

LAW OF
JUVENILE JUSTICE

.... **S.S. Upadhyay**
Former District & Sessions Judge/
Former Legal Advisor to Governor
UP, Lucknow
Mobile : 9453048988
E-mail : ssupadhyay28@gmail.com

1(A). 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 :

Notification dated 12.01.2016 : MINISTRY OF WOMEN AND CHILD DEVELOPMENT, New Delhi, the 12th January, 2016 S.O. 110(E).—In exercise of the powers conferred by sub-section (3) of section 1 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), the Central Government hereby appoints the 15th day of January, 2016 as the date on which the said Act shall come into force. [No. CW-II-11/4/2015-CW.II]

1(B). Applicability of the new JJ Act, 2015 to the pending 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.*"

1(C) Juvenile—who is ? : 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.

- 1(D). **Child—who is ?** : 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.
- 1(E) **"Juvenile"** : According to Section 2(35) of the Juvenile Justice (Care & Protection of Children) Act, 2015, "juvenile" means a child below the age of eighteen years.
- 1(F). **"Child in conflict with law"--who is ?** : 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.
- 1(G). **"Children's Court"** : According to Section 2(20) of the Juvenile Justice (Care & Protection of Children) Act, 2015, "Children's Court" means a court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012, wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act.
- 1(H) **"Heinous Offences"** : According to Section 2(33) of the Juvenile Justice (Care & Protection of Children) Act, 2015, "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more.
- 1(I) **"Serious Offences"** : According to Section 2(54) of the Juvenile Justice (Care & Protection of Children) Act, 2015, "serious offences" includes the offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is imprisonment between three to seven years.
- 1(J) **"Petty Offences"** : According to Section 2(45) of the Juvenile Justice (Care & Protection of Children) Act, 2015, "petty offences" includes the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years.
- 2(A). **Procedure in relation to Board** : According to Sec. 7 of the Juvenile Justice (Care & Protection of Children) Act, 2015,

(2) A child in conflict with law may be produced before an individual member of the Board, when the Board is not in sitting.

(3) A Board may act notwithstanding the absence of any member of the Board, and no order passed by the Board shall be invalid by the reason only of the absence of any member during any stage of proceedings. Provided that there shall be at least two members including the Principal Magistrate present at the time of final disposal of the case or in making an order under sub-section (3) of section 18.

2(B). Sec. 8. Powers, functions and responsibilities of the Board :

(1) Notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, the Board constituted for any district shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law, in the area of jurisdiction of such Board.

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them under section 19 or in appeal, revision or otherwise.

3(c) ensuring availability of legal aid for the child through the legal services institutions.

2(C): Procedure to be followed by the Board, appellate and revisional courts

: Sec. 103 of the JJ Act, 2015 : Sec. 103(1) of the JJ Act, 2015 provides that save as otherwise expressly provided by this Act, a Committee or a Board while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 for trial of summons cases.

Section 103(2) of the JJ Act, 2015 provides that save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals or revision proceedings under this Act shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973.

2(D): Principles of natural justice to be followed in procedure : Basic procedural standards of fairness shall be adhered to, including the right to a fair

hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

2(E). Procedure to be followed by a Magistrate who has not been empowered under the JJ Act, 2015 (Sec. 9 of JJ Act, 2015):

- (1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.
- (2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be.

2(F). Inquiry by Board regarding child in conflict with law : Section 14 of JJ

Act, 2015 : Sub-section (1) of Sec. 14 of JJ Act, 2015 provides that where a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.

- (2) The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.
- (3) A preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.
- (4) If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated.

certain clauses of sub-section (5) to Sec. 14 of the JJ Act, 2015 provides as under :

- (d) cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973.
- (e) inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973.
- (f) inquiry of heinous offences,—
 - (i) for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e).
 - (ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.

2(G). Preliminary assessment into heinous offences by Board : Sec. 15(1) of the JJ Act, 2015 : 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 Board shall conduct a preliminary assessment 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, and may pass an order in accordance with the provisions of subsection (3) of section 18. Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation : For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

- (2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973. Provided that the order of the Board to dispose of the matter shall be appealable under subsection (2) of section 101.

2(H). JJ Board when to transfer the case to the Children's Court : Sec. 15(3) of the JJ Act, 2015 ? : Where the Board after preliminary

assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

2(I). **Powers of children's court on receiving the case on transfer from the JJ Board : Section 19(1) of the JJ Act, 2015 :** After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that :

- (i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere.
- (ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

2(J). **Sec. 19(1) of the JJ Act, 2015 when not to apply to a child in conflict with law who is above 18 years of age :** Proviso to Sec. 24(1) of the JJ Act, 2015 provides that notwithstanding anything contained in any other law for the time being in force, a child who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attached to a conviction of an offence under such law:

Provided that in case of a child who has completed or is above the age of sixteen years and is found to be in conflict with law by the Children's Court under clause (i) of sub-section (1) of section 19, the provisions of sub-section (1) shall not apply.

Sec. 24(2) of the JJ Act, 2015 : The Board shall make an order directing the Police, or by the Children's court to its own registry that the relevant records of such conviction shall be destroyed after the expiry of the period of appeal or, as the case may be, a reasonable period as may be prescribed:

Provided that in case of a heinous offence where the child is found to be in conflict with law under clause (i) of sub-section (1) of

section 19, the relevant records of conviction of such child shall be retained by the Children's Court.

3(A). Accused crossing 18 years of age on 01.04.2000 entitled to the benefit of 2000 Act : Where the accused persons were juvenile even under the provisions of Juvenile Justice Act, 1986 but crossed the age of 18 years when 2000 Act came into force, they would be treated as juvenile in subsequent appeal and are entitled to benefit and protection under 2000 Act. Accused persons had committed offense u/s 302/ 34 IPC & had crossed age of 40 years and it was held by the Supreme Court that it will not be conducive to environment in special home as the accused persons had undergone an actual period of sentence of more than 3 years, the maximum period provided under Sec 15 of 2000 Act, while sustaining their conviction u/s 302 /34 IPC, sentences awarded to them were set aside by the Supreme Court. See : **Lakhan Lal Vs. State of Bihar, AIR 2011 SC 842.**

3(B). Place of detention of juvenile becoming major during pendency of case : Where the accused had gone into juvenile home when he was juvenile but during the pendency of case (appeal) he had attained the age of majority (nearly 35 years), interpreting the provisions of Sec.2(k), 2(l), 7-A, 20, 49 of the Act of 2000 r/w rules 12 and 98 of the Rules, 2007, it has been held by the Supreme Court that it may not be conducive in the environment in the special home and to the interest of other juveniles housed in the special home to refer him to the board for passing orders for sending him (accused) to a special home or for keeping him at some other place of safety. See : **Dharambir Vs. State (NCT of Delhi), (2010) 5 SCC 344.**

3(C). Minor girl can be allowed to be kept in children home but not in observation home meant for juveniles : A minor girl undergoing marriage in violation of the provisions of the Prohibition of Child Marriage Act, 2007 if has capacity to determine and refuses custody of her parents, can be allowed to be kept in children's home but not in observation home meant for juveniles in conflict with JJ Act, 2000. Such minor girl cannot be compelled to go to custody of her parents and instead the court may entrust her in the custody of a fit person subject to her volition. Sections 17

& 19 of Guardians and Wards Act can be taken for guidance. See : **Sivakumar Vs. Inspector of Police, AIR 2012 Madras 62 (F.B.)**

- 3(D). Five-Judge Constitution Bench decision in Pratap Singh's case no longer relevant after 2006 Amendments in the JJ Act, 2000** : The Five-Judge Constitution Bench decision of the Supreme Court given in Pratap Singh Vs. State of Jharkhand & another, AIR 2005 SC 2731 came up for consideration by the Supreme Court in Hari Ram Vs. State of Rajasthan & another, (2009) 13 SCC 211 wherein (in paras 12, 13, 14), the Hon'ble Supreme Court has observed that "after this court's decision in Pratap Singh's case and presumably as a result of that decision a No. of amendments of a very basic nature were introduced in the JJ Act, 2000 w.e.f. 22.08.2006 by Act No. 33 of 2006. In Hari Ram's case (in para 59), the Hon'ble Supreme Court held that the Constitution Bench decision in Pratap Singh's case was no longer relevant since it was rendered under the un amended Act of 2000. The law as now crystallized on a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 read with Rules 12 and 98 places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence prior to 01.04.2001 would be treated as juveniles even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted. See : **Daya Nand Vs. State of Haryana, AIR 2011 SC 593.**
- 3(E). Accused to get benefit of 2000 Act even if convicted prior to 01.04.2000 (Sec. 64)** : Where on the date of occurrence accused was over 16 years of age and had crossed the age of 18 years on 01.04.2000, the date when 2000 Act came into force and was undergoing imprisonment after conviction on date when 2000 Act into force, it has been held by the Hon'ble Supreme Court that in view of Sections 2(l) and 20 of the 2000 Act as inserted by Act No 33 of the 2006, the accused cannot be kept in prison to undergo sentence and should be directed to be released and to be tried before juvenile court. See :
- (i) **Daya Nand Vs. State of Haryana, AIR 2011 SC 593**
 - (ii) **Lakhan Lal Vs. State of Bihar, AIR 2011 SC 842**
 - (iii) **Dharambir Vs. State (NCT of Delhi) AIR 2010 SC 1801**

3(F). All Accused below 18 years of age on date of commission of offence to get benefit of 2000 Act : Benefit of the provisions of Sections 2(k), 2(l), 7-A and 20 of the JJ Act, 2000 will be available to all persons who were below 18 years of age on date of commission of offence irrespective of whether offence was committed before or after enforcement of 2000 Act, i.e. 01.04.2000. See : **Dharambir Vs. State (NCT of Delhi) AIR 2010 SC 1801**

3(G). Accused below 18 years of age on date of commission of offence to get benefit of 2000 Act : Where the date of birth of the accused was 10.05.1982, date of occurrence was 01.05.1999, his age on date of occurrence was 16 years 11 months 21 days and he had not completed the age of 18 years on the date of offence i.e. on 01.05.1999, it has been held by the Hon'ble Supreme Court that in view of the provisions of section 2(l), 7-A, 20 and 64 of the JJ Act, 2000, the accused/convict who had already undergone 12 years in jail, was entitled to the benefit of the JJ Act, 2000 irrespective of the fact that he had ceased to be a juvenile on or before 01.04.2001. The accused was therefore directed to be released from custody forthwith. See : **Amit Singh Vs. State of Maharashtra and another, 2011(74) ACC 887(SC)**

Note : Case of Hari Ram Vs. State of Rajasthan and others, 2010(68) ACC 367(SC) relied upon in the case of Amit Singh.

3(H). A Juvenile under 1986 Act crossing age of 18 years on 01.04.2000 would be treated as Juvenile in subsequent appeal : where the accused was convicted for the offence under Section 302/34 of the IPC and was juvenile even under the provisions of the JJ Act, 1986 but had crossed the age of 18 years when 2000 Act came into force on 01.04.2000, it has been held by the Hon'ble Supreme Court that the accused would be treated juvenile in subsequent appeal and would be entitled to the benefit and protection of Section 2(l), 7 and 20 of the 2000 Act. Since the convicted accused persons had crossed age of 40 years, therefore, it was held by the Hon'ble Supreme Court that it will not be conducive to environment in special home if they are kept therein. The accused person had already undergone an actual period of sentence of more than three years, maximum period provided under Section 15 of 2000 Act, and while sustaining their conviction for offence under section 302/34 of the IPC, sentence awarded

to them was set aside by the Hon'ble Supreme Court. See : **Lakhan Lal Vs. State of Bihar, AIR 2011 SC 842.**

4. **Applicability of the 1986 JJ Act and 2000 JJ Act (Sec. 20 & Rule 97) to pending cases** : (A) The Juvenile Justice (Care & Protection of Children) Act, 2000 came into force on 1.4.2001. Provisions of the JJ Act, 2000 would be applicable to those cases initiated and pending inquiry or trial for the offences committed under the Juvenile Justice Act, 1986 provided that the person had not completed 18 years of age as on 1.4.2001. Sec. 20 of the 2000 JJ Act would apply only when the following twin conditions are fulfilled-----
- (i) That on the date of enforcement of the 2000 Act, i.e. on 1.4.2001 the proceeding was pending.
 - (ii) That on the date of enforcement of the 2000 Act, i.e. on 1.4.2001 the accused was below the age of 18 years. See :
 1. **Bijender Singh Vs. State of Haryana, 2005 (3) SCJ 644**
 2. **Pratap Singh Vs. State of Jharkhand & another, 2005 (2) SCJ 70 (Five-Judge Bench).**
- (B) Where the accused below 18 years (17 years on the date of occurrence) was convicted by the ASJ for the offences u/s. 302, 452, 323 IPC and during the pendency of appeal, the juvenile raised the plea of juvenility and benefit of the 2000 Act, the Supreme Court, rejecting the contention of the accused to extend benefit of 2000 Act to him, ruled that as the accused was not a person below the age of 18 years on the date of enforcement of the 2000 Act, i.e. on 1.4.2001, benefit of Sec. 20 under the 2000 Act could not have been extended to him even if his case was pending prior to the coming into force the 2000 Act. See :
1. **Ranjit Singh Vs. State of Haryana, 2008 (63) ACC 130 (SC)**
 2. **Jameel Vs. State of Maharashtra, 2007 (57) ACC 1064 (SC).**
- (C) Where a male accused was found to be 17 years of age on the date of occurrence, it has been held that he was not entitled to the benefit of 1986 Act. See : **Satbir Singh Vs. State of Haryana, (2005) 12 SCC 72.**
- (D) Where the criminal case against the accused was initiated and pending under the 1986 Act, it has been held that the 1986 Act would have applied to the accused provided he had not completed 18 years of age as on 1.4.2001 i.e. the date of enforcement of the 2000 Act and as such the plea

of the accused that the 2000 Act was applicable in respect of his case was rejected. See : **Satbir Singh vs. State of Haryana, (2005) 12 SCC 72**

5. **Effects of amendments in the Juvenile Justice (Care & Protection of Children) Act, 2000 (vide Amending Act No. 33 of 2006 w.e.f. 22.8.2006)** :The effects of amendments in the Juvenile Justice (Care & Protection of Children) Act, 2000 vide amending Act no. 33 of 2006 w.e.f. 22.8.2006 are as under :
- (i) Sections 1, 2, 4, 6, 10, 12, 14, 15, 16, 20, 29, 32, 33, 34, 39, 41, 59, 64, 68 stand amended.
 - (ii) Insertion of new Sections like 7-A, 62-A.
 - (iii) Substitution of new Sections for sections 21 & 57.

6(A-1).**Rules making powers of the Central and the State Governments :**
Section 110(1) of the JJ Act, 2015 : The State Government shall, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government is required to make rules and where any such model rules have been framed in respect of any such matter, they shall apply to the State mutatis mutandis until the rules in respect of that matter are made by the State Government and while making any such rules, they conform to such model rules.

6(A-2).**Effect of the Juvenile Justice (Care & Protection of Children) Rules, 2007:** New Rules called “Juvenile Justice (Care & Protection of Children) Rules, 2007” have been framed and made enforceable vide Central Government’s Notification No.:G.S.R. 679(E) of 2007, dated Nov. 26, 2007. According to Rule 96 of the 2007 Rules, only the Rules contained under these new Rules are applicable w.e.f. 26.11.2007 to give effect to the provisions of the 2000 Act with the result that the Rules framed in U.P. under “U.P. Juvenile Justice (Care & Protection of Children) Rules, 2004” are no more applicable w.e.f. 26.11.2007. Rule 96 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 reads as under :

“**Rule 96-** It is hereby declared that until the new rules conforming to these rules are framed by the State Government concerned under section 68 of the Act, these rules shall mutatis mutandis apply in that State.”

It is thus clear that in the absence of any new rules framed in U.P., only the rules contained under the 2007 Rules are applicable and the U.P. rules framed in the year 2004 are no more applicable.

Rule 97- “Pending Cases— (1) No juvenile in conflict with law or a child shall be denied the benefits of the Act and the rules made thereunder.

- (2) All pending cases which have not received a finality shall be dealt with and disposed of in terms of the provisions of the Act and the rules made thereunder.
- (3) Any juvenile in conflict with law, or a child shall be given the benefits under sub-rule (1) of this rule, and it is hereby clarified that such benefits shall be made available to all those accused who were juvenile or a child at the time of commission of an offence, even if they cease to be a juvenile or a child during the pendency of any inquiry or trial.
- (4) While computing the period of detention or stay or sentence of a juvenile in conflict with law or of a child, all such period which the juvenile or the child has already spent in custody, detention, stay or sentence of imprisonment shall be counted as a part of the period of stay or detention or sentence of imprisonment contained in the final order of the court or the Board.”

Section 20 : “Special provision in respect of pending cases—

Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any Court in any area on the date on which this Act comes into force in that area, shall be continued in that Court as if this Act had not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation- In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any Court, the determination of juvenility of such a juvenile shall be in

terms of clause (1) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.”

6(AA).Whether UP J.J. Rules, 2004 would apply in the State of UP or the Central J.J. Rules, 2007, matter referred to larger Bench by single Hon'ble Judge Justice Mushaffey Ahmad : See : Jai Prakash Tiwari Vs. State of U.P., 2013 (81) ACC 279 (All).

6(B-1).JJ Board to conduct child friendly enquiry and not an adversarial trial of juvenile : Rule 13 of the JJ Rules, 2007 requires the JJ Board to conduct child friendly enquiry and not an adversarial trial of juvenile. See : Dr. Subramanian Swamy Vs. Raju, 2014 (86) ACC 637 (Three-Judge Bench).

6(B-2).Salient features of 2007 Rules : Certain salient features of the Juvenile Justice (Care And Protection of Children) Rules, 2007 are as under :

- (1) **3 (2) I. (a)** : Presumption of innocence of juvenile or child :
- (2) **3 (2) I (d)(iii) & (14)** : Legal aid and guardian ad litem for juvenile
- (3) **3 VIII** : Prohibition of accusatory words against juvenile
- (4) **5 (1)**: Composition of JJ Board by a Metropolitan Magistrate or a Magistrate of the first class, two Social Workers of whom at least one shall be Woman.
- (5) **5 (2)**: Procedure of CrPC for JJ Board
- (6) **10** : Functions of JJ Board
- (7) **11, 13** : Pre and post-production action of police and other agencies and post production process by the JJ Board
- (8) **75, 76** : Except at the time of arrest, Police officer to be in plain clothes & no hand cuffing and fetters on juvenile
- (9) **Rule 11 (10) & Section 5 (2)** : Juvenile to be produced before the single member of the Board when the Board is not sitting.
- (10) **11(11)** : Registering FIR or filing charge-sheet not required except where the offence committed by juvenile is of serious nature such as rape, murder or committed jointly with adults
- (11) **12 (2)** : Prima facie determination of juvenility from physical appearance or documents also.

- (12) 12 (2) : Prima facie determination of juvenility from physical appearance or documents for sending him to Observation Home or to jail
- (13) 12 (3) (a) (i) to (iii) & Section 14 : Procedure to be followed in determination of age of juvenile
- (14) 12 (3) (b) : Medical Boards opinion about age of juvenile
- (15) 12 (6) : To apply to decided cases where the status of juvenility was not determined in accordance with the provisions of Rule 12 (3)
- (16) 13 (7) : Proceedings of cases against juvenile involving non serious offences to be terminated beyond delay of 4 to 6 months
- (17) 15 (6) : Personal bond of Bail of juvenile on form VI sufficient
- (18) 15 (5), (7) & Section 2 (s), Section 15 (4) : Release of juvenile on Probation
- (19) 62 : Leave of absence of juvenile for purposes like examination, admission, marriage, emergencies like death, accident, illness in the family
- (20) 15(13) & Section 15 (1)(g) : Maximum detention of juvenile upto 3 years
- (21) 77 : Procedure by Magistrate not empowered to deal with juvenile
- (22) 78 (4), 79 : Procedure for transfer of Juvenile out of jurisdiction of JJ Board and record of the case
- (23) 84 : Special Juvenile Police Unit for the cases of Juveniles
- (24) 87 : Duties of Probation Officers & submission of social investigation report to the JJ Board
- (25) 90 : Training of personal engaged in dealing with juvenile.
- (26) 97 & Section 20 : Provision for pending cases of juveniles on 01.04.2000
- (27) 99 and Section 19(2) : Removal and Weeding out of records of decided cases of juveniles after 07 years
- (28) Section 18 : No joint trial or proceeding of juvenile with non juvenile persons
- (29) Section 21 : No disclosure of name etc of juvenile and publication of any matter concerning his case in media etc.

7. **Relevant date for determination of juvenility:** According to Sec. 2(l) 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 has been 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) **Pratap Singh vs. State of Jharkhand & another, 2005(2) SCJ 70 (Five-Judge Bench)...No more relevant after 2000 Act.**
- (iv) **Dharambir Vs. State (NCT of Delhi), (2010) 5 SCC 344.**

Note: But in the case of **Arnit Das vs. State of Bihar, 2000 (41) ACC 191 (SC)** under the old Juvenile Justice Act, 1986, the Supreme Court had held that the relevant date for determining the juvenility or the age of the juvenile is the date when the delinquent was brought before the court or the competent authority. This ruling now stands overruled by the Supreme Court in the cases noted above.

8. **Forum of inquiry/trial of Juvenile** : Sec. 6 of the 2000 Act provides for the powers and forum for the inquiry/trial of the offences under the Act. Sec. 6 of the Act reads as under ---

“Sec. 6- Powers of Juvenile Justice Board- (1) Where a Board has been constituted for any district, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law.

- (2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.”

an accused aged 14 years and 4 months was charge sheeted by the I.O. for the offences u/s. 147, 148, 149, 307, 302, 504, 506 IPC, it was held by the Allahabad High Court (in the case noted below) that trial could not be held by regular court of Magistrate or Sessions Judge but by Juvenile Justice Board only. See : **Guddu alias Mohd. Islam vs. State of U.P., 2005 (53) ACC 876 (Allahabad)**

9(A).Powers of JJ Board : Sec. 6 of the Juvenile Justice (Care & Protection of Children) Act, 2000 provides for the powers that can be exercised by a JJ Board. Sec. 6 of the Act reads as under-----

“**Sec. 6-** (1) Where a Board has been constituted for any district, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law.

- (2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.”

9(B).Powers & procedure of Sessions Judge to hold enquiry for determination of age of Juvenile : The powers and the procedure of Sessions Judge under the Act, 2000 and the **juvenile justice (Care & Protection of Children) Rules, 2007** in conducting any inquiry or the proceedings in relation to a juvenile are as under :

Sec. 6(2) of the Act, 2000- The powers conferred on the Board by or under the Act may also be exercised by the High Court and the Court of Sessions, when the proceeding comes before them in appeal, revision or otherwise.

Sec. 7-A (w.e.f. 22.8.2006- (1) Whenever a claim of juvenility is raised before any Court or a Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

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.

- (2) If the Court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence, if any, passed by a Court shall be deemed to have no effect.

9(C).Providing opportunity for producing evidence to parties mandatory :

While holding enquiry to decide juvenility of a person under the 2000 Act, 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)**

9(D). 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 the 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 insofar 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) 7 SCC 263. (Para 23).**

9(D-1).Determination of age of a child in conflict with law : Sec. 94 of the JJ

Act, 2015 : 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.

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.

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.

9(D-2).Procedure to be followed in determination of Age (Rule 12(3)(a) & (b) of the 2007 Rules) :

(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law.

prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(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--

(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 panchayat;

(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.

- (4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.
- (5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.
- (6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law .

9(D-4).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>(i) the matriculation or equivalent certificates, if available; and in the absence whereof;</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>(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the</p>

<p>(ii) the date of birth certificate from the school (other than a play school) first attended, and in the absence whereof,</p> <p>(iii) the birth certificate given by a corporation or a municipal authority or a Panchayat,</p> <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.</p>	<p>concerned examination Board, if available; and in the absence thereof;</p> <p>(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;</p> <p>(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.</p> <p>(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.</p>
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9(D-4).Procedure in Rule 12 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 their under is mandatory. See : **Ashwani Kumar Saxena Vs. State of M.P., 2012 (79) ACC 748 (S.C.)**

9(E). Procedure in inquiries, appeals and revision proceedings (Sec. 54) : (1)

Save as otherwise expressly provided by this Act, a competent authority while holding any inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and subject thereto, shall follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 (2 of 1974) for trials in summons cases.

- (2) Save as otherwise expressly provided by or under this Act, the procedure to be followed in hearing appeals or revision proceedings under this Act shall be, as far as practicable, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

Rule 13(e)- Even in cases of inquiry pertaining to serious offences the Board shall follow the procedure of trial in summons cases.

9(F). 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 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(FF). Physical 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.**
- 9(G). No joint trial of juvenile with non-juvenile accused :** According to Sec. 18 of the Juvenile Justice (Care & Protection of Children) Act, 2000, a juvenile cannot be charged with or tried for any offence together with a person who is not a juvenile. Sec. 223 CrPC has no application in relation to a juvenile. If a juvenile has been charged and tried together with non-juvenile, the JJ Board, on taking cognizance of the offence, must direct separate trials of the juvenile from the non-juveniles.
- 9(GG). Trial of Juvenile for certain offences committed during period of juvenility and for certain offences when he had become adult :** Accused was tried jointly for four offences out of six which were committed by him after attaining majority and they were very serious in nature and not part of same transaction i.e. not related to offences committed by him when he was juvenile and those offences were also not so intricately intertwined that they could not be separated from one another. It has been held by the Hon'ble Supreme Court that valid part of GCM (General Court Marshall under Army Act) proceedings is required to be saved by applying principle of severability of offences and in valid part of order could not render the entire GCM proceedings invalid. Besides, the accuse was required to raise objection in respect of jurisdiction at an early stage of proceedings in terms of rule 51 of Army Rule, 1954. See : **Union of India Vs. Ajeet Singh, (2013) 4 SCC 186.**
- 9(H). Framing of joint charge against juvenile and non juvenile illegal :** According to the provisions u/s 18 of the Juvenile Justice (Care & Protection of children) Act, 2000, no joint charge against juvenile and non juvenile can be framed and they can not be tried jointly u/s 223 of the CrPc. See... **2011 (2) ALJ (NOC) 155 (All).**

9(I).Once declared juvenile, trial of juvenile only by JJ Board : Where after being declared juvenile, the application of the juvenile for sending his case for trial to Juvenile Justice Board was rejected by the ASJ, it has been held that it was the statutory duty of the ASJ to send the case of the juvenile for trial to the JJ Board and order rejecting his application for the same was held improper and was quashed. See : **Indra Pal v. State of U.P, 2011 (2) ALJ 707 (All—LB).**

9(J). 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)**

9(K).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)**

10(A).Stage of raising plea of juvenility : According to the proviso to Sec. 7-A of the Act, 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.**

10(B).Plea of Juvenility can be raised in appeal or revision too : Benefit of JJ Act, 2000 can be claimed not only during trial but even in subsequent proceedings by way of revision or appeal. Court can consider and determine the juvenility of a person even after his conviction. See : **Amit Singh Vs. State of Maharashtra and another, 2011(74) ACC 887 (SC)**

10(C).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)**

10(D).Continuing offence disentitles to claim of juvenility : Where on the date of last call for ransom u/s 364-A IPC, the accused had become above 18 years, it has been held that the JJ Act no longer applies to him even if he was juvenile on the date of commencement of the offense. See...**Vikas Chaudhary Vs. State of NCT of Delhi,(2010) 8 SCC 508**

- 11. Procedure to be followed by a Magistrate not empowered under the Act :** “Sec. 7--- (1) When any Magistrate not empowered to exercise the powers of a Board under this Act is of the opinion that a person brought before him under any of the provisions of this Act (other than for the purpose of giving evidence), is a juvenile or the child, he shall without any delay record such opinion and forward the juvenile or the child and the record of the proceeding to the competent authority having jurisdiction over the proceedings.
- (2) The competent authority to which the proceeding is forwarded under subsection (1) shall hold the inquiry as if the juvenile or the child had originally been brought before it.”
- Rule 77(2)**- In case of a juvenile is produced before a Magistrate not empowered under this Act, such Magistrate shall direct the case to be transferred to the Board for inquiry and disposal.
- 12. When conflicting opinions amongst the members of the JJ Board --- effect ?**: Sec. 5(4) of the Act provides that in the event of any difference of opinion among the members of the Board in the interim or final disposition, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the Principal Magistrate shall prevail.
- 13. Child or infant in mother’s care in jail— Law & C.L. thereon** : Directions issued by the Supreme Court in **R.D. Upadhyay vs. State of A.P. & others, AIR 2006 SC 1946**, circulated by Allahabad High Court amongst the Judicial Officers of the State of U.P. vide **C.L. No. 34/2006 dated 7.8.2006** mandates that female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years.
- 14. Sections & Rules providing procedure for determination of age of Juvenile** : The relevant provisions contained in the 2000 Act and 2007 Rules regarding determination of age of a juvenile are as under:
- (i) **Sec. 7-A, 54, 68 of JJ Act, 2000**
- (ii) **Rules 12(3)(a) & 12(3)(b) of JJ Rules, 2007**
- 15(A).School Leaving Certificate & 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 prosecute 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, 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(AA).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 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 the IO. See : **Panch Lal Adivasi Vs. State of UP, 2014 (84) ACC 22 (All).**

15(B).School Leaving Certificate & its evidentiary value : Where the accused

had for the first time claimed to be juvenile in his confession made u/s 313 CrPc. & had produced school leaving certificate without producing the primary evidence of birth certificate, it has been held that the same was not satisfactory & 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(C).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 has 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(D)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(E).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(F).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 in 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**

16(A).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.**

16(AA).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)**

16(B).Date of birth recorded in School register or school certificate valueless unless the parents or persons 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 have special knowledge of the DOB of the person and on whose information the entry has been made have been examined. DOB recorded in school certificate may be admissible in evidence u/s 35 of the Evidence Act, but it's probative value still requires to be examined. See---

(i) **Satpal Singh Vs. State of Haryana, (2010) 8 SCC 714** (*case of rape & determination of age of prosecutrix*)

(ii). **Birad Mal Singhvi Vs. Anand Purohit, AIR 1988 SC 1796.**

16(C).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)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 v. Sonu, 2009(5) ALJ 276(SC)**.

17(A).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 & another Vs. State of Haryana, 2010(70) ACC 380(SC)=(2010) 3 SCC 235**

17(B).When DOB in School Mark Sheet & parents evidence contrary: Where in determining the age of Juvenile, Sessions Judge relied on medical opinion and disbelieved 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)**

17(C).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 has 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)**.

17(D).DOB recorded in Mark-sheet not relevant : In Sub-clause (i) in clause (a) of sub-rule (3) of Rule 12 of the Rules, 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 work 'mark-sheet' would have been also included there alongwith 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)**

17(E). 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. fails to satisfy the requirement of Sec. 35, Evidence Act and the same are also found "forged and fabricated", then held that no reliance can 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 (Allahabad—D.B.)**

17(F). DOB in School Register & Parents evidence as to age of their child : 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.**

18(A). 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.**

18(B). Entry in TC not to be relied on unless the headmaster 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 headmaster 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 headmaster 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**

19(A). 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) 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)**

19(B.1). Parents evidence & ossification test report & school records : Where 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 borne but the date of birth recorded in school certificate showing the prosecutrix above 16 years of age is belied by evidence of parents and the said unimpeachable school documents, 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.**

19(B.2).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 accused. See : **Om Prakash Vs. State of Rajasthan & another, (2012) 5 SCC 201**

19(B.3).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 is above 18 years of age, it obviously means that girl is not less than 18 years of age--Such an obs Juvenile Justice-- 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 is 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 and belies contradictory age shown in High School certificate--In view of statement of 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 at liberty with immediate effect-

-Impugned orders of lower Court quashed--Revision allowed. See : **Vivek Chandra Bhaskar Vs. State of UP, 2013 (82) ACC 707(All)**

19(C). Affidavit of parents regarding date of birth or age of Juvenile :

According to Sec. 7-A & 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. Case on the subject is--**Rakesh Kumar Verma vs. State of U.P. & others, 2000 (4) AWC 2722 (Allahabad)(D.B.)**

19(D).Affidavit of Juvenile about his age & its evidentiary value ? :

According to Sec. 7-A & 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. Case on the subject is--**Rakesh Kumar Verma vs. State of U.P. & others, 2000 (4) AWC 2722 (Allahabad—D.B.)**

20(A). Report from medical board under rule 12 when to be sought ? :

Rule 12 of 2007 rules describes four categories of evidence which have been provided in which reference has been given 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.**

20(B-1). Report from medical board under rule 12 when to be sought ? :

According to Rule 12(3)(b), 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 :

- (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 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).**

20(B-2).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).**

20(C).Medical Board's opinion Vs. school certificate etc.? Rule 12 of 2007 rules describes four categories of evidence which have been provided in which reference has been given 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 marksheet and school certificate is not proper. See : **Shah Nawaz Vs. State of UP and another, AIR 2011 SC 3107.**

20(CC).Medical Evidence Vs. School Records : Where school record is ambiguous and does not conclusively prove minority of accused, medical opinion assumes importance. Opinion of medical experts based on x-ray and ossification test would be given precedence over shaky evidence based on school records and plea of circumstantial interference based on concocted story set up by the father of the accused. Where the accused had committed heinous crime of raping a tender age girl of 13 year 6 months and method and manner of commission of offence indicated evil and matured skill of the accused, in the absence of reliable documentary evidence in support of age of accused, medical evidence which indicated that accused was major would be given primacy. It is duty of courts to scrutinize plea juvenility with extreme caution in cases involving heinous crimes to ensure that plea of minority is not employed to escape punishment. See : **Om Prakash Vs. State of Rajasthan & another, (2012) 5 SCC 201**

20(D).Medical Board Report versus 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, 2001. 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(E).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 :

1. **Ram Suresh Singh vs. Prabhat Singh, AIR 2009 SC 2805**
 2. **Jaya Mala vs. Home Secretary, Government of J & K, AIR 1982 SC 1297.**
- 20(F).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 Hon'ble 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).
- 21(A).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(B).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. 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 it's 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(A). 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(B). Entries of Family Register & their evidentiary value ? : In the cases of **Budh Ram Vs. State of U.P., 1993 (30) ACC 636 (All) & Harpal Singh and another Vs. State of H.P., AIR 1981 SC 361**, it has been held that the entries made in the family register, if produced from proper custody, should not be ignored lightly.

23(C). 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)**.

24. Entries in register of births & deaths & their evidentiary value ? : 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(A). "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**.

25(B). First day to be excluded in computing period of time for legal purposes : The Section 9 of General Clause Act 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).**

25(C).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**

26(A).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**

26(B). 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(A-1).Law of bail to a child in conflict with law overrides the provisions of bail contained in the CrPC Sec. 12(1) of the JJ Act, 2015 :

Sec. 12(1) of the JJ Act, 2015 provides that when any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

27(A-2).Bail to a child in conflict with law when to be denied ? Proviso to

Sec. 12(1) of the JJ Act, 2015 : According to the Proviso to sub-section (1) of Sec. 12 of the JJ Act, 2015, bail to a person apparently a child alleged to be in conflict with law can be denied on any or more of the following grounds :

- (i) if there appears reasonable ground for believing that the release is likely to bring that person into association with any known criminal or
- (ii) release on bail would expose the said person to moral, physical or psychological danger or
- (iii) release of the said person on bail would defeat the ends of justice.

The JJ Board shall record the reasons for denying the bail and circumstances that led to such a decision.

27(A-3). JJ Board to modify the conditions of bail if the child in conflict with law fails to comply with the conditions of bail within seven days :

Section 12(4) of the JJ Act, 2015 provides that when a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the

bail order, such child shall be produced before the Board for modification of the conditions of bail.

27(A-4). Presumption of innocence : Section 3(i) of JJ Act, 2015 : Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.

27(A-5).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 nearly 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, therefore, 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)**.

27(A-6).Seriousness/gravity of offence not a ground to deny bail to a juvenile u/s 12 of the JJ Act, 2000 : Seriousness/gravity of offence is not a ground to deny bail to a juvenile u/s 12 of the JJ Act, 2000 unless conduct of the juvenile is such to indicate that in all likelihood, after being released on bail, juvenile bail indulge into more crimes. It no imminent chances of his repeating crime, bail to juvenile should not be ordinarily refused. See : **Amit Yadav Vs. State of UP, 2016 (93) ACC 571 (All)**.

27(A-7).FIR or charge-sheet not to be filed by police against juveniles : In the cases of juveniles in conflict with law, police is not required to file an FIR or a charge-sheet. Only information of the offence is required to be recorded in the general diary. FIR would be necessary only if juvenile has committed serious offence like rape or murder or has committed the offence with an adult. See : **Dr. Subramanian Swamy Vs. Raju, 2014 (86) ACC 637 (Three-Judge Bench)**.

27(A-8).FIR to be registered against juvenile by police only on commission of serious offences like rape, murder or when the offence has been

committed by the juvenile with an adult : In the cases of juveniles in conflict with law, police is not required to file an FIR or a charge-sheet. Only information of the offence is required to be recorded in the general diary. FIR would be necessary only if juvenile has committed serious offence like rape or murder or has committed the offence with an adult. See : **Dr. Subramanian Swamy Vs. Raju, 2014 (86) ACC 637 (Three-Judge Bench).**

27(A-9).Apprehended juvenile to be produced before the JJ Board immediately: Interpreting rules 11(11) and 11(a) of the JJ Rules, 2007, a Three-Judge Bench of the Hon'ble Supreme Court has held that during investigation of an offence allegedly committed by a juvenile, the apprehended juvenile is required to be produced before the JJ Board immediately and police must submit the report of the juvenile's social background, circumstances of apprehension and the alleged offence. See : **Dr. Subramanian Swamy Vs. Raju, 2014 (86) ACC 637 (Three-Judge Bench).**

27(A-10).In non-serious offences, police is only required to intimate the parents/guardian of the juvenile : Interpreting rules 11(11) and 11(a) of the JJ Rules, 2007, a Three-Judge Bench of the Hon'ble Supreme Court has held that during investigation of an offence allegedly committed by a juvenile, the apprehended juvenile is required to be produced before the JJ Board immediately and police must submit the report of the juvenile's social background, circumstances of apprehension and the alleged offence. In cases of non serious nature of offences, police is only required to intimate the parents/guardian of the juvenile that such report has been submitted to the JJ Board. See : **Dr. Subramanian Swamy Vs. Raju, 2014 (86) ACC 637 (Three-Judge Bench).**

27(B-1).Bail to juvenile not to be refused on the ground of seriousness of offence : Where the bail to a juvenile allegedly involved in committing an offence u/s 376 of the IPC was rejected by the Sessions Judge, Rae Bareilly on the ground that the said offence was a heinous offence, relying upon its two earlier decisions reported in the cases of Amit Kumar Vs. State of UP, 2010 (71) ACC 209 (All India) and Naurang (minor) Vs. State of UP, 2010 (71) ACC 255 (All India), it has been held by the Hon'ble Allahabad High Court that bail to a juvenile alleged to be involved in an offence (under Section 376

IPC) cannot be rejected u/s 12 of the JJ Act, 2000 on the ground of seriousness of the offence. Seriousness of offence is no ground to refuse bail to a juvenile. See : **Arvind Kumar Misra Vs. State of UP, 2012 (77) ACC 64 (Allahabad)(LB).**

27(B-2).Bail to juvenile not to be refused except under the exceptions u/s 12 of the JJ Act, 2000 : A juvenile accused of bailable or non-bailable offence shall be released on bail except where his release would bring him in association with known criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice. See : **Dr. Subramanian Swamy Vs. Raju, 2014 (86) ACC 637 (Three-Judge Bench).**

27(B-3).Juvenile not to be apprehended except for serious offences : Interpreting rules 11(7), 11(1), 11(2) of the JJ Rules, 2007, it has been held by a Three-Judge Bench of the Hon'ble Supreme Court that juvenile in conflict with law need not be apprehended except in serious offences. Juvenile so apprehended should be placed in charge of the Welfare Officer to be produced by him before the JJ Board within 24 hours. Juvenile in no case should be sent to lock-up or jail. See : **Dr. Subramanian Swamy Vs. Raju, 2014 (86) ACC 637 (Three-Judge Bench).**

27(B-4).Refusal of bail to juvenile held improper : Refusal of bail to juvenile on the ground that if released on bail, juvenile might possibly come into association with his family members who were co-accused in same occurrence was improper as the report of the District Probation Officer available on record does not show any abnormal behavior of juvenile and also his physical & mental condition and social and economic status has been shown as normal and the said report also mentions no criminal background of juvenile. The Juvenile Magistrate without considering the report of the District Probation Officer and without assigning any consent reason has refused to grant bail to the juvenile and the appellate court instead of applying its independent mind to the fact and circumstances of the case had also wrongly concurred with the opinion of the Juvenile Justice Board. The Hon'ble High Court set aside the two orders passed by the lower court and granted bail to the juvenile. see : **Vishal Vs. State of UP, 2014 (4) ALJ 294 (All)**

27(B-5).Juvenile involved in commission of offences u/s 376, 307 IPC entitled

to bail : Where juvenile accused charged with committing rape and attempt to murder was denied bail on the ground that grant of bail would expose juvenile to moral, physical or psychological danger but the social investigation report indicated that juvenile had been obedient to his parents and had positive and good terms with local residents and it could not be concluded that his release on bail would bring him into association with any known criminal or expose him to any moral, physical or psychological danger, the High Court granted bail to the juvenile u/s 12 of the JJ Act, 2000. See : **Rajesh Lakra Vs. the State of Chhattisgarh, 2015 CrLJ (NOC) 76 (Chhattisgarh).**

27(B-6). Rulings on Bail of Juvenile : For the law of bail of juveniles, as quoted above, kindly see the rulings noted below :

1. **Arvind Kumar Misra Vs. State of UP, 2012 (77) ACC 64 (Allahabad--LB)**
2. **Amit Kumar Vs. State of UP, 2010 (71) ACC 209 (Alld)**
3. **Naurang (minor) Vs. State of UP, 2010 (71) ACC 255 (Alld).**
4. **Pintu Gupta vs. State of U.P., 2009 (67) ACC 460 (All)**
5. **Jaswant Kumar Saroj vs. State of U.P., 2008 (63) ACC 190 (All)**
6. **Sanjay Chaurasia vs. State of U.P., 2006 (55) ACC 480**
7. **Anil Kumar vs. State of U.P., 2006 (6) ALJ 205 (Allahabad)**
8. **Ankita Upadhyay vs. State of U.P., 2006 (55) ACC 759 (Allahabad)**
9. **Pratap Singh vs. State of Jharkhand, AIR 2005 SC 2731**
10. **Pankaj vs. State of U.P., 2003 (46) ACC 929 (Allahabad)**

27(B-7).Bail to Juvenile u/s 12 of the JJ Act, 2000 not to be granted in

heinous offences : JJ Board, Meerut had rejected the bail application of a juvenile involved in offences u/s 302, 376 of the IPC. Sri S.V. Singh Rathore, Sessions Judge, Meerut had also dismissed the criminal appeal of the juvenile filed against the said order of the JJ Board u/s 52 of the JJ Act, 2000. Giving approval to the order of the Sessions Judge, Meerut, a Single Hon'ble Judge of the Allahabad High Court, quoting paras 3, 22 & 23 of the decision of the Hon'ble Supreme Court rendered in the case of **Om Prakash Vs. State of Rajasthan, (2012) 5 SCC 201**, dismissed the criminal revision filed u/s 53 of the JJ Act, 2000 against the order of the Sessions Judge, Meerut and ruled thus : "While considering the prayer for bail under Section 12 of the Act, the Judge has to ensure that the order proposed to be passed does not violate any of the conditions contemplated by Section 12 of the Act. It

cannot be interpreted to work only for the benefit of juvenile ignoring the cries of victim child whenever, a child becomes victim of offences, let alone heinous offences like murder or rape, society craves and cries for justice. By showing misplaced sympathy to juvenile, who has perpetrated offence like rape/murder, victim (child) and the society is denied justice which is not and cannot be the intention of law. In view of above, juvenile is not entitled to bail under Section 302 and 376 I.P.C. Consequently, no error has been committed by Sessions Judge in rejecting the bail." Kindly see : ***Judgment dated 30.04.2014 of the Hon'ble Allahabad High Court delivered by Hon'ble Justice Sudhir Kumar Saxena in Criminal Revision No. 345/2011 titled Virendra Vs. State of UP.***

Note : *In compliance with the directions issued in the said judgment dated 30.04.2014 of the Hon'ble Single Judge, copy of the judgment has been circulated by the Registrar General of the Allahabad High Court to all the Sessions Judges of the State of UP.*

27(B-8).Magistrate to decide bail application of juvenile u/s 437 CrPC when

JJ Board not constituted : In the cases noted below, it has been held by the Hon'ble Allahabad High Court that if the JJ Board is not constituted the accused/juvenile may move his bail application u/s 437 of the CrPC. before the Magistrate having jurisdiction and in case the bail application is rejected by the Magistrate, the juvenile may move his application u/s 439 of the CrPC before the Sessions Judge but he cannot directly move his bail application before the High Court u/s. 439 CrPC Likewise, where the JJ Board is not constituted and unless the bail application is rejected by the Magistrate concerned u/s. 437 CrPC, the same cannot be directly heard by the Sessions Judge u/s. 439 CrPC. See :

- (i) **Mohd. Amir vs. State of U.P., 2002 (45) ACC 94 (All)**
- (ii). **Sant Das alias Shiv Mohan Singh vs. State of U.P., 2002 (45) ACC 1157 (All),**

27(B-9). SJ to refer the bail application of Juvenile to JJ Board :

where the bail application of the Juvenile was referred by the sessions judge to JJ Board for disposal, it has been held that the bail application is to be disposed of by the JJ Board in accordance with section 12 of the JJ Act 2000 and if the bail application is rejected by the board then the power to grant bail can be exercised by the sessions judge u/s 52 of the JJ Act. See : **Akhilesh vs. State of U.P. 2010 (71) ACC 537 (All)**

27(B-10).NDPS Act & Bail Of Juvenile : In the event of recovery of commercial quantity of Charas from accused, it has been held that bail application of the accused would be considered u/s 12 of the JJ Act, 2000 & not u/s 37 of the NDPS Act, 1985. See : **2011 CrLJ 200 (All)**.

27(B-11).Provisions in 2007 Rules for Bail of Juvenile : The relevant provisions regarding bail of juvenile contained under the 2007 Rules are as under-----

Rule 13(1)(c)- release the juvenile in the supervision or custody of fit persons or fit institutions or probation officers as the case may be, through an order in Form-I, with a direction to appear or present a juvenile for an inquiry on a next date.

Rule 17(1)- The officer-in-charge shall maintain a register of the cases of juveniles in conflict with law to be released on the expiry of the period of stay as ordered by the Board.

Rule 17(4)- The timely information of the release of a juvenile and of the exact date of release shall be given to the parent or guardian and the parent or guardian shall be invited to come to the institution to take charge of the juvenile on that date.

Rule 17(6)- If the parent or guardian, as the case may be, fails to come and take charge of the juvenile on the appointed date, the juvenile shall be taken by the escort of the institution; and in case of a girl, she shall be escorted by a female escort.

Rule 17(8)- If the juvenile has no parent or guardian, he may be sent to an aftercare organization, or in the event of his employment, to the person who has undertaken to employ the juvenile.

Rule 17(13)- Where a girl has no place to go after release and requests for stay in the institution after the period of her stay is over, the officer-in-charge may, subject to the approval of the competent authority, allow her stay till the time some other suitable arrangements are made.

27(B-11).Offences punishable with more than 07 years imprisonment to be cognizable, non-bailable and triable by Children's Court : Sec. 86 (1) of the JJ Act, 2015 : Where an offence under this Act is punishable with imprisonment for a term more than seven years, then, such offence shall be cognizable, non-bailable and triable by a Children's Court.

27(B-12).Offences punishable with imprisonment from less than 03 years but not more than 07 years imprisonment to be cognizable, non-bailable

and triable by Magistrate: Sec. 86 (1) of the JJ Act, 2015 : Sec. 86(2) of the JJ Act, 2015 : Where an offence under this Act is punishable with imprisonment for a term of three years and above, but not more than seven years, then, such offence shall be cognizable, non-bailable and triable by a Magistrate of First Class.

27(B-13).Offences punishable with imprisonment less than 03 years or with fine to be non-cognizable, bailable and triable by any Magistrate: Sec. 86 (3) of the JJ Act, 2015 : Sec. 86(3) of the JJ Act, 2015 : Where an offence, under this Act, is punishable with imprisonment for less than three years or with fine only, then, such offence shall be non-cognizable, bailable and triable by any Magistrate.

27(B-14).JJ Board to function even when any member of it is absent : Section 5(3) of the JJ Act, 2000 reads thus : "A Board may act notwithstanding the absence of any member of the Board, and no order made by the Board shall be invalid by reason only of the absence of any member during any stage of proceedings : Provided that there shall be at least two members including the principal Magistrate present at the time of final disposal of the case."

27(B-13).Form of Personal Bond & Bail Bonds for Juvenile : In case a juvenile is released on bail, rules 15 & 79 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 requires special personal bond on prescribed format (given below) from the juvenile and the guardian/parent/other fit person in whose custody the juvenile is placed :

FORM V

[Rules 15(5) and 79(2)]

UNDERTAKING/BOND TO BE EXECUTED BY A PARENT/GUARDIAN/RELATIVE/ FIT PERSON IN WHOSE CARE A JUVENILE IS PLACED

Whereas I..... being the parent, guardian, relative or fit person under whose care.....(name of the juvenile) has been ordered to be placed by the Juvenile Justice Board..... have been directed by the said Board to execute an undertaking/bond with surety in the sum of Rs.....(Rupees.....) or without surety. I hereby bind myself on the said.....being placed under my care. I shall have the said Properly taken care of and I do further bind myself to be responsible for the good behaviour of the said..... and to observe the following conditions for a period of..... years w.e.f.....

1. That I shall not change my place of residence without giving previous intimation in writing to the Juvenile Justice Board through the Probation Officer/Case Worker;
2. That I shall not remove the said juvenile from the limits of the jurisdiction of the Juvenile Justice Board without previously obtaining the written permission of the Board;

- 3. That I shall send the said juvenile daily to school/to such vocation as is approved by the Board unless prevented from so doing by circumstances beyond control;
- 4. That I shall send the said juvenile to an Attendance Centre regularly unless prevented from doing so by circumstances beyond my control;
- 5. That I shall report immediately to the Board whenever so required by it;
- 6. That I shall produce the said juvenile in my care before the Board, if he/she does not follow the orders of Board or his/her behaviour is beyond control;
- 7. That I shall render all necessary assistance to the Probation Officer/Case Worker to enable him to carry out the duties of supervision;
- 8. in the event of my making default herein, I undertake to produce myself before the Board for appropriate action or bind myself, as the case may be, to forfeit to Government the sum of Rs.(Rupees.....)

Dated this.....day of.....20.....

Signature of person executing the Undertaking/Bond.

(Signed before me)

Principal Magistrate, Juvenile Justice Board

Additional conditions, if any, by the Juvenile Justice Board may entered numbering them properly;

I/We of..... (place of residence with full particulars) hereby declare myself/ourselves as surety/sureties for the aforesaid..... (name of the person executing the undertaking/bond) to adhere to the terms and conditions of this undertaking/bond. In case of (name of the person executing the bond) making fault therein, I/We hereby bind myself/ourselves jointly or severally to forfeit to government the sum of Rs. (Rupees.....)dated this theday of..... 20..... in the presence of.....

Signature of Surety(ies)

(Signed before me)

Principal Magistrate, Juvenile Justice Board

FORM VI

[Rules 15(6) and 79(2)]

PERSONAL BOND BY JUVENILE/CHILD

Personal Bond to be signed by juvenile/child who has been ordered under Clause..... Of sub-section..... of Section..... of the Act.

Whereas, I inhabitant of (give full particulars such as house number, road, village/town, tehsil, district, state)..... have been ordered to be sent back/restored to my native place by the Juvenile Justice Board/Child Welfare Committee..... under section..... of the Juvenile Justice (Care & Protection of Children) Act, 2000 on my entering into a personal bond under sub-rule..... of rule and sub-rule of rule of these Rules to observe the conditions mentioned herein below. Now, therefore, I do solemnly promise to abide by these conditions during the period.....

I hereby bind myself as follows:

1. That during the period..... I shall not ordinary leave the village/town/district to which I am sent and shall not ordinarily return to or go anywhere else beyond the said district without the prior permission of the Board/Committee.
2. That during the said period I shall attend school/vocational training in the village/town or in the said district to which I am sent;
3. That in case of my attending school/vocational training at any other place in the said district I shall keep the Board/Committee informed of my ordinary place of residence.

I hereby acknowledge that I am aware of the above conditions which have been read over/explained to me and that accept the same.

(Signature or thumb impression of the juvenile/child)

Certified that the conditions specified in the above order have been read over/explained to (Name of juvenile/child)..... and that he/she has accepted them as the conditions upon which his/her period of detention/placement in safe custody may be revoked.

Certified accordingly that the said juvenile/child has been released/relived on the.....

Signature and Designation of the certifying authority
i.e. Officer-in-charge of the institution.

28(A-1).Aim of sentencing of juvenile is to reform and rehabilitate the errant juvenile : Aim of sentencing of juvenile is to reform and rehabilitate the errant juvenile. See : **Dr. Subramanian Swamy Vs. Raju, 2014 (86) ACC 637 (Three-Judge Bench).**

28(A-2).Penalty of detention of juvenile when permissible ? : Rules 4.1, 17.1, 17.2 of the U.N. Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules) do not prohibit detention of a juvenile is proved to have committed a violent serious offence or to have repeatedly committed such serious offences. Rule 17.2 prohibits imposition of capitol punishment on juveniles. See : **Dr. Subramanian Swamy Vs. Raju, 2014 (86) ACC 637 (Three-Judge Bench).**

28(A-3).Penalty not awardable against juvenile : According to Sec. 16 of the Act, 2000, no sentence of death or imprisonment of any term can be passed against a juvenile. A juvenile cannot be sent to jail for his default of payment of fine or furnishing security.

28(B). Penalty awardable against Juvenile: Sec. 15 provides for different orders which may be passed by the JJ Board regarding a juvenile on recording findings that the juvenile had committed an offence. A juvenile may be required to render community service as enumerated under Section 15(1)(c) & Rule 2(e) of the Juvenile Justice (Care & Protection of Children) Rules, 2007. Under Rule 2(e), certain examples of "Community Service" are given as under :

- (i) cleaning a park
- (ii) getting involved with habitat for Humanity
- (iii) service the elderly in nursing homes
- (iv) helping a local fire or police department
- (v) helping out at a local hospital or nursing home
- (vi) serving disabled children

28(C).Rulings on sentencing of juvenile : Following rulings should be seen on the point of sentencing of juveniles. See : **Dharambir Vs. State (NCT of Delhi), (2010) 5 SCC 344** (*paras 17 &18*).

28(D).Revision & Appeal : According to **Sec. 54(2)** of the Act, 2000, procedure prescribed for the hearing of appeals or revisions in the CrPC would be applicable, as far as practicable, in the hearing of **revisions u/s. 53** and the **appeals u/s 52** of the Juvenile Justice (Care & Protection of Children) Act, 2000.

29(A).Appeal maintainable u/s 52 against order rejecting claim of Juvenility
: Appeal against an order rejecting claim of juvenility is maintainable u/s 52 of the JJ Act, 2000.

29(B).Time barred appeal u/s 52 to be entertained : Where an appeal u/s 52 of the JJ Act, 2000 was filed before the Sessions Judge, Agra after a delay of five days and the same was not condoned u/s 5 of the Limitation Act, 1963 and the appeal was dismissed as being time barred, the Hon'ble High Court, expressing displeasure at the Sessions Judge, Agra, observed that the Hon'ble Court cannot visualize a judicial regime where a judicial officer can punish a litigant for the fault of his counsel who was on strike and could not file the appeal in time. The Hon'ble High Court while setting aside the order passed by the Sessions Judge directed him to register the appeal and dispose of the same within two months. See : **Sonu Vs. State of UP, 2011(75) ACC 146(All)**

- 29(C).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(D).Revisions and appeals under the 2000 Act---where to lie?** : In the case noted below, it has been ruled by the Allahabad High Court that where a Magistrate has jurisdiction over several Sessions Divisions, the appeals or revisions against the orders passed by such Magistrate would lie to the Court of Session within whose jurisdiction the headquarters of the Magistrate are ordinarily situate, whether the offence was committed within such local limits or not. See : **Shori Lal vs. State of U.P., AIR 1952 All 193 (All)(LB)**
- 30. 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).**
- 31. POCSO Court to try both the cases where accused charged under SC/ST Act also** : A perusal of Section 20 of the SC/ST (Prevention of Atrocities) Act, 1989 and Section 42-A of the Protection of Children from Sexual Offences Act, 2012 reveals that there is a direct conflict between the two non obstante clauses contained in these two different enactments. If Section 20 of the SC/ST Act is to be invoked in a case involving offences under both the

Acts, the same would be triable by a Special Court constituted under Section 14 of the SC/ST Act and if provisions of Section 42-A of the POCSO Act are to be applied, such a case shall be tried by a Special Court constituted under Section 28 of the POCSO Act. Dealing with an issue identical to the case on hand, the Apex Court in Sarwan Singh Vs. Kasturi Lal, AIR 1977 SC 265 held thus : "When two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. For resolving such inter se conflicts, one other test may also be applied though the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Bearing in mind the language of the two laws, their object and purpose, and the fact that one of them is later in point of time and was enacted with the knowledge of the non-obstante clauses in the earlier. In KSL & Industries Limited Vs. Arihant Threads Limited & Others, AIR 2015 SC 498, the Apex Court held thus :In view of the non obstante clause contained in both the Acts, one of the important tests is the purpose of the two enactments. It is important to recognize and ensure that the purpose of both enactments is as far as possible fulfilled. A perusal of both the enactments would show that POCSO Act is a self contained legislation which was introduced with a view to protect the children from the offences of sexual assault, harassment, pornography and allied offences. It was introduced with number of safeguards to the children at every stage of the proceedings by incorporating a child friendly procedure. The legislature introduced the non obstante clause in Section 42-A of the POCSO Act with effect from 20.06.2012 giving an overriding effect to the provisions of the POCSO Act though the legislature was aware about the existence of non obstante clause in Section 20 of the SC/ST Act. Applying the test of chronology, the POCSO Act, 2012 came into force with effect from 20.06.2012 whereas SC/ST Act was in force from 30.01.1990. The POCSO Act being beneficial to all and later in point of time, it is to be held that the provisions of POCSO

Act have to be followed for trying cases where the accused is charged for the offences under both the enactments." See :

- (i) **State of A.P. Vs. Mangali Yadgiri, 2016 CrLJ 1415 (Hyderabad High Court)(AP)** (*paras 14, 15, 16, 17, 19 & 20*).
 - (ii) **KSL & Industries Limited Vs. Arihant Threads Limited & Others, AIR 2015 SC 498.**
- 32. Repeal and savings : Sec. 111 of the JJ Act, 2015 :** (1) The Juvenile Justice (Care and Protection of Children) Act, 2000 is hereby repealed.
- (2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.
- 33. Powers to remove difficulties: Sec. 112 of the JJ Act, 2015 :** (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty: Repeal and savings. Power to remove difficulties. 56 of 2000.
- Provided** that no such order shall be made after the expiry of the period of two years from the commencement of this Act.
- (2) However, order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.
