who is a victim of crime. Therefore, it would be just and appropriate to apply Rule 12 of the 2007 Rules to determine the age of the prosecutrix who is the victim of offences of kidnapping and gang rape etc i.e. offences u/s 376(2)(g), 366, 120-B of the IPC (in this case). See : **Jarnail Singh Vs. State of Haryana, (2013) 7SCC 263. (Para 23).**

- 5.1 Relevant date for determination of juvenility under the JJ Act,2015 is the date of offence:** As per **Sec. 2 (13), 9(2) and 14** of the JJ Act,2015 and **Rule 12 (7)** of the JJ Rules,2016, the relevant date for determination of juvenility is the date of offence.

- 5.2 Relevant date for determination of juvenility under the JJ Act,2000:** According to **Sec. 2(1) and Sec. 7-A** of the Juvenile Justice (Care & Protection of Children) Act, 2000 and **Rules 12(4) and 97(3)** of the Juvenile Justice (Care & Protection of Children) Rules, 2007, the relevant date for determination of the juvenility or the age of a juvenile is the **date of offence** alleged to have been committed by the juvenile. In the cases noted below, the Hon'ble Supreme

Court has held that relevant date for determining the age of the juvenile would be the one on which the offence was committed and not when he is produced in court. See :

- (i) **Ashok Kumar Mehra Vs. State of Punjab AIR, 2019 SC 1903**
- (ii) **Vimal Chadha vs. Vikas Chowdhary, 2008(62) ACC 264 (SC)**
- (iii) **Dharambir Vs. State (NCT of Delhi), (2010) 5 SCC 344.**

5.3 Procedure for determination of age of child in conflict with law : Sec. 94 of the JJ Act, 2015 and Rule 12 of JJ Rules, 2016 : Section 94(1) of the JJ Act, 2015 provides that 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.

5.4 Procedure of enquiry: Section 14 & 94 of JJ Act, 2015 and Rule 12 of JJ Rules, 2016 : Procedure of enquiry to be as under:

- (i) within 4 months
- (ii) extension for 2 months by board
- (iii) enquiry in petty offences to terminate automatically if not completed within two month's extended period
- (iv) 3 months in heinous offences

- (v) **Section 14 (5) (e) of JJ Act, 2015:** Summons trial procedure for serious offences
- (vi) **Section 14 (5) (f) of JJ Act, 2015: Below 16 years in heinous offences--**
: Summons trial procedure and above 16 years, as per Sec. 15
- (vii) **Sec. 15 of JJ Act, 2015 and Rule 14 of JJ Rules, 2016:** Preliminary assessment into heinous offences
- (viii) **Rule 13(8) of JJ Rules, 2016:** JJ Board to be friendly to the child while examining him to record his statement in enquiry u/s 14.

5.5 Determination of age of juvenile under JJ Act, 2015: Sec. 94 (2) of the JJ

Act, 2015 : 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.

5.6 Age determination by board by majority: Rule 6(6) of JJ Rules,2016: The decision of the board regarding age, preliminary assessment and final disposition shall be taken by a majority including the Principal Magistrate.

Presumption in favour of juvenility: (Sec. 94(3) of the JJ Act, 2015) : 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.

Presumption in favour of juvenility: Rule 12 (5) of JJ Rules,2016: The age decided by the JJ Board u/s 94 (2) of the JJ Act, 2015 and Rule 12 of the JJ Rules, 2016 shall be **conclusive proof** of the age of the child.

Presumption in favour of juvenility while putting questions to the witnesses and child u/s 165 of Evidence Act: JJ Board shall start with the presumption in favour of juvenility while putting questions to the

witnesses and child u/s 165 of the Evidence Act: See: **Rule 12 (7) of JJ Rules, 2016.**

Presiding Judge must play pro-active role to ensure fair trial (Sec. 165, Evidence Act): Duty of presiding judge is to play pro-active role to ensure fair trial. Court cannot be a silent spectator or mute observer when it presides over trial. It is the duty of the court to see that neither prosecution nor accused play truancy with criminal trial or corrode sanctity of the proceedings. Presiding judge can invoke his powers u/s 165 of the Evidence Act and can put questions to the witness to elicit the truth. See : **Bablu Kumar Vs. State of Bihar, (2015) 8 SCC 787.**

6. Rule 12(3)(a) of JJ Rules, 2007 and Section 94(2) of JJ Act, 2015 compared :

Rule 12(3)(a) of JJ Rules, 2007	Section 94(2) of JJ Act, 2015
<p>(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining--</p> <p style="padding-left: 40px;">(i) the matriculation or equivalent certificates, if available; and in the absence whereof;</p> <p style="padding-left: 40px;">(ii) the date of birth certificate from the school (other than a play school) first attended, and in the absence whereof,</p> <p style="padding-left: 40px;">(iii) the birth certificate given by a corporation or a municipal authority or a Panchayat,</p>	<p>(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 —</p> <p style="padding-left: 40px;">(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;</p> <p style="padding-left: 40px;">(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;</p>

Rule 12(3)(b) : And only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year; and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, **clause (b) shall be the conclusive proof of the age** as regards such child or the juvenile in conflict with law.

(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.

- 7. Procedure in Rule 12 of JJ Rules, 2007 and preferential order of production and consideration of evidence mandatory** : Procedure given in Rule 12 of 2007 Rules and the preferential order of production and consideration of evidence given there under is mandatory. See : **Ashwani Kumar Saxena Vs. State of M.P., 2012 (79) ACC 748 (SC)**

- 8. Physical appearance of accused can also be made basis for prima facie holding of juvenility :** It must be appreciated by every Magistrate that when an accused is produced before him, it is possible that the prosecution or the investigating officer may be under a mistaken impression that the accused is an adult. If the Magistrate has any iota of doubt about the juvenility of an accused produced before him, Rule 12 of 2007 provides that a Magistrate may arrive at a prima facie conclusion on the juvenility on the basis of his physical appearance. In our opinion, in such a case, this prima facie opinion should be recorded by the Magistrate. Thereafter, if custodial remand is necessary, the accused may be sent to jail or a juvenile may be sent to an Observation Home, as the case may be, and the Magistrate should simultaneously order an inquiry, if necessary, for determining the age of the accused. Apart from anything else, it must be appreciated that such an inquiry at the earliest possible time, would be in the best interests of the juvenile, since he would be kept away from adult under-trial prisoners and would not be subjected to a regimen in jail which may not be conducive to his well-being. As mentioned above, it would also be in the interests of better administration of criminal justice. It is, therefore, enjoined upon every Magistrate to take appropriate steps to ascertain the juvenility or otherwise of an accused person brought before him or her at the earliest possible point of time, preferably on first production. See : **Jitendra Singh @ Babboo Singh & Another Vs. State of UP, 2013 (83) ACC 651 (SC)**
- 9. appearance & determination of age :** Where the age of an accused recorded by the trial court on the basis of evidence produced and also on his physical appearance was set aside by the High Court in exercise of its revisional power u/s 52 of the 2000 Act r/w Sec. 49, 4 & 7-A of that Act, it has been held by the Supreme Court that the revisional court (High Court) could not have reversed

the findings of the trial court in exercise of its revisional powers. See : **Jabar Singh Vs. Dinesh, (2010) 3 SCC 757.**

10. **Use of previous orders of courts in determination of age of Juvenile :** In determining the juvenility of a person on the date of commission of offence, the earlier orders passed by the court regarding the age of the juvenile are also relevant. See: **Jyoti Prakash Rai vs. State of Bihar, 2008 (61) ACC 330 (SC)**

11. **Stage of raising plea of juvenility :** According to the Proviso to Sec. 7-A of the JJ Act, 2000, the plea of juvenility can be raised by the accused (juvenile in conflict with law) before any court at any stage and even after the final disposal of the case. The above noted Proviso reads as under---
“Provided that a claim of juvenility may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.” In the cases noted below, it has been held that the plea of juvenility can be raised by the accused at any stage and before any court including the appellate and revisional courts:
 - (i) **Smt. Lali vs. State of U.P., 2008(61) ACC 943 (All)**
 - (ii) **Ram Babu vs. State of U.P., 2006 (56) ACC 579 (All)**
 - (iii) **Bhola Bhagat & others vs. State of Bihar, AIR 1998 SC 236**

Note : *But the Supreme Court (in the case noted below) has held that if the plea of juvenility was not raised before the trial court or High Court, the same cannot be allowed to be raised in the Supreme Court for the first time as the age being question of fact, requires taking of evidence. See---* **Murari Thakur vs. State of Bihar, AIR 2007 SC 1129.**

12. **Accused can raise the plea of juvenility for the first time even before the Supreme Court :** Accused had filed criminal appeal before the High Court

against his conviction and sentence for the offence u/s 302/34 IPC. He had not taken the plea of juvenility either before the trial court or before the High Court and took this plea for the first time before the Supreme Court. The Supreme Court held that in view of the provisions of Section 2(k) of the Juvenile Justice (Care and Protection) of Children Act, 2000 (since repealed), the convict had right to raise the plea of juvenility for the first time before the Supreme Court even when he had not raised that plea before the trial court or the High Court. **See:**

- (i) **Ashok Kumar Mehra Vs. State of Punjab, AIR 2019 SC 1903.**
- (ii) **Raju Vs. State of Haryana, AIR 2019 SC 1136 (Three-Judge Bench)**

13.1 Belated plea of juvenility without any cogent evidence not to be accepted: Where the accused had raised the plea of juvenility belatedly at the stage of appeal and that too without producing the birth certificate or school record or medical examination report or any expert examination report in support of his juvenility and in his own statement recorded by the trial court u/s 313 CrPC he had admitted to be above 18 years of age around the time of the incident, the Supreme Court held that such belated plea of juvenility without any reliable evidence cannot be accepted. **See: Mohd. Anwar vs. State of NCT of Delhi, (2020) 7 SCC 391 (Three - Judge Bench)**

13.2 Plea of juvenility has to be decided first before disposal of bail application : Where bail application by the accused was moved u/s 439 CrPC by claiming to be juvenile aged 17 years and the same was rejected by the Sessions Judge merely on the technical ground that the bail application was moved u/s 439 CrPC (and not u/s 12 of the JJ Act, 2000), the Hon'ble Allahabad High Court set aside the order passed by the Sessions Judge by observing that the application for bail could not have been rejected on the ground of mentioning of incorrect Section. Such an application and matter should have either been enquired by the court itself under the provisions of the JJ Act, 2000 or should have been sent to the Juvenile Justice Board. Since the matter relates to a person who claims himself to be juvenile, his plea of juvenility has to be enquired into

before disposing of his bail application. See : **Mohan Nishad Vs. State of UP, 2016 (93) ACC 25 (All).**

14.1 Authenticity of entries of public document like school register or T.C. may be tested by court: So far as the entries made in the official record by an official or person authorized in performance of official duties are concerned, they may be admissible **u/s 35 of the Evidence Act** but the **court has a right to examine their probative value.** The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entries in school register or school leaving certificate require to be proved in accordance with law and the **standard of proof required in such cases remained the same as in any other civil or criminal case.** See:

- (i). **C. Doddanarayana Reddy Vs. C. Jayarama Reddy, (2020) 4 SCC 659 (Para 18)**
- (ii). **Madan Mohan Singh Vs. Rajni Kant, (2010) 9 SCC 209 (Para 20)**
- (iii). **Updesh Kumar Vs. Prithvi Singh, (2001) 2 SCC 524**
- (iv). **State of Punjab Vs. Mohinder Singh, (2005) 3 SCC 702.**

14.2 Same standard of evaluation of entries u/s 35 Evidence Act to be applied both in civil and criminal cases : In determining the age of a person contained in school admission register, same standard u/s 35 of the Evidence Act regarding the assessment of evidence has to be applied for both civil and criminal proceedings. See:

- (i) **Ram Suresh Singh vs. Prabhat Singh, AIR 2009 SC 2805**
- (ii). **Ravinder Singh Gorkhi vs. State of U.P., (2006) 5 SCC 584**

15.1. School Leaving Certificate AND its evidentiary value : Where school leaving certificate was produced but nothing was shown as to whether any register was required to be maintained under any statute, any register was maintained was also not shown, original register was not produced, none was examined to prove the entries made in the register, school leaving certificate was not issued by a person who was in school at the time when the accused was admitted therein, then interpreting the provisions of Sec. 35 of the Evidence Act, the Supreme Court held that such school leaving certificate

cannot be relied upon to ascertain the age of a juvenile. The age of a person requires to be determined in a manner laid down under a statute and different standard of proof should not be adopted. See :

1. Ravinder Singh Gorkhi vs. State of U.P., 2006 (55) ACC 814 (SC)

2. State of Chhattisgarh vs. Lekhram, (2006) SCC (Criminal) 66—*Regarding age of Prosecutrix*

15.2 School Leaving Certificate and its evidentiary value : Where the accused had for the first time claimed to be juvenile in his confession made u/s 313 CrPC and had produced school leaving certificate without producing the primary evidence of birth certificates, it has been held that the same was not satisfactory and adequate to arouse judicial conscience regarding juvenility that too when the school leaving certificate was procured after conviction. See : **Pawan Vs. State of Uttaranchal, (2009) 15 SCC 259 (Three-Judge Bench)**

15.3 School Leaving Certificate, Mark sheet & DOB Recorded therein : Where the date of birth of the accused both in school leaving certificate and mark-sheet was recorded as 18.06.1989 and the occurrence had taken place on 04.06.2007 and relying upon those documents the JJ Board had declared the accused a juvenile on the date of the occurrence but the ASJ and the High Court had erred in reversing the decision of the JJ Board, the Supreme Court while setting aside the orders of the ASJ and the High Court, held that entry relating to the date of birth entered in the school mark-sheet is valid evidence in proof of age of an accused and so is the school leaving certificate. The order passed by the JJ Board was restored. See : **Shah Nawaj Vs. State of UP & another, 2011(74) ACC 871(SC).**

15.4 School Leaving Certificate & School Register & their Probative Value ?
: A document may be admissible but as to whether the entry contained therein has any probative value may still be required to be examined in the facts and circumstances of a particular case. The authenticities of the **entries in the official records by an official or by a person authorized in the performance of official duties would depend on whose information such entries stood recorded and what was his source of information.** The entry in school

register/ School leaving certificate requires to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases. See : **Madan Mohan Singh Vs. Rajnikant, AIR 2010 SC 2933**

15.5 School Leaving Certificate when public document u/s 74 of Evidence Act ?

: Where the school leaving certificate was issued by the Head Master of the **Government Primary School**, it has been held that such school leaving certificate falls within the ambit of **public document** defined u/s. 74 of the Evidence Act and it is admissible in evidence per se without formal proof. See: **Shyam Lal vs. Sanjeev Kumar, AIR 2009 SC 3115**

15.6 Unquestioned certificates issued by the school first attended should be accepted :

In case where genuineness of the school leaving certificate has not been questioned and the law gives prime importance to the date of birth certificate issued by the school first attended, there is no question of placing reliance on the contrary certificate issued by the village Chaukidar and placing reliance on statement of the mother of the claimant to decline claim of juvenility. See : **Jodhbir Singh Vs. State of Punjab, AIR 2013 SC 1** (it was a case on Punjab JJ Rules, 2000)

15.7 Date of birth recorded in school register or school certificate valueless unless the parents or person having special knowledge of the DOB is examined :

The DOB mentioned in a school register or a school certificate has no probative value unless either the parents are examined or the persons who had special knowledge of the DOB of the person and on whose information the entry had been made are examined. DOB recorded in school certificate may be admissible in evidence u/s 35 of the Evidence Act, but its probative value still requires to be examined. See:

- (i) **Satpal Singh Vs. State of Haryana, (2010) 8 SCC 714** (*case of rape and determination of age of prosecutrix*)
- (ii). **Birad Mal Singhvi Vs. Anand Purohit, AIR 1988 SC 1796.**

15.8 When conflict in between school certificate, parents evidence and doctor's certificate :

Where school certificates produced by accused were found not

reliable, evidence of mother of accused was found not acceptable being based on estimation but the finding by the High Court was that the accused was below 18 years of age merely on the basis of Doctor's certificate which did not even indicate the basis for determination of age, explaining Sec 2(k) and 68 of the JJ Act, 2000 & Rule 22(5) of the U.P JJ Rules, 2004, it has been held by the Supreme Court that the finding of the High Court was not proper. See: **Pappu vs. Sonu, 2009(5) ALJ 276(SC)**.

15.9 Mark Sheet and DOB recorded therein : In determining the age of an accused person under the JJ Act, 2000, mark sheet is one of the proof and it can be admitted as evidence. See: **Raju Vs. State of Haryana, (2010) 3 SCC 235**

15.10 When DOB in school mark Sheet & parents' evidence contrary: Where in determining the age of juvenile, Sessions Judge relied on medical opinion and disbelieved the High School mark sheet on the basis of oral evidence of mother who was illiterate lady and had no orientation of time, it has been held that the statement of the mother can not be relied upon to discredit the school mark sheet. See: **Ram Sajiwan vs. state Of U.P., 2011 CrLJ 1121 (All)**

15.11 DOB recorded in Mark-sheet not relevant : In Sub-clause (i) in clause (a) of sub-rule (3) of Rule 12 of the Rules of 2007, the words used are matriculation or equivalent certificate, if available. If in an enactment, the word certificate has been used, it should be taken as such and it cannot be substituted by the word mark-sheet. Had it been the intention of the Legislature that the documents certificate and the marks-sheet are equivalent to each other, for this purpose the word 'mark-sheet' would have been also included therein along with the words matriculation certificate. A mark-sheet is basically a statement of marks obtained by the student. If in a mark-sheet, the date of birth has been mentioned, that date cannot be treated as certified. In a certificate, the date of birth of the student is properly certified by the authority duly recognized by law and rules who is competent to certify the date of birth. It is not proper to deviate from the regular and ordinary meaning of the word as used by the Legislature especially when there is no scope for more than one interpretation. In Rule 12 of the Rules, the word 'certificate' has been used and not 'mark-sheet'. Therefore, the word 'mark-sheet' cannot be substituted for 'certificate'. See : **Shah Nawaz Vs. State of UP, 2011(1) JIC 2 (All)**

15.12 Entries of Admission Register of school not a public document : Age recorded in school admission register cannot be treated as a public document and it must be proved in accordance with the law. Entry of date of birth made in School Admission Register should be considered from the perspective that **often persons give false age of the child at the time of admission** so that he may have an advantage later in his life. When no reliable material is produced on record to show that date of birth was recorded in School Register on the basis of statement of any responsible person and the Admission Register and T.C. fail to satisfy the requirement of Sec. 35 of the Evidence Act and the same are also found “forged and fabricated”, then it was held that no reliance could be placed upon such entries contained in Admission Register of the school. See:

1. **Ram Suresh Singh vs. Prabhat Singh, AIR 2009 SC 2805**
2. **Sushil Kumar vs. Rakesh Kumar, (2003) 8 SCC 673**
3. **Punit Rai vs. Dinesh Chowdhary, (2003) 8 SCC 204**
4. **Rakesh Kumar vs. State of U.P. & others, 2000 (4) AWC 2722 (All)(DB)**

15.13 Entries in school records/Transfer Certificate whether public document ? : considering the provisions of **Sec.35 of the Evidence Act** in relation to determining the age of juvenile, it has been held by the Supreme Court that if the conditions laid down in Sec.35 are not satisfied and if the entry in the school records like Transfer Certificate, Admission Form was not made in any public or official register and was not made either **by a public servant in the discharge of his official duty or by any person in performance of a duty specially enjoined by the law of the country**, the entry would not be relevant u/s 35 of the Evidence Act for the purpose of determining the age of juvenile. See : **Jabar Singh Vs. Dinesh, (2010) 2 SCC (Criminal) 484.**

15.14 Entry in TC not to be relied on unless the Head Master or person concerned is examined : In the matter of determination of age of the prosecutrix in a criminal trial u/s 376 IPC, it has been held that transfer certificate duly signed by the school Head Master is admissible in evidence u/s 35 of the Evidence Act. But the certificate would be of not much evidentiary value to prove the age of girl in the absence of materials on the basis of which

age was recorded and **unless the person who had made the entry or who gave the date of birth is examined. If the Head Master who had made the entry is not examined, the entry in Transfer Certificate cannot be relied upon to definitely fix age of the girl.** See : **Alamelu vs State, AIR 2011 SC 715**

16.1 Parents evidence regarding age : In the matter of conviction of an accused for offences u/s 366, 376 IPC, the evidence of parents of the prosecutrix (their daughter) was to the effect that she was below 16 years of age. It has been held by the Supreme Court that the parents of the victim of rape are most natural and reliable witnesses with regard to her age. See : **Fateh Chand vs. State of Haryana, 2009 (66) ACC 923 (SC)**

16.2 Parents evidence as to age of their child to be preferred as against entry in school record : For determining the age of a person, the best evidence is of his/her parents if it is supported by unimpeccable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeccable evidence of reliable persons and contemporaneous documents like the date of birth register of the municipal corporation, government hospital, nursing home etc., the entry in the school register is to be discarded. See : **Madan Mohan Singh Vs. Rajnikant, AIR 2010 SC 2933**

16.3 Parents evidence, ossification test report & school records : In a rape case, the statement of parents of prosecutrix was that she was below 16 years of age and this statement of parents was corroborated by two impeachable documents viz. birth register of municipal corporation and register of hospital where the prosecutrix was born but the date of birth recorded in school certificate showed the prosecutrix above 16 years of age. It was held that consent of prosecutrix was immaterial. Medical experts opinion u/s 45 Evidence Act **based on the basis of ossification test was only of an advisory character and not binding on witness of fact i.e. parents.** See: **Vishnu vs. State of Maharashtra, AIR 2006 SC 508.**

16.4 Ossification test and radiological examination report & determination of age of juvenile : Though doctor's examination of age is only an opinion but where such opinion is based on scientific medical tests like ossification test and

radiological examination, it will be treated as strong evidence having corroborative value while determining age of alleged juvenile . See : **Om Prakash Vs. State of Rajasthan , (2012) 5 SCC 201**

16.5 Radiological examination for purpose of age & possibility of two years error : It is notorious and one can take judicial notice that the margin of error in ascertaining the age of a person by radiological examination is two years on either side. See :

(i). Ram Suresh Singh vs. Prabhat Singh, AIR 2009 SC 2805

(ii). Jaya Mala vs. Home Secretary, Government of J & K, AIR 1982 SC 1297.

16.5.1 One year's benefit to be given in favour of juvenility if the medical board is not certain or gives range of age: Rule 12(4) of JJ Rules, 2016: Where the medical board gives the range of the age of the child, the court or the board or the committee shall consider the age of the child on the lower side and, may, if considered necessary, for reasons to be recorded, give benefit to the child within the margin of one year.

16.6 Rule adding two years to the age determined by doctor not absolute : Where the doctor on the basis of X-ray and physical examination of the prosecutrix of offense u/s 376 IPC had opined that prosecutrix was 17 years of age, reversing the order of the Allahabad High Court holding her to be 19 years of age , it has been held by the Supreme Court that there is no such rule much less absolute one that two years have to be added to the age determined by doctor. See: **State of U.P v. Chhotey Lal, AIR 2011 SC 697 (Regarding age of prosecutrix u/s 376 IPC).**

17.1 Report from medical board under Rule 12 of 2007 Rules when to be sought ? : According to Rule 12(3)(b) OF 2007 Rules, the medical opinion from a duly constituted Medical Board will be obtained only when the proof mentioned under sub-clause (i), (ii) or (iii) of clause (a) to sub-rule (3) of Rule 12 is not available. Rule 12(3)(a) is as quoted below :

- (i) the matriculation or equivalent certificates, if available; and in the absence whereof;
- (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
- (iii) the birth certificate given by a corporation or a municipal authority or panchayat;

According to Rule 12(3)(b), if the exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year and while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

In the cases noted below it has been held that while dealing with the question of determination of age of the accused for the purposes 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 and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be a juvenile in border line cases. See :

1. **Ram Janam vs. State of U.P., 2003 (46) ACC 1150 (Allahabad)**
2. **Rajinder Chandra vs. State of Chhattisgarh, 2002(1) JIC 609 (SC).**

17.2 Report from medical board under rule 12 when to be sought ? : Rule 12 of 2007 Rules describes four categories of evidence which provide for preference to school certificate over medical report. Medical opinion from medical board should be sought only when matriculation certificate or school certificate or any birth certificate issued by a corporation or by any

panchayat or municipality is not available. Determination of age of juvenile only on the basis of medical opinion of medical board ignoring date of birth mentioned in mark-sheet and school certificate is not proper. Reliance for determination of age should first be on documents stipulated under Rule 12(3)(a) of 2007 Rules and only in absence of such documents, medical opinion under rule 12(3)(b) of the 2007 Rules should be sought. See :

(i) **State of M.P. Vs. Anoop Singh, (2015) 7 SCC 773**

(ii) **Shah Nawaz Vs. State of UP and another, AIR 2011 SC 3107.**

18. Duty of IO & CMO in determination of age of prosecutrix/victim of sexual offences : In the case noted below, the accused was arrested in pursuance of FIR lodged by the father of the prosecutrix u/s 363, 366, 376, 504, 506 IPC and u/s 3/4 of the Protection of Children from Sexual Offences Act, 2012. The girl aged 16 years was enticed by the accused. The Radiologist had opined about the age of the prosecutrix between 16 to 19 years. Father of the prosecutrix stated her daughter's says to be 15 years and the prosecutrix had stated her age u/s 164 CrPC to be 16 years. It was duty of the IO to produce the prosecutrix before the CMO for final determination of her age after she was examined by the Radiologist and the Medical Officer. Without considering the seriousness of the matter and without final determination of age of the prosecutrix, the IO had submitted charge-sheet which amounts to dereliction of duty by him. Warnings and directions were issued to the IO by the Hon'ble Allahabad High Court and copy of the said order was also sent to the Principal Secretary (Health), Govt. of UP, for proper action against the IO. See : **Panch Lal Adivasi Vs. State of UP, 2014 (84) ACC 22 (All).**

19.1 School certificate to exclude medical evidence in determining age of juvenile : If school certificate is there, the same shall exclude medical evidence in determining age of juvenile. See : **Smt. Parwana Bano Vs. State of UP, 2015 (88) ACC 489 (All)(LB).**

19.2 Conflict between radiological opinion & school certificate : Age determination--Conflict between radiological opinion and school certificate--

Age of girl estimated by doctor to be about 19 years while High School Certificate mentioning her birth date as 25.05.1996. Margin of flexibility or margin of error cannot be lowered any further below 18 years. Where doctor observed that girl was above 18 years of age, it obviously means that girl is not less than 18 years of age. Such an observation indicates lower most outer limit of flexibility bracket. Such kind of observation is made by doctors on basis of **fusion of certain bones of body** which cannot be completed before a person attains a particular age. Individual age variations of particular fusion are not and cannot be stretched beyond certain limits. Categorical opinion of doctor regarding age of girl completely belies contradictory age shown in High School certificate. In view of statement of the girl given before J.M. refuting all allegation of coercion exercised by petitioner No. 1 showing her complete willingness and approval to her marital status with him giving due weight to irreconcilable conflict of age continuation of girl's detention in Nari Niketan not justified. Court directed to set her at liberty with immediate effect. Impugned orders of lower Courts quashed. Revision allowed. See : **Vivek Chandra Bhaskar Vs. State of UP, 2013 (82) ACC 707(All)**

19.3 Medical Board Report Vs. School Certificate : In case of conflict of date of birth recorded in the certificate of the school first attended and the opinion of the medical board, the **date of birth recorded in the certificate from school first attended should be given preference**. In terms of the provisions of Sec. 68 of the Juvenile Justice (Care & protection of Children) Act, 2000, the Central Government has framed Juvenile Justice (Care & Protection of Children) Rules, 2007. Rule 22 of the said Rules provides for the procedure to be followed in respect of determination of the age of a person. It indicates that the opinion of the Medical Board is to be preferred only when a date of birth certificate from the school first attended is not available. See: **Ram Suresh Singh vs. Prabhat Singh, AIR 2009 SC 2805**

20. School Certificate vis-a-vis records of Municipal Corporation, Government Hospital & Nursing Homes etc. : For determining the age of a person, the best evidence is of his/her parents if it is supported by unimpeccable documents. In case the date of birth depicted in the school register/certificate stands belied by the unimpeccable evidence of reliable persons and contemporaneous documents like the date of birth register of the municipal corporation, government hospital, nursing home etc. the entry in the school register is to be discarded. See: **Madan Mohan Singh Vs. Rajnikant, AIR 2010 SC 2933.**

21.1 Horoscope a very weak piece of material to prove age of a person : A horoscope is very weak piece of material to prove the age of a person. The entry of Admission Register of a school as to age is more authentic evidence u/s 32(5), Evidence Act unless shown to be inherently improbable. See : **State of Punjab vs. Mohinder Singh, AIR 2005 SC 1868.**

21.2 Horoscope must be proved by its maker : Where the maker of the horoscope being dead could not be examined to prove as to what was the primary evidence of the date and time of birth, paper on which the horoscope was drawn up was not an old one, horoscope was prepared at the instance of another person and written by his brother, a bystander, having nothing to do either with the preparation of the horoscope or with the writing thereof, had given evidence regarding the horoscope, the Supreme Court held that the horoscope in question was not trustworthy as an evidence and could not have been looked into for any purpose whatsoever. See : **Sushil Kumar vs. Rakesh Kumar, (2003) 8 SCC 673**

22.1 Voter List cannot be considered for determination of age of juvenile : Voter list cannot be taken to be guide for determination of age of accused. Voter list is not a document mentioned in Rule 12(3) of the JJ Rules, 2007. See : **Annu Vs. State of UP, 2013 (81) ACC 595 (All).**

22.2 Entries of electoral Roll & their evidentiary value ? : Entry of age of a person recorded in electoral roll is recorded as per the statement made by the person concerned. But it is for the court to consider the said material on record in its proper perspective. Such entries have been held by the Supreme Court

as not conclusive. See : **Sushil Kumar vs. Rakesh Kumar, (2003) 8 SCC 673**

23.1 Entries of Family Register & their evidentiary value ? : Extracts of family register do not indicate correct date of birth. The entries made in family register regarding the age of a person **are not conclusive proof of the correctness of the date of birth.** Entries in Kutumb Register cannot be relied upon for determination of age of a person without holding enquiry. See :

(i) **Bahadur vs. State of U.P., 2009 (67) ACC 427 (All)**

(ii) **Onkar Tiwari alias Kariya vs. State of U.P., 2001 All Dand Nirnya 52 (Allahabad)**

(iii) **Hare Ram Chowdhary vs. State of U.P., 1990 (27) ACC 99 (Allahabad)**

23.2 Entries of Family Register & their evidentiary value ? : Entries made in the family register, if produced from proper custody, should not be ignored lightly. See:

(i) **Ram Vs. State of U.P., 1993 (30) ACC 636 (All)**

(ii) **Harpal Singh and another Vs. State of H.P., AIR 1981 SC 361,**

24. Entries in register of births & deaths should be given due weightage: : As per Sec. 35, Evidence Act, while ascertaining the age of an offender, the entries contained in register of births & deaths recorded by an official in performance of his duties cannot be doubted merely on the ground that the same were not contemporaneous with the suggested date of birth of the offender. More so, when LIC policy and matriculation certificate also mentioned the same date of birth as mentioned in Register of births and deaths. See : **Santenu Mitra Vs. State of W.B., AIR 1999 SC 1587**

25. Value of text books on medical jurisprudence & toxicology for determination of age : The statement of the doctor is no more than an opinion. The court has to base its conclusions upon all the facts and circumstances disclosed on examining of the physical features of the person whose age is in question, in conjunction with such oral testimony as may be

available. An X-ray ossification test may provide a surer basis for determining the age of an individual than the opinion of a medical expert but it can be no means be so infallible and accurate a test as to indicate the exact date of birth of the person concerned. **Too much of reliance cannot be placed upon text books, on medical jurisprudence and toxicology while determining the age of an accused.** In this vast country with varied latitude, heights, environment, vegetation and nutrition, the height and weight cannot be expected to be uniform. See: **Ram Deo Chauhan vs. State of Assam, AIR 2001 SC 2231 (Three-Judge Bench)**

26.1 "Day": When commences and when ends ? : The day of birth of a person must be counted as a whole day and any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birth day. Legal day commences at 12 'O' Clock midnight and continues until the same hour the following night. See: **Erati Laxman vs. State of A.P., (2009) 2 SCC (Criminal) 15.**

26.2. First day to be excluded in computing period of time for legal purposes : Section 9 of General Clause Act, 1897 says that in any Central Act or Regulation made after the commencement of the General Clauses Act, 1897, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or any period of time, to use the word 'to'. The principle is that when a period is delimited by statute or rule, which has both a beginning and an end and the word 'from' is used indicating the beginning, the opening day is to be excluded and if the last day is to be excluded the word 'to' is to be used. In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties. See :

- (i) **Tarun Prasad Chatterjee Vs. Dinanath Sharma, AIR 2001 SC 36 (Three-Judge Bench).**
- (ii) **Manmohan Anand Vs. State of UP, (2008) 3 ADJ 106 (All).**

26.3 Fraction of a day or a Legal Day when complete? : The day of birth of a person must be counted as a whole day and any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birth day. Legal day commences at 12 O' Clock midnight and continues until the same hour the following night. See : **Erati Laxman vs. State of A.P., (2009) 2 SCC (Criminal) 15**

27.1 One year's benefit to be given in favour of juvenility if the medical board is not certain or gives range of age:: Where the medical board gives the range of the age of the child, the court or the board or the committee shall consider the age of the child on the lower side and, may, if considered necessary, for reasons to be recorded, give benefit to the child within the margin of one year. See: **Rule 12(4) of JJ Rules, 2016**

27.2 In border line cases as to age, benefit to be extended to Juvenile : According to Rule 12(3)(b) of the Juvenile Justice (Care & Protection of Children) Rules, 2007, if the exact assessment of the age of a person cannot be done, the court or the Board or the Committee for the reasons to be recorded may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of **one year**. In the cases noted below it has been held that **in a doubtful case of age, court should lean in favour of the juvenile and extend the benefit of the Act by holding him juvenile :**

- (i) **Ram Janam vs. State of U.P., 2003 (46) ACC 1150 (All)**
- (ii) **Rajinder Chandra vs. State of Chhattisgarh and another, 2002 SCC (Criminal) 333.**
- (iii) **Kali Prasad Patwa and another vs. State of U.P., 2002(1) UPCR 401**

27.3 In border line cases as to age, benefit to be extended to juvenile : In the cases noted below, it has been held that while dealing with the question of determination of age of the accused for the purposes 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 and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be a juvenile in border line cases. See :

- (i) **Ram Janam vs. State of U.P., 2003 (46) ACC 1150 (Allahabad)**
- (ii) **Rajinder Chandra vs. State of Chhattisgarh, 2002(1) JIC (SC)**

27.4 Affidavit of juvenile regarding his date of birth or age not to be taken : According to Sec. 7-A and 49 of the Juvenile Justice (Care & Protection of Children) Act, 2000, the **affidavit of a juvenile cannot be taken into account for the determination of his age** or juvenility on the date of commission of the offence. See: **Rakesh Kumar Verma vs. State of U.P. & others, 2000 (4) AWC 2722 (All)(DB)**

27.5 Affidavit not permissible during enquiry of juvenility: As per **Section 9 (2) of the JJ Act 2015**, affidavit cannot be produced as evidence in support of juvenility before the court not empowered under the Act to deal with the juvenile.

28. Revisional Court not to reverse findings of trial court recorded on juvenility : A revisional court (High Court) while exercising its power of revision u/s 53 of the 2000 Act read with Sec.49, 4 & 7-A of that Act cannot convert itself into an appellate court u/s 52 of the 2000 Act read with Sec.49,4 & 7-A of the Act and reverse findings of fact arrived at by the trial court except where the revisional court is not satisfied as to legality or propriety of the order passed by the trial court. See : **Jabar Singh Vs. Dinesh, (2010) 2 SCC (Criminal) 484.**

29. Protection of Children from Sexual Offences Act, 2012 & Determination of Age of Victim Girl : Where while hearing on a bail application of an accused of offences u/s 363, 366, 376, 504, 506 IPC and u/s 3/4 of the Protection of Children from Sexual Offences Act, 2012, the Hon'ble Allahabad High Court came to know that the age of the prosecutrix said to be 15 years was though determined by the Radiologist and Medical Officer but the prosecutrix was not produced before CMO for final determination of her age, noticing the said lapse on the part of the IO, the Hon'ble Court issued warnings to the IO with the direction to the Registrar General of the Hon'ble Court to send a copy of the said judgment to the Principal Secretary (Health), Govt. of UP and also to the SSP, Allahabad and the CMO, Allahabad for suitable action against all responsible. See : **Panch Lal Adivasi Vs. State of UP, 2014 (84) ACC 22 (All).**
