



Determination of Juvenility under Juvenile Justice (Care & Protection of children) Act, 2000

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History:

Since the dawn of human civilization, there has been tremendous urge to protect the helpless, weak, innocent and victims of violence and intimidation. Our ancient scriptures have also emphasized this fact of human behavior and laid down various methods to safeguard the interest of the child for its all-round development since its infancy.

With the advent of United Nations, the importance of properly rearing the child and affording him an opportunity for unraveling its latent potential in the years to come, were highlighted. The universal declaration of Human Rights adopted by the United Nations in 1948 emphasized the importance of child and declared that they are entitled to special care and assistance and also special protection.

Several provisions of the Constitution including clause (3) of Article 15, clause (e&f) of Article 39, Article 45 and 47 also impose on the state a primary responsibility of ensuring that all the needs of children are met and that their basic Human Rights are fully protected. On 20th November, 1989, the General Assembly of the United Nations adopted the convention on the rights of the child wherein a set of standards to be adhere to by all state parties in securing the best interest of the child has been laid down.

After undergoing a series of changes and evolution of several enactments in various states of India and efforts made at the international and national levels, the condition of children in various spheres have not substantially changed. They are often subjected to cruelty, exploitation and deprivation.

Prior to the enforcement of Juvenile Justice Act, 1986, the condition in respect of the implementation of the children Acts in various states was not at all satisfactory. Barring the states of Gujrat, Maharashtra, Karnataka, Andhra Pradesh, Kerala and Tamil Naidu, other states could not make much headway in this respect. Some states like Assam, Bihar, Himachal Pradesh, Madhya Pradesh, Rajasthan, Uttar Pradesh and West Bengal had enacted their respective children Act and partially implemented the same with inadequate infrastructure while

other states such as Arunachal Pradesh and Nagaland did not have children Acts. The Union Territories of Delhi and Puducherry had implemented the children Act, 1960(Central) at the relevant time.

Juvenile Justice Act, 1986

After the enforcement of Juvenile Justice Act, 1986 through the length and breadth of the country except Jammu and Kashmir, the entire scenario has undergone a remarkable change. Novel features had been introduced in this Act and the nomenclatures of some institutions at the committal stage have been changed to make them more meaningful. The renewal efforts to boost Juvenile Welfare activities in various spheres will usher in a new era of progress and prosperity.

This particular enactment of 1986 added a new dimension of Juvenile laws and matters related to it by bringing and inserting the word 'Delinquent' Juveniles. This enactment provided 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.

If for a moment we go back to history, it is evident that in the latter half of the 19th century, the then British Government felt the need for enacting a juvenile legislation in the country. Thus in 1850, the Apprentices Act was passed. It was an all India major to deal with the problem of juvenile deviance. In fact, it was the first juvenile legislation in India. The legislative majors in England had profound influence on the enactment of laws in India. The laws in India followed the British precedent and developed from the primitive and retaliatory approach of the rigid criminal courts towards a gradual acceptance of the humanitarian concept of re-education and protection of the child in need as a ward of the state.

Juvenile Justice (Care and Protection of Children) Act, 2000: With passage of time and striving to meet the new demands and to face new challenges, on 20th November, 1989, the General Assembly of the United Nations adopted the conventions on the rights of the child wherein a set of standards to be adhered to by all state parties in securing the best interest of the child has been prescribed. The convention emphasizes social re-integration of child victims, to the extent possible, without resorting to judicial proceedings. To achieve the various objectives fixed by the convention on the rights of the child, the U.N. standard minimum rules for the administration of Juvenile Justice, 1985 (The Beijing Rules) and the U.N. Rules for the protection of juveniles deprived of their liberty, the Juvenile Justice (Care and Protection of Children) Bill was introduced in the Parliament.

Interestingly, a new terminology came into existence in the form of "Juvenile in Conflict with Law" as compared to that of 'Delinquent Juveniles' provided under the earlier Juvenile Justice Act, 1986. The Juvenile Justice (Care and Protection of Children) Bill having been passed by both the house of Parliament received the assent of The President on 30th December, 2000. It came on the statute

book as the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000).

Besides various statement of objects and reasons enshrined in it, the one which catches the attention for the purpose of this topic is that, this Bill is separated into two parts to minimize the stigma and in keeping with the developmental needs of the juvenile or the child- one for juveniles in conflict with law and the other for the juvenile or the child in need of care and protection.

The Hon'ble Supreme Court of India in ***Arnit Das versus The State of Bihar (2000) 5 Supreme Court Cases 488*** while deciding Criminal Appeal no. 469 of 2000 on May 9th, 2000 it held that the term "Juvenile Justice" before the onset of delinquency may refer to social justice; after the onset of delinquency, it refers to justice in its normal juridical sense. The Juvenile Justice Act provides for justice after the onset of delinquency. The societal factors leading to the birth of delinquency and the preventive measures which would check juvenile delinquency legitimately fall within the scope of social justice. Once a boy or a girl has assumed delinquency, his/her treatment and trial at the hands of the justice delivery system is taken care of by the provisions of Juvenile Justice Act as the act aims at laying down a uniform juvenile justice system in the country avoiding lodging in jail or police lockup of the child and providing for prevention and treatment of juvenile delinquency, for care, protection etc. post-juvenility. The Hon'ble Supreme Court further held that the field sought to be covered by the act is not the one which had led to juvenile delinquency but the field when a juvenile having committed a delinquency is placed for being taken care of post delinquency. Thus the legislative aims and objectives go to show that this legislation has been made for taking care of the care and custody of a juvenile during investigation, inquiry and trial i.e. from the point of time when the juvenile is available to the law administration and justice delivery system and it does not make any provision for a person involved in an offence by reference to the date of its commission by him. The long title of the Act too suggest that the content of the Act is the justice aspect relating to juveniles. It was further held that the scheme of the 1986 Act contemplates its applicability coming into play only when the person may appear or be brought before the competent authority. A police officer or a Magistrate who is not empowered to act or cannot act as a competent authority has to merely form an opinion guided by the apparent age of the person and in the event of forming an opinion that he is a juvenile he has to forward him to the competent authority at the earliest subject to arrangements for keeping in custody and safety of the person having been made for the duration of time elapsing in between. The competent authority shall proceed to hold enquiry as to the age of that person for determining the same by reference to the date of the appearance of the person before it or by the reference to the date when the person was brought before it under any of the provisions of the Act i.e. Juvenile Justice Act, 1986. It further held that the use of the word "is" at two places in subsection(1) of Section 32 of the Act read in conjunction with " a person brought before it" also suggests that the competent authority is required to record the finding by reference to an event in praesenti before it the procedure prescribed by the provisions of the act has to be adopted

only when the competent authority finds the person brought before it or appearing before it to be under 16 years of age if a boy and under 18 years of age if a girl on the date of being so brought or such appearance first before the competent authority. The date of the commission of offence is irrelevant for finding out whether the person is a juvenile within the meaning of clause(h) of Section 2 of the Act. Thus it was held finally in the above stated precedent that the crucial date for determining the question whether the person is a juvenile is the date when he is brought before the competent authority.

However, the law laid down by Hon'ble Supreme Court in **Arnit Das versus The State of Bihar (2000) 5 Supreme Court Cases 488** was held to be not a good law by a constitution bench judgement of the Hon'ble Supreme Court in **Pratap Singh versus The State of Jharkhand and Anr. (2005) 3 Supreme Court Cases 551** where it was held by a majority of Hon'ble five judges that the reckoning date for the age of juvenile is the date of the commission of the offence and not the date when the juvenile in conflict with the law is produced before the competent authority or court. It was laid down that the law Juvenile Justice (Care and Protection of Children) Act, 2000 relates to both pre and post delinquency as the whole object of the said act is to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and the act being benevolent legislation and interpretation must be given which would advance the cause of the legislation that is to give benefit to juveniles. It is also a remedial legislation as it specially refers to international law such as the provisions of United Nations standard minimum rules for the administration of Juvenile Justice 1985 are incorporated therein. The Hon'ble Supreme Court in the above mentioned Constitution Bench Judgement has further affirmed the law laid down by it in **Umesh Chandra versus The State of Rajasthan (1982) 2 Supreme Court Cases 202** whereby it was held that the relevant date for determining the age of the accused for the purpose of juvenility and who claims to be a child is the date of occurrence and not the date of trial.

When a task is given for determining the juvenility under the new Act of 2000, we find that this new act not only recognizes a juvenile or a child for providing a protection and benefit of the social legislation, but also takes due care of 'Juvenile in conflict with law', 'escaped juvenile' and 'child in need of care and protection' under its relevant provision. By a plain reading of section 2(k) of the Act, 2000 where the definition of juvenile has been provided, it becomes apparent that the age of the person concerned is of paramount consideration for bringing him under the definition of juvenile under this new enactment.

Section 2(k) reads as follows: -

"Juvenile or child" means a person who has not completed 18th year of age: this provision is very much universal in its application, when it declares that any person who has not completed 18 years of age is a juvenile or the child within the meaning of this new act irrespective of his gender, his or her behavior or social attainments. Therefore, to qualify in this category, a person has to prove this fact that he is less than 18 years of age, the date on which his juvenility is questioned. Nevertheless, one should not be oblivious of this fact that for the purpose of determining the juvenility i.e. as to whether a person is juvenile or not, we have to take into consideration two important dates for the purpose. First is the date of his birth and second is the date when his juvenility is questioned. Without these two ends of the measuring rod, we cannot assess the age of a person who claims to be a juvenile under the act. It appears

and sounds easier for a juvenile to get his juvenility determined as the intention of the legislator seems to be very clear and liberal while enacting the Juvenile Justice (Care and Protection of Children) Act, 2000, when they haven't inserted any qualifying factor except the age for giving the benefit of this act to any person claiming as a juvenile. However, the same is not the case for those who fall foul with the laws or are alleged or leveled as delinquents or offenders. As for them, the act takes special care and has inserted Section 2(I) which reads as follows:

"Juvenile in conflict with law" means a juvenile who is alleged to have committed an offence.

Our country, our society, our courts are in majority of cases interacting with a class of persons who either commit offences or fall foul with laws and claim to be a juvenile for the purpose of being governed or provided the benefit of this benevolent social legislation. In fact, ever since the United Nations started deliberations on control of crimes, "Juvenile Delinquency" became an important topic. In 1955, and then in 1960 and again in 1965, this topic was discussed at length in the United Nation Congress on the prevention of crime and the treatment of offender held at Caracas in 1980 was the resolution on the development of minimum standards for juvenile justice.

While enacting this new Act of 2000, the legislature has taken due care of this vast majority of persons who are offenders, deviant, delinquents and fall foul with the laws and seek the protection of this act, claiming themselves to be juvenile while inserting the words 'Juvenile in conflict with law'. By a plain reading of Section 2(I), it appears that not only the offence as a qualifying factor bring this class of persons under the category of juvenile in conflict with law but a simultaneous factor of juvenility i.e. being less than 18 years of age also cumulatively bring this class under the definition of juvenile for the purpose of benefit under the new act of 2000.

By a deep reading of this Section 2(I), it is revealed that juvenile in conflict with law means a juvenile i.e. a person who has not completed 18th year of age who is alleged to have committed an offence. When we give our thoughtful view and consideration to this provision in the manner stated above, mysteries start to unravel. For determination of juvenility of this class of juveniles i.e. juvenile in conflict with law, two important factors emerge. First is the age, which must be less than 18 years and second is the allegation of committing an offence. The corollary which next emerges is that both the factors have to be assist cumulatively and not in isolation i.e. the alleged date of committing the offence must precede the date of the completion of 18 years of age. So, all juveniles may not be 'juvenile in conflict with law' but all juveniles in conflict with law must be a juvenile. Henceforth, a juvenile in conflict with law can only get the benefit of this new act 2000 when it is proved that he was juvenile i.e. less than 18 years of age on the date he is alleged to have committed an offence.

This is the primary reason for this juvenile legislation to provide for the protection, treatment and training of both delinquents and non-delinquents. Earlier also, the Children Act, 1960 which was applicable to all the union territories first made a clear distinction between the delinquents who fall foul with laws and the non-delinquents who were neglected, uncontrollable and destitute. That act also provided for two agencies at the trail level i.e. Children's Court and Child Welfare Board. The Children's court was to deal with delinquents who came into conflict with laws and the child welfare board had to take care of the non-delinquents who were in crime prone situation. Similarly, under this Juvenile Justice (Care and Protection) Act, 2000,

Juvenile Justice Board deals with the delinquents and Child Welfare Committee takes care of the non-delinquents.

In a case of juvenile in conflict with law where the court is empowered to determine juvenility, it has to determine whether the person concerned retained his juvenility on the date when he is alleged to have committed the offence i.e. he was less than 18 years of age on the alleged date of offence. The notable distinction between the definition of the 1986 Act and the 2000 Act is that in the 1986 Act, juvenile in conflict with law is absent. The definition of delinquent juvenile in the 1986 Act is referable to an offence said to have been committed by him. It is the date of the offence that he was in conflict with law. When a juvenile is produced before the competent authority and/or court he has not committed an offence on that date but he was brought before the authority for the alleged offence which he has been found to have committed. Thus, what was implicit in the 1986 Act has been made explicit in the 2000 Act.

The constitution bench of the Hon'ble Supreme Court in ***Pratap Singh versus The State of Jharkhand and Anr. (2005) 3 Supreme Court Cases 551*** summarized the discussion in the following terms:

- In terms of the 1986 Act, the age of the offender must be reckoned from the date when the alleged offence was committed.
- The 2000 Act will have a limited application in the cases pending under the 1986 Act.
- The model rules framed by the Central Government having no legal force cannot be given affect to.
- The court thus would be entitled to apply the ordinary rules of evidence for the purpose of determining the age of the juvenile taking into consideration the provisions of Section 35 of the Indian Evidence Act. Precisely 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 that person in the absence of the material on which the age was recorded.
- Section 20 of the Act of 2000 would be applicable when the person is below the age of 18 years as on 01.04.2001. For the purpose of attracting Section 20 of the Act, it must be established that on the date of coming into force, the proceedings in which the petitioner was accused was pending and on that day, he was below the age of 18 years. For the purpose of this new act, both the afore mentioned conditions are required to be fulfilled.

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