



## RESEARCH ARTICLE

## A Critical Analysis of Juvenility Used As a Weapon for Eluding From Punishment

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Determination of age with respect to consideration as juveniles. Earlier the age was within 18 years to claim as juveniles. Later on, through amendments it was lowered to 16 years. Judicial decisions which lowered 18 years to 16 years as juvenility, discussed in this research paper. The need of the study is to check how juvenility was misused by the people and how this was noticed by the judges while deciding cases who took protection under the Juvenile Justice Act in the guise of juvenility.

**INTRODUCTION**

This paper is about analysing the cases where the Juvenility has been used as weapon in various ways to escape from the punishment and how the Courts have dealt in detail and has given its Judgement by analysing various ways to determine the age of the person claiming Juvenility. Ossification test is ordered by the court to check the age of the person claiming Juvenile. It is a medical procedure to estimate a person's age by evaluating the development of their bones.

**MATERIALS AND METHODS**

In this paper, the Researcher has used the case laws as Materials and the Method used is the Case Study Method.

**DISCUSSION**

In *Jaya Mala vs. Home Secretary, Government of Jammu and Kashmir*<sup>1</sup>, The Petitioner Jaya Mala was associated with the legal aid committee in the state of Jammu and Kashmir. She received a letter dated 15<sup>th</sup> of April 1982 from a student in B. A class of Jammu University stated that the Detenu Riaz Ahmed who was arrested on October 19<sup>th</sup>, 1981, and was detained under section 8 of the Jammu and Kashmir Public Safety Act, 1978. The grounds for detention were that the Detenu was traveling by minibus and was demanded bus fare but he refused to pay and left the bus, after administering threats stating that "by demanding money you are inviting your death", and the same was repeated by Detenu after seven months of the occurrence of this incident when Detenu refused to pay money after taking

lemon water. On these grounds, F.I.R. was lodged<sup>2</sup>. The present petition was a writ of 'habeas corpus' to release Detenu who was a minor and had not even completed seventeen years at the time of the occurrence of the incident. No one represented on behalf of Detenu in the trial court.

In the report of radiological and orthopedic test on May, 3<sup>rd</sup> 1982, it was stated that "Epiphysis around the ankle, lencem wrist, elbow, and shoulder joints appear to be completely fused. Radiological age is between 18-19 years.

Detenu was arrested on October 18<sup>th</sup> 1981, and reported to experts on May 3<sup>rd</sup>, 1982 which is nearly 7 months from the date of Detention. And according to experts if 7 months are deducted from the appropriate age then the detenu shall be around 17 years of age and the petition of habeas corpus turns out to be wholly true. The petition was allowed.

In *Madan Gopal Kakkad vs. Naval Dubey and another*<sup>3</sup>, the respondent graduated from medical college. His elder brother was working as superintendent of police in RajGarh district. His father was a retired professor, and his sister-in-law was a lecturer. The petitioner was living three to four houses away from the respondent's house in the same locality.

The petitioner and respondent had cordial relationships making frequent visits to the houses of each other. The petitioner had a minor daughter namely Tulna Sheri. According to the prosecution, the respondent had a crush on many young girls and used to develop friendships and attract them by narrating interesting stories from comic books.

On September 2<sup>nd</sup>, 1982 about 4 or 5 pm the respondent called Tulna and whispered that he would narrate some lurid tales of sex to her thereby stimulating immoral thoughts so that Tulna might fall prey to his lewd and lascivious behavior. Then the respondent bolted the door from inside and naked Tulna to do fellatio (to suck his penis) he also inserted his penis into her vulva and started sucking her lips. Within a few seconds, he ejaculated and freed Tulna from his clutches. Later he warned Tulna stating that if she disclosed this then her parents would be beaten off by her elder brother. Hence Tulna was afraid and after a couple of days she enumerated what happened to her parents and then the petitioner, the father of the victim (Tulna) lodged an F.I.R. on the respondent. In the confession made by the respondent, he said that he has raped the girl, but he had ruptured her hymen, as he knew his limits as he is a doctor.

The trial court acquitted the respondent, stating that the extra-judicial confession of the respondent cannot be considered and also the F.I.R. has been belatedly lodged with no reasonable explanation.

The state preferred an appeal before the High Court challenging the acquittal order of the respondent however High Court found the respondent guilty under section 354 of IPC and imposed 6 months of simple imprisonment and also directed Rs 2,000 as compensation with a fine of 3,000/-.

The petitioner (the father of the victim) feels aggrieved by the High Court judgment and filed the criminal appeal on 2 grounds.

Firstly, the High Court has erred in finding the respondent guilty of a minor offense under section 354 of IPC instead of section 375 of IPC.

Secondly, the sentence imposed by the High Court is inadequate and not commensurate.

According to many rulings, a conviction can still be safely recorded even in cases where there is no oral confirmation of the prosecutor's testimony, this is because the victim's evidence must not be fainted by any fundamental weakness and the probability factor must not make it untrustworthy. Generally speaking, cooperation cannot be demanded. Except in cases where medical evidence is expected to be provided give the particulars of the case as held in *Rameshwar vs. state of Rajasthan*<sup>4</sup>, *Bharwada Bhoginbai Hirjihai vs. state of Gujarat*<sup>5</sup>. And *Krishal Lal vs. the state of Haryana*<sup>6</sup>.

In the appeals against acquittal, the powers of the High Court are as wide as in appeals from conviction, in *Surajpal Singh vs State*<sup>7</sup>, *Tulsiram Kanu vs State*<sup>8</sup>, *Aher Raja Kima vs State of*

Saurashtra<sup>9</sup>, Radha Kishan vs. State of Uttar Pradesh<sup>10</sup>. Holding that an appeal from acquittal need not be treated differently from an appeal from conviction. The same is also held in Jodunath Singh vs State of Uttar Pradesh<sup>11</sup>, Dharam Das vs State of Uttar Pradesh<sup>12</sup>, Barati vs State of Uttar Pradesh<sup>13</sup>, and Sethu Madhavan Nair vs State of Kerala<sup>14</sup>.

In interpreting complete penetration to constitute rape the various High Courts have taken the view stating that even taken slightest penetration is sufficient whereas depth penetration is immaterial as held in Natha vs Emperor<sup>15</sup>, Abdul Magid vs Emperor<sup>16</sup>, Mst. Jantan vs Emperor<sup>17</sup>, Ghanashyam Misra vs State<sup>18</sup>, Das Bernard vs State<sup>19</sup>. In re Anthony,<sup>20</sup> it has been held that while there is penetration but no completion of sexual intercourse it constitutes rape. According to Gour, "Even vulval penetration has been held to be sufficient for a conviction of rape<sup>21</sup>."

In Arnit Das vs state of Bihar<sup>22</sup>, the question was regarding the consideration of crucial dates for determining the question whether to consider a person as a juvenile on the date when he bought before the competent authority (or) the date of commission of the offense, according to section 2(h) of Juvenile Justice, Act, 1986. The petition was charged under section 302 of the Indian Penal Code, whereas he claimed that he was born on 18-9-1982 and therefore he is a juvenile and is entitled to protection under the Juvenile Justice, Act, 1986. The ACJM (Additional Chief Judicial Magistrate) directed an inquiry to be held under section 32 of the Act and accordingly, the report was given as the petitioner was above 16 years of age on the date of occurrence of the offense and is not required to be tried by a juvenile court.

According to a number of rulings, convictions can still be safely recorded even in cases where there is no oral confirmation of the prosecutrix's testimony. This is because the victim's evidence must not be tainted by any fundamental weakness and the probability factor must not make it untrustworthy. Generally speaking, corroboration cannot be demanded except in cases where medical evidence is expected to be provided given the particulars of the case.

The learned senior counsel for the appellant has argued that the date of the offense is essential to establishing the age of the person claiming to be a juvenile, but the learned Additional solicitor general contends that the date the person is brought before the appropriate authority is what counts in determining the person's age and determining whether or not they are a juvenile.

According to section 2(h) of the Juvenile Justice, Act, 1986, "juvenile" means a boy who has not attained 16 years or a girl who has not attained 18 years of age.

In Santanu vs. State of West Bengal<sup>23</sup>, Bholu Bhagat vs, State of Bihar<sup>24</sup>, and Gopinath Gosh vs. State of West Bengal<sup>25</sup>, whether the accused was a juvenile or not was decided by considering the age of the accused on the date of occurrence (or) on the date of commission of the offense.

The Full-bench decision of the High Court of Calcutta in Dilip Saha vs. State of West Bengal<sup>26</sup>, and the full-bench decision in Krishna Bhagwan vs. State of Bihar<sup>27</sup>, relied on the provisions regarding consideration of the age determination of the accused is to be considered taking into record at the time of commission of the offense.

In Ram Deo Chauhan vs. State of Assam<sup>28</sup>, there was a review sought on plea of juvenility. An X-ray ossification.

An X-ray ossification test can be more reliable than a medical expert's judgment in estimating an individual's age, but it is by no means a reliable enough method to pinpoint a person's precise birthdate. The Supreme Court considered the scope and review and the limitation imposed on its

S. Nagaraj vs. State of Karnataka<sup>29</sup>, State of Maharashtra vs. Suchdev Singh<sup>30</sup>, Malkat Singh vs. State of Punjab<sup>31</sup>, Allauddin Mian vs. State of Bihar<sup>32</sup>, A.R. Antu vs. R.S Nayak<sup>33</sup>, Union of India vs. Godfrey Philips India Ltd<sup>34</sup>, Union of India vs. Javed Phmed, Abdul Hamid Pawala vs. State of Maharashtra<sup>35</sup>, State of Orrisa vs. Titaghur Paper Mills<sup>36</sup>, Gopinath Gosh vs. State of West Bengal<sup>37</sup>, R.S Nayak vs. A.R Antulay<sup>38</sup>, Manjappan vs. State of Tamil Nadu<sup>39</sup>, M/s Northern India caterers (India) ltd vs. Governor of Delhi<sup>40</sup>, P.N Iswara Iyer vs. Registrar Supreme Court of India<sup>41</sup>, Bachan Singh vs. State of Punjab<sup>42</sup>, Maru Ram vs. Union Of India<sup>43</sup>, Chandra Kanta vs. Sheik Habib<sup>44</sup>, O.N Mohindroo vs. District Judge Delhi<sup>45</sup>, G.L Gupta vs. D.N Mehta<sup>46</sup>, Patel Narashi Thakershi vs. Pradyanman Singh ji Arjun Singh ji<sup>47</sup>, Naresh Shridhar Mirajkar vs. state of Maharashtra<sup>48</sup>, Sajjan Singh vs. State of Rajasthan<sup>49</sup>, Prem Chandra Garg vs. Excise Commissiner, Uttar Pradesh . Allahabad<sup>50</sup>, Smt Ujjain Bai vs. State of Uttar Pradesh<sup>51</sup>, Raja Prithvi Chand lal Choudhary vs. Sukhraj<sup>52</sup>, Rajendar Narain Rae vs. Bijaj Govind Singh<sup>53</sup>, and the Supreme Court dismissed the appeal.

In Vishnu vs. State of Maharashtra<sup>54</sup>, the determination of the age of Prosecution was made on the Ossification test (the accused is not liable).

The accused is not liable to be penalized in light of the definition of rape under section 375 of the IPC clause sixthly, as the sexual relations were voluntary unless it is proven that the prosecutrix is under the age of sixteen. This submission is rejected categorically.

In Annep Kumar vs. State of Himachal Pradesh<sup>55</sup>, the appeal was filed challenging the Judgement dated 21-04-2010, where the appellant was convicted under sections 363, 366A, and 376 of the Indian Penal Code. It was argued that the age of the prosecutrix was fifteen and a half years on the day of the occurrence by a learned law officer but the respondent advocate argued that the age of the prosecutrix was Eighteen and half years at the time of occurrence. He also relied on two cases namely Jinish Lal sha vs. State of Bihar<sup>56</sup>, and Alamelu and another vs. State<sup>57</sup>, whereas the law officer relied on the conviction in the Judgement of Honorable Supreme Court in Mahadeo vs. State of Maharashtra<sup>58</sup>, to support his contentions. The accused is acquitted of the commission of the offense as the prosecutrix had gone with the accused on her own and was also major.

In Mukarrab etc. vs. state of Uttar Pradesh<sup>59</sup>, there was a claim regarding the determination of age on the ossification test as conclusive. The special leave was regarding conviction under section 302 of the Indian Penal Code.

In Mukesh and Anr vs. State of (National Capital Territory of Delhi) and Ors <sup>60</sup>, read with sections 149 and 148 of Indian Penal Code and also sentence of imprisonment for life under section 302 of Indian Penal Code and Rigorous Imprisonment of two years under section 148 of Indian Penal Code. The appellants Mukarrab and Arshal for the very first time raised the claim of juvenility before this court. They took defense as they were Juveniles according to section 7 of the Juvenile Justice Act, 2000. In Arnit Das vs. State of Bihar<sup>61</sup>, it was held that the court should not take a hyper-technical approach while appreciating the evidence in determining the accused's age.

In Rajindra Chandra vs. State of Chhattisgarh and another,<sup>62</sup> it was held that in determining age the degree of probability should be considered and not the proof beyond reasonable doubt.

In Akbar Sheikh and Ors vs. State of West Bengal<sup>63</sup>, and Pawan vs. State of Uttaranchal<sup>64</sup>, the documents such as the S.S.L.C Certificate (or) voters' list are accepted for determination of the age of the accused while in Jitendra Singh alias Babboo Singh and another vs. State of Uttar Pradesh<sup>65</sup>, the same documents were treated sufficient for directing an inquiry and verification of accused's age.

In Babloo Paisi vs. State of Jharkhand and another<sup>66</sup>, it was held that the ossification test is not the sole criteria for determining age and the medical opinion has to be considered along with other cogent evidence.

In *Darga Ram vs. State of Rajasthan*<sup>67</sup>, the court must be informed that the age determination of the individuals in question cannot be guaranteed in the absence of original and valid documentary proof and that there is always a chance that the age of the concerned parties may fluctuate by two years or more. The court displayed a tilt toward the accused's youth even in the face of medical opinion.

The courts are mandated to carry out their duties with the goal of safeguarding the public's confidence in the organization entrusted with the administration of justice. As such, a casual or cavalier approach in recording an accused person's juvenile status cannot be allowed when the accused commits a serious and heinous offense and then tries to claim statutory shelter under the pretense of being a minor. The defense of juvenility, which is more akin to a shield to elude or elude the law, cannot be permitted to save him. It is quite evident that the JJ Act 2000 was not intended to provide protection to those who are accused of serious or heinous crimes.

In *the State of Madhya Pradesh vs. Anoop Singh*<sup>68</sup>, it was held that the ossification test is not the sole criteria for age determination.

The plea of Juvenility was dismissed in the Mukarrab case.

In *Mukesh Anr vs. State (National Capital Territory of Delhi) and Ors*<sup>69</sup>, the plea of juvenility was rejected as it was a heinous offense.

In *Ram Prasad Sharma vs. State of Bihar*<sup>70</sup>, *Ram Murti vs. State of Haryana*<sup>71</sup>, *Dayaram vs. Dawalat Shah*<sup>72</sup>, *Harpal Singh vs. State of Himachal Pradesh*<sup>73</sup>, *Ravinder Singh Gorkhi vs. State of Uttar Pradesh*<sup>74</sup>, *Desh Raj vs. Bodh Raj*<sup>75</sup>, and *Ram Suresh Singh vs. Prabhat Singh*<sup>76</sup>, it was held that even if the entry has been made in an official record in their official duty it may have weight but may require corroboration.

Conclusion: Discussing the above case laws we can come to the conclusion of how juvenility was used as a shield and how many have escaped from punishment. Later the courts started to observe this and decreased the juvenile age from 18 to 16 years in case a person commits any heinous offence. Again there was no differentiation regarding offence. But through studying the case laws we came to know how judicially the offense were divided into 'petty', "Serious" and "heinous offenses"

#### **Authors' Contribution**

VK - conceived the idea of the research paper and referred the case laws.

SKP-gave skeleton of the Article to write this research paper and helped in writing Manuscript. All authors read and approved the final Manuscript.

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