JOURNAL OF THE INDIAN LAW INSTITUTE

VOLUME 51 APRIL-JUNE 2009 NUMBER 2

QUAGMIRE OF AGE ISSUES UNDER THE JUVENILE JUSTICE ACT: FROM INCLUSION TO EXCLUSION

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I Introduction

TAKING COGNIZANCE of the constitutional provisions[1] directing the state to ensure "that all the needs of children are met and that their basic human rights are fully protected"; the ratification by India of the Convention on the Rights of the Child (hereinafter CRC) prescribing a set of standards to be adhered to by all state parties in securing the best interests of the child on December 11, 1992; and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international instruments, it was found expedient to enact the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter the JJA 2000):

> [T]o consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation and for matters connected therewith or incidental thereto.

The JJA was brought into force on April 1, 2001 and it repealed and replaced the Juvenile Justice Act, 1986. Significant amendments have been made in the JJA 2000 by the JJ (Amendment) Act, 2006. Since its amendment, the JJA 2000 authorises the central government to make rules on all the matters on which state governments can make rules and enjoins the state governments to make their rules in accordance with the model

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1. Among others, cl. (3) of art. 15, cl. (e) and (f) of art. 39, arts. 45 and 47.

rules framed by the central government, so far as is poracticable.[2] Pursuant to this amendment, the central government has notified the Model Rules 2007 on October 26, 2007, which are binding on all states till the states make their own rules.[3]

Even though the JJA 2000 has made a complete departure from the welfare approach of the era in which the first Children Act was passed in 1920 in Madras and incorporates the rights approach established by the CRC since 1989, it, like its predecessors, applies to two categories of children: delinquent children rechristened as 'juveniles in conflict with law',[4] and neglected children, now referred to as 'children in need of care and protection'.[5] However, the most crucial issues under all the enactments since 1920 have been the issues relating to age which determine the applicability of the Act in a given case. The cut-off age defining a child under these legislations differed but these Acts applied to children below the specified age. The JJA 2000 defines a child or juvenile as a person who has not completed the age of eighteen years[6] in contradistinction to the definition of 'juvenile' as a person below the age of sixteen years in case of a boy and below the age of eighteen years in case of a girl under the JJA 1986.

Given the cut-off age it should have been simple to apply the JJA 2000 to all those children who have not completed the age of eighteen years. However, the number of issues raised in relation to age gives a glimpse of the complexity of this simple proposition. In order to determine if a person below the age of eighteen may be dealt with or not under the JJA in a given case, many questions need to be addresed. Most importantly:

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2. S. 68 reads: 1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section, and where any such model rules have been framed in respect of any such matter, they shall apply to the State until the rules in respect of that matter is made by the State Government and while making any such rules, so far as is practicable, they conform to such model rules.

3. R. 96: Application of rules - It is hereby declared that until the new rules conforming to these rules are framed by the State Government concerned under section 68 of the Act, these rules shall mutatis mutandis apply in that State.

4. S. 2 (l): Alleged to have committed an offence.

5. S. 2(d): Destitute; found begging; street or working child; living with an abuser; mentally or physically challenged or terminally ill without care; living with unfit or incapacitated parent; orphan; runaway; abandoned; surrendered; exploited / abused for sexual purposes, illegal acts, unconscionable gain; vulnerable to drug abuse or trafficking; victim of armed conflict, civil commotion or natural calamity.

6. S. 2(l).

Who has the duty to raise the question of age – child, prosecution, police, or magistrate? Is the court bound to hold an age determination inquiry in all cases whenever an accused claims to be a child? On whom is the burden to ensure that evidence is forthcoming to prove age - magistrate, prosecution, or child? Who should determine age – only competent authority under the JJA or any magistrate? When can the ordinary magistrates determine age? Where should the 'accused' remain during age determination when the ordinary magistrates decide to determine age themselves? If the question is not raised at the first instant and is raised after committal to a session judge, can the session judge determine the age or should the case be transferred to the juvenile court for age determination? At what stage the plea of child status may be raised? What procedure should be followed for determination of age? How to determine age in the absence of birth certificate? Should documentary evidence be preferred over medical evidence? How reliable is the medical evidence? In which cases should medical evidence be preferred over documentary evidence? How should the court decide the question of age if there are conflicting evidences? Whether age of the accused should be proved beyond reasonable doubt or can it be determined by preponderance of evidence? Should a person whose age cannot be determined exactly, be given the benefit of doubt and be treated as a child or juvenile? When should the child be below the specified age for applicability of the JJA? What will be the relevant date to determine age in continuing offences? What should be done if the person ceases to be eighteen years of age during the pendency of proceedings? Can a child above the age of sixteen years be dealt with by the juvenile court in view of the prohibition contained in section 27 of the Code of Criminal Procedure?

Does the JJA, 2000 apply to above sixteen-under eighteen years old boys who committed an offence prior to April 1, 2001 and who were being tried by ordinary criminal courts as they did not fall within the definition of juvenile under the JJA 1986?

Does the JJA, 2000 apply to those boys who were above the age of sixteen but below the age of eighteen on the date of offence and were sent to prison by an ordinary criminal court and were still in prison on April 1, 2001 when the JJA 2000 came into force raising the age to eighteen years for both boys and girls?

Some of these issues have been considered by courts with differing results. Some have been specifically clarified or addressed by the JJ

(Amendment) Act, 2006 (hereinafter referred to as the JJAmA).[7] Many are still waiting categorical answers and development of the best practice in those circumstances.

This paper scrutinises the judicial decisions and the amendments in the JJA 2000 on the issues relating to age mentioned above in the next three parts. The first part focuses on the procedural issues relating to age and the second part on the evidentiary issues relating to determination of age. The third part considers the issues relating to applicability of the Act and focuses primarily on two aspects, one, relevant date for age determination and second, applicability of the JJA to pending cases. The paper concludes that there is a pronounced shift in the approach of the apex court from inclusiveness to being exclusionary contrary to the provisions and scheme of the JJA 2000 as amended in 2006.

II Procedural questions regarding age

Different answers have been given by courts to the question who has the duty to raise the question of age among the child, prosecution, police, and magistrate? In a case where the medical evidence showed the accused to be below the specified age, Bombay High Court held that it was for the prosecution to prove that the accused was not a child,[8] but when it showed him to be above the specified age, the accused was asked to prove that he was a child.[9] In case the accused earlier stated that he was older than the specified age but later produced no material to substantiate his revised plea, the Children Act was not applied by the court to him.[10] The Calcutta High Court[11] said that the person, who is asking application of the Children Act, should ask for an inquiry to determine his age. Thereafter the court is obligated to determine the age and record its finding.

However, the reasoning of the Bombay High Court seems to be most persuasive which held that it should be the court which should ensure that "it does not exercise jurisdiction which it does not possess. Therefore, the court has to make a thorough inquiry into the age of the accused."[12] This

7. Received the assent of the President on August 22, 2006 and published in the Gazette of India on August 23, 2006.

8. *State* v. *Dungaria Mahala*, 1961 Cri LJ 815.

9. *Nazir Hossain Halder* v. *State of West Bengal*, 1998 Cri LJ 1720 (Cal) and *Hawaldar Singh* v. *State of UP,* AIR 1985 SC 955.

10. *Jaichand and others* v. *State of Haryana*, ILR (1980) 1 Punj 275 (DB); *Neeraj* v. *State,* 1978 All LJ 1293; *Raja Ram* v. *State of UP,* 1978 All LJ 51; 1978 Cri LJ 196 (DB) and *Borstal Inmate Narjit Singh* v. *State of Punjab,* ILR (1975) 2 Punj 251 (DB).

11. *Dilip Saha* v. *State of WB,* 1979 Cri LJ 88(FB).

12. *State* v. *Dungaria Mahala*, 1961 Cri LJ 815.

approach has been reinforced by the Andhra Pradesh,[13] Rajasthan[14] and Allahabad[15] high courts too.

Another important question is whether the court is bound to hold an age determination inquiry in all cases whenever an accused claims to be a child? It is not uncommon to find cases in which the courts have refused to determine age on the ground that it is an afterthought. However, in *Bhola Bhagat* v. *State of Bihar*[16] the Supreme Court had categorically stated that:[17]

> 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 benefits of the provisions to an accused. *The court must hold an inquiry* and return a finding regarding the age, one way or the other. (Emphasis added)

In answer to the question on whom is the burden to ensure evidence is forthcoming to prove age - magistrate, prosecution, child, the ruling of the Supreme Court in *Gopinath Ghosh*[17a] is instructive of the duty on the magistrate to secure the evidence of age when it observed that "if necessary, the magistrate may refer the accused to the Medical Board or the Civil Surgeon, as the case may be after obtaining credit worthy evidence about age. The magistrate may as well call upon accused also to lead evidence about his age."

Another question frequently raised is whether the magistrate not empowered to deal with juveniles also determine the age or should they always transfer the matter to the Juvenile Justice Board as provided for in section 7 of the JJA 2000?[18] The answer seems to be explicit in the words

13. *Bandella Allaiah* v. *State of Andhra Pradesh*, 1995 Cri LJ 1083 (AP).

14. *Arjun Ram* v. *State of Rajasthan*, 1998 Cri LJ 4375 (Raj); *Balbir Singh* v. *State of Rajasthan*, 1994 Cri LJ 2750 (Raj) and *Balbir Singh* v. *State of Rajasthan*, 1994 Cri LJ 2750 (Raj).

15. *Milap Singh* v. *State of UP*, 2000 Cri LJ 3059 (All).

16. (1997) 8 SCC 720.

17. *Id.* Para 18.

17*a*. *Gopinath Ghosh* v. *State of W.B.*, 1984 Supp SCC 228.

18. S. 7 reads: Procedure to be followed by a Magistrate not empowered under the Act. (1) When any Magistrate not empowered to exercise the powers of a Board under this Act is of the opinion that a person brought before him under any of the provisions of this Act (other than for the purpose of giving evidence), is a juvenile or the child, he shall without any delay record such opinion and forward the juvenile or the child and the record of the proceeding to the competent authority having jurisdiction over the proceeding.

(2) The competent authority to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the juvenile or the child had originally been brought before it.

contained in the section "[w]hen any Magistrate … is of the opinion" as these words suggest that the magistrates should transfer the matter if the magistrate has formed an opinion either due to the physical appearance of the person brought before him or due to any other apparently reliable piece of evidence that the person is likely to be a juvenile. In case the magistrate thinks that the person before him may not be a juvenile but may be below the age of twenty-one years, in those cases, such magistrate may determine the age himself. These approach was adopted by the Allahabad High Court, which held that the high court or the court of sessions may exercise the power of inquiry when proceedings come before them in appeal, revision or otherwise after commitment of the case, and did not direct that the inquiry must be held by the competent authority alone.[19] Such inquiry must be held expeditiously and it should be ensured that the person does not come in contact with any known or hardened criminals to prevent any adverse influence on him.

Another procedural issue involved in age determination is what should a session judge, or other courts do if the plea of child status is raised for the first time when the matter comes before them after committal or in appeal or revision or otherwise. This question needs to be answered by reference to the newly inserted section 7A read with the above discussion. Section 7A provides that "a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, even if the juvenile has ceased to be so on or before the date of commencement of this Act." Hence, it makes no difference at what stage the plea of child status is raised and the court is obligated to decide the plea even after the case has been finally disposed off. All the courts that are empowered to admit evidence should hold the inquiry themselves only if they are of the opinion that the person before them may not be a child but not so in cases they think that the person may be a child. In the latter case, the case and the accused should be transferred as per the provisions of the JJA, 2000.

Section 7A also provides that the authority conducting inquiry for determination of age should take evidence other than an affidavit as necessary to determine the age and record a finding. When the plea of child status is raised, the Supreme Court in *Bhola Bhagat*[20] directed that if there is a doubt about the age, the court is obliged "to hold an inquiry itself, … or cause an enquiry to be held and seek a report 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,

19. *Aquil Alvi* v. *State of UP,* 1996 Cri LJ 103 (All).
20. (1997) 8 SCC 720.

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."

In case the person is found to be a juvenile, he is to be forwarded "to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect."[21]

In *Balbir Singh*,[22] the Rajasthan High Court elaborating the procedure to be followed for determination of age, said that the competent authority should give an opportunity to the parties to adduce oral and documentary evidence. It must also give right to cross-examine the opposite party following the procedure of the summons case.

Section 49 of the JJA 2000 contains the presumption and procedure for determination of age and reads as follows:

> (1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.
>
> (2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority 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.

This section read with section 3 of the JJA 2000 show the clear intention of the legislature to be inclusive in its approach and applicability bringing within its purview persons who may be found later not to be children or who may have ceased to be so during the pendency of proceedings.

III Evidentiary issues

Many evidentiary questions arise in age determination but there are very few judicial decisions relating to them. The issue of age determination

21. S. 7A (2) of the JJA 2000.
22. 1994 Cri LJ 2750 (Raj).

is of utmost importance as very few children subjected to the provisions of the JJA have a birth certificate. In the absence of a birth certificate issued soon after birth by the concerned authority, determination of age becomes a very difficult task providing lot of discretion to the judges to pick and choose evidence. *Ramdeo Chauhan*[23] is a classic example of the problems presented in age determination. In that case the accused was convicted for multiple murders. He sought to be dealt with under the provisions of the JJA on the ground that he was a child being below the age of sixteen years on the date of commission of the offence. The accused presented the evidence of the principal of the second school in which he was admitted on the basis of the transfer certificate from the first school showing him to be fifteen years of age on the date of offence. The trial court noted that the school register was not kept properly but still accepted that the entry did relate to the accused. However, it refused to rely on it on the ground that the basis of entry in the first school was not known and this evidence could not be relied upon. The trial court referred him to a medical board for age determination six years after the date of occurrence. According to the medical report, the accused was above the age of fourteen but not above the age of fifteen years and he certainly was not of nineteen years of age on the date of commission of the offence. The trial court refused to accept the medical evidence stating that there was a margin of error of two years on either side in the medical examination. Even the accused did not claim to be twelve years old and on the other side he could be of seventeen years old. Instead the trial court preferred to rely on the testimony of the father during cross-examination, statement of the accused to the police even though such statement is inadmissible in evidence, a statement given by the deceased's brother and entries (usually made by the court clerk) in his recorded statement under section 313 of the Code of the Criminal Procedure. The death penalty given to the accused was upheld by the high court and the Supreme Court without examining the question of age determination. In the review petition filed in the Supreme Court, which was limited to the question of age determination and applicability of the JJA, Sethi J quoted with approval the way the trial court had determined the age and confirmed his death penalty. However, Thomas J dissented and held that neither the defence has been able to prove beyond reasonable doubt that the accused was below the age of sixteen years nor the prosecution has been able to establish that he was above that age. In view of there being doubt in the matter, he recommended that his death penalty should be converted to life imprisonment. The third judge, Phukan J, gave no opinion

23. *Ram Deo Chauhan @ Rajnath Chauhan* v. *State of Assam*, (2001) 5 SCC 714.

on the question of age. He did not also found it appropriate to reconsider imposition of death penalty in the matter saying that a review petition did not allow it. However, he elaborately discussed the executive power of commutation of sentence and suggested that in case the accused moved a mercy petition, the considerations that had weighed with Thomas J for dissenting, should be taken into consideration by the governor or the president as the case may be. The well celebrated judgements of the Supreme Court laying down guidelines for age determination were not discussed in this case.[24]

This case posed many questions. 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 is 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?

The Supreme Court in *Arnit Das*[25] clarified that the review of judicial opinion shows that the court should not take a hyper technical approach while appreciating evidence for determination of age of the accused. If two views are possible, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This approach was further confirmed by the Supreme Court in *Rajendra Chandra*[26] in which it laid down that the standard of proof for age determination is the degree of probability and not proof beyond reasonable doubt.

The Model Rules 2007 framed after the JJAmA, through rule 12 lay down categorically procedure and principles to be followed in age determination.[27]

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24. *Santenu Mitra* v. *State of West Bengal*, (1998) 5 SCC 697; *Bhola Bhagat* v. *State of Bihar*, 1998 Cri LJ 390 and *Bhoop Ram* v. *State of U.P.*, 1989 (1) SCALE 799.

25. AIR 2000 SC 2264.

26. *Rajinder Chandra* v. *State of Chhatisgarh,* (2002) 2 SCC 287.

27. Rule 12. Procedure to be followed in determination of Age: (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –

It requires the competent authority to determine age by seeking:

(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other 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.

It further provides that "only in the absence of either (i), (ii) or (iii) of clause (a), above the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child."

It also includes the principle of benefit of doubt to the accused in case exact age cannot be assessed and provides that "the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them,

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(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other 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;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.

may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year."

Rule 12 clearly provides that finding of age recorded following the above procedure "shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law."

Rule 12 applies not only to the cases to be decided after its enforcement but has retrospective application and applies also "to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

It is most unfortunate that despite such clear provisions contained in rule 12 of the Model Rules which became applicable to all the states unless it passed fresh rules, the Supreme Court in *Babloo Pasi*,[28] referring to *Ramdeo Chauhan*,[29] held that the medical evidence was not conclusive proof of age. It noted that:[30]

> 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.

It refers to Jharkhand Rules 2003 and not to the Model Rules 2007 and, thus, seems to be *per incurium*.

Another important evidentiary question that requires to be considered is how should the court decide the question of age if there are conflicting evidences? Surely there is no categorical answer to it and evidence will have to be examined in the light of other circumstances of the case. However, it can be clearly stated that the nature of offence committed by the child should never be among the criteria to determine if the accused was a child or not. The guiding principle should be beneficial appreciation of evidence so as to bring the borderline cases within the protective sphere of the JJA.

IV Applicability of Act

The question of applicability has been raised in four contexts: Section

28. (2008) 13 SCC 113.
29. (2001) 5 SCC 714.
30. *Supra* note 28. Para 22.

27 of the Code of Criminal Procedure; special offences by children; relevant date for age determination; and pending cases. The issue of special offences by children is not directly relevant to the age questions discussed in this paper and has not been analysed in this paper and it may suffice to mention that a non-obstante clause inserted as section 1 (4) by the JJAmA 2006 makes it abundantly clear that the JJA 2000 applies to all offences committed by children including the special offences under special legislations like TADA or NDPS Act.[31]

The question of applicability of the JJA to children above sixteen years of age committing offences punishable with death penalty in view of section 27 of the Code of Criminal Procedure has been long settled by the Supreme Court in *Rohtas Singh* v. *State*[32] and *Raghubir Singh* v. *State*[33] and does not need any further discussion. However, the other two issues of relevant date for age determination and pending cases have continued to plague the courts and have been analysed in detail below.

Relevant date for age determination

Applicability of the JJA has been dependent on the child being below the specified age. However, the question what should be the point in time when the accused should be below the specified age, has plagued the courts over many decades since the first Children Act. While the Acts laid down the age defining child, they were either silent or differed as to whether it was the date of commission of offence, or of arrest, or of first production, or the date of trial that determine applicability of the Act.[34] The Children Act and the central legislations passed since then provide that if the child ceases to be so during the pendency of inquiry, the case would continue as if he has continued to be a child.[35]

31. S. 1 (4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under such other law.

32. AIR 1979 SC 1839.

33. AIR 1981 SC 2037.

34. The provisions of the Children Acts of Madras and Uttar Pradesh had specially mentioned the date of conviction and date of trial, respectively for determining the child status. The cases arising under these Acts were decided accordingly. See, *In re Pendali Settiah*, (1960) Andh. LT 247 and *Public Prosecutor* v. *S. Venkatsubramanyam*, AIR 1941 Mad. 358, under the Madras Children Act and *Mushtaq* v. *State*, AIR 1954 All 580 under the Uttar Pradesh Children Act.

35. For example, S. 3 of the JJA 2000 reads as follows: Continuation of inquiry in respect of juvenile who has ceased to be a juvenile. Where an inquiry has been initiated against a juvenile in conflict with law or a child in need of care and protection and during the course of such inquiry the juvenile or the child ceases to be such, then,

It was the first time in *Umesh Chandra* v. *State of Rajasthan*[36] that the Supreme Court in most categorical terms said that age on the date of commission of offence determined applicability of the Children Act. The court observed thus:[37]

> As regards the general applicability of the Act, we are clearly of the view that the relevant date for the applicability of the Act is the date on which the offence takes place. Children Act was enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that stage could not be said to be mature for imputing mens rea as in the case of an adult. This being the intendment of the Act, a clear finding has to be recorded that the relevant date for applicability of the Act is the date on which the offence takes place. It is quite possible that by the time the case comes up for trial, growing in age being an involuntary factor, the child may have ceased to be a child. Therefore, ss.3 and 26 became necessary. Both the sections clearly point in the direction of the relevant date for the applicability of the Act as the date of occurrence. We are clearly of the view that the relevant date for the applicability of the Act so far as the age of the accused who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial.

The issue was raised in some high courts under the JJA[38] and was decided differently without any reference to *Umesh Chandra*.

The Supreme Court itself too decided in *Arnit Das* v. *State*,[39] that it was age at the time of first production that determined applicability of the JJA. The case was subject matter of much academic comments,[40] and was reviewed by a five judge bench in *Arnit Das-II*.[41] However, it refused to give any finding on the issue on the ground that the issue had not survived

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notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a juvenile or a child.

36. (1982) 2 SCC 202.

37. *Id*. Para 28.

38. *V. Laxminarayana,* 1992 Cri LJ 334 (AP) [Overruled in *Bandella Alliah*, 1995 Cri LJ 1085 (AP) (FB) and *Sheo Mangal Singh* (1990 Cri LJ 1698) (Luck)].

39. (2000) 5 SCC 488.

40. Ved Kumari, "In Defence of *Arnit Das* v. *State of Bihar*: A Rejoinder", (2002) 2 *SCC (Jour)* 15; R.D. Jain, "In Defence of *Arnit Das* v. *State of Bihar*: A Critique", (2001) 2 *SCC (Jour)* 9; Chandrashekhar Pillai, "Editorial Comments", (2001) 2 *SCC (Jour)*; B.B. Pande, "Rethinking Juvenile Justice: *Arnit Das* Style", (2000) 6 *SCC (Jour)* 1; Ved Kumari, "Relevant Date for Applying the JJ Act", (2000) 6 *SCC (Jour)* 9.

41. 2001 (7) SCC 657.

for decision in view of the finding that the accused in the case was above the specified age on the date of commission of offence and held that *Arnit Das-I* was per incurium having been decided by two judge bench contrary to the opinion of the full bench in *Umesh Chandra*.

The question was squarely raised in *Pratap Singh* v. *State of Jharkhand*,[42] in which the accused was below the age of sixteen years on the date of offence but had ceased to be so by the time he was produced before the juvenile court under the JJA 1986. The Supreme Court took note of the controversy between *Arnit Das-I* and *Umesh Chandra* and categorically stated that *Arnit Das-I* cannot be said to have laid down good law. It upheld the view taken in *Umesh Chandra* as correct that the age at the time of commission of the offence determined applicability of the JJA.

The JJAmA has set this question at rest by inserting the categorical words "and has not completed eighteenth year of age as on the date of commission of such offence" in the definition of "juvenile in conflict with law" as given in section 2 (l) of the JJA 2000.

Since the JJAmA, the question found another angle needed to be decided in *Vimal Chadha* v. *Vikas Choudhary and Another*.[43] The accused was charged for murder and extortion. He made calls for ransom even after the hostage was killed. By the time the accused made the last call, he had crossed the age of eighteen by a day. The Supreme Court held that in continuing offence, the relevant point to determine the age is the date on which the last act was committed. As the accused had become eighteen years and one day old on the day the last ransom call was made, the Supreme Court held that the JJA did not apply. In the author's opinion, the court needed to treat the two offences separately. The accused was a child on the date he committed murder and should have been dealt with under the JJA 2000 for that offence. For the offence of extortion that continued till the time he had ceased to be a child, he should have been tried separately as the JJA 2000 enjoins that a child and an adult cannot be tried together. This principal should apply to even those cases when different offences are committed by the same person some of which were committed during his juvenility.

Pending cases

There are two sections in the JJA 2000 which contain provisions relating to pending cases, namely, sections 20 and 64. Section 20 relates to cases of persons pending before ordinary criminal courts who were not children

42. (2005) 3 SCC 551.
43. 2008 (9) SCR 911: 2008 (8) SCALE 608.

under the JJA 1986 but have now been brought within the purview of the JJA 2000 due to the change in the definition of child or juvenile.[44] Section 64 applies to the same category of children but at a different stage, namely, undergoing imprisonment pursuant to the orders of ordinary criminal courts. In *Pratap Singh* v. *State of Jharkhand*,[45] the constitutional bench of the Supreme Court framed the following issue for determination:

> Whether the Act of 2000 will be applicable in the case a proceeding initiated under 1986 Act and pending when the Act of 2000 was enforced with effect from 1.4.2001.

Two separate but concurring judgements were written in the case by Sema J and S.B. Sinha J. Analying the language of section 20 of the JJA 2000, Sema J, speaking on behalf of N. Santosh Hegde, S.N. Variava, B.P. Singh JJ, said that opening of the section with a non obstante clause was of great significance. He further pointed out that:[46]

> The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the Act is relatable to proceedings initiated before the 2000 Act came into force and which are pending when the 2000 Act came into force. The term "any court" would include even ordinary criminal courts. If the person was a "juvenile" under the 1986 Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or girl had crossed 18 years. This shows that Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act but had not yet crossed the age of 18 years then the pending case shall continue in that Court as if the 2000 Act has not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, shall forward the juvenile to the Board which shall pass orders in respect of that juvenile. (Emphasis added)

Agreeing with the scope of section 20, Sinha J laid down the following two conditions that must be fulfilled for applying section 20:

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44. Prior to its amendment by the JJAmA, S. 20 read as follows: Special provision in respect of pending cases.-Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence.

45. (2005) 3 SCC 551.

46. *Id*. Para 31.

(i) on the date of coming into force the proceedings in which the petitioner was accused was pending; and (ii) on that day he was below the age of 18 years.

Both the judgements agreed that the accused must be below the age of eighteen years on the date of enforcement of the JJA 2000, namely, April 1, 2001, to be dealt with in accordance with this section. Hence, it is clear that *Pratap Singh* laid down that section 20 applied to pending cases including the cases of boys who were above the age of sixteen years but below the age of eighteen years on the date of commission of offence, provided the accused had not crossed the age of eighteen years on the date of enforcement of the JJA 2000.

It needs to be noticed that Pratap Singh in this case had adduced his school-leaving certificate and mark sheet of central board of secondary education in evidence before the ACMM proving him to be below the age of sixteen years on the date of offence and his case was duly transferred to the juvenile court. Aggrieved by the order the informant appealed to additional session judge against the order relying on *Arnit Das* arguing that the JJA 1986 did not apply as the accused had ceased to be a child on the date he was produced before the juvenile court. The session judge allowed his appeal. Against this order Pratap Singh appealed to the high court which, dismissed his appeal in view of *Arnit Das* ruling though took the view that the date of birth, as recorded in the school and the school certificate, should be the best evidence for fixing the age of the appellant. The matter came before the constitutional bench of the Supreme Court, which in these circumstances, framed two questions: one with regard to the relevant time for determining age and the second relating to applicability of the JJA 2000 to pending cases. In the present case there was no appeal against the age determined by the juvenile court according to which he was below the age of sixteen years on the date of offence. Having resolved the first issue holding age on the date of commission of the offence as being determinative of applicability of the JJA 1986, the second issue did not survive for decision in the case and the matter had to be remitted back to be dealt with by the juvenile court as he was below sixteen years of age on the date of offence.

It is important to understand the implication of this ruling. Pending cases of juveniles on the date of enforcement of the JJA 2000 may be classified in two categories. One, cases of children under the age of sixteen on the date of offence pending before the juvenile courts established under the JJA 1986 and second, cases of persons above the age of sixteen but below the age of eighteen on the date of offence pending in any other courts. The limitation of the accused being below the age of eighteen years on April 1, 2001 can surely be not applied to the first category of pending cases as that will violate the provision of article 20 of the Constitution. All

cases pending before the juvenile courts under the JJA 1986 had to be disposed of in terms of sections 21 and 22 of that Act if the child was found to have committed an offence. Sections 15 and 16 of the JJA 2000 are comparable to those sections and if their cases are disposed off in terms of these sections, they will not be subjected to penalty higher than that applicable on the date of offence. However, if cases of children in the first category are excluded from the purview of the JJA 2000 if they have crossed the age of eighteen years on April 1, 2001 it will violate article 20 of the Constitution by subjecting them to the punishments provided under the Indian Penal Code or other special or local criminal Acts. Hence, the limitation being below the age of eighteen years on April 1, 2001 for applying the JJA 2000 must be read as applicable only to the accused falling in the second category, namely, boys above the age of sixteen years but below the age of eighteen years on the date of offence.

Having clarified that let us look at the subsequent developments relating to section 20. In *Brijendra Singh* v. *Haryana,*[47] the accused sought transfer of his case to juvenile justice board under the provisions of the JJA 2000 as he was seventeen years and eight months on the date of offence and his trial had not begun in the ordinary criminal court. Pasayat J refused to allow this plea as the accused was admittedly above the age of eighteen years on April 1, 2001. Relying on *Pratap Singh* judgement, Pasayat J said that section 20 has created a legal fiction and the court has to assume all the circumstances necessary to apply the legal fiction but not to be extended beyond the purpose for which it is created, or beyond the language of the provision by which it is created. It was observed thus:[48]

> [B]y reason of legal fiction, a person, although not a juvenile, has to be treated to be one by the Board for the purpose of sentencing which takes care of a situation that the person although not a juvenile in terms of the 1986 Act but still would be treated as such under the 2000 Act for the said limited purpose.

After these rulings of the Supreme Court in *Pratap Singh* and *Brijendra Singh* decided in 2005, the following explanation has been added to section 20 by the JJAmA in 2006:

> In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said

47. MANU/SC/0230/2005
48. *Id*. Para 12.

> provisions had been in force, for all purposes and at all material times when the alleged offence was committed. (Emphasis added)

It is apparent that this explanation removed the limitation of the accused being below the age of eighteen years on the date of enforcement of the Act for applicability of the JJA 2000 as provided by *Pratap Singh* and *Brijendra Singh*. The first judgement of the Supreme Court after the amendments introduced in sections 20 and 64 was given in *Jameel*.[49] However, the case was decided by applying *Pratap Singh* ruling without any reference to the explanation added to section 20 or the Model Rules framed in 2007 and, thus, it is *per incurium* being apparently contrary to the amendment introduced in section 20. A year later, Sinha J decided *Balu @ Bakthvatchalu.*[50] In this case the judge quoted section 20 of the JJA without mentioning the explanation added to it by the amendment but referred to the change brought about in the definition of juvenile in conflict with law and stated:[51]

> In view of the decision of the Constitution Bench of this Court as also the amendments carried out by the Parliament, evidently the question as to whether the appellant was aged '18' as on 1st April, 2001 requires consideration.

After discussing the cases in which the Supreme Court had ordered age determination on a plea raised for the first time before it, he directed the session court to "hold the enquiry in regard to the age of the appellant on the date of commission of the offence and in the event it is found that the appellant was a juvenile within the meaning of the provisions of the said Act, he should proceed with the matter in accordance with law." It is apparent that the 'law' referred to in this case was as decided in *Pratap Singh* and not as changed by the explanation added to section 20.

Judgments of the Supreme Court since then have rarely given full effect to the amended sections 20 and 64 of the JJA 2000. *Hari Ram*[52] decided on May 5, 2009 and *Jayasingh* v. *State by Inspector of Police*[53] both delivered by Altamas Kabir J have brought a welcome relief to otherwise bleak scenario relating to applicability of the JJA. *Jayasingh* was decided just three days after *Balu.* The appellant in this case was below the age of eighteen years though admittedly above the age of sixteen years on the date

49. *Jameel* v. *State of Maharashtra*, AIR 2007 SC 971.

50. *Bake @ Bakthvatchala* v. *State of Tamilnadu*, MANU/SC/7138/2008: AIR 2008 SC 1434.

51. *Id*. Para 8.

52. Criminal Appeal No. 907 of 2009 (Arising out of SLP (Crl.)No.3336 of 2006).

53. Decided on February 15, 2008.

of commission of the offence.[54] He was convicted for murder and sentenced to life imprisonment by the session court. The plea of applicability of the JJA 2000 was not raised either before the sessions court or before the high court. It was raised for the first time in the Supreme Court. The Supreme Court allowed the plea and noted that while the JJA 1986 applied to boys below the age of sixteen years, the JJA 2000 has extended this age till eighteen years for boys. It also noted the amendment introduced in section 20 and held that in view of his age, section 20 of the JJA was attracted and he could not have been sent to imprisonment for more than three years in view of section 15 (g). The court ordered his release forthwith as he had already spent seven years in jail when the matter was heard by the Supreme Court.

Pratap Singh has again been followed in *Jyoti Prasad*[55] without any reference to either *Jayasingh*, or the amendments made to the JJA in 2006 rendering the judgement in this case also *per incurium.*

The decision in *Ranjit Singh*[56] is even more disturbing. In this case the accused was seventeen years old at the time of commission of offence in 1989 and sought the final disposal order in accordance with the provisions of the JJA 2000. Pasayat J did refer to the amendment in section 20 but held:[57]

> Section 20 of the Act does not in any way help the appellant. It deals with cases where proceedings related to a period when 1986 Act was in force. What Section 20 provides is that the proceedings shall continue as if the Act (i.e. Act of 2000) is not in existence. To put it differently, even if under the definition of "juvenile" has undergone a change by fixing the age to be 18 years the proceedings shall continue on the footing that accused was a juvenile under the 1986 Act. What appellant contends is to reverse the situation i.e. take the applicable age to be 18 years. That is not legally permissible.

He further referred to the decision given in *Jameel*[58] which did nothing more than quoting *Pratap Singh* and was bad in law in view of the amendment of the section in 2006. He did not refer to his own judgement

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54. He claimed to be 16 years, 6 months and 9 days on the date of the incident on the strength of his school leaving certificate and he was 17 years 10 months and 26 days old according to the birth certificate annexed to the affidavit filed on behalf of the State.

55. *Jyoti Prasad,* Decided on March 4, 2008; *Balu @ Bakthvatchalu*, *supra* note 50.

56. (2008) 9 SCC 453.

57. *Id*. Para 9.

58. *Jameel* v. *State of Maharashtra*, AIR 2007 SC 971.

in *Brijendra Singh* or that of *Pratap Singh*, both of which had categorically analysed the language of section 20 and held that the section applied to cases of persons who were above the age of 16 years but below the age of 18 years on the date of commission of offence. No change has been introduced in the language of the main section. Hence, the analysis given in *Pratap Singh* and *Brijendra Singh* by looking into the language of section 20 that it applied to cases of boys above the age of 16 but below the age of 18 years has not been affected. The only thing that the insertion of the explanation to the section in 2006 did was to remove the limitation that such accused should be below the age of eighteen years on the date of enforcement of the Act and no more.

Fortunately for children, Altamas Kabir J has again provided the much awaited clarification on the applicability issue since the amendments in 2006 in *Hari Ram's*[59] case. The accused in this case was below the age of eighteen years though above the age of sixteen years on the date of offence. He was also below the age of eighteen years on April 1, 2001. As per the second proposition of *Pratap Singh*, there was no problem in applying the JJA to him. However, Kabir J, thought it appropriate to use this occasion to take on board the constitutional bench decision in *Pratap Singh* to note that its above mentioned second proposition has been rendered infructuous and the position as crystalised by the amendments in the JJA in 2006 is that irrespective of the age of the accused on the date of enforcement of the JJA, i.e., April 1, 2001, the JJA applied if the accused was above the age of sixteen years but below the age of eighteen years on the date of commission of offence. The court noted categorically: [60]

> The law as now crystallized on a conjoint reading of Sections 2(k), 2(l), 7A, 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 1st April, 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.

V Conclusion

Majority of the cases discussed above adopted a narrow and exclusionary interpretation of the section while the explanation added to this section read with section 3 of the JJA 2000 show an inclusionary approach aimed

59. Criminal Appeal No. 907 of 2009 (Arising out of SLP (Crl.)No.3336 of 2006).
60. *Id*. Para 37.

at providing the beneficial coverage to all those persons who were below the specified age on the date of commission of offence irrespective of their age at any subsequent point of time.

Application of protective and beneficial provision of the JJA 2000 has been extended by section 64[61] even to those persons who were above the age of sixteen but below the age of eighteen years on the date of offence and undergoing imprisonment after having been found to have committed an offence.

In *Pratap Singh*, Sinha J had held that age need not be determined in accordance with the Model Rules framed by the central government as the JJA 2000 gave no power to the central government to frame rules under the Act.[62] That objection to the applicability of Model Rules passed by the

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61. S. 64 as it stood before amendment in 2006: Juvenile in conflict with law undergoing sentence at commencement of this Act.-In any area in which this Act is brought into force, the State Government or the local authority may direct that a juvenile in conflict with law who is undergoing any sentence of imprisonment at the commencement of this Act, shall, in lieu of undergoing such sentence, be sent to a special home or be kept in fit institution in such manner as the State Government or the local authority thinks fit for the remainder of the period of the sentence; and the provisions of this Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective care under sub-section (2) of section 16 of this Act.

The following proviso and explanation has been added to it by the JJAmA in 2006: Provided that the State Government, or as the case may be the Board, may, for any adequate and special reason to be recorded in writing, review the case of a juvenile in conflict with law undergoing a sentence of imprisonment, who has ceased to be so on or before the commencement of this Act, and pass appropriate order in the interest of such juvenile.

Explanation.—In all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment at any stage on the date of commencement of this Act, his case including the issue of juvenility, shall be deemed to be decided in terms of clause (l) of section 2 and other provisions contained in this Act and the rules made thereunder, irrespective of the fact that he ceases to be a juvenile on or before such date and accordingly he shall be sent to the special home or a fit institution, as the case may be, for the remainder of the period of the sentence but such sentence shall not in any case exceed the maximum period provided in section 15 of this Act.

62. Sinha J noted: "We, however, do not agree that the model rules have been framed in terms of the provisions of the Act so as to attract the principles that rules validly framed are to be treated as part of the Act. It is one thing that the rules validly framed are to be treated as part of the Act as has been held in Chief Forest Conservator (Wildlife) and Others Vs. Nisar Khan [(2003) 4 SCC 595] and National Insurance Co. Ltd. Vs. Swaran Singh and Others [(2004) 3 SCC 297] but the said principle has no application herein as in terms of the provisions of the said Act, the Central Government does not have any authority to make any rules. In absence of any rule making power it cannot refer to the omnibus clause of power to remove difficulty inasmuch as it has not been stated that framing of any model rule is permissible if a difficulty arises in giving effect to the provision of the Act. The Central Government is a statutory

central government has been removed by the amendment introduced in section 68 as mentioned earlier and the directions contained in the Model Rules are binding on all in the implementation of the JJA. The rules too incorporate the beneficial, protective, and inclusive approach of the JJA and contain many specific provisions to ensure its applicability to all children who were below the age of eighteen years on the date of offence whether undergoing trial or already found to have committed offence and undergoing imprisonment.

Rules 97[63] makes specific provisions relating to pending cases and provides that no child below the age of eighteen years to be denied the benefits of the JJA 2000 and all pending cases have to be decided in accordance with the provisions of the JJA irrespective of their age on the date of commencement of the JJA 2000.

Rule 98 of the Model Rules 2007[64] categorically directs that in disposed off cases of juveniles in conflict with law the state government or the board may, either *suo motu* or on an application determine his juvenility in terms of the provisions contained in the Act and rule 12 of these rules and pass an appropriate order for the immediate release of the juvenile in

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functionary. Its functions are circumscribed by Section 70 of the Act only. It has not been authorized to make any rule. Such rule making power has been entrusted only to the State. The Central Government has, thus, no say in the matter nor can it exercise such power by resorting to its power 'to remove difficulties'. Rule making power is a separate power which has got nothing to do with the power to remove difficulty. By reason of the power to remove difficulty or doubt, the Central Government has not been conferred with any legislative power."

63. Rule 97- (1) No juvenile in conflict with law or a child shall be denied the benefits of the Act and the rules made thereunder.

(2) All pending cases which have not received a finality shall be dealt with and disposed of in terms of the provisions of the Act and the rules made thereunder.

(3) Any juvenile in conflict with law, or a child shall be given the benefits under sub-rule (1) of this rule, and it is hereby clarified that such benefits shall be made available to all those accused who were juvenile or a child at the time of commission of an offence, even if they cease to be a juvenile or a child during the pendency of any inquiry or trial.

(4) While computing the period of detention or stay or sentence of a juvenile in conflict with law or of a child, all such period which the juvenile or the child has already spent in custody, detention, stay or sentence of imprisonment shall be counted as a part of the period of stay or detention or sentence of imprisonment contained in the final order of the court or the Board.

64. Rule 98: The State Government or as the case may be the Board may, either suo motu or on an application made for the purpose, review the case of a person or a juvenile in conflict with law, determine his juvenility in terms of the provisions contained in the Act and rule 12 of these rules and pass an appropriate order in the interest of the juvenile in conflict with law under section 64 of the Act, for the immediate release of the juvenile in conflict with law whose period of detention or imprisonment has exceeded the maximum period provided in section 15 of the said Act.

conflict with law whose period of detention or imprisonment has exceeded the maximum period provided in section 15 of the said Act.

The JJA, 2000 has been given retrospective effect and applies to all cases where the JJA 1986 would not have applied but JJA, 2000 would have applied if it was in force at that time. In *Pratap Singh* and *Brijendra Singh* cases the Supreme Court discussed in detail the circumstances in which a legislation may or may not be given retrospective effect. Sinha J in *Pratap Singh* categorically stated:

> The embargo of giving a retrospective effect to a statute arises only when it takes away vested right of a person. By reasons of Section 20 of the Act no vested right in a person has been taken away, but thereby only an additional protection has been provided to a juvenile.

However, majority of the cases decided since the JJAmA 2006 have not taken cognisance of the amendments made in the JJA 2000 or the Model Rules 2007 made thereafter and continue to prefer interpretation that excludes applicability of the JJA. The application of the JJA was first sought to be limited by *Arnit Das* by choosing a date later than the age at the time of commission of the offence. Even though it was already declared to be bad law in 2001,[65] the case continued to be quoted and applied till the ruling of *Pratap Singh* which itself has arisen due to the wrongful applicability of *Arnit Das* ruling to the appellant.

Pratap Singh ruling also took a narrow view of the applicability of the JJA to pending cases and introduced a limitation not found in the Act of it being applicable to children who were so on the date the JJA 2000 came into force. Now despite the amendments introduced to the contrary, *Pratap Singh* continues to be followed in flagrant opposition to the intention of the legislature and language of the law. The Bombay High Court in *Imtiyaz Hussain Mumtiyaz Sheikh*[66] had analysed in detail the impact of the JJAmA 2006 on *Pratap Singh* case. It pointed to the statement of objects and reasons for the JJAmA which was introduced, inter alia, "to remove doubts regarding the relevant date in determining the juvenility of a person and applicability of the Juvenile Justice Act." After noting down the amendments made in sections 1(4), 2 (l), 7A and 20, the Bombay High Court concluded:

> On a conspectus and consideration of all these provisions it becomes clear that what is relevant is the date of offence and if that person falls within the definition of 'juvenile in conflict with law' then irrespective of whether proceedings are pending or the proceedings are in appeal or revision or even if proceedings had

65. (2001) 6 SCC 461.
66. 2008 (110) Bom LR 1645.

> been closed and if an application is made by the juvenile who is undergoing a sentence, then on a proper reading of Section 7-A, together with Section 20, the provisions of the Act are applicable to such 'juvenile in conflict with law.' To that extant the judgment in *Pratap Singh* (*Supra*) considering the Amendment of 2006 will not apply to proceedings in respect of a 'juvenile in conflict with law' after the Juvenile Justice Amendment Act, 2006. The opening words of Section 20, therefore, clearly indicate that the definition of 'juvenile' is retrospective and the definition of juvenile under the Juvenile Justice Act of 2000 will be the applicable law. In other words, if the child or juvenile was less than 18 years on the date of the commission of the offence, the juvenile will be covered by the provisions of the Act of 2000 together with the 2006 amendment.

This and the enlightened judgements like *Hari Ram* and *Jayasingh*, however, are exceptions rather than the rule. The quagmire created by the conflicting and narrow interpretations by the Supreme Court on the age issues has narrowed down the applicability of the JJA to an increasing number of cases contrary to the scheme and words of the legislation as well as the intention of the legislature.