

OSSIFICATION TEST: THE JUDICIAL REVIEW

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Abstract

The age determination is the paramount importance under the judicial system by ascertaining the age of the child whether he comes in the preview of the juvenile act or not. The juvenile justice act, 2015 has given special privileges to the accused who have appeared juvenile during the time of the offence. The importance of these provisions has to be a necessary aspect under this system and due to the introduction of the judicial waiver system under the act the special privileges are less for the accused for the time being. As under the judicial waiver the accused will be treated as based on the crime committed, if the accused has committed the heinous crime then he'll be treated as major rather than treated as a minor. The ossification test will be helping the judicial system to prove the age of the person whether he or she will be falling under the category of the juvenile justice act or not. In the present research the importance and the loopholes have been discussed in relation to this test and what more modifications can be done to give the accurate result and there will no misuse of this test or the provisions.

Introduction

In the present time it has been observed in society that crimes done by children under the age of 18 have increased most significantly. It has been observed by the child welfare committee of India that the reason behind the crime is depended on the psychology of the child behind that crime or the upbringing of the child or the lack of education among those children who have committed the crime. The main difficulty that has been faced by CWC is the age determination of the child due to lack of legal documents or any other reason. This means the committee has to decide that whether the child has to be treated as a juvenile or not. Most of the time these children's are used as an instrument for committing the crime, as they were manipulated to commit it as they don't have proper knowledge of the consequences that will happen after committing the crime. As in this aspect the Juvenile Justice act,2015 plays a paramount

importance in determining the age of the accused or the victim that whether he or she has been covering the aspects of the act or not. The importance of age determination has been given more importance in the present scenario due to the introduction of the judicial waiver system in the Juvenile Justice act, 2015. A judicial waiver allows the accused to be treated as major if he has committed the heinous crime and his age is between 16 to 18 years.

The provisions that is present for the age determination is lean heavily in the favor of the offenders. As in this CWC plays a crucial role to decide the age, in the normal scenario the committee will decide the age based on physical appearance, if the accused physical appearance is looking below 18 years then he'll be prosecuted as a juvenile. In the other scenario the legal documents have to be verified by the members of the committee to decide that whether the accused is juvenile or not as documents can mark sheet or birth certificate or any other related document that will be important for the verification of age. In the absence of any of these documents the committee will go further for ossification test or some other medical test for the determination of age. But the ossification test is preferred more in these types of scenarios. This is the primary test that has been held by the medical experts for determining the age of the accused by testing the bones or layer that is present on the bones. Regarding the determination of the age under section 94 of the Juvenile Justice act, 2015 various guidelines have been given and under this ossification test is mentioned. If the documentary evidence is present then no test will be done on the accused or the victim because the court will only rely on the documentary evidence as it is the primary evidence¹ under the Indian evidence act, 1872. Sometimes it becomes more difficult to rely on the school certificates because the fake evidence was presented before the court of law. Most of the schools were responsible for fabricating the age of their students by producing fake documents or giving the wrong information to the officials. In India no other method is preferred for the age determination apart from the ossification test for the purpose of the JJ act. This test has been separately and specifically mentioned in the act by showing the legislative bias in the favor. In the various occasions the credibility of the test has been questioned which raises the doubt over the context of the juvenile system in the country.

¹ Section 62, Indian evidence act, 1872: Primary evidence

In the case of *Ravindra Singh Gorkhi vs. State of Uttar Pradesh*² the court rejected the school leaving certificate of the accused as the evidence is not satisfactory and it is not fulfilling the criteria of Indian evidence act. In this case the court also found out that no proper register was maintained by the school authorities and the original document was not produced before the court of law. The register was also not produced because it was not made in the ordinary course of business. The certificate which has been produced before the court was fake and it was concluded in the case that the certificate was made for that case only. The court rejected the documentary evidence in this case for determining the age of the accused.

Reliability of Evidences

The juvenile board plays an important role in determining the age of the accused and also the culpability of the offender. In the present act the board has given the extraordinary power to conduct the preliminary enquiry to determine the maturity of the accused of committing the offence. Due to the judicial waiver system in the present scenario it has been stated by the board that the minor would be treated as major if he has committed a heinous crime. After that, his maturity and capability will be seen by the board by doing the preliminary test on the accused whether he is capable of committing the offence or he has been manipulated to the offence. The board has categorized the offences into three categories that the offence is committed of low, medium or high risk category. After the determination of the risk principles the juvenile will be deployed to the places of safety which will give treatment programs to the children's and helping their psychological state to recover and by telling them the consequences and risk of the offences they have committed. The three layer procedure has been followed by the board to determine the age of the child. Firstly they will assume the age based on physical appearance of the child at this stage the presumption is drawn in the favor of the juvenile board. Based on this if the child appears to be less than 18years of age then the child welfare committee will note down the date on the basis of presumption and will not wait for any confirmation. At the second stage the documentary evidence will be seen by the board such as a matriculation certificate or any other

² (2006) 5 SCC 584

document which is confirming the age of the child. Documentary evidence is accepted by the court as it is treated as the primary evidence under the Indian evidence act.

In the case of *Birad mal singhvi vs Anand Purohit*³ the court has stated that the entry relating to the Date of birth in the school register has to be established in the court of law so it can have the evidentiary value. If the register is established in the court and the document has to be admissible under section 35 of the Indian evidence act then it has to satisfy the three conditions firstly, the entry on which the counsel is relying must be one in a public or official book of record, secondly the entry of the book must be stating a relevant fact or fact in issue. Third and the last the entry must be made by the public servant in discharge of its official duty. The entry made in the school register for the age of the child must be admissible but entry relating to the age of the child in the school register has not the evidentiary value to prove the age of the person. In *Nirbhaya's*⁴ case the age of the accused was 17 years and six months but due to the nature of the crime that has been done by the other members and also done by him he has to be treated as major, but at the time of the incident his age was 17 and due to the documentary evidence that has been submitted before the court of law he was treated as a juvenile as the prosecution also demanded to do ossification test of the accused but due to the presence of the documentary evidence their demand was rejected by the court of law.

In many of the cases the court has rejected the school documents relating to the determination of age as in *Ravinder singh Gorkhi*⁵ case the court has rejected the matriculation certificate as it is not fulfilling the criteria of the evidence act. The court also found out that no proper register was maintained by the school authorities and the original document was not produced before the court of law. The certificate which has been produced before the court was fake and it was concluded in the case that the certificate was made for that case only.

³ AIR 1988 SC 1796

⁴ (2017) 6 SCC 1

⁵ *Id*

There are various scenarios regarding the information that has been submitted in the registers of the public office or by the public officer which was not correct as there was a case of *Ashwani Kumar Saxena Vs State Of Madhya Pradesh*⁶, in this court held that the enquiry for the determination of the age that has been done under Juvenile justice act has nothing to do with an enquiry under other legislations such as for promotion or the retirement purpose. There can be various situations for the entry of the child under the public register or for the relation of age regarding to the case that has been done under the school certificate or panchayat register cannot be correct. Mentioning in the Gorki case the scam was found the principle was making the fake matriculation certificate on behalf of the child to prove them minor under the act. But the court or the committee which is functioning under the juvenile justice act cannot be provoking the enquiry or not expected to hold such enquiries for determining the certificates in the public office is correct or not. The court also said to the committee, if the documents relating to the determination of the age were found fabricated or fake then they have to do the medical test of the accused. When the determination of the age of the victim becomes the question of law that whether the verification of the child has to be done or not when the child's appearance is showing him minor.

In *Jarnail Singh vs. State of Haryana*⁷ the court look out for the first time on rule 12 of the act that deals with the child in conflict with the law but also reading in the extending view of the rule also raises some questions on determination of the age of the child. In the same view of the accused and relating to the victim the court has mentioned the various rules and also said that in seeking the language with the legislation this rule is used for both for the victim and for the accused for the determination of the age, no such disqualification should be made in this rule of law.

The third stage that has been taken by the committee for the determination of the age is based upon the medical evidence that has to be taken by the court in the absence of documentary evidence such as aadhar card or matriculation certificate. The primary test is taken up the by

⁶ AIR 2013 SC 553

⁷ (2013) 7 SCC 263

court and the medical experts have relied on for the determination of age is ossification test. In this test the human bones are remodeled and a new layer of the model is placed. The test is based on this phenomenon hence known as the ossification test. The test, (2013) 7 SCC 263 results are considered under section 45 of the Indian evidence act which is also stating about the medical opinion from the medical expert.

In the case of *Mahadeo vs state of Maharashtra*⁸ the court has relied upon the various statements that have been stated during the course of trial by the counsel was that, the counsel for the appellant find the fault by mentioning PW8 as the evidence and said that the doctor during the ossification test has told the age of the prosecutrix is ranging between 17 to 25 years. Even the trial court has also found out that relying on the said opinion of the PW8 will not be enough for the court to decide the age of the prosecutrix. As the proper medical test such as the ossification test has to be done so the age of the person can be identified till then the counsel can rely on the statutory provisions of the JJ act and Rule 12 of the specific act for the determination of age. The determination of age has been done in rape cases also but it has been also said by the court that the prosecution cannot rely on the age of the victim only based on the ossification test as other documents has to be submitted before the court of law.

In *State of M.P vs Munna alias shambhu nath*⁹ the court has held the accused not guilty due to lack of evidences in the case, as the accused was charged with rape of the minor but in this case no matriculation certificate has been submitted to the court for proving the age of the victim, when the doctor has done the ossification test of the victim it was stated that the girl is under 16 years of age at the time of the incident but the doctor was never examined in the court so the higher court has rejected the examination report of the test. Then the principle was examined in the court for proving the age of the minor but due to not maintaining the school register the proper age was not proved. By mentioning Birad lal case the court also said the information present in the school register has not the evidentiary value because prosecution cannot raise it convictions on the basis of approximate age.

⁸ AIR 2013 SC 637

⁹ 2015 SC 821

In *State of M.P vs Munna Singh*¹⁰ the court held, the X ray report of the ossification test cannot be believed, as the doctor who has examined the victim never appeared before the court and the test has not been done by the doctor. In the absence of any legal documents the prosecution was not able to determine the age.

The determination of the age that has been done by the means of radiological examination creates ample of doubt in a court of law and it is also not possible for the court to decide the age of the person based on the radiological examination. The same thing happened in the case of *Rajak Mohammad vs The State Of Himachal Pradesh*¹¹ it was stated by the court it is correct the determination of age has been done by radiological examination cannot determine the exact age of the prosecutrix and hence the benefit of the doubt relating to this report will be going in the favor of the accused and hence the prosecution has been failed to establish the accurate age of the victim with the help of that test and the accused will be charged based on the rest of the charges.

Margin of Error and Solution for Ossification

The major flaw that has been established in recent years is the estimation of age by this test is not determining the accurate age of the person as it gives the range of the age in which the person lies. It is due to its biological nature of the test, the age differs from the legal age or the age that is written on the legal documents. Sometimes the variation is shown by four years if the single test is conducted by the medical expert. When this test is conducted by the practitioner several X-rays has to be done at different angles of the bone and various part of the bodies. This mainly includes the shoulder and the wrist. This is also due to the difference in the genetic distinction these variations came up and these variations have been seen in the different parts of the country.

¹⁰ *Id*

¹¹ (2018) 9 SCC 248

The individual maintains skeletal maturity at the age of 15 years and sometimes the maturity comes up at the age of 20 years. The nature of the deformities have not been seen in these test for example if the child is suffering from the deficiency of vitamin D then the deformity caused on the bone cannot be seen by this test so the age difference can be shown by this. The UNICEF also reported in its report that almost 35 percent of the child are suffering from the deficiency of Vitamin D which leads to skeletal deformities and it will be problematic to decide the standard age for every skeletal structure. Due to these deformities the margin of error should come up in the ossification test. The person has to satisfy the court by giving sufficient reason and evidence so that the age should be decided in his favor otherwise the burden would be lied on the court.

In the case of *Mukkarab and ors. Vs State of UP*¹² the court observed in various circumstances that in the absence of the legal document it becomes very difficult for the court to determine the age of the person and it becomes the discretion for the judges to pick and choose the evidence. The views were also stated that to prove the claim of juvenility the claimant must produce the material which has to be prima facie and satisfy the court and the burden will lie on the party to prove the certain age. It is also difficult for the state to choose which documents will be necessary for the determination of the age but according to rule 12¹³ of the act the documents are being mentioned are enough to prove the age of the person. If there is a benefit of the doubt that the documents are not reliable then medical tests have to be done and it is the last option under the rule that is present for determining the age. The criteria for the determination of the age will be applicable for the accused as well as the victim.

The variations of the age are very high in some of the cases the same thing has happened in the case of *Sandip Samadhan Shirsat vs State of Maharashtra*¹⁴ the prosecution has challenged the documentary evidence because of the tampering as the accused has presented the school certificate for proving his age at the time of the incident he was juvenile as he was charged with

¹² 2016 SCC Online SC 1413

¹³ Rule 12 Juvenile Justice Act, 2015: Provision relating to determination of age

¹⁴ 2019 SCC Online Bom 3105

section 375¹⁵ IPC but the session court and high court has stated the different statements in the mentioning of the age as the high court has also verified the municipal records but the proper record relating to the birth was not found as in the birth certificate that has been submitted by the zila parishad was in 1995 but according to the admission in the school it was the date of birth is of 2003. The radiological test and X rays that have been taken up by the different medical experts have told the age of the accused is above 18 years of age but due to the submission of the school certificate the court has to rely on the primary evidence and the accused was juvenile at the time of the incident.

The solution that has come up for the ossification test and the discrepancies that have come up by this test. For removing the discrepancies the test they can do for the determination of age is used in forensic dentistry and is also used by the U.S immigration for the age determination. Under this test the development of the wisdom teeth or the 3rd molar test will be observed by the medical officer. This test is specifically for children ranging between 15-19 years old and it is also suitable for the purpose of JJ act. This is so much suitable for children because the development of the wisdom root take place in this period. In the Indian context this test is very much reliable as the roots are protected by the hard and soft tissue so no damages are caused to the roots so easily. This also shows the little deviation .75 years of the age of the person rather than showing 2-4 years of variation.

In the recent case of *Ram Vijay Singh vs State of Uttar Pradesh*¹⁶ the Supreme Court stated that the ossification test is may be useful but it is not conclusive in nature. In the present appeal the accused is relying on the family register that is maintained by panchayat and aadhar card and the order of the High court in 1982 that has granted his bail is based on radiology examination in which it was stated that at the time of the offence the accused was juvenile and ranging between 15-17 years. But the Supreme Court has also taken various records and the statement that has been given by the doctor for age determination and for the deceased that he has suffered multiple injuries at the time of the incident. The court also stated that they have taken the medical

¹⁵ Section 375 IPC: Rape

¹⁶ Criminal Appeal No. 175 Of 2021

evidence but it is not conclusive and incontrovertible nature. The court has appreciated the evidence that has been submitted to the court and they have found out the guilt against the accused and has no further findings of merit in this case.

Conclusion

In the present scenario the ossification test has been done at a large scale and the consistent practice has not been evolved yet rather by the court or by the medical staff that has been appointed by the court to do the test. The court has to analyze this problem on a serious note to maintain the specific centers for the ossification test and the proper medical team has to be appointed for doing these test. Proper guidelines have to be mentioned for the victim or for accused and these guidelines has to be explained to them that how will court rely on this test and how the age limit of the person will be set on the basis of this. The provisions of the Juvenile justice act being beneficial for the victim as well for the accused but due to some loopholes in the laws and rules of the act, they are being misused by the people for wasting the time of the court and the justice would be served on time due to this problem. The age determination has to be done at the earlier stage by the officials who has taken the accused into custody and also by the magistrate so the question of juvenility cannot be raised in between the trial.