

STUDY MATERIAL ON

**DETERMINATION OF AGE OF JUVENILE IN JJA AND VICTIM IN POCSO
CASES
&
JUDGMENT OF HON'BLE SUPREME COURT
&
VARIOUS HIGH COURTS
FOR
PRINCIPAL MAGISTRATES OF JJB / POCSO JUDGES**

On 23.02.2026

PREPARED BY

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**DETERMINATION OF AGE OF JUVENILE IN JJA AND VICTIM IN POCSO
CASES
&
JUDGMENTS OF HON'BLE SUPREME COURT & VARIOUS HIGH COURTS**

**PRELIMINARY ASSESSMENT
UNDER SECTION 15
JUVENILE JUSTICE ACT, 2015**

Article 15 of the constitution confers upon the State powers to make special provision for children. Article 39(e) and (f) 45 and 47 further makes the state responsible for ensuring that all need of children are met and their basic human rights are protected.

The Juvenile Justice (Care and Protection of Children) Act was enacted in the year 2000 to provide for the protection of children. which was amended in 2006 and 2011

**JUVENILE JUSTICE ACT, 2015
FEATURES**

The JJ Act, 2015, being a special Act, will have an overriding effect over general procedure prescribed under the BNS.

The provisions of the BNSS would be applicable to the extent they are not in conflict with the special provisions contained in the Act, 2015.

PROCEDURE TO BE FOLLOWED BY A MAGISTRATE WHO HAS NOT BEEN EMPOWERED UNDER THIS ACT.

Section 9. Procedure to be followed by a Magistrate who has not been empowered under this Act.—(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: Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of

commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.

PRESUMPTION AND DETERMINATION OF AGE

Section 94. Presumption and determination of age.—(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(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.

INQUIRY BY BOARD REGARDING CHILD IN CONFLICT WITH LAW. (S.14)

(1) 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.

Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

(5) The Board shall take the following steps to ensure fair and speedy inquiry, namely:—

(a) at the time of initiating the inquiry, the Board shall satisfy itself that the child in conflict

with law has not been subjected to any ill-treatment by the police or by any other person, including a lawyer or probation officer and take corrective steps in case of such ill-treatment;

- (b) in all cases under the Act, the proceedings shall be conducted in simple manner as possible and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings.
- (c) every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry
- (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 (2 of 1974)
- (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 (2 of 1974).
- (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.

PRELIMINARY ASSESSMENT INTO HEINOUS OFFENCES BY BOARD (S.15.)

(1) 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 sub-section (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 (2 of 1974).

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101

Provided further that the assessment under this section shall be completed within the period specified in section 14.

ORDERS REGARDING CHILD FOUND TO BE IN CONFLICT WITH LAW(S.18)

(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, [or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under Section 15, disposed of the matter] then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

(a) allow the child to go home after advice or admonition by following appropriate inquiry and

counseling to such child and to his parents or the guardian;

(b) direct the child to participate in group counseling and similar activities;

(c) order the child to perform community service under the supervision of an organization or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine: Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years.

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years.

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it

thinks fit, for providing reformatory services including education, skill development, counseling, behaviour modification therapy, and psychiatric support during the period of stay in the special home: Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) 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.

CHAPTER III

PROCEDURE IN RELATION TO CHILDREN IN CONFLICT WITH LAW (JJ CARE AND PROTECTION OF CHILDREN, MODEL RULES, 2016)

9. Production of the child alleged to be in conflict with law before the Board.-(1) When the child alleged to be in conflict with law is apprehended, he shall be produced before the Board within twenty-four hours of his being apprehended, along with a report explaining the reasons for the child being apprehended by the police.

(2) On production of the child before the Board, the Board may pass orders as deemed necessary, including sending the child to an observation home or a place of safety or a fit facility or a fit person.

(3) Where the child produced before the Board is covered under section 83 of the Act, including a child who has surrendered, the Board may, after due inquiry and being satisfied of the circumstances of the child, transfer the child to the Committee as a child in need of care and protection for necessary action, and or pass appropriate directions for rehabilitation, including orders for safe custody and protection of the child and transfer to a fit facility recognised for the purpose which shall have the capacity to provide appropriate protection, and consider transferring the child out of the district or out of the State to another State for the protection and safety of the child.

(4) Where the child alleged to be in conflict with law has not been apprehended and the information in this regard is forwarded by the police or Special Juvenile Police Unit or Child Welfare Police Officer to the Board, the Board shall require the child to appear before it at the earliest so that measures for rehabilitation, where necessary, can be initiated, though the final report may be filed subsequently.

(5) In case the Board is not sitting, the child alleged to be in conflict with law shall be produced before a single member of the Board under sub-section (2) of section 7 of the Act.

(6) In case the child alleged to be in conflict with law cannot be produced before the Board or even a single member of the Board due to child being apprehended during odd hours or distance, the child shall be kept by the Child Welfare Police Officer in the Observation Home in accordance with rule 69 D of these rules or in a fit facility and the child shall be produced before the Board thereafter, within twenty-four hours of apprehending the child.

(7) When a child is produced before an individual member of the Board, and an order is obtained, such order shall be ratified by the Board in its next meeting.

10. Post-production processes by the Board.- (1) On production of the child before the Board, the report containing the social background of the child, circumstances of apprehending the child and offence alleged to have been committed by the child as provided by the officers, individuals, agencies producing the child shall be reviewed by the Board and the Board may pass such orders in relation to the child as it deems fit, including orders under sections 17 and 18 of the Act, namely:

- (i) disposing of the case, if on the consideration of the documents and record submitted at the time of his first appearance, his being in conflict with law appears to be unfounded or where the child is alleged to be involved in petty offences;
- (ii) referring the child to the Committee where it appears to the Board that the child is in need of care and protection;
- (iii) releasing the child in the supervision or custody of fit persons or fit institutions or Probation Officers as the case may be, through an order in Form 3, with a direction to appear or present a child for an inquiry on the next date; and
- (iv) directing the child to be kept in the Child Care Institution, as appropriate, if necessary, pending inquiry as per order in Form 4.

(2) In all cases of release pending inquiry, the Board shall notify the next date of hearing, not later than fifteen days of the first summary inquiry and also seek social investigation report from the Probation Officer, or in case a Probation Officer is not available the Child Welfare Officer or social worker concerned through an order in Form 5.

(3) When the child alleged to be in conflict with law, after being admitted to bail, fails to appear before the Board, on the date fixed for hearing, and no application is moved for exemption on his behalf or there is not sufficient reason for granting him exemption, the Board shall, issue to the Child Welfare Police Officer and the Person-in-charge of the Police Station directions for the production of the child.

(4) If the Child Welfare Police Officer fails to produce the child before the Board even after the issuance of the directions for production of the child, the Board shall instead of issuing process

under section 82 of the Code of Criminal Procedure, 1973 pass orders as appropriate under section 26 of the Act.

(5) In cases of heinous offences alleged to have been committed by a child, who has completed the age of sixteen years, the Child Welfare Police Officer shall produce the statement of witnesses recorded by him and other documents prepared during the course of investigation within a period of one month from the date of first production of the child before the Board, a copy of which shall also be given to the child or parent or guardian of the child.

(6) In cases of petty or serious offences, the final report shall be filed before the Board at the earliest and in any case not beyond the period of two months from the date of information to the police, except in those cases where it was not reasonably known that the person involved in the offence was a child, in which case extension of time may be granted by the Board for filing the final report.

(7) When witnesses are produced for examination in an inquiry relating to a child alleged to be in conflict with law, the Board shall ensure that the inquiry is not conducted in the spirit of strict adversarial proceedings and it shall use the powers conferred by section 165 of the Indian Evidence Act, 1872 (1 of 1872) so as to interrogate the child and proceed with the presumptions in favour of the child.

(8) While examining a child alleged to be in conflict with law and recording his statement during the inquiry under section 14 of the Act, the Board shall address the child in a child-friendly manner in order to put the child at ease and to encourage him to state the facts and circumstances without any fear, not only in respect of the offence which has been alleged against the child, but

also in respect of the home and social surroundings, and the influence or the offences to which the child might have been subjected to.

(9) The Board shall take into account the report containing circumstances of apprehending the child and the offence alleged to have been committed by him and the social investigation report in Form 6 prepared by the Probation Officer or the voluntary or non- governmental organisation, along with the evidence produced by the parties for arriving at a conclusion.

10 A. Preliminary assessment into heinous offences by Board.- (1) The Board shall in the first instance determine whether the child is of sixteen years of age or above; if not, it shall proceed as per provisions of section 14 of the Act.

(2) For the purpose of conducting a preliminary assessment in case of heinous offences, the Board may take the assistance of psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances. A panel of such experts may be made available by the District Child Protection Unit, whose assistance can be taken by the Board or could be accessed independently.

(3) While making the preliminary assessment, the child shall be presumed to be innocent unless proved otherwise.

(4) Where the Board, after preliminary assessment under section 15 of the Act, passes an order that there is a need for trial of the said child as an adult, it shall assign reasons for the same and the copy of the order shall be provided to the child forthwith.

11. Completion of Inquiry.- (1) Where after preliminary assessment under section 15 of the Act, in cases of heinous offences allegedly committed by a child, the Board decides to dispose of the matter, the Board may pass any of the dispositional orders as specified in section 18 of the Act.

(2) Before passing an order, the Board shall obtain a social investigation report in Form 6 prepared by the Probation Officer or Child Welfare Officer or social worker as ordered, and take the findings of the report into account.

(3) All dispositional orders passed by the Board shall necessarily include an individual care plan in Form 7 for the child in conflict with law concerned, prepared by a Probation Officer or Child Welfare Officer or a recognised voluntary organisation on the basis of interaction with the child and his family, where possible.

(4) Where the Board is satisfied that it is neither in the interest of the child himself nor in the interest of other children to keep a child in the special home, the Board may order the child to be kept in a place of safety and in a manner considered appropriate by it.

(5) Where the Board decides to release the child after advice or admonition or after participation in group counselling or orders him to perform community service, necessary direction may also be issued by the Board to the District Child Protection Unit for arranging such counselling and community service.

(6) Where the Board decides to release the child in conflict with law on probation and place him under the care of the parent or the guardian or fit person, the person in whose custody the child is released may be required to submit a written undertaking in Form 8 for good behaviour and

well-being of the child for a maximum period of three years.

(7) The Board may order the release of a child in conflict with law on execution of a personal bond without surety in Form 9.

(8) In the event of placement of the child in a fit facility or special home, the Board shall consider that the fit facility or special home is located nearest to the place of residence of the child's parent or guardian, except where it is not in the best interest of the child to do so.

(9) The Board, where it releases a child on probation and places him under the care of parent or guardian or fit person or where the child is released on probation and placed under the care of fit facility, it may also order that the child be placed under the supervision of a Probation Officer who shall submit periodic reports in Form 10 and the period of such supervision shall be maximum of three years.

(10) Where it appears to the Board that the child has not complied with the probation conditions, it may order the child to be produced before it and may send the child to a special home or place of safety for the remaining period of supervision.

(11) In no case, the period of stay in the special home or the place of safety shall exceed the maximum period provided in clause (g) of sub-section (1) of section 18 of the Act.

12. Pendency of Inquiry.- (1) For the purpose of sub-section (3) of section 16 of the Act, the Board shall maintain a 'Case Monitoring Sheet' of every case and every child in Form 11. The said Form shall be kept at the top of each case file and shall be updated from time to time. The

following points shall be considered so far as 'progress of inquiry' mentioned in Form 11 is concerned:

- (i) time schedule for disposal of the case shall be fixed on the first date of hearing;
- (ii) scheduled date given in column No. (2) of 'progress of inquiry' shall be the outer limit within which the steps indicated in column (1) are to be completed.

(2) The Board shall submit a quarterly report in Form 12 about the pendency of the cases, visits to Homes etc. to the following:

- (i) Chief Judicial Magistrate or Chief Metropolitan Magistrate;
- (ii) District Magistrate.

(3) The District Judge shall conduct an inspection of the Board once every quarter and appraise the performance of the members of the Board on the basis of their participation in the proceedings of the Board and submit a report to the Selection Committee constituted under rule 87 of these rules.

POWERS OF CHILDREN'S COURT(S.19) J.J. Act.

(1) 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 (2 of 1974) 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) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail.

Provided that the reformatory services including educational services, skill development, alternative therapy such as counseling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required.

PROCEDURE IN RELATION TO CHILDREN'S COURT AND MONITORING AUTHORITIES (RULE 13 JJ CARE AND PROTECTION OF CHILDREN, MODEL RULES, 2016)

- (1) Upon receipt of preliminary assessment from the Board the Children's Court may decide whether there is need for trial of the child as an adult or as a child and pass appropriate orders.
- (2) Where an appeal has been filed under sub-section (1) of section 101 of the Act against the order of the Board declaring the age of the child, the Children's Court shall first decide the said appeal.
- (3) Where an appeal has been filed under sub-section (2) of section 101 of the Act against the finding of the preliminary assessment done by the Board, the Children's Court shall first decide the appeal.
- (4) Where the appeal under sub-section (2) of section 101 of the Act is disposed of by the Children's Court on a finding that there is no need for trial of the child as an adult, it shall dispose of the same as per section 19 of the Act and these rules.

- (5) Where the appeal under sub-section (2) of section 101 of the Act is disposed of by the Children's Court on a finding that the child should be tried as an adult the Children's Court shall call for the file of the case from the Board and dispose of the matter as per the provisions of the Act and these rules.
- (6) The Children's Court shall record its reasons while arriving at a conclusion whether the child is to be treated as an adult or as a child.
- (7) Where the Children's Court decides that there is no need for trial of the child as an adult, and that it shall decide the matter itself:
- (i) It may conduct the inquiry as if it were functioning as a Board and dispose of the matter in accordance with the provisions of the Act and these rules.
 - (ii) The Children's Court, while conducting the inquiry shall follow the procedure for trial in summons case under the Code of Criminal Procedure, 1973.
 - (iii) The proceedings shall be conducted in camera and in a child friendly atmosphere, and there shall be no joint trial of a child alleged to be in conflict with law, with a person who is not a child.

- (iv) When witnesses are produced for examination the Children's Court shall ensure that the inquiry is not conducted in the spirit of strict adversarial proceedings and it shall use the powers conferred by section 165 of the Indian Evidence Act, 1872 (1 of 1872).
- (v) While examining a child in conflict with law and recording his statement, the Children's Court shall address the child in a child-friendly manner in order to put the child at ease and to encourage him to state the facts and circumstances without any fear, not only in respect of the offence which is alleged against the child, but also in respect of the home and social surroundings and the influence to which the child might have been subjected.
- (vi) The dispositional order passed by the Children's Court shall necessarily include an individual care plan in Form 7 for the child in conflict with law concerned, prepared by a Probation Officer or Child Welfare Officer or recognized voluntary organisation on the basis of interaction with the child and his family, where possible.
- (vii) The Children's Court, in such cases, may pass any orders as provided in sub-sections (1) and (2) of section 18 of the Act.
- (8) Where the Children's Court decides that there is a need for trial of the child as an adult:

- (i) It shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 of trial by sessions and maintaining a child friendly atmosphere.
- (ii) The final order passed by the Children's Court shall necessarily include an individual care plan for the child as per Form 7 prepared by a Probation Officer or Child Welfare Officer or recognized voluntary organisation on the basis of interaction with the child and his family, where possible.
- (iii) Where the child has been found to be involved in the offence, the child may be sent to a place of safety till the age of twenty-one years.
- (iv) While the child remains at the place of safety, there shall be yearly review by the Probation Officer or the District Child Protection Unit or a social worker in Form 13 to evaluate the progress of the child and the reports shall be forwarded to the Children's Court.
- (v) The Children's Court may also direct the child to be produced before it periodically and at least once every three months for the purpose of assessing the progress made by the child and the facilities provided by the institution for the implementation of the

individual care plan.

(vi) When the child attains the age of twenty-one years and is yet to complete the term of stay, the Children's Court shall:

(a) interact with the child in order to evaluate whether the child has undergone reformatory changes and if the child can be a contributing member of the society.

(b) take into account the periodic reports of the progress of the child, prepared by the Probation Officer or the District Child Protection Unit or a social worker, if needed and further direct that institutional mechanism if inadequate be strengthened.

(c) After making the evaluation, the Children's Court may decide to:

(ca) release the child forthwith;

(cb) release the child on execution of a personal bond with or without sureties for good behaviour;

(cc) release the child and issue directions regarding education, vocational training, apprenticeship, employment, counselling and other therapeutic interventions with a view to promoting adaptive and positive behaviour etc.;

(cd) release the child and appoint a monitoring authority for the remainder of the prescribed term of stay. The monitoring authority, where appointed shall maintain a Rehabilitation Card for the child in Form 14.

(vii) For the purpose of sub-rule (vi) (c) (cd) of this rule:

(a) A Probation Officer or Case Worker or Child Welfare Officer or a fit person may be appointed as a monitoring authority.

(b) The District Child Protection Unit shall maintain a list of such persons who can be engaged as monitoring authorities which shall be sent to the Children's Court along with bi-annual updates.

(c) The child shall for the first quarter after release, meet with the monitoring authority on a fortnightly basis or at such intervals as may be directed by the Children's Court. The monitoring authority shall fix a time and venue for such meetings in consultation with the child. The monitoring authority will forward its observations on the progress of the child on a monthly basis to the Children's Court.

(d) At the end of the first quarter the monitoring authority shall make recommendations regarding the further follow up procedure required for the child.

- (e) Where the child, after release is found to be indulging in criminal activities or associating with people with criminal antecedents, he shall be brought before the Children's Court for further orders.
- (f) If it is found that the child no longer requires to be monitored, the monitoring authority shall place the detailed report with recommendations before the Children's Court which shall issue further directions either terminating the monitoring or for its continuation.
- (g) After the first quarter, the child shall meet the monitoring authority at such intervals as may be directed by the Children's Court based on the recommendations made by the monitoring authority at the end of the first quarter and the monitoring authority shall forward its report to the Children's Court which shall review the same every quarter.

PROCEDURE IN CASE OF COMMISSION OF OFFENCE BY CHILD AND DETERMINATION OF AGE BY SPECIAL COURT(S.34) POCSO ACT

- (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of [the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)].
- (2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.
- (3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.

JUDGMENTS OF HON'BLE SUPREME COURT & VARIOUS HIGH COURTS

S.No.	Title	Citation	Law Point
1	Jaya Mala v. Govt. of J & K	(1982) 2 SCC 538	Para 9. One can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side...
2	Brij Mohan Singh v. Priya Brat Narain Sinha	AIR 1965 SC 282.	“In actual life it often happens that persons give false age of the boy at the time of his admission to a school so that later in life he would have an advantage when seeking public service for which a minimum age for eligibility is often prescribed.”
3	Ramdeo Chauhan v. State of Assam	(2001) 5 SCC 714	Para 8. The Act has been enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to and disposition of delinquent juveniles. The object of the Act is to provide extraordinary procedure for offences alleged to be committed by a child/juvenile and punishment thereof. The Act is a complete code in itself. “Juvenile” has been defined to mean a boy who has not attained the age of 16 years or a girl who has

not attained the age of 18 years and “delinquent juvenile” means a juvenile who has been found to have committed an offence. Section 5 of the Act authorises the State Government for constitution of Juvenile Courts for exercising the powers and discharging the duties conferred on such courts in relation to delinquent juveniles under the Act. Section 8 of the Act provides that when any Magistrate not empowered to exercise the power of a board or a Juvenile Court under this Act is of the opinion that a person brought before him under any of the provisions of the Act is a juvenile, he shall record such opinion and forward the juvenile and the record of the proceedings to the competent authority having jurisdiction over the proceedings. Such a power can be exercised by the Magistrate either on the complaint made to him or his own observations regarding the age of the accused appearing before him. In the absence of an order of a Magistrate, the competent authority under the Act cannot hold an enquiry for the purpose of determining whether the person brought before it is a juvenile or not.

51. In his report the doctor has detailed all the data on which he reached his conclusion. I do not propose to

extract all such data here except pointing out that such data collected by Dr B.C. Roy is in consonance with the guidelines provided in the textbooks on medical jurisprudence (vide Modi's Medical Jurisprudence and Jhala & Raju's Medical Jurisprudence). Ossification test is done for multiple joints, for which the radiological report was obtained. The margin of error according to authorities on medical jurisprudence can be two years either way as the maximum. In this context it is useful to extract the relevant passage from Jhala & Raju's Medical Jurisprudence (6th Edn., p. 198):

“If ossification test is done for a single bone the error may be two years either way. But if the test is done for multiple joints with overlapping age of fusion the margin of error may be reduced. Sometimes this margin is reduced to six months on either side.”

52. Of course the doctor's estimate of age is not a sturdy substitute for proof as it is only his opinion. But such opinion of an expert cannot be sidelined in the realm where we grope in the dark to find out what would possibly have been the age of a citizen for the purpose of affording him a constitutional protection. In the absence of all other acceptable materials, if such

			<p>opinion points to a reasonable possibility regarding the range of his age it has certainly to be considered. When the possibility of the petitioner having been a juvenile on the relevant date cannot be excluded from the conclusion by adopting such reasonable standards, the interdict contained in Section 22(1) of the Juvenile Act cannot be bypassed for awarding death penalty to the petitioner so long as the death penalty is permitted to survive Article 21 only if the lesser alternative can be foreclosed unquestionably. In other words, if the age of the petitioner cannot be held to be unquestionably above 16 on the relevant date its corollary is that the lesser sentence also cannot unquestionably be foreclosed. We have to abide by the declaration of law made by the majority of Judges of the Constitution Bench in Bachan Singh case [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] .”</p>
4	Pratap Singh v. State of Jharkhand	(2005) 3 SCC 551	<p>“111. “The relevant date for reckoning the age of the juvenile would be the date of the occurrence not the date on he was produced before the Board/ court.”</p>
5	Vishnu v. State of Maharashtra	(2006) 1 SCC 283	<p>20. “The opinion of the Medical Officer is to assist the court as he is not a witness of fact and the evidence given by the Medical Officer is really of an advisory character and not binding on the witness of fact.”</p>

6	Ravinder Singh Gorkhi v. State of U.P.,	(2006) 5 SCC 584	<p>“38. The age of a person as recorded in the school register or otherwise may be used for various purposes, namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was a minor. A court of law for the purpose of determining the age of a party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under Article 21 of the Constitution, as in that case the accused may unjustly</p>

			be convicted.”
7	Babloo Pasi v. State of Jharkhand	(2008) 13 SCC 133	<p>Para 28. “It is trite that to render a document admissible under Section 35, three conditions have to be satisfied, namely: (i) entry that is relied on must be one in a public or other official book, register or record; (ii) it must be an entry stating a fact in issue or a relevant fact, and (iii) it must be made by a public servant in discharge of his official duties, or in performance of his duty especially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded.</p> <p>29. Therefore, on facts at hand, in the absence of evidence to show on what material the entry in the voters' list in the name of the accused was made, a mere production of a copy of the voters' list, though a public document, in terms of Section 35, was not sufficient to prove the age of the accused. Similarly, though a reference to the report of the Medical Board, showing the age of the accused as 17-18 years, has been made but there is no indication in the order</p>

			<p>whether the Board had summoned any of the members of the Medical Board and recorded their statement. It also appears that the physical appearance of the accused, has weighed with the Board in coming to the aforementioned conclusion, which again may not be a decisive factor to determine the age of a delinquent.”</p>
8	Eerati Laxman v. State of A.P.	(2009) 3 SCC 337	<p>“In absence of any express provision, while calculating a person's age, the day of his birth 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 birthday. A legal day commences at 12 o'clock midnight and continues until the same hour the following night.”</p> <p>It is interesting to note, however, that the common law rule stated in <i>Shurey, Re, Savory</i> [<i>Shurey, Re, Savory v. Shurey</i>, (1918) 1 Ch 263] in respect of anniversaries has been abrogated by virtue of the Family Law Reform Act, 1969. The effect of the change is that, in respect of anniversaries falling after 1-1-1970, the time at which a person attains a particular age expressed in years is the commencement of relevant anniversary of the date of his birth.”</p>

9

**Ram Suresh
Singh v.
Prabhat Singh**

**(2009) 6 SCC
681**

“Opinion of the Medical Board will be preferred only when date of birth certificate from school is not available.”

Para 11. In terms of the provisions of Section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2000, the Central Government has framed the Juvenile Justice (Care and 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.

12. The condition laid down in Section 35 of the Evidence Act for proving an entry pertaining to the age of a student in a school admission register is to be considered for the purpose of determining the relevance thereof. But in this case, the said condition must be held to have been satisfied. An entry in a school register may not be a public document and, thus, must be proved in accordance with law, as has been held by this Court in *Birad Mal Singhvi*² but in this case the said entry has been proved.”

10

**Jabar Singh v.
Dinesh,**

**(2010) 3 SCC
757**

Para 13. “only when a person is “brought before the competent authority” under any of the provisions of the Act, the competent authority is required to make due enquiry as to the age of that person and for that purpose take such evidence as may be necessary and record a finding whether the person is a juvenile or not. Section 49 is, therefore, attracted when a person is brought before the competent authority and not otherwise”.

Para 29. “A plain reading of Section 52 of the Act shows that no statutory appeal is available against any finding of the court that a person was not a juvenile at the time of commission of the offence. Section 53 of the Act which is titled “Revision”, however, provides that the High Court may at any time, either of its own motion or on an application received on that behalf, call for the record of any proceeding in which any competent authority or Court of Session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order, and may pass such order in relation thereto as it thinks fit. While exercising such revisional powers, the High Court cannot convert itself to an appellate court and reverse the findings of fact arrived at by the trial court on the basis of evidence or material on record, except where the

			High Court is not satisfied as to the legality or propriety of the order passed by the trial court.”
11	Shah Nawaz v. State of U.P.	(2011) 13 SCC 751	<p>Para 23. “Rule 12 of the Rules categorically envisages that the medical opinion from the Medical Board should be sought only when the matriculation certificate or school certificate or any birth certificate issued by a corporation or by any panchayat or municipality is not available. We are of the view that though the Board has correctly accepted the entry relating to the date of birth in the marksheet and school certificate, the Additional Sessions Judge and the High Court committed a grave error in determining the age of the appellant ignoring the date of birth mentioned in those documents which is illegal, erroneous and contrary to the Rules.”</p> <p>Para 24. “The entry relating to date of birth entered in the marksheet is one of the valid proofs of evidence for determination of age of an accused person. The school leaving certificate is also a valid proof in determining the age of the accused person. Further, the date of birth mentioned in the High School marksheet produced by the appellant has duly been corroborated</p>

			<p>by the school leaving certificate of the appellant of Class X and has also been proved by the statement of the clerk of Nehru High School, Dadheru, Khurd-o-Kalan and recorded by the Board. The date of birth of the appellant has also been recorded as 18-6-1989 in the school leaving certificate issued by the Principal of Nehru Preparatory School, Dadheru, Khurd-o-Kalan, Muzaffarnagar as well as the said date of birth mentioned in the school register of the said School at Sl. No. 1382 which have been proved by the statement of the Principal of that School recorded before the Board.”</p>
12	<p>Daya Nand v. State of Haryana,</p>	<p>(2011) 2 SCC 224</p>	<p>Par 14. “The law as now crystallised on a con-joint 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 even prior to 1-4-2001, 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.</p>

Section 7-A of the Juvenile Justice Act, 2000, made provision for the claim of juvenility to be raised before any court at any stage, as has been done in this case, and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the juvenile had ceased to be so on or before the date of commencement of the Act.

Accordingly, a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act.

The said position was re-emphasised by virtue of the amendments introduced in Section 20 of the 2000 Act, whereby the proviso and Explanation were added to Section 20, which made it even more explicit that in all pending cases, including trial, revision, appeal and any other criminal proceedings in respect of a juvenile in conflict with law, the determination of juvenility of such a juvenile would be in terms of clause (1) of Section 2 of the 2000 Act, and the provisions of the Act would apply as if the said provisions had been in force when the alleged of-

			fence was committed.
13	Abuzar Hossain v. State of W.B.	(2012) 10 SCC 489	<p>Para 39. Now, we summarise the position which is as under:</p> <p>(i) A claim of juvenility may be raised at any stage even after final disposal of the case. It may be raised for the first time before this Court as well after final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in appeal court.</p> <p>(ii) For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.</p> <p>(iii) As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of</p>

evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rule 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard and fast rule can be prescribed that they must be prima facie accepted or rejected. In Akbar Sheikh² and Pawan⁸ these documents were not found prima facie credible while in Jitendra Singh¹⁰ the documents viz., school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7A and order an enquiry for determination of the age of the delinquent.

(iv) An affidavit of the claimant or any of the parents

or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of age of the delinquent.

(v) The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in 2000 Act are not defeated by hyper-technical approach and the persons who are entitled to get benefits of 2000 Act get such benefits. The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.

(vi) Claim of juvenility lacking in credibility or frivo-

lous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the court at threshold whenever raised.”

39.4. An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of the age of the delinquent.

39.6. Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the court at the threshold whenever raised.

42. In para 39.4 of the order fall cases in which the accused setting up the plea of juvenility is unable to produce any one of the documents referred to in Rules 12(3)(a)(i) to (iii) of the Rules, under the Act, not necessarily because, he is deliberately withholding such documents from the court, but because, he did not

have the good fortune of ever going to a school from where he could produce a certificate regarding his date of birth. Para 39.4 sounds a note of caution that an affidavit of a parent or a sibling or other relative would not ordinarily suffice, to trigger an enquiry into the question of juvenility of the accused, unless the circumstances of the case are so glaring that the court is left with no option except to record a prima facie satisfaction that a case for directing an enquiry is made out.

48. If one were to adopt a wooden approach, one could say nothing short of a certificate, whether from the school or a municipal authority would satisfy the court's conscience, before directing an enquiry. But, then directing an enquiry is not the same thing as declaring the accused to be a juvenile. The standard of proof required is different for both. In the former, the court simply records a prima facie conclusion. In the latter, the court makes a declaration on evidence, that it scrutinises and accepts only if it is worthy of such acceptance. The approach at the stage of directing the enquiry has of necessity to be more liberal, lest, there is avoidable miscarriage of justice. Suffice it to say that while affidavits may not be generally accepted as a good enough basis for directing an enquiry, that they

			<p>are not so accepted is not a rule of law but a rule of prudence. The Court would, therefore, in each case weigh the relevant factors, insist upon filing of better affidavits if the need so arises, and even direct, any additional information considered relevant including the information regarding the age of the parents, the age of siblings and the like, to be furnished before it decides on a case to case basis whether or not an enquiry under Section 7-A ought to be conducted. It will eventually depend on how the court evaluates such material for a prima facie conclusion that the court may or may not direct an enquiry.”</p>
14	<p>Om Prakash v. State of Rajasthan</p>	<p>(2012) 5 SCC 201</p>	<p>Para 27. The benefit of the principle of benevolent legislation attached to the Juvenile Justice Act would thus apply to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence regarding his minority as the benefit of the possibilities of two views in regard to the age of the alleged accused who is involved in grave and serious offence which he committed and gave effect to it in a well-planned manner reflecting his maturity of mind rather than innocence indicating that his plea of juvenility is more in the nature of a shield to dodge or</p>

dupe the arms of law, cannot be allowed to come to his rescue. Hence, if the plea of juvenility or the fact that he had not attained the age of discretion so as to understand the consequence of his heinous act is not free from ambiguity or doubt, the said plea cannot be allowed to be raised merely on doubtful school admission record and in the event it is doubtful, the medical evidence will have to be given due weightage while determining the age of the accused.

32. Drawing a parallel between the plea of minority and the plea of alibi, it may be worthwhile to state that it is not uncommon to come across criminal cases wherein an accused makes an effort to take shelter under the plea of alibi which has to be raised at the first instance but has to be subjected to strict proof of evidence by the court trying the offence and cannot be allowed lightly in spite of lack of evidence merely with the aid of salutary principle that an innocent man may not have to suffer injustice by recording an order of conviction in spite of his plea of alibi.

33. Similarly, if the conduct of an accused or the method and manner of commission of the offence

indicates an evil and a well-planned design of the accused committing the offence which indicates more towards the matured skill of an accused than that of an innocent child, then in the absence of reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major cannot be allowed to be ignored taking shelter of the principle of benevolent legislation like the Juvenile Justice Act, subverting the course of justice as statutory protection of the Juvenile Justice Act is meant for minors who are innocent law-breakers and not the accused of matured mind who use the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him.

34. The benefit of benevolent legislation under the Juvenile Justice Act obviously will offer protection to a genuine child accused/juvenile who does not put the court into any dilemma as to whether he is a juvenile or not by adducing evidence in support of his plea of minority but in absence of the same, reliance placed merely on shaky evidence like the school admission register which is not proved or oral evidence based on

			conjectures leading to further ambiguity, cannot be relied upon in preference to the medical evidence for assessing the age of the accused.”
15	Ashwani Kumar Saxena v. State of M.P.	(2012) 9 SCC 750	<p>Para 15. Further, it was also held that 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 even prior to 1-4-2001 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. With regard to the determination of age, this Court held that the determination of age has to be in the manner prescribed in Rule 12 of the 2007 Rules and opined that the determination of age is an important responsibility cast upon the Juvenile Justice Boards.</p> <p>25. Section 7-A, obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the JJ Act. The criminal courts, Juvenile Justice Board,</p>

committees, etc. we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code. The statute requires the court or the Board only to make an “inquiry” and in what manner that inquiry has to be conducted is provided in the JJ Rules. Few of the expressions used in Section 7-A and Rule 12 are of considerable importance and a reference to them is necessary to understand the true scope and content of those provisions. Section 7-A has used the expressions “court shall make an inquiry”, “take such evidence as may be necessary” and “but not an affidavit”. The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates, etc. as evidence, need not be oral evidence.

26. Rule 12 which has to be read along with Section 7-A has also used certain expressions which are also to be borne in mind. Rule 12(2) uses the expression “prima facie” and “on the basis of physical appearance” or “documents, if available”. Rule 12(3) uses the expression “by seeking evidence by obtaining”. These expressions in our view re-emphasise the fact that what is contemplated in

Section 7-A and Rule 12 is only an inquiry. Further, the age determination inquiry has to be completed and age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the inquiry has to be conducted and completed. The word “inquiry” has not been defined under the JJ Act, but Section 2(y) of the JJ Act says that all words and expressions used and not defined in the JJ Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

30. Consequently, the procedure to be followed under the JJ Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules. We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the court exercising powers under Section 7-A of the Act. In many of the cases, we have come across, it is seen that the criminal courts are still having the hangover of the procedure of trial or inquiry under the Code as if they are trying an offence under the penal laws forgetting the fact that the

specific procedure has been laid down in Section 7-A read with Rule 12.

31. We also remind all courts/Juvenile Justice Boards and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate, etc. mentioned in Rules 12(3)(a)(i) to (iii). The courts in such situations act as a *parens patriae* because they have a kind of guardianship over minors who from their legal disability stand in need of protection.

32. “Age determination inquiry” contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal

authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

34. Age determination inquiry contemplated under the JJ Act and the 2007 Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion, etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those

			documents or certificates are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination.”
16	Hariom Soni v. State of MP and Ors	2012 (1) Crimes 111	<p>Para 7. In the case of Babloo Pasi v. State of Jharkhand, (supra), the Apex Court held: it is clear that it merely provides that when it appears to the competent authority viz. the Board, that the person brought before it is a Juvenile. The Board Is obliged to make an enquiry as to the age of that person; for that purpose it shall take evidence as may be necessary and then record a finding whether the person in question is a juvenile or not. Explaining the scope and purpose of Section 32 of the Juvenile Justice Act, 1986 which is almost pari materia with Section 49 of the Act in Bhola Bhagat v. State of Bihar MANU/SC/1361/1997 : (1997) 8 SCC 720, this Court had observed as under: ..when a plea is raised on behalf of an accused that he was a "child" within the meaning of the definition of the expression under the Act, it becomes obligatory for the Court, in case it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the question of age of the accused or cause an enquiry to be held and seek a report</p>

		<p>regarding the same, if necessary by asking the parties to lead evidence in that regard. Keeping In view the beneficial nature of the socially-oriented legislation, it is an obligation of the court where such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefit of the provisions to an accused. The court must hold an enquiry and return a finding regarding the age, one way or the other. Nevertheless, in <i>Jitendra Ram alias Jitu v. State of Jharkhand</i>, MANU/SC/8116/2006 : (2006) 9 SCC 428, the Court sounded a note of caution that the aforestated observations in <i>Bhola Bhagat</i> (supra) would not mean that a person who is not entitled to the benefit of the said Act would be dealt with leniently only because such a plea is raised. Each pled must be judged on its own merit and each case has to be considered on the basis of the materials brought on record. At this juncture, it is relevant to note that in exercise of power conferred by Section 68 of the Act, the State Government of Jharkhand has framed the <i>Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003</i>. Rule 22 thereof lays down the procedure to be followed by a Board in holding</p>
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enquiries and the determination of age. Sub-rule (5) of the said Rule which is material for the present case reads thus: 22. Procedure to be followed by a Board in holding inquiries and the determination of age: (1)... (5) In every case concerning a juvenile or a child, the Board shall either obtain. (i) a birth certificate given by a corporation or a municipal authority; or (ii) a date of birth certificate from the school first attended; or (iii) matriculation or equivalent certificates, if available; and (iv) in the absence of (i) to (iii) above, the medical opinion by a duly constituted Medical Board, subject to a margin of one year, in deserving cases for the reasons to be recorded by such Medical Board, (regarding his age and, when 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). Thus, as per Rule 22, in the absence of birth or matriculation certificates, in order to record a finding in respect of age of a person, the Board is required to obtain the opinion of a duly constituted Medical Board. It is clear from a bare reading of the Rule that although the Board is bound to obtain the opinion of the Medical Board but the opinion per se is not a

conclusive proof of age of the person concerned. It is no more than an opinion. More so, when even the Medico-Legal opinion is that owing to the variation in climatic, deistic, hereditary and other factors, affecting the people of different States in the country, it would be prudent to formulate a uniform standard for the determination of the age. True, that a Medical Board's opinion based on the radiological examination is a useful guiding factor for determining the age of a person but is not incontrovertible. Commenting on the evidentiary value of the opinion of a doctor, based on x-ray tests, as to the age of a person, in Ramdeo Chauhan alias Raj Nath v. State of Assam MANU/SC/0297/2001 : (2001) 5 SCC 714; R.P. Sethi, J., speaking for the majority in a three Judge Bench, had observed that: ...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 by 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 on text books, on medical jurisprudence and toxicology while determining the age of an accused. In this vast country with varied latitudes, heights,

			<p>environment, vegetation and nutrition, the height and weight cannot be expected to be uniform. It is well settled that it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. The date of birth is to be determined on the basis of material on record and on appreciation of evidence adduced by the parties. The Medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence.”</p>
17	<p>Nasaruddin v. State of U.P.</p>	<p>2012 SCC OnLine All 3739</p>	<p>Para 6. The aforesaid provisions contain an idea that when the matter of juvenility would be raised by any Court, the Court shall make an enquiry and 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.</p> <p>7. And if the Court finds a person to be juvenile on the date of commission of the offence under subsection (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</p>

			<p>effect. Therefore, the Magistrate before whom the question of juvenility was raised as per the statement made by learned Counsel at the Bar was under legal obligation to determine the question of juvenility in accordance with, law by not doing so the cause of justice has been frustrated and the applicant has been compelled to come up before the High Court to seek bail.”</p>
18	<p>Mahadeo v. State of Maharashtra,</p>	<p>(2013) 14 SCC 637</p>	<p>“12. We can also in this connection make reference to a statutory provision contained in the Juvenile Justice (Care and Protection of Children) Rules, 2007, where under Rule 12, the procedure to be followed in determining the age of a juvenile has been set out. We can usefully refer to the said provision in this context, inasmuch as under Rule 12(3) of the said Rules, it is stated that:</p> <p>“12. (3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, by the Committee by seeking evidence by obtaining—</p> <p>(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;</p> <p>(ii) the date of birth certificate from the school (other</p>

than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a Panchayat;”

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

13. In the light of our above reasoning, in the case on hand, there were certificates issued by the school in which the prosecutrix did her Vth standard and in the school leaving certificate issued by the said school under Exhibit 54, the date of birth of the prosecutrix has been clearly noted as 20-5-1990, and this document was also proved by PW 11. Apart from that the transfer certificate as well as the admission form maintained by the Primary School, Latur, where the prosecutrix had her initial education, also confirmed the date of birth as 20-5-1990. The reliance placed upon the said evidence by the courts below to arrive at

			<p>the age of the prosecutrix to hold that the prosecutrix was below 18 years of age at the time of the occurrence was perfectly justified and we do not find any good grounds to interfere with the same.”</p>
19	<p>Neelu Chaurasia v. State of U.P.</p>	<p>2013 SCC OnLine All 13763</p>	<p>Para 9. As per Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, the question of juvenility has to be decided on the basis of matriculation certificate or equivalent certificate or in the absence whereof the date of birth recorded in the school first attended and in the absence whereof the date of birth recorded in the Municipal records, Panchayat, Corporation etc. and in the absence of above three certificates, age has to be determined on the basis of a certificate of the Medical Board duly constituted for the purpose of ascertaining the age of the accused.</p> <p>10. When the high school marks-sheet was filed and if the trial court had any doubt, it could have summoned the relevant school records or the records of the High School Board. The Principal of the school could also have been summoned to establish the correct date of birth of the revisionist.</p>

			<p>11. An inquiry into juvenility of an accused is not a game of chess between the accused, the complainant and the State. Heavy responsibility rests on the shoulders of the Court to find out the truth irrespective of the fact whether a party is being represented properly or incompetently. The powers of the Court to inquire into the juvenility of an accused are unlimited. On one side, a person should not be permitted to take a false plea of juvenility to escape punishment and on the other hand, a juvenile should not suffer on account of lack of proper representation or lack of means. When an inquiry is being held by the Court, it can summon any person as a witness at the expense of the State to find out the truth. Such an inquiry is not a mere formality.”</p>
20	<p>Jarnail Singh v. State of Haryana</p>	<p>(2013) 7 SCC 263</p>	<p>Para 23. “Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict</p>

with law, and a child who is a victim of crime.

The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a

corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion.

24. Following the scheme of Rule 12 of the 2007 Rules, it is apparent that the age of the prosecutrix VW, PW 6 could not be determined on the basis of the matriculation (or equivalent) certificate as she had herself deposed, that she had studied up to Class 3 only, and thereafter, had left her school and had started to do household work. The prosecution in the facts and circumstances of this case, had endeavoured to establish the age of the prosecutrix VW, PW 6 on the next available basis in the sequence of options expressed in Rule 12(3) of the 2007 Rules. The prosecution produced Satpal (PW 4) to prove the age of the prosecutrix VW, PW 6. Satpal (PW 4) was the Head Master of Government High School, Jathlana,

		<p>where the prosecutrix VW, PW 6 had studied up to Class 3. Satpal (PW 4) had proved the certificate Ext. PG, as having been made on the basis of the school records indicating that the prosecutrix VW, PW 6 was born on 15-5-1977. In the scheme contemplated under Rule 12(3) of the 2007 Rules, it is not permissible to determine age in any other manner, and certainly not on the basis of an option mentioned in a subsequent clause. We are therefore of the view that the High Court was fully justified in relying on the aforesaid basis for establishing the age of the prosecutrix VW, PW 6. It would also be relevant to mention that under the scheme of Rule 12 of the 2007 Rules, it would have been improper for the High Court to rely on any other material including the ossification test, for determining the age of the prosecutrix VW, PW 6. The deposition of Satpal, PW 4 has not been contested. Therefore, the date of birth of the prosecutrix VW, PW 6 (indicated in Ext. PG as 15-7-1977) assumes finality. Accordingly it is clear that the prosecutrix VW, PW 6, was less than 15 years old on the date of occurrence i.e. on 25-3-1993. In the said view of the matter, there is no room for any doubt that the prosecutrix VW, PW 6 was a minor on the date of occurrence. Accordingly,</p>
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			we hereby endorse the conclusions recorded by the High Court, that even if the prosecutrix VW, PW 6 had accompanied the appellant-accused Jarnail Singh of her own free will, and had had consensual sex with him, the same would have been clearly inconsequential, as she was a minor.”
21	Parwana Bano v. State of U.P.	2014 SCC OnLine All 16105	Para 6. “At this stage when the question of custody is involved the prima facie evidence of school certificate cannot be ignored statement given by the revisionist or age mentioned in the Nikahnama will not be; decisive for the purpose of the determination of question of custody of child. The Court below has not committed any mistake in assessing the age of revisionist less than 18 years on the date of incident as well as on the date of recording the statement under section 164, Cr.P.C., therefore, her consent would be immaterial in the present case specially when the child has been given in interim custody to her parents. ”
22	State of M.P. v. Anoop Singh	(2015) 7 SCC 773	Para 17. “Court should have relied firstly on the documents as stipulated under Rule 12(3)(b) and only in the absence, the medical opinion should have been sought. The ossification test is not the sole criterion for determination of the date of birth of the prosecutrix as her certificate of birth and also the certificate of her

			medical examination had been enclosed.”
23	Parag Bhati v. State of U.P.	(2016) 12 SCC 744	<p>Para 17. Only in the absence of alternative methods described under Rules 12(3)(a)(i) to (iii), the medical opinion can be sought for and in no other case.</p> <p>34. If there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he would be entitled to the special protection under the JJ Act. But when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice.</p> <p>35. The benefit of the principle of benevolent legislation attached to the JJ Act would thus apply to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence regarding his minority as the benefit of the</p>

			<p>possibilities of two views in regard to the age of the alleged accused who is involved in grave and serious offence which he committed and gave effect to it in a well-planned manner reflecting his maturity of mind rather than innocence indicating that his plea of juvenility is more in the nature of a shield to dodge or dupe the arms of law, cannot be allowed to come to his rescue.</p> <p>36. It is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth an enquiry for determination of the age of the accused is permissible which has been done in the present case.”</p>
24	Mukarrab v. State of U.P.	(2017) 2 SCC 210	Para 10. Age determination is essential to find out whether or not the person claiming to be a child is below the cut-off age prescribed for application of the Juvenile Justice Act. The issue of age determination is

of utmost importance as very few children subjected to the provisions of the Juvenile Justice Act have a birth certificate. As juveniles in conflict with law usually do not have any documentary evidence, age determination, cannot be easily ascertained, specially in borderline cases. Medical examination leaves a margin of about two years on either side even if ossification test of multiple joints is conducted.

11. Time and again, the questions arise : How to determine age in the absence of birth certificate? Should documentary evidence be preferred over medical evidence? How to use the medical evidence? Is the standard of proof, a proof beyond reasonable doubt or can the age be determined by preponderance of evidence? Should the person whose age cannot be determined exactly, be given the benefit of doubt and be treated as a child? In the absence of a birth certificate issued soon after birth by the authority concerned, determination of age becomes a very difficult task providing a lot of discretion to the Judges to pick and choose evidence. In different cases, different evidence has been used to determine the age of the accused.

22. Courts need to be aware of the fact that age determination of the persons concerned cannot be certainly ascertained in the absence of original and valid documentary proof and there would always lie a possibility that the age of the person concerned may vary plus or minus two years. Even in the presence of medical opinion, the Court showed a tilt towards the juvenility of the accused. However, it is pertinent to note that such an approach is taken in the specific facts and circumstances of that particular case and any attempt of generalizing the said approach could not be justifiably entertained.

23. It is a well-accepted fact that age determination using ossification test does not yield accurate and precise conclusions after the examinee crosses the age of 30 years. It is well settled that it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. The date of birth is to be determined on the basis of material on record and on appreciation of evidence adduced by the parties. The medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence.

while dealing with a question of determination of the age of an accused, for the purpose of finding out

whether he is a juvenile or not, a hypertechnical 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 same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. We are also not oblivious of the fact that being a welfare legislation, the courts should be zealous to see that a juvenile derives full benefits of the provisions of the Act but at the same time it is also imperative for the courts to ensure that the protection and privileges under the Act are not misused by unscrupulous persons to escape punishments for having committed serious offences.”

32. In the facts and circumstances of the case, the opinion of the Medical Board in determining the age of the appellants cannot be relied upon so as to give benefit under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. In the absence of other cogent evidence, the plea of juvenility of the appellants is liable to be rejected.

25	Shweta Gulati v. State (NCT of Delhi)	2018 SCC OnLine Del 10448	Para 14. “The settled principle is that the ossification test is not conclusive of age determination. It is settled that it is difficult to determine the exact age of the person concerned on the basis of ossification test or other tests. The Supreme Court, in several decisions, has taken judicial notice of the fact that the margin of error in age ascertained by radiological examination is two years on either side. ¹⁶ It is also settled position of law that benefit of doubt, other things being equal, at all stages goes in favour of the accused. ^{3 17} . In the present case as no document of age was available, the age has been determined by the Child Welfare Committee as 17 years based on the ossification report. The bone ossification test report has estimated the age as 17 to 19 years. So applying the margin of error principle, of two years on either side, the age could be between 15 to 21 years. In the present case even if the margin of error is not taken on the higher side, the upper limit of the age estimated by the ossification test is 19 years.”
26	Rajak Mohammad v. State of H.P.	(2018) 9 SCC 248	Para 9. “While it is correct that the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts

			stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the accused.”
27	State (GNCT of Delhi) v. Hargovind	2019 SCC OnLine Del 9172	Para 4. “A radiological test cannot give the exact age of a person and there is always a margin of error. On the basis of the x ray films the age of the victim cannot be determine”
28	Durga Meena v. State of Rajasthan	2019 SCC OnLine Raj 3839	Para 11. “As is apparent from Sub-Rule 2 of Rule 10A of the Model Rules, 2016, the assistance of the psychologists or psycho-social workers or other experts, which the Board requires for carrying out the preliminary assessment, should have experience of working with children in difficult circumstances. However, neither the assistance of any such psychologist was sought for nor any such psychologist or child psychologist having special experience of working with children in difficult circumstances was associated in the proceedings. Furthermore, we do not approve of the procedure adopted by the Juvenile Justice Board while making the preliminary assessment inasmuch as, the principles of natural justice were not adhered to and without any

justification and without providing legal assistance, the child was sent and admitted in the psychiatry department of the MBH Hospital, Udaipur on the basis of some random secret report (copy whereof was not provided to her). Be that as it may. Rule 10A(4) provides that where the Board, after preliminary assessment u/Sec. 15 of the Act, passes an order that there is a need for trial of the child as an adult, it shall assign reasons for the same and the copy of the order shall be provided to the child forthwith. However, a plain reading of the order dated 05.09.2016 indicates that the Board did not provide a copy thereof to the child.

13. Considered in light of ‘Sec. 15 of the Act and Rule 10A of the Model Rules’, we are of the firm opinion that the order dated 05.09.2016 does not stand to scrutiny on the anvil of these mandatory statutory provisions. While undertaking this exercise, the Principal Magistrate failed to advert to the circumstances in which, the offence took place and did not adhere to the presumption of innocence in favour of the child in conflict with law and passed the order dated 05.09.2016 in an absolutely mechanical and

		<p>laconic manner. In our understanding while invoking Sec. 15 of the Act and directing the trial of the child as an adult, the Board must remain alive to the situation that the offence had been committed by the child in such a manner which gives rise to an inference that the act was done in a cold blooded or calculated manner which does not co-relate to the child like behaviour of the offender. No such reflection is visible in the order dated 05.09.2016. The order must refer to the circumstances which led to the commission of offence and there must be an active consideration of the fact whether, the child was driven to commit the offence because of the conduct of the victim. The Medical Board's report dated 30.08.2016 is referred to in an absolutely casual manner in the order. It is relevant to mention here that when the child was subjected to interrogation during the course of investigation, she categorically mentioned that she had contracted a love marriage with her husband Shri Bherulal the deceased. After some time, Bherulal started bearing a suspicion in his mind that illicit relations had developed between Durga and his father Unkar. He used to beat her and also treated her like an animal every other day after consuming liquor. In the night of 14.06.2016, Bherural</p>
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consumed liquor and assaulted her badly. Thereafter, he poured kerosene on her body, on which, she ran away and slept in the bada. On the fateful night i.e. 15.05.2015, Page: 1937 she was again badly thrashed and thus she became infuriated. In these difficult circumstances and finding Bherulal to be in an inebriated condition, she gave him a single blow with an axe which proved fatal. Manifestly, the tenor of this statement coupled with the allegations levelled in the FIR indicate that the husband and wife were not keeping on good terms and used to fight with each other on trivial issues. The appellant had been married to the deceased at a very tender age and thus, without any doubt, she cannot be attributed with the mental ability or maturity to understand and weigh the implications of the act which she committed on the spur of the moment after being traumatized by the cruel behaviour of her spouse. The anger of a young girl who is harassed, humiliated and treated cruelly in her matrimonial home and that too by the man with whom, she contracted a love marriage, can very well be understood because the doors of her maternal home are closed for her.”

29	Shilpa Mittal v. State (NCT of Delhi)	(2020) 2 SCC 787	<p>Para 29. There can be no manner of doubt that if the intention of the legislature is absolutely clear from the objects and reasons of the Act then the Court can correct errors made by the person who drafted the legislation and may write down or omit/delete/add words to serve the purpose of the legislation and ensure that the legislation is given a meaning which was intended to by the legislature. The issue is whether in the present case we can clearly hold what was the intention of the legislature.</p> <p>31. No doubt, as submitted by Mr Luthra, there appears to be a gross mistake committed by the framers of the legislation. The legislation does not take into consideration the 4th category of offences. How and in what manner a juvenile who commits such offences should be dealt with was something that the legislature should have clearly spelt out in the Act. There is an unfortunate gap. We cannot fill the gap by saying that these offences should be treated as heinous offences. Whereas on the one hand there are some offences in this category which may in general parlance be termed as heinous, there are many other offences which cannot be called as heinous offences. It</p>
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			<p>is not for this Court to legislate. We may fill in the gaps but we cannot enact a legislation, especially when the legislature itself has enacted one. We also have to keep in mind the fact that the scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015 is that children should be protected. Treating children as adults is an exception to the rule. It is also a well-settled principle of statutory interpretation that normally an exception has to be given a restricted meaning.</p> <p>34. From the scheme of Sections 14, 15 and 19 referred to above it is clear that the legislature felt that before the juvenile is tried as an adult a very detailed study must be done and the procedure laid down has to be followed. Even if a child commits a heinous crime, he is not automatically to be tried as an adult. This also clearly indicates that the meaning of the words “heinous offence” cannot be expanded by removing the word “minimum” from the definition.”</p>
30	<p style="text-align: center;">C. Doddanarayana Reddy v. C. Jayarama</p>	<p style="text-align: center;">(2020) 4 SCC 659</p>	<p>Para 15. “School leaving certificate has been produced by the plaintiff and said to be signed by his father. The person who has recorded the date of birth in the school register or the person who proves the</p>

	Reddy		signature of his father in the school transfer certificate has not been examined. No official from the school nor any person has proved the signatures of his father on such certificate. Apart from the self-serving statement, there is no evidence to show that the entry of the date of birth was made by the official-in-charge, which alone would make it admissible as evidence under Section 35 of the Evidence Act, 1872. However, the High Court has not found any other evidence to prove the truthfulness of the certificate.”
31	Mohd. Anwar v. State (NCT of Delhi)	(2020) 7 SCC 391	<p>Para 14. “Pleas of unsoundness of mind under Section 84 IPC or mitigating circumstances like juvenility of age, ordinarily ought to be raised during trial itself. Belated claims not only prevent proper production and appreciation of evidence, but they also undermine the genuineness of the defence's case.</p> <p>15. As noted by the High Court, no evidence in the form of a birth certificate, school record or medical test was brought forth; nor has any expert examination been sought by the appellant. Instead, the statement recorded under Section 313 CrPC shows that the appellant was above 18 years around the time of the incident, which is a far departure from the claimed age</p>

			of 15 years.”
32	State of J&K v. Shubam Sangra	(2022) 20 SCC 1	Para 40. “Sub-rule (3) of Rule 74 referred to by us in Para 29 above, makes it abundantly clear that in the absence of the certificates mentioned in sub-clauses (i) to (iii) or in the event of any contradiction arising therefrom, the authority deciding the issue of age may refer the matter to a duly constituted medical board which, in turn, would record its findings and submit to the Juvenile Justice Board. The materials on record as looked into by us above reveal no manner of doubt that there are discrepancies in the certificates on record disclosing the date of birth of the respondent. We fail to understand as to why the courts below were not able to take cognizance of such discrepancies or contradictions. We are not at all impressed with the submission canvassed on behalf of the respondent that even if there are contradictions or discrepancies in the documentary evidence of record there is not a single date emerging on record on the basis of which it could be said that the respondent was major on the date of the alleged offence. It is a very unreasonable argument. That is not the correct way of looking at the core issue.

41. The correct way of looking at the core issue is to closely examine whether there is any cogent or convincing evidence as regards the correct date of birth of the respondent-accused and after ascertaining the same, reach to an appropriate conclusion. If, there is any doubt in this regard, there is no good reason why the matter should not be referred to a duly constituted medical board which shall, in turn, record its findings and submit to the Juvenile Justice Board. The word “may” should be read as “shall” having regard to the very object of sub-rule (3) of Rule 74.

42. It is a well-settled principle of interpretation that the word “may” when used in a legislation by itself does not connote a directory meaning. If in a particular case, in the interests of equity and justice it appears to the court that the intent of the legislature is to convey a statutory duty, then the use of the word “may” will not prevent the court from giving it a mandatory colour.

45. The plain reading of Section 8 referred to above indicates that whenever a claim of juvenility is raised before any court or the court is of the opinion that the accused person was a juvenile on the date of the

commission of the offence, then it is mandatory for the court to make an inquiry and in the course of such inquiry, the court may take such evidence as may be necessary, however, not an affidavit, so as to determine the age of such person. At the end of the inquiry, if the court finds a person to be a juvenile on the date of commission of the offence under subsection (1) of Section 8, then in such circumstance, the court is obliged in law to forward the juvenile to the Juvenile Justice Board for passing appropriate order and sentence.

56. Sub-rule (3) of the aforesaid Rule clearly mandates that while conducting an inquiry about the juvenility of an accused, the Juvenile Justice Board would seek evidence by obtaining the matriculation or equivalent certificates and in the absence whereof the date of birth certificate from the school first attended and in the absence whereof the birth certificate given by a corporation or a municipal authority or a panchayat. It is made clear by sub-clause (b) that only in the absence of the aforesaid three documents, medical information would be sought from a duly constituted Medical Board which will declare the age of the juvenile or child. Thus, it is only in the absence

			<p>of the aforesaid documents that the Juvenile Justice Board can ask for medical information/ossification test.</p> <p>63. Thus, this Court kept in mind the facts and circumstances attached to the production of documents/certificates, as required by the provisions of the Juvenile Justice Act before those documents could be relied upon. In other words, even if the documents are found to be prima facie correct, there may be facts and circumstances to alert the court to go into the inquiry to satisfy itself as to correctness of the claim. In the same breath, When any claimant or any of the parents or siblings in support of the claim of juvenility raised for the first time in appeal or revision depends on mere affidavits, it shall not be sufficient to justify the inquiry for determination of age unless there exist circumstances which cannot be ignored.”</p>
33	Manoj v. State of Haryana	(2022) 6 SCC 187	<p>Para 39. We are unable to approve the broad view taken by the High Court in some of the cases that family register is not relevant to determine age of the family members. It is a question of fact as to how much evidentiary value is to be attached to the family register, but to say that it is entirely not relevant would not be the correct enunciation of law. The register is</p>

being maintained in accordance with the rules framed under a statute. The entries made in the regular course of the affairs of the Panchayat would thus be relevant but the extent of such reliance would be in view of the peculiar facts and circumstances of each case.

40. In terms of Rule 12(3)(iii) of the Rules, birth certificate issued by corporation or municipal authority or a panchayat is a relevant document to prove the juvenility. The family register is not a birth certificate. Therefore, it would not strictly fall within clause (iii) of Rule 12(3) of the Rules. Even Section 94(2)(ii) of the 2015 Act contemplates a birth certificate issued by a panchayat to determine the age.

41. The appellant sought to rely upon juvenility only on the basis of school leaving record in his application filed under Section 7-A of the 2000 Act. Such school record is not reliable and seems to be procured only to support the plea of juvenility. The appellant has not referred to date of birth certificate in his application as it was obtained subsequently. Needless to say, the plea of juvenility has to be raised in a bonafide and truthful manner. If the reliance is on a document to seek juvenility which is not reliable or dubious in nature, the appellant cannot be treated to be juvenile keeping

			in view that the Act is a beneficial legislation. The provisions of the statute are to be interpreted liberally but the benefit cannot be granted to the appellant who has approached the Court with untruthful statement.”
34	Rishipal Singh Solanki v. State of U.P.	(2022) 8 SCC 602	<p>Para 33 What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:</p> <p>33.1 A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.</p> <p>33.2 An application claiming juvenility could be made either before the Court or the JJ Board.</p> <p>33.2.1 When the issue of juvenility arises before a Court, it would be under sub-section (2) and (3) of <u>section 9</u> of the JJ Act, 2015 but when a person is brought before a Committee or JJ Board, <u>section 94</u> of the JJ Act, 2015 applies.</p> <p>33.2.2 If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding</p>

stating the age of the person as nearly as may be.

33.2.3 When an application claiming juvenility is made under section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a Court, then the procedure contemplated under section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the concerned criminal court, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide section 9 of the JJ Act, 2015).

33.3 That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the

documents mentioned in Rule 12(3)(a)(i),(ii), and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

33.4 The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

33.5 That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the concerned criminal court. In case of an inquiry, the Court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of section 94 of 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if

worthy of such acceptance.

33.6 That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

33.7 This Court has observed that a hyper- technical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

33.8 If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the Court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

33.9 That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the

			<p>discharge of official duty would have greater credibility than private documents.</p> <p>33.10 Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the <u>Indian Evidence Act</u> viz., <u>section 35</u> and other provisions.</p> <p>33.11 Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in <u>Section 94(2)</u> of the JJ Act, 2015..”</p>
35	Vinod Katara v. State of U.P.,	(2023) 15 SCC 210	<p>Para 45. Thus, Section 7-A(1) of the 2000 Act and the proviso thereto provided that a claim of juvenility might be raised before any court and it shall be recognised at any stage, even after the final disposal of the case, and such claim shall be determined in terms of the provisions contained in the 2000 Act and the Rules made thereunder, even if the juvenile has ceased to be so, on or before the date of commencement of</p>

the 2000 Act.

46. Sub-section (2) of Section 7-A mandates that if the court finds a person to be a juvenile on the date of the commission of offence under sub-section (1), it shall forward the juvenile to the Juvenile Justice Board for passing an appropriate order, and the sentence, if any, passed by a court shall be deemed to have no effect.

49. In view of Section 7-A of the 2000 Act referred to hereinabove, applicable to the writ applicant herein, the plea of juvenility could be raised in any court, at any stage even after the final disposal of the special leave petition under Article 136 of the Constitution. In the case of the writ applicant herein, his special leave petition had also been dismissed by this Court. However, this Court is still obliged to consider the plea of juvenility taken by the writ applicant and grant him appropriate relief. The fact that the 2000 Act has later been replaced by the 2015 Act would make no difference.

62. The 2015 Act under Section 94(2)(iii) read with

			<p>Rule 12(3) of the 2007 Rules provides the legislative sanction for the conduct of ossification test or other medical age determination test available in the absence of other documentary proof of age i.e. matriculation certificate or birth certificate, which has to be given within 15 days from the date of such order. The test is to be conducted by the Child Welfare Committee (CWC). The provision mentioned herein is the basis for determining the age of a child under the 2000 Act which even includes a child who is a victim of crime in addition to a child in conflict with the law.</p>
36	<p>OM PRAKASH @ ISRAEL @ RAJU@ RAJU DAS</p>	<p>2025 INSC 43</p>	<p>Para 11. “A Juvenile Court is a species of a parent. A delinquent, who appears before the Court, is to be protected and re-educated, rather than be judged and punished. It is for this purpose, that the Court will have to press into service the benevolent provisions for rehabilitation introduced by the Legislature. A Juvenile Court assumes the role of an institution rendering psychological services. It must forget that it is acting as a Court, and must don the robes of a correction home for adeviant child.”</p> <p>21. We place emphasis on the words “even after the final disposal of the case” in Section 9(2) of the 2015 Act. As stated, this provision being the heart and soul</p>

of the entire Act, must be given its fullest meaning and interpretation. If the offence is committed by a child, it cannot be treated otherwise than as provided under the 2015 Act. After finding out the truth, necessary consequences must follow. In a country like ours, where society is fragmented due to various reasons including,

but not limited to illiteracy and poverty, the role which is assigned to the Court assumes great significance. Sufficient opportunities must be given to the child in conflict with law to get the benefit of the 2015 Act.

22. Merely because a casual adjudication has taken place, it does not mean that a plea of juvenility cannot be raised subsequently. This is for the simple reason that the plea of juvenility has not attained finality. So long as the right of a party subsists, one can never say that finality has been attained. In a case where a plea has been raised, but not adjudicated upon, the decision rendered thereunder would not amount to attaining finality. Likewise, when such a plea is not treated as one

under Section 9(2) of the 2015 Act in compliance with the procedural mandate specified thereunder, an order

			<p>rejecting such a plea would not be termed as a final one. To put it differently, even assuming a plea of juvenility was raised but not considered appropriately at the time of disposal of a Special Leave Petition/Statutory Criminal Appeal, a Review Petition, or a Curative Petition thereafter, it would not bar a competent Court from deciding the said issue by following due procedure. We make it clear that if an adjudication is based on due determination, then there may not be any room for another round of litigation. But, in a case where the plea was not treated as an application under Section 9 (2) of the 2015 Act and, the procedure mandated thereunder was not followed, the principle as aforesaid would certainly apply as the right of raising the plea of juvenility has not ceased and, therefore, subsists.</p>
37	<p>State of U.P. v. Anurudh,</p>	<p>2026 SCC OnLine SC 40</p>	<p>Medically Determining the Age of the Victim Juvenility can be claimed at any stage and that initial burden lies on the claimant. Documents like school certificate or municipal birth certificate are prima facie sufficient to establish juvenility, while medical tests cannot serve as the sole criterion. when evidence is borderline,courts are to lean in favour of Juvenility,</p>

although misuse must be guarded against.

A medical determination of age of a victim cannot be resorted to as a matter of course, much less mandated. It can only be employed in a given circumstance when the other stipulations of Section 94JJ Act are not /cannot be met.

Para 16. “Apropos the above discussion, it is clearly held that determination of age of the victim is a matter of trial and not at the stage of bail. If the age is under question, the bail Court may examine the documents produced to establish age, but it will not enter into the question of those documents being correct or not so. The mandate of Section 94 JJ Act is clear. The documents provided therein are to be utilized for determination of the age of the victim, and only in the absence thereof, will medical evidence be resorted”
