

CLAIM OF JUVENILITY: A SECURITY FOR EVER



The Haryana Police Journal
Vol.2 | 2019

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Abstract

Children are the future of a nation. Therefore, they are to be protected against exploitation and provided with all the facilities to grow in a healthy environment. For those unfortunate ones who come in conflict with the law or who are orphans and deserted or abandoned by the parents, the Juvenile Justice (Care and Protection of Children) Act 2015 provides a complete scheme of doing justice and ensuring care and protection. A claim of juvenility is a very important and relevant concept in the juvenile justice system. The concept envisages eternal security for the children below 18 years of age. This security is a guarantee that all children get due care and protection, as they are entitled to under the provisions of the juvenile justice laws. Children can claim juvenility before any court and at any stage of the proceedings under the JJ Act 2015. The claim of Juvenility is a shield available to all children against the rigor of criminal justice processes as well as provides them a protective umbrella against all moral and material abandonment.

Key Words: Juvenile Justice Board, Extension of Juvenility, Presumption of Age, Determination of Age, Review of Sentence.

Introduction

As per Article 15(3) of the Constitution of India, State can make special provisions for the welfare of children. Article 39(f) enshrined in Part IV of the Constitution enjoins the State to make policies for children in order to give them opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. Childhood is to be protected against all kinds of exploitation. In fulfilment of the constitutional mandate and international commitment, and being signatory to United Nations Conventions on the Rights of the Child 1992, United Nations Standard Minimum Rules for Administration of Juvenile Justice 1985, United Nations Rules for Protection of Juveniles Deprived of Their Liberty 1990, the Havana Convention on Protection of Children and Co-operation in respect of Inter-country Adoption 1993 and other related international instruments, Indian Parliament enacted the Juvenile Justice (Care and Protection of Children) Act 2000 (56 of 2000). The Act was repealed and another consolidated Act namely The Juvenile Justice (Care and Protection of Children) Act 2015 (2 of 2016), called JJ Act 2015 hereinafter, replaced it. The Juvenile Justice (Care and Protection of Children) Rules 2016 (JJ Rules 2016) were framed under the JJ Act 2015. Both these documents provide a comprehensive scheme of Juvenile Justice and for Care and Protection of Children. It would be worthwhile to examine the concept of a claim of juvenility contained therein and explore the protective cover offered by it.

Concept of Juvenility

As per section 2(35) of the JJ Act 2015, 'juvenile' means a child below the age of eighteen years. Under the Act, Children have been divided into two categories, namely, 'Child in conflict with law' (CCL) and 'Child in need of care and protection'(CNCP). CCL means a child who is alleged or found to have committed an offense and who has not completed eighteen years of age. CNCP means a child who falls in any one of them (xii) categories enumerated in section 2(14) of the JJ Act 2015. Generally, children who are orphans or abandoned by parents, missing or runaway children, children vulnerable to exploitation and abuse because of their socio-economic background, mentally ill or physically challenged children, children victims of armed conflict, civil unrest or natural calamity or children who are at risk of marriage are classified as CNCP.

In the aftermath of the Nirbhaya episode, people demanded that mature children between 16 to 18 years of age should be categorized separately and they need to be tried as an adult. Government succumbed under public pressure and the old JJ Act 2000 was repealed and replaced by the new JJ Act 2015, paving way for a separate classification of children, in the age group of 16 to 18 years, who are involved in heinous crimes. A separate scheme of prosecution of such CCL as an adult has been prescribed under the JJ Act 2015. Academicians and researchers have given the nomenclature of 'Juvenile Waiver System' to this new scheme of prosecution CCL as an adult. Separate procedures for registration of inquiry, arrest, and apprehension, inquiry and investigation, trial, prosecution, and punishment have been prescribed in detail in the JJ Act 2015 and JJ Rules 2016.

Extension of Juvenility

A pertinent question arose quite often as to how the children, who complete the age of 18 years during the continuation of inquiries/investigation/trial, should be dealt with. They should be treated as juveniles and adjudicated upon as such as per the juvenile justice law or dealt with as adults as per the procedure laid down in the Criminal Procedure Code, 1973 (Cr.P.C). Clarity on this issue was brought in the JJ Act 2015 by inventing the concept of 'Extension of Juvenility'. Section 5 of the Act provides that if the child completes the age of 18 years during the continuation of inquiry under the JJ Act, the Board (Juvenile Justice Board) may continue the inquiry and pass orders as if such person had continued to be a child. Word 'may' in section 5 shall always mean 'shall', in view of one of the most important Principles of Juvenile Justice, namely, 'best interest of the child' contained in section 3 of the JJ Act 2015. Section 6(1) prescribes that if the child completes 18 years of age and is apprehended for committing the offense when he was below 18 years, he shall be treated like a child during the process of inquiry. Further, such a child as in section 6(1), if not released on bail, shall be placed in a place of safety during the inquiry.

Juvenile Waiver System

As per the JJ Act 2015, criminal offences are classified into three categories namely, 'petty offences', 'serious offences' and 'heinous offences'. Petty offences include the offences for which maximum punishment under the Indian Penal Code or any other law for the time being in

force is imprisonment up to three years. Serious offences entail a punishment of imprisonment between three to seven years. Heinous offences are those offences for which punishment of imprisonment for seven years or more is prescribed. The Judicial Waiver System (JWS) is the system whereby a CCL, in the age group of sixteen to eighteen years, who is found involved in a heinous offence, is classified as a separate category for the purpose of enquiry, punishment, custody, and rehabilitation. Accordingly, section 14(5)(f) of the JJ Act 2015 prescribes that inquiry of heinous offences-

- (i) for children below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Juvenile Justice Board by following the procedure for trial in summons cases under the Code of Criminal Procedure, 1973.
- (ii) for children above the age of sixteen years as on the date of commission of an offence shall be dealt with the manner prescribed under section 15, i.e. the JWS.

The JWS enshrined in section 15(1) of the JJ Act 2015 provides that in case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the JJB shall conduct a Preliminary Assessment (PA) with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. The JJB may take the assistance of experienced psychologists or psycho-social workers or other experts to arrive at a decision during the PA. Explanation to section 15(1) makes it clear that PA is not a trial, PA is to assess the capacity of such a child to commit and understand the consequences of the alleged offence. Where the JJB is satisfied on PA that the case of the CCL should be disposed of by it, then, it shall follow the procedure, as far as may be, for trial in summons case under the Cr.P.C. If the JJB on PA decides that the CCL should be treated as an adult, the Board shall pass an order and transfer the trial of the case to the Children's Court(CC) having jurisdiction to try such offences. In order to ensure that there is no undue delay for concluding the inquiry, it is provided in section 15(2) read with section 14(3) of the JJ Act, 2015 that the PA shall be completed within a period of three months from the date of the first production of the child before the JJB. The order of the JJB on PA is appealable under section 101(2) of the Act. The appeal against the order of the JJB during PA shall lie before the Court of Sessions. While deciding the appeal, the Sessions Court may take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the JJB in passing the order on PA. No second appeal shall lie from any order of the Court of Sessions passed in appeal under the section. It is, therefore, made clear that the order of the Court of Sessions in appeal on PA shall be final. Though, the affected party can always file a revision petition in the competent court.

After the receipt of the PA report from the JJB under section 15, the CC considers the PA report afresh and may decide whether the CCL should be tried as an adult as per the provisions of the Cr.P.C. In case the CC decides that there is no need for a trial of the CCL as an adult, it may conduct an inquiry as a JJB and pass appropriate order under section 18 i.e. an order in which a JJB passes for a CCL. If in the opinion of the CC the CCL is to be tried as an adult, it shall follow the provisions of the Cr.P.C and pass appropriate orders accordingly. However, it is prohibited under

section 21 of the JJ Act, 2015 that no CCL shall be sentenced to death or for life imprisonment without the possibility of release.

Claim of Juvenility

The claim of juvenility may be raised before any court, at any stage, even after the final disposal of a case. Such a claim shall be determined as per the provisions of the JJ Act 2015 and the rules made thereunder.

The magistrate, not empowered to exercise the powers of JJB, before whom a person is produced can initiate immediate inquiry qua juvenility *suomotu*, if he is of the opinion that the person alleged to have committed the offence and brought before him is a child. Such a magistrate can form his opinion qua juvenility based on the mere appearance of the person as well. But looks may be deceptive. It is always safe to form such an opinion after conducting an enquiry as per the procedure laid down in the JJ Act 2015. After the inquiry, the court shall record a finding on the matter stating the age of the person as nearly as may be. If on inquiry, it is found that the person was a child on the date of commission of the offence, the court shall forward the child to the JJB for further proceedings. During inquiry qua juvenility, if required to be kept in custody, the person shall be kept in the place of safety.

In *Jitender Singh v. the State of UP*, *UOI v Ajeet Singh*, and *Gopinath Ghosh v. the State of WB*, the plea of juvenility was taken the first time before the Supreme Court of India (SC) in appeal. The SC set aside the orders of conviction in all these cases and ordered a fresh trial by the JJB as it was established by the defence that the convicts were juveniles on the date of commission of crimes. The Apex Court held that juvenile justice legislators JJ Act, are beneficial Acts and benefit of the provisions contained therein can be given to the juveniles retrospectively, keeping in view the principle of 'best interest of the child'. In *Abdul Razzaq v. the State of UP* and *Mahesh Jogi v. the State of Rajasthan* also the SC again established retrospective application of the juvenile justice laws.

In *Mohd. Feroz Khan v. the State of AP*, *Upender Pradhan v. the State of Orissa* and *Indra Deo Sao v. the State of Bihar* it was again reiterated by the SC that claims of juvenility can be raised at any stage, even after conviction is confirmed by the Apex Court.

In *Raju v. The State of Haryana*, a Three-Judge Bench of the Supreme Court revisited all questions related to juvenility and answered them in para 9, 10 and 25 as under-

“9. It is by now well-settled, as was held in *Hari Ram v. State of Rajasthan*, (2009) 13 SCC 211, that in light of Sections 2(k), 2(I), 7A read with Section 20 of the 2000 Act as amended in 2006, a juvenile who had not completed eighteen years on the date of commission of the offence is entitled to the benefit of the 2000 Act (also see *Mohan Mali v. State of Madhya Pradesh*, (2010) 6 SCC 669; *DayaNand v. State of Haryana*, (2011) 2 SCC 224; *Dharambir v. State (NCT) of Delhi* (supra); *Jitender*

Singh @ Babboo Singh v. State of Uttar Pradesh, (2013) 11 SCC 193). It is equally well-settled that the claim of juvenility can be raised at any stage before any Court by an accused, including this Court, even after the final disposal of a case, in terms of Section 7A of the 2000 Act (see Dharambir v. State (NCT) of Delhi, (supra) Abuzar Hossain v. State of West Bengal, (2012) 10 SCC 489; Jitendera Singh @ Babboo Singh v. State of UP, (supra) Abdul Razzaq v. State of Uttar Pradesh, (2015) 15 SCC 637).

10. In light of the above legal position, it is evident that the Appellant would be entitled to the benefit of the 2000 Act if his age is determined to be below 18 years on the date of commission of the offence. Moreover, it would be irrelevant that the plea of juvenility was not raised before the Trial Court, in light of Section 7A. As per the report of the inquiry conducted by the Registrar (Judicial) of this Court, in this case, the Appellant was below 18 years of age on the date of commission of the offence. The only question before us that needs to be determined is whether such report may be given precedence over the contrary view taken by the High Court, so that the benefit of the 2000 Act may be given to the Appellant.

25. Criminal Appeal hereby stands allowed and the order of the High Court affirming the conviction and sentence of the Appellant under Section 376 (2) (g) of the IPC is set aside. Seeing that the Appellant has already spent 6 years in imprisonment, whereas the maximum period for which a juvenile may be sent to a special home is only 3 years as per Section 15(1) (g) of the 2000 Act, and since the Appellant has already been enlarged on bail by virtue of the order of the Court dated 09.05.2014, he need not be taken into custody. His bail bonds stand discharged and all proceedings against him, so far as they relate to the present case, stand terminated.”

The ratio laid down by the Three-Judge Bench in Raju (above) was later applied and reiterated by the SC in *Ashok Kumar Mehra and Another v. State of Punjab etc.* as well.

Determination of age

As per section 94(2) of the JJ Act 2015, the JJB or the Child Welfare Committee (CWC)

shall undertake the process for determination of age by seeking evidence as follows:-

- (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 is given by a corporation or a Municipal Authority or a Panchayat, and only in the absence of (i) and (ii) above
- (iii) age shall be determined by the ossification test or any other latest medical age determination test.

It is absolutely clear from the above provisions contained in section 94(2) that the sequence of the process prescribed for the determination of age should be followed step by step. In *Ranjeet Goswami v. State of Jharkhand and others*, the SC held that when the School Leaving Certificate was available there was no question of medical examination by a medical board.

Generally, a range of age is given by medical professionals because it is not possible to determine the exact age of a person by using medical science. When such a range of age is prescribed, the age of the person recorded on the lower side of ranges shall be presumed to be the age, keeping in view the principle of 'best interest of the child'.

The age recorded by the CWC or the JJB shall be deemed to be the true age of that person for the purpose of the JJ Act 2015. It means that age once determined by a competent authority, shall not be determined again by another authority. The SC reiterated this provision of law in *Hari Ram v. the State of Rajasthan*. In this case, the High Court declared the child to be below 18 years of age. In this eventuality, the SC ruled that there was no need to determine the age by the JJ Board again.

In *Om Parkash v. the State of Rajasthan*, the SC, however, took a slightly different position and held that it was the duty of the court to scrutinize plea of juvenility with extreme caution in cases involving heinous crime to ensure that plea of juvenility was not raised to escape punishment. In case a record of age in school documents was found to be doubtful, a medical opinion should be given precedence.

Similar caution was sounded by the SC in *Parag Bhati v. the State of UP*. The Apex Court observed that the benefit of the possibility of two views in regard to age of the alleged accused, who is involved in grave and serious matter, which he committed in a well-planned manner, reflecting his maturity of mind rather than innocence, indicating that his plea of juvenility is more in the nature of a shield to dodge or dupe the arm of law, cannot be allowed to come to his rescue. The SC further held that only in cases where documents or certificates are found to be fabricated or manipulated, the JJB/CWC can go for medical report of age determination. If documents are genuine, then, it is conclusive proof of age. The same view was reiterated by SC in *Sri Ganesh v. State of Tamil Nadu*. The SC held that documentary evidence as stated in the Rules was enough to establish juvenility if it was found to be reliable. There was no need for a medical examination in such a case.

Presumption of age

In order to settle to claim of juvenility, it is not always that the JJB/CWC shall undertake inquiry as per section 94(2) of the JJ Act 2015. They may decide on the question of juvenility merely on the basis of appearance as well. Section 94(1) of the JJ Act 2015, reproduced below, provides sufficient grounds for the presumption of the age of a person for the purpose of an enquiry under the provisions of the JJ Act 2015.

“Section 94 -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.”

It is, however, stated that if the aggrieved party has an objection to the presumption, age should be determined following the due proves as given in section 94(2) of the JJ Act 2015.

An appeal against the claim of juvenility

Generally, as a matter of rule, the age recorded by the JJB or CWC to be the age of person so brought before it shall, for the purpose of the JJ Act 2015, be deemed to be the true age of that person. But, it is the magnanimity of law that it keeps the doors of law courts open forever for the aggrieved party. A person aggrieved by the orders of JJB/CWC/CC on the claim of juvenility may get his grievances redressed by initiating any one of following remedial proceedings.

- (1) By disputing that the documents produced in support of juvenility are not genuine, an appeal may be filed in the children court (CC) or High Court, as the case may be.
- (2) By filing review/revision petition against the orders of the JJB/CWC/CC in the competent court on the point of law or for violation of procedures, provisions of international conventions to which India is a signatory and principles of natural justice, etc.
- (3) By filing the appeal/revision petition against the order of the CC on the Preliminary Assessment done by the JJB.

The orders of the JJB/CWC under the JJ Act 2015, including order passed during Preliminary Assessment undertaken u/s 15 of the Act are appealable. An appeal against any order of the Children Court shall lie before the High Court as per the provision of Cr.P.C.

Section 102 of the JJ Act 2015 provides that the High Court, at anytime, on its own motion or on application received in their behalf may call for the record of any proceedings by the JJB/CC

for the purpose of satisfying as to the legality or propriety of any order and pass any order as it thinks fit, after giving opportunity of hearing to the person aggrieved by the order to be passed. Procedure in appeal or revision shall be as prescribed in Cr.P.C.

Review of Sentence

The CCL convicted as an adult shall be sent for rehabilitation to the place of safety till he attains the age 21 years and thereafter the case of the person shall be reverted by the CC. During the stay in the place of safety, the child shall be provided reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support, etc. The progress made by the CCL during the rehabilitation period shall be evaluated periodically by the CC with the help of a Probation Officer or the District Child Protection Unit or a social worker. When the CCL attains the age of 21 years and is yet to complete the term of stay, the CC shall evaluate if such a child has undergone reformatory changes and if the child can be a contributive member of the society. As per section 20(2) of the JJ Act, 2015, after the completion of the evaluation, the CC may-

- (i) decide to release the child on such conditions as it deems fit which includes the appointment of a monitoring authority for the remainder of the prescribed term of stay, or
- (ii) decide that the child shall complete the remainder of his term in jail.

Thus, a CCL, who is tried as an adult, gets an opportunity to escape incarceration in jail after staying in a place of safety up to the age of 21 years. This is additional security to juveniles in case they are incarcerated as adults for their involvement in a heinous offence.

Removal of Disqualification

A child who has committed an offence and has been dealt with under the provisions of the JJ Act 2015 shall not suffer disqualification, if any, attached to a conviction of an offence under such law. This provision conforms to the general principles of care and protection of children that all past records of any child under the juvenile justice system should be erased, except in special circumstances. However, there is one exception to this rule. The provision relating to the removal of disqualification shall not apply to the CCL who has been tried as an adult under the provisions of the Act.

The benefit of the removal of disqualification is available to a child at any age, at any stage in life. If the JJB/CC fails to order removal of disqualification in the dispositional order, such a CCL can seek relief from the JJB by filing an application and get the disqualification removed as per the provisions of this Act.

Conclusions

Childhood is innocence personified. Any child shall be presumed to be innocent of any problematic or criminal intent up to the age of eighteen years. Unlawful conduct of a child which is done for survival or is due to environment or situational factors or is under the control of adults or peer groups ought to be covered by the principle of innocence. Every child in the juvenile justice

system shall have the right to be reunited with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in before coming under the purview of the JJ Act 2015. Principle of diversion enshrined in section 3(xv) of the JJ Act 2015 entails that measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole. Thus, the claim of juvenility is security forever and every stakeholder in the justice delivery system has to recognize this universally accepted principle.



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Supra note 1

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*Section 14 or section 36 of the JJ Act 2015. Section
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Section 94(3), JJ Act 2015

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Section 3 (i), Principal of presumption of innocence Section 3 (xii) JJ Act 2015