



The Legal Procedure for Age Determination of Children in Conflict with the Law:

Analysing Section 34 of the POCSO Act, 2012

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Issue Brief

The Legal Procedure for Age Determination of Children in Conflict with the Law:

Analysing Section 34 of the POCSO Act, 2012

II INTRODUCTION

The greatest challenge that we face in dealing with the juvenile justice system is to strike a balance by being both fair and just to the child in conflict with the law, and the victim.

The term 'child' is universally defined as any person under 18 years, as established by International law. As per [UNICEF](#)¹, the term 'children in conflict with the law' means any person under 18 years who has come in contact with the justice system for committing a crime or has been suspected of committing a crime. In India, children in conflict with the law are governed under [the Juvenile Justice \(Care and Protection of Children Act\), 2015](#)², which focuses on rehabilitating and reforming the children to reintegrate them into society. According to Section 2(13) of the Act, a 'child in conflict with the law' refers to a person who has been alleged or found to have committed an offence while being below the age of 18 at the time of its commission.

In [Salil Bali v. Union of India and Another](#)³, the Hon'ble Supreme Court stated that "One of the other principles which was sought to be reiterated and adopted was that a juvenile should be dealt with for an offence in a manner, which is different from an adult." Children are presumed to be innocent of any mala fide intent based on the principle of 'doli incapax' which means 'incapable of wrong'. Thus, it is necessary to differentiate between minors and adults as the justice system for children should focus on reintegration while justice system for adults focuses upon punishment and retribution.

The Protection of Children from Sexual Offences (POCSO) Act, 2012, is a landmark legislation framed in the best interests of the children to protect them from sexual harassment and sexual offences. Section 34(1) of the POCSO Act states that if the offence is committed by a child, then it shall be dealt with under the Juvenile Justice (Care and Protection of Children) Act, 2015. Under Section 34(2) of the POCSO Act, it states the procedure to be followed to determine the age of the child when the child's age is not known or challenged.

The legal determination of age of a child is crucial as it provides for a fair trial for both the accused as well as the victim. However, challenges persist as the trial court must determine the age of the person accurately and it relies on a multi-faceted approach of documentary evidence, medical evidence, benefit of doubt and others.

II BACKGROUND

Offenses committed by individuals below 18 years of age are termed 'juvenile delinquency,' whereas similar acts committed by adults constitute 'crime'. Before the 18th century, children above seven years of age were treated as adults under criminal law. In 1825, the House of Refuge opened its doors in New York City where children capable of reformation were sent to these houses which involved the process of guidance, discipline and education. The first juvenile court was established in 1899 in Cook County, Illinois, USA. With industrialization in the 19th century, there was a shift in societal perceptions of childhood, leading to increased focus on education and juvenile justice reforms.

The importance of age determination can be underpinned for several factors:

As earlier stated, the doctrine of doli incapax which means that children are incapable of committing crimes as they are not mature enough to understand the difference between right and wrong, good and bad.

Another principle is welfare approach to juveniles. There are several external factors that motivate children to commit crimes like poverty, family characteristics, environment, illiteracy, hunger and others and thus, there is a high chance of reformation in children.

Further, it is also important that children grow out of their crimes rather than facing stigmatisation for their entire lives.

As per NCRB data, crimes committed by children in India in 2022 were 30,555 crimes. The states that topped the list were Madhya Pradesh and Maharashtra.⁴

In India, children in conflict with the law are governed by the Juvenile Justice (Care and Protection of Children) Act, 2015, which replaced the earlier 2000 Act. This act emphasized a child-friendly approach, focusing on care, protection and correction. It also created a separate category of children between the age of 16-18 years who can be tried as adults who have committed heinous crimes.

On the other hand, The Protection of Children from Sexual Offences (POCSO) Act, enacted in 2012, as amended in 2019 protects children against crimes specifically sexual harassment, sexual abuse and pornography.

The process of age determination under Indian law is governed by both the POCSO Act and the Juvenile Justice Act. Section 34 of the POCSO Act aligns with Section 94 of the Juvenile Justice Act, ensuring that minors accused of or victimized in sexual offenses are identified correctly and treated accordingly under the appropriate legal framework.

II SECTION 34 OF THE POCSO ACT

The bare reading of Section 34 of the POCSO Act envisages a situation where the offender is a child, and Section 34(1) clearly states that where the offender is a child, the POCSO Act will have no jurisdiction and the Juvenile Justice Act, 2015, will be applicable. Since the POCSO Act does not specify the procedure for age determination, Section 94 of the Juvenile Justice Act provides the legal framework for this process.

As per Section 94 of the Juvenile Justice Act, whenever any person is brought before the Child Welfare Committee or Juvenile Justice Board and there are reasonable grounds to doubt the age of the person, then the Special court shall determine the age of the child and record the reasons in writing. The documentary evidence to determine the age of the child is a Birth certificate by municipal authority or school records. In the absence of this documentary evidence, the court shall order for an ossification test or any other medical test to determine the age of the person. This determined age shall be considered as the true age of the person.

The 'Ossification' test determines age based on the 'degree of fusion of bone' by taking the x-ray of a few bones. Bone age indicates the biological and skeletal maturity of the person and thus, helps in the determination of the age.

In cases where medical opinion is obtained and the age is provided as an estimate or as a range, then the margin of one year on the lower side shall be given to the accused, following the underlying objectives of the Juvenile Justice Act.

In [Jarnail Singh v State of Haryana](#)⁵, the Supreme Court stated the procedure to be followed in

determining the age of the child while also stating that the age of the accused must be determined within thirty days of an application being brought before the court. It also stated that the benefit of the doubt in case of a medical report must go to the accused.

In another case of [Rajak Mohammad v State of Himachal Pradesh](#)⁶, the Hon'ble Supreme Court where the convict was acquitted of the charges of kidnapping and sexual assault by providing him the benefit of the doubt as his age was found to be between 17-19 years based on a radiological exam.

It must be remembered that medical opinion must be sought only when documentary evidence is absent, and the Courts must be careful in determining the age of the accused and should not over-rely upon medical evidence. In [Mukarrab](#)⁷ case, it was held by the court that,

“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 circumstances.”

In [Shah Nawaz v State of UP](#)⁸, the court laid down the hierarchy of evidence to be tested as follows,

1. Primary Evidence: A matriculation or equivalent certificate.
2. Secondary Evidence: The date of birth certificate from the first school attended (excluding play school).
3. Tertiary Evidence: A birth certificate issued by a municipal authority or Panchayat.
4. Quaternary Evidence: In the absence of all the above, a medical opinion is sought from a duly constituted board.

This hierarchy ensures that the most reliable documents are used to determine the age of the accused.

II CHALLENGES TO AGE DETERMINATION

Determining the age of the accused is often challenging due to the various complexities involved. The challenges include the absence of official birth records, parents often giving the wrong date of birth at the time of admission in school or recording different dates of birth at different schools, and medical opinion is also not considered accurate. Courts have acknowledged these challenges in several judgments, as discussed below.

In [Umesh Chandra v State of Rajasthan](#)⁹, the Supreme Court observed that it is not uncommon for parents to change the age of their child to get some benefit like appearing in an examination or some public service. In [Daya Chand v Sahib Singh](#)¹⁰, the court observed different dates of birth being recorded at different schools and noted the tendency of parents to record lesser ages at schools. In such a case, the court held that medical opinion must be sought.

There are several documents to be scrutinised to determine the age of the accused, and the court has ruled in different cases about the validity of documents.

When determining the age of an accused, official birth records should be given primary consideration. In [Santenu Mitra v. State of West Bengal](#)¹¹, the court held that birth records maintained by government

authorities are presumed to be valid under Section 35 of the Indian Evidence Act, 1872.

In [Pratap Singh v. State of Rajasthan](#)¹², the court ruled that school records are a reliable form of evidence for determining the age of an accused. But, in [Parag Bharti v State of UP](#)¹³, when the school evidence is produced but it still raises doubts of juvenility, then medical opinion must be sought in such cases. School leaving certificate can also be a reliable document but only when it is free from doubts. When the school leaving certificate is produced after the accused has left the school, or there is no proper registry of the school, in such cases, the school leaving certificate is not relied upon as in the case of [Ravinder Singh Gorkhi vs. State of U.P.](#)¹⁴

In case of conflict of age recorded in school certificate first attended and medical certificate, it has been held by the court that school certificate must be held valid as medical evidence is to be taken into consideration only in the absence of documentary evidence.¹⁵

Courts have also ruled certain documents as unreliable for age determination. In [Punit Rai v. Dinesh Chowdhary](#)¹⁶, the court held that school admission registers alone cannot serve as conclusive proof of age. Entries of family registers also cannot be conclusive proof of the age of the accused¹⁷. Affidavit of parents regarding date of birth or age of Juvenile cannot be taken into account for the determination of the age of the accused.¹⁸ Entries made in electoral rolls are also not conclusive.¹⁹

A significant challenge in granting juvenility is determining the precise age at which an individual qualifies for juvenile status. The Supreme Court first addressed this issue in [Pratap Singh v. State of Jharkhand & Anr.](#)²⁰, ruling that juvenility must be determined based on the age of the accused at the time of the offense, rather than at the time of trial or cognizance by the court. This principle was reaffirmed in [Hari Ram v. State of Rajasthan & Anr.](#)²¹ Furthermore, the court has established that the burden of proving juvenility rests on the accused, while the court is responsible for thoroughly examining the evidence presented.²²

II PROPOSED SOLUTIONS

The determination of an accused's age plays a pivotal role in the juvenile justice system, ensuring justice, fairness, and accountability. Given the complexities involved, the POCSO Act and the Juvenile Justice Act seek to balance the rights of both the accused and the victim, ensuring a fair trial. Courts have consistently emphasized the importance of age determination and have provided clarity on the legal procedures governing it.

However, challenges persist, and addressing them requires effective reforms:

Strengthening the Legal Framework – A stringent and transparent legal process must be followed to determine a child's age. Official birth and school records should be digitized to prevent discrepancies and ensure immediate access when required. Courts must ensure that medical examinations remain a last resort, used only in the absence of reliable documentary evidence.

Creation of a specialized authority for age determination under the Ministry of Women and Child welfare: A dedicated authority under the Ministry of Women and Child Development could maintain a centralized digital registry of verified birth data. With the [Bharatiya Sakshya Adhinyam, 2023](#) (replacing the Indian Evidence Act, 1872) recognizing digital documents as admissible evidence, such an authority could issue digitally verifiable age certificates easily accessible to courts.

Addressing Document Tampering: The POCSO Act could be amended to make the falsification or tampering of school records a specific punishable offence.

Aadhaar and Civil Registration Linkage: Another effective solution could be the mandate linking of Aadhaar and Civil Registration Systems, ensuring every child's age is traceable and verified.

As the courts have often observed, "Juvenility is not merely a state of body but a state of mind." Protecting children must go hand in hand with ensuring accountability for their actions. A justice system that promotes both rehabilitation and responsibility will truly uphold the principles of justice and the welfare of society.

ENDNOTES

- 1 The United Nations International Children's Emergency Fund
- 2 The Juvenile Justice (Care and Protection of Children Act), 2015
- 3 AIR 2013 SUPREME COURT 3743
- 4 NCRB Crime Report 2022", National Crime Records Bureau, <www.ncrb.gov.in> accessed 12 March 2025.
- 5 CRIMINAL APPEAL NO. 1209 OF 2010
- 6 (2018) 9 SCC 248
- 7 Mukarrab and others v. State of Uttar Pradesh 2016 sec OnLine SC 1413
- 8 2024:AHC:123860
- 9 AIR1982 SC 1057
- 10 (1991) 2 SCC 438
- 11 AIR1999SC1587
- 12 2005(2) SCJ
- 13 Parag Bhati(Juvenile)Thr.Legal ... vs State Of U.P. on 12 May, 2016
- 14 2006 (55) ACC 814 (SC)
- 15 Ram Suresh Singh vs. Prabhat Singh (AIR 2009 SC 2805)
- 16 (2003) 8 SCC 204
- 17 Bahadur vs. State of U.P (2009 (67) ACC 427 (Allahabad))
- 18 Rakesh Kumar Verma vs. State of U.P. & others - 2 2000 (4) AWC 2722 (Allahabad—D.B.)
- 19 Sushil Kumar vs. Rakesh Kumar - 4 (2003) 8 SCC 673.
- 20 supra
- 21 Hari Ram v. State of Rajasthan & Anr., (2009) 13 SCC 211
- 22 Jitendra Singh @ Babboo Singh v. State of U.P. (2003)



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