

**AGE DETERMINATION (OF VICTIM &  
PERPETRATOR) : CHALLENGES & SOLUTIONS**

## Object of POCSO Act

- To protect children from sexual offences
- Constitutional Obligation under Article 15(3)
- Interpretation in favor of accused in normal criminal trial
- Special Law for children – Purposive interpretation

# Challenges

- Absence of birth certificate
- Poor maintenance of record
- Non application of jj act provisions
- Inconsistent reliance on school certificate
- Roving enquiry into school certificates
- Margin of error not given to the victims
- Lenience in romantic cases
- Lapses in investigation by not obtaining records but resorting to medical opinion

## **Sustainable development goal no 16**

- State to provide legal identity to all including birth registration
- Right of a child to nation and nationality under art 7(1) of UNCRC
- Vital link between registration of birth and access to justice

## **Who is a child - POSCO ACT**

Section 2(d) – child means any person below the age of 18 years.

## Section 34 – POCSO ACT

### Procedure in case of commission of offence by child and determination of age by Special Court:-

- 1) Where any offence under this act is committed by a child, such child shall be dealt with under the provisions of Juvenile Justice (Care & Protection) Act , 2002
- 2) If any question arises in any proceedings 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.

## Section 94 – JJ Act, 2015

### “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



- Whether Special Court under the POCSO Act need to follow the procedure prescribed under section 94 of JJ Act 2015?

## Rule 12 – JJ Rules, 2007

### ‘Only in the absence of’

“12. (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, by the Committee by seeking evidence by obtaining—

(a)

(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 a Panchayat;”

Under Rule 12(3)(b), it is specifically provided that **only in the absence of alternative methods described under Rules 12(3)(a)(i) to (iii)**, the medical opinion can be sought for. In the light of such a statutory rule prevailing for ascertainment of the age of a juvenile, in our considered opinion, **the same yardstick can be rightly followed by the courts for the purpose of ascertaining the age of a victim as well.**

**Birad Mal Singhvi v. AnandPurohit,**  
**AIR 1988 SC 1796**

The Supreme Court held that the basis on which the entry pertaining to date of birth in a school register was recorded needs to be established for it to have evidentiary value.

It held:

**“To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record;**

**secondly, it must be an entry stating a fact in issue or relevant fact;**

**Thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law.”**

An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded.”

- Section 77 of Indian Evidence Act - Production of certified copies to prove content of public documents.
- Section 79 of Indian Evidence Act – Presumption as to genuineness of the certified copies.
- This case was under Representation of Peoples Act – No value was given to date of birth entry – Absence of material on which entry was made.

## State(Govt of NCT Delhi) v. Krishan

- The Special Court relied upon Section 94 JJ Act, 2015 and held that victim was a child based on records from the first attended school.
- This finding was confirmed by the Delhi High Court.

## **Rajendran v. State decided on 23.12.2016 in Criminal Appeal No. 483 of 2016 (Madras High Court)**

- Division bench of Madras High Court relied on Section 94(2) JJ Act, 2015 to concluded that victim under POSCO Act was a child.
- As per Section 34 of the POSCO Act, the age of the victim shall be determined by the court.
- As indicated sub section (1) of Section 34 of the POSCO Act, the age of the victim could be determined by following the procedure contemplated in Section 94 of JJ Act, 2015

## Jarnail Singh vs. State of Haryana (2013) 7 SCC 263

- 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.
- 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 for a child who is a victim of crime for, in our view, 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.”

## **State of MP v. Anoop Singh 2015 7 SCC 773**

- Rule 12(3) of the Juvenile Justice (Care & Protection) Rules, 2007 is applicable to determination of age of rape victim.



## ASHWANI KUMAR SAXENA VS STATE OF MADHYA PRADESH, AIR 2013 SC 553

The Supreme Court held:

“Age determination inquiry contemplated under the JJ Act and Rules has **nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc.**

There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct.’

- But Court, JJ Board or a Committee functioning under the JJ Act is **not expected to conduct such a roving enquiry** and to go behind those certificates to examine the correctness of those documents, kept during the **normal course of business**. Only in cases where those documents or certificates are found to be **fabricated or manipulated**, the Court, the JJ Board or the Committee need to go for medical report for age determination.

## **Mahadeo v. State of Maharashtra**

- Though the learned counsel for the appellant attempted to find fault with the said conclusion by making reference to the evidence of PW 8, the doctor, who examined the prosecutrix and who in her evidence stated that on her examination she could state that the age of the prosecutrix could have been between 17 to 25 years, it will have to be held that the rejection of the said submission even by the trial court was perfectly in order and justified.

- The trial court has found that to rely upon the said version of PW 8, the doctor, scientific examination of the prosecutrix such as ossification test to ascertain the exact age should have been conducted which was not done in the present case and, therefore, merely based on the opinion of PW 8, the age of the prosecutrix could not be acted upon.
- We can also in this connection make reference to a statutory provision contained in the Juvenile Justice (Care and Protection of Children) Rules, 2007, where under Rule 12, the procedure to be followed in determining the age of a juvenile has been set out.

**Shah Nawaz v. State of Uttar Pradesh,  
(2011) 13 SCC 751 – Interpretation of Rule 12(3)**

- The Supreme Court observed that in accordance with the erstwhile JJ Model Rules, 2007 “...the medical opinion from the medical board should be sought only when the matriculation certificate or school certificate or any birth certificate issued by a corporation or by any Panchayat or municipality is not available.”

**Jabbar v. State**  
**2018 Scc Online Delhi 9327**

- The court relied on ADHAR card for determining the age of the prosecutrix
- We have perused the Aadhar Card (Ex.PW-11/H) and find that, in the said Card, the age of 'S' is, indeed, reflected as six years.
- We may also note that the veracity of the said Aadhar Card has not been questioned by the defence, at any stage of proceedings.”

Eera through Manjula Krippendorf v. State ( Govt of NCT Delhi) and Ors 2017 15 SCC 133

- Section 2(1) d of the POCSO Act, 2012 do not read the word mental while defining who is a child.

## Rajak Mohammad vs State Supreme court on 23.08.2018

While it is correct that the age determined on the basis of a radiological examination may not an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix

The benefit of the aforesaid doubt, naturally, must go in favour of the accused.



# Sweta Gulati vs State

## Delhi High Court on 08.08.2018

### Ossification test

The question that arises for consideration is as to whether, while determining the age of the victim, the benefit of doubt in age estimated by the Age determination of a victim bone ossification test is to go to the accused or the victim”

The settled principle is that the ossification test is **not conclusive of age determination**.

It is settled that it is **difficult to determine the exact age** of the person concerned on the basis of ossification test or other tests.

The Supreme Court, in several decisions, has taken judicial notice of the fact that the margin of error in age ascertained by radiological examination is **two years on either side**”.

## whether the lower of the age or the higher of the age is to be taken ?

- If benefit of doubt has to go to the accused then one would have to take the higher limit and if benefit of doubt has to go in favour of the prosecutrix then the lower of the two limits would have to be taken”.
- Sweta Gulati Case clearly held on this point as “It is also settled position of law that benefit of doubt, other things being equal, at all stages goes in favour of the accused”.
- A three judges bench of Supreme Court also confirmed the opinion of High Court.

## **State of Karnataka v. Bantara Sudhakara, (2008) 11 SCC 38**

- Supreme Court held that, merely because the doctor's evidence showed that victim belonged to the age group of 14-16, to concluded that two years age has to be added to upper age limit without any foundations.

**State of Assam v. Md. Abdul Kalam, POCSO case  
No. 23 of 2015, decided on 10.3.2016 in Assam**

- With respect to Margin of error the special court held, if benefit of doubt of variation of two years in estimation of age on the basis of Radiological report by Doctor is given to the accused in POCSO cases, no child who do not have a birth certificate who is the above the age of 16 *will get justice under the POCSO Act.*

State v. Varun SC 108 (2013) decided on 29.10.2013  
Delhi

In view of the objectives of the POCSO Act, 2012 if there is doubt about the age of the girl child we must lean towards juvenility of the victim.

THANK YOU!