



DETERMINATION OF JUVENILE'S AGE: IN REFERENCE TO LEGALITY OF DOCUMENTS AND ITS RELEVANCY

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Abstract:

The Dimensions of delinquency and the way juvenile justice system of now is tackling with the situation is absolutely changed. Juveniles as they were before 30-40 years are totally adverse of who exists today. Every facet of juvenile delinquency and system of juvenile justice dealing with it changing at very high pace. Earlier they were only committing petty crimes, misconduct that can be treated under the supervision and maintenance being vested on the family. But as soon as time passes, juveniles are capable of committing the same crimes as adults. Because of the offender's status as minor their acts are considered to be delinquent. They were involved in crimes including murder, rape, rioting, assault, property crimes, drug related crimes etc. It gets tough for the police to deal with juvenile offenders because the law possesses a lot of restrictions. Juveniles who were adopting this behavior is because of so many factors existing now a days, that can be biological, socio environment, psychological, parent-child relationship, child's birth order in family, broken homes, bad company, revenge factors, poor literacy rate, over exposure to media, lack of values, cheap literature, early sex experience, mental conflict, love of adventures and so on. These factors motivate them to commit heinous crimes that were not at all present before. As a result, the arena of juvenile delinquency is expanded to the future and its contours stretching day by day. To tackle with these changing facets the need to establish a separate system for juveniles was felt considering their crimes, their age, determination of juvenility and possibility of correction. To make strong the juvenile justice system according to the changing dimension of juvenility, international scenario and Legislative actions in India contributed a lot in determining the correct age of juvenility and making them offended with a crime based on the documents and their legality.

Keywords: Children's Rights, Juvenile Justice System, Constitution, Juvenile, Age, Determination, Juvenility.

Introduction:

Children are the future of our country and it is the responsibility of everyone to ensure that they have a safe environment to live in. But the last few decades have seen a huge leap in the rate of juvenile crimes in a developing country like India. Juvenile crime is one of the nation's serious problems. Juveniles because of their status have been historically conferred special status and given certain rights that have not been given to the adults found guilty of similar crime. This is attributed to the fact that juveniles have a chance of being reformed and should be treated gently. The system of juvenile justice does not believe in retribution doctrine, rather it is based on the rehabilitative model.¹

However, sometimes it happens that a juvenile instead of being tried in a juvenile court is tried in an adult court. This transfer has been propagated by some keeping in mind that some Juveniles are beyond reform and letting them escort free would amount to encouraging them. The underlying basis is that the society needs to see that those perpetrating crimes do not go unpunished. This would mean that those juveniles, whom the society thinks that cannot be reformed, do not deserve the special treatment given to other juveniles which in turn means that the juveniles would be transferred to the adult system, without knowing whether the juvenile is mature enough to understand the complex adult proceedings. It becomes problematic in the regard that what should be the criteria for determining juveniles who are to be treated in the ordinary courts and those who should be treated in the juvenile courts, if we need criteria ever.²

Delinquency in general terms refers to as dereliction of duty, remissness, neglectful behavior on the part of any person suffering from it. It is basically considered to be that minor crime, wrong doing, lawbreaking, misconduct or misbehavior especially that committed by young people. These young people are none other than those children who are minor who because of so many factors, involved in the commission of crime at the earliest stage of their lives. Due to their delinquent behavior, they were punished like adults in some cases, and because of this behavior only they were considered to be juvenile delinquents and the stage is called juvenile delinquency.³

Meaning and Definition of Juvenile:

The word “**Juvenile**” originates in a Latin word “**Juvenis**” that means ‘Young’. A Juvenile or Child means a person who has not completed certain age given in their legal system. Children are great national resource. They represent the nation and the coming future of the country. But what is worrying more is that the share of crimes committed by juveniles to total crimes reported in India has increased in the last few years. Juvenile crime formally known as juvenile delinquency is a term that defines the participation of a minor in an illegal act. To tackle with this participation or involvement of children in an illegal act, the most needed juvenile justice system emerged in society.

¹ CHOUDHARY, R N: Law relating of juvenile justice in India. (Orient Publishing Company, Allahabad, 2005).

² NATIONAL REPORT on A world fit for children. (India, Ministry of Women and Child Development, 2007).

³ MISHRA, B N: Juvenile delinquency ad justice system. (Ashish Pub. House, New Delhi, 1991).

Juvenile Justice is the legal system that aspires to protect all children bringing within its ambit the children in need of protection, besides those in conflict with law. Most of the factors causing delinquency are in plenty in a developing country. As we all know that society is changing very rapidly, things which exist now are not these before 30-40 decades. This happens only due to technological advancements, the way society adapting every new culture, ideas or ideologies.

Juvenile: Meaning of Child and Children in Conflict with Law:

“**Juvenile**” or “**Child**” means a person who has not completed eighteen years of age.⁴

“**Child in conflict with law**” means a juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such offence.⁵

Many U.N. Conventions like **U.N. Congress on Prevention of Crime and Treatment of Offenders 1960 & 1980, Standard Minimum Rules, Beijing Rules, U.N. Convention on Rights of the Child** was all made to draw special attention that should be given to prevent juvenile delinquency about the determination of age for when to setting them up with the charges, when to set them free and when to send them to the correctional homes.⁶

Similarly in India, the first legislation for keeping children out of jails was enacted in the forms of the **Apprentices Act, 1850**. Then came IPC, report of Indian Jail Committee 1919-20, **Children Act, 1920** was passed as recognition of the need of providing better environment and surrounding and for treating youth offenders. The watershed moment in juvenile justice was reached with the enactment of the **Juvenile Justice Act, 1986**. Then came **Juvenile Justice (Care and Protection of Children) Act, 2000** in fulfillment of India's obligation under International Conventions covering delinquent juveniles also. But immunity given to them under this act from criminality became the cause of widespread demand for amendment to juveniles found guilty of commission of heinous and violent crimes particularly against women.⁷

But the situation became even worsened when the cases like Delhi gang rape, Shakti Mill Rape case taken place that creates an urgent need to tackle with these kinds of juveniles who due to protection under law regarding age are exempted to be treated as adults. As a result, a comprehensive act, **the Juvenile Justice (Care and Protection) of Children Act, 2015** came into existence, which treats juveniles between age group of 16 to 18 years as adults for heinous crimes. Similarly, many Judicial pronouncements were also made time to time by Supreme Court and different High Courts to establish the harmony between two conflicting interest that is the interest of juveniles and the interest of the victims of heinous crimes committed by juveniles. Thus, it meets the needs of the society.⁸

⁴ Sec. 2(k) of the Juvenile Justice (Care & Protection of Children) Act, 2000.

⁵ Sec. 2(l) of the Juvenile Justice (Care & Protection of Children) Act, 2000.

⁶ Treatise on the Juvenile Justice Act, 1986 (Indian Law Institute, Delhi, 1993).

⁷ V. Kumari: Juvenile justice system in India. (Oxford Univ. Press, New Delhi, 2004) (NHRC).

⁸ M. Ashutosh: Juvenile justice: An in-depth study of matters relating to children. (S C Sarkar, Calcutta, 1989).

Development of Juvenile Justice System:

The Juvenile Justice System developed throughout the world with a conception that, children are not mature like adult. They failed to understand the nature and consequence of their acts. This idea is based on the legal ‘**principle of Doli incapax**’ i.e., **child do not have capacity to form criminal intention**. Therefore, a child cannot be made liable for acts which are illegal. An adult is commonly understood to mean a person who has reached maturity of mind. In the psychological perception, a person is mature ‘who possesses certain skills that are the product of both cognitive development and the nature of the person’s interactions with his or her environment.’⁸ According to Jean Piaget – ‘the ability to understand and interpret his or her world proceeds in a series of stages, beginning with semismooth period, which lasts roughly from birth until age 2 and ending with the formal operations period, which lasts from roughly age 11 through adulthood.’⁹

During this period, the child is able to understand and interpret the world differently because of his or her ability to engage in more abstract thought. In addition, the development of the child’s cognitive abilities is, to some extent, influenced by the in-child’s environment.¹⁰ Legislative authorities adopted this principles different Acts. It is to be noted that there is no general consensus about the definition of youth and child. Different statute has different mandate in the matter of age or attaining adulthood.¹¹ There is policy shift in the new Juvenile Justice legislation. It is very progressive Act, designed to adopt the philosophy of parents’ patria and prescribe institutionalized care/protection. The only shift witnessed is to punishing delinquents involved in case serious offence. JJS is adopting policy for the reformation and socialization of the young person and punishment is an exception. JJS is essentially different from ordinary criminal courts, adopting informal hearing.¹⁰

Relevant date for determination of juvenility: Computation of 16 or 18 years of age under the old and new Acts of 1986 & 2000---

In the Case of **Erati Laxman vs. State of A.P**, 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.¹¹

According to Sec. 2(1) and Sec. 7-A of the Juvenile Justice (Care & Protection of Children) Act, 2000 and Rules 12(4) and 97(3) of the Juvenile Justice (Care & Protection of Children) Rules, 2007, the relevant date for determination of the juvenility or the age of a juvenile is the **date of offence** alleged to have been committed by the juvenile. In the cases noted below, the Hon’ble Supreme Court has held that relevant date for determining the age of the juvenile would be the one on which the offence has been committed and not when he is produced in court.¹²

⁹ J. Jaiswal: Human rights of accused and juveniles (Kalapaz Publication, Delhi, 2005).

¹⁰ ASSOCIATION FOR DEVELOPMENT, DELHI: Compendium of information obtained under the Right to Information Act, 2005 on juvenile justice system in Delhi. (Association for Development, Delhi, 2008).

¹¹ (2009) 2 SCC (Criminal) 15.

¹² Vimal Chadha vs. Vikas Chowdhary, 2008(62) ACC 264 (SC) and Pratap Singh vs. State of Jharkhand & another, 2005(2) SCJ 70 (Five-Judge Bench).

But in the case of **Arnit Das vs. State of Bihar**,¹³ 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. This particular thing should be kept in the mind in order to make any child liable and gave him the status of Juvenile.

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.”¹⁴

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--

1. Smt. Lali vs. State of U.P.,¹⁵
2. Ram Babu vs. State of U.P.,¹⁶
3. Bhola Bhagat & others vs. State of Bihar,¹⁷

But the Supreme Court in **Murari Thakur v. State of Bihar**, 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.¹⁸

Juvenile Justice (Care and Protection) Act 2015 underlying following principles: -

JJ Act 2000 is replaced by JJ Act 2015, with a view to update JJS in accordance with the international conventions and present social development. The new Act under lying following basic principles on the basis of which every action is needed in case of Juvenile:

- Presumption of innocence.
- Principles of dignity and worth.
- Principles of participation with due regard to maturity.
- Principles of best interest of the child.
- Principles of family responsibility to take care.

¹³ 2000 (41) ACC 191 (SC).

¹⁴ Juvenile Justice (Care and Protection of Children's) Act, 2000.

¹⁵ 2008(61) ACC 943 (All)

¹⁶ 2006 (56) ACC 579 (All)

¹⁷ AIR 1998 SC 236.

¹⁸ AIR 2007 SC 1129.

- Principles of ensuring safety without my abuse of the child.
- Positive measures for wellbeing and development of child.
- Principles of non-accusatory or non-stigmatizing semantics.
- Principles of non-waiver of rights.
- Principles of equality and non-discrimination.
- Principles of right to privacy and confidentiality
- Principles of institutionalization should be last resort.
- Principles of Repatriation and restoration.
- Principles of fresh start-erasing of past records.
- Principles of diversion (without resorting to Judicial proceedings).
- Principles of natural justice.¹⁹

Determination of age of juvenile with reference to different documents:

(A) School Leaving Certificate--- 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.²⁰
2. State of Chhattisgarh vs. Lekhrum.²¹

(B) 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. It was held in the case of Ram Suresh Singh vs. Prabhat Singh.²²

¹⁹ Mishra, B.N. (1991). Juvenile Delinquency and Justice System. New Delhi. Ashish Publishing House.

²⁰ 2006 (55) ACC 814 (SC).

²¹ (2006) SCC (Criminal) 66—*Regarding age of Prosecutrix*.

²² AIR 2009 SC 2805.

(C) 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. Following cases supports the above statement:

1. Ram Suresh Singh vs. Prabhat Singh.²³
2. Sushil Kumar vs. Rakesh Kumar.²⁴
3. Punit Rai vs. Dinesh Chowdhary.²⁵

(D) Entries of Electoral Roll---- In the case of **Sushil Kumar vs. Rakesh Kumar**, Entry of age of a person recorded in electoral board is recorded as per the statement made by the person concerned. But it is for the court to consider the said material on record in its proper perspective. Such entries have been held by the Supreme Court as not conclusive.²⁶

(E) Entries of Family Registers---- 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. Cases in reference to the above:

1. Bahadur vs. State of U.P.²⁷
2. Onkar Tiwari alias Kariya vs. State of U.P.²⁸
3. Hare Ram Chowdhary vs. State of U.P.²⁹

But in the cases of **Budh Ram vs. State of U.P.**,³⁰ & **Harpal Singh and another vs. State of H.P.**,³¹ it has been held that the entries made in the family register, if produced from proper custody, should not be ignored lightly.

(F) 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

²³ AIR 2009 SC 2805.

²⁴ (2003) 8 SCC 673.

²⁵ (2003) 8 SCC 204

²⁶ (2003) 8 SCC 673.

²⁷ 2009 (67) ACC 427 (Allahabad).

²⁸ 2001 All Dand Nirnaya 52 (Allahabad).

²⁹ 1990 (27) ACC 99 (Allahabad)

³⁰ 1993 (30) ACC 636 (All).

³¹ AIR 1981 SC 361.

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.**³²

(G) 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. Case on the subject is- **Fateh Chand vs. State of Haryana.**³³

(H) 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. Case on the point is **Jyoti Prakash Rai vs. State of Bihar.**³⁴

(I) Entries in register of births & deaths--- 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. Case on the point **Santenu Mitra vs. State of W.B.**³⁵

Procedure to be followed in Determination of Age of a Juvenile:

(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.³⁶

(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:

- the matriculation or equivalent certificates, if available; and in the absence whereof;
- the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
- the birth certificate given by a corporation or a municipal authority or panchayat;³⁷

³² 2000 (4) AWC 2722 (Allahabad—D.B.).

³³ 2009 (66) ACC 923 (SC).

³⁴ 2008 (61) ACC 330 (SC).

³⁵ AIR 1999 SC 1587.

³⁶ BHAKHRY, Savita: Children in India and their rights. (National Human Rights Commission, New Delhi, 2006) (NHRC).

³⁷ M. Neelima: Child protection and juvenile justice system for children in need of care and protection. (Childline India Foundation, Mumbai, 2008) (NHRC).

and only in the absence of either (i), (ii) or (iii), 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.³⁸

Conclusion:

One of the six men involved in the Nirbhaya gang-rape case (in Delhi) was a juvenile at the time of committing the crime. The juvenile will walk free after three years at a reformatory home as per the Juvenile Justice Act. Members of the **All India Mahila Sanskritik Sangathan** staged a demonstration in the city to protest against an order passed by the JJB in New Delhi directing a 17-year-old convict in the gang-rape of a 23-year-old physiotherapy student to undergo three years, the maximum tenure prescribed under the JJ Act, in a Correctional Home. The protestors called for more stringent punishment to the offender. There were demands from some in India to reduce the upper age limit for juveniles from 18 to 16, in light of the Delhi gangrape case.³⁹

However, child rights activists said that changing this section of the law in response to a public outcry over a few cases would be a regressive step. In July, the Supreme Court dismissed eight petitions brought by the public asking the Court to rule that crimes of rape and murder committed by juveniles should be punished

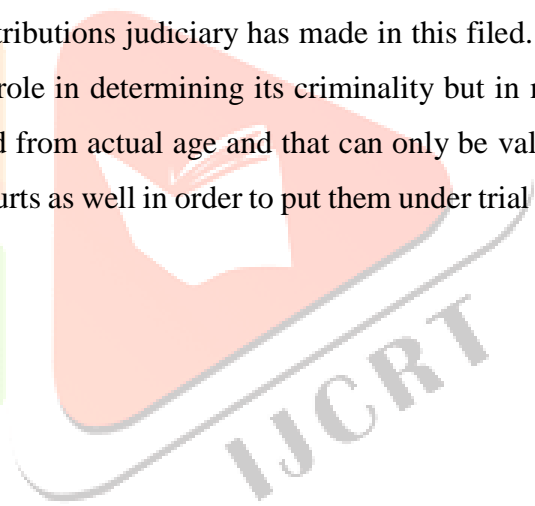
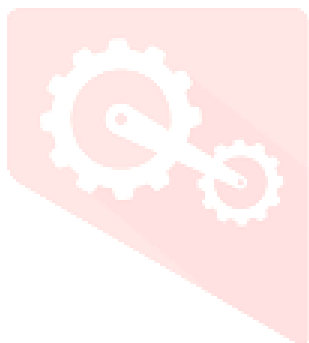
³⁸ Dr. Srivastava S S., Juvenile Law and Delinquency, 3rd Edn., Page No. 319, 2007.

³⁹ Nirbhaya Case – https://en.wikipedia.org/wiki/2012_Delhi_gang_rape retrieved on 14.08.21.

under adult laws and that the upper age limit for juveniles be lowered to 16. But a subsequent petition, currently being considered by the Supreme Court, asks judges to consider the mental maturity of the juvenile delinquents instead of his or her age in cases where a young person is accused of involvement in a particularly serious crime. Juvenility is mainly a state of mind, and not only a state of body.

Even as the nation pushes and the government debates lowering the age limit in juvenile crimes in the light of the Delhi gang rape, National Crime Records Bureau (NCRB) data shows that most juvenile crimes are committed by those in the age group of 16-18 years. Notably, the minor accused in the Delhi gang rape, who was allegedly the most brutal among the six accused, is 17 and a half years old.⁴⁰

Working to prevent juvenile delinquency and to rehabilitate juvenile offenders is a challenging and ideal way to spend one's time in research. It requires wide range of skills from working with one individual to prevent him or her from entering the juvenile justice system to advocating for social change and social justice. In this research, the main center of study is about the juveniles, juvenile delinquency and their delinquent behavior, what circumstances changed their meaning, how time plays the crucial role for the changes, the age and determination of Juvenility, the position of laws to deal with the changing stages at different periods, the relevancy of documents accepted legally and what contributions judiciary has made in this filed. The whole research shows that although age plays an important role in determining its criminality but in most of the situation mental status is judged which is far developed from actual age and that can only be validly put on the basis of the documents which are accepted by the courts as well in order to put them under trial as an adult.



⁴⁰ Dr. B.K. Das, Juvenile Justice in India & POCSO Act-2012 2nd Edition 2014 & Dr. P.K. Singh, IBR, xxxi (3&4) 2004 at pp – 115-116 and Dr. G.S. Sharma, IBR, xxxi (3&4) 2004, P.447.