

SHATTERING THE JUDICIAL GLASS CEILING: *OM PRAKASH* VERSUS *UNION OF INDIA* REVISITED

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Abstract

The courts are the custodian of law to ensure justice at any cost as reflected in the *Om Prakash* case. The Supreme Court of India in this landmark judgment has interpreted the doctrine of finality to permit retrospective recognition of juvenility, thereby relieving a death-row convict after nearly 25 years of incarceration, despite upholding him guilty. The apex court has scrupulously examined the judicial history, where repeated claims of juvenility of the accused was consistently declined by the trial and appellate courts, therefore, he suffered from denial of relief even after a presidential commutation. This revolutionary judicial vision underpins an evolving jurisprudence of curative and clemency remedies by embracing a progressive right-based and rehabilitative approach especially for marginalized convicts. This inimitable judicial trend set a precedence not only in India, but must be a torch bearer for global adversarial jurisprudence for handling wrongful convictions and addressing innocence claims.

I Introduction

JUSTICE IS the elixir that ensures a dignified human existence. Justice is indeed a manifestation of the truth, which remains the guiding star in the entire judicial process.¹ For justice to prevail, truth must triumph. The court functions as a search engine of truth, with procedural and substantive law as its essential tools.² V.R. Krishna Iyer J., had observed, "... Truth, like, song, is whole and half-truth can be noise".³ A judge delivers justice to the best of his ability within the confines of the legal framework, yet umpteen factors often undermine the purpose of judicial proceedings. In an adversarial justice system, the court primarily relies on evidence presented before it, and "... the judge in his anxiety to maintain his position of neutrality never takes any initiative to discover the truth. He does not correct the aberrations in the investigation or in the matter of production of evidence before court".⁴ Recently, in *Om Prakash*,⁵ the Supreme Court redefined the doctrine of finality in order to recognize claims of juvenility, thereby correcting earlier judgments in the larger interest of justice. The

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1 *Om Prakash v. Union of India* 2025 SCC OnLine SC 47 at para 4.

2 *Ibid.*

3 *Jasraj Inder Singh v. Hemraj Multanchand* (1977) 2 SCC 155 at para 8.

4 Malimath Committee on Reforms of Criminal Justice System, Vol. I, Ministry of Home Affairs, India, 24(Mar. 2003).

5 *Supra* note at 1.

Latin phrase *Actus curiae neminem gravabit* means that “an act of the court shall prejudice no one”, has been aptly explained by the Supreme Court as under:⁶

No one shall be prejudiced by an act of the Court. A mistake committed by the Court cannot stand in the way of one's rightful benefit. It is not the party which commits a mistake, but rather the Court itself. Hence, such a mistake cannot act as a barrier for the party to get its due relief. However, we make it clear that the mistake must be so apparent that it does not brook any adjudication on the foundational facts.

The *Om Prakash* case is a tale of repetitive errors committed during adjudication by way of not accepting the claims of juvenility, which was undisputedly established by the age mentioned in the school certificate and the ossification test conducted by the medical board constituted by the competent authority. The apex court, after deliberating delicate legal precepts like the doctrine of finality and the clemency granted by the President of India, finally accepted the juvenile claim, and released the convict, who was serving solitary confinement since last 25 years. However, the conviction was upheld in the gruesome triple murder case.

II Essential facts in detail

On November 15, 1994, Om Prakash, a domestic servant, brutally killed three members of a family with a sword, including late Colonel Shyam Lal Khanna (62 years), his son (27 years) and sister (65 years). He also severely injured Colonel Khanna's wife, an eyewitness, in an attempt to kill her. However, she managed to escape by locking herself in a bathroom. Om Prakash fled from the crime scene and remained absconding for five years until his arrest in Jalpaiguri, West Bengal following a police investigation aided by his photograph being telecast on the popular television show 'India's Most Wanted'. Investigation revealed that Om Prakash had committed crime out of anger and resentment after Khanna family decided to terminate his services due to his involvement in theft, cruelty towards family members and mistreatment with their pet.

During the trial, Om Prakash deposed that he was 20 years old at the time of incident. He also claimed to hold a bank account with Punjab National Bank, presenting a passbook and a cheque book before the trial court. However, it was undisputed that he was illiterate. After examining 19 witnesses and multiple exhibits, and after observing due process, the trial judge held Om Prakash guilty under Sections 302 and 307 of the Indian Penal Code, 1860 for the diabolical crime. For the first time, Om Prakash claimed juvenility before the trial court on the day of hearing on determination of punishment. The trial court could not consider his claim, as he had previously acknowledged his majority during trial, and no documentary evidence was presented

6 *Id.*, para 28.

to substantiate his claim of juvenility. Consequently, he was sentenced to death by the judgement dated April 18, 2001.⁷

The reference of death penalty was referred by the trial court and the appeal against the conviction order filed by the convict were jointly adjudicated by the High Court of Uttarakhand.⁸ During appeal, on the issue of juvenility, the high court held that the accused had admitted during trial his majority of age at the time of incident. The high court further observed that “Indeed, a savings bank account could be opened in the Bank only by a major. It is thus apparent that he was a major even on March 9, 1994 when savings bank account was opened. The present crime was committed by him on November 15, 1994. Therefore, there could be no question of accused being a juvenile on the date of the commission of this crime.”⁹ Finally, the high court set aside the appeal and upheld the conviction and award of death penalty.¹⁰ The apex court also rejected the appeal of the convict against the high court order of confirming the death penalty, and the plea of juvenility was also rejected by the apex court *vide* order dated December 5, 2002 in absence of any supporting document.¹¹ Later, the Supreme Court issued a warrant for execution of death sentence to be carried out in the Central Jail of Meerut.

In the meantime, the petitioner convict on the death row, preferred a Criminal Review Petition (Criminal) No. 273/2003 before the apex court seeking review of the judgment dated December 5, 2002, and disclosed that his deceased employer had filled the details to open the bank account without his knowledge of mentioning his date of birth. However, the review petition was dismissed by the apex court on March 4, 2003. The warrant of execution was stayed on April 28, 2003. After dismissal of the review petition on March 4, 2003, two writ petitions by the parents of the convict and Tarak Majumdar were separately filed by invoking provisions under Article 32 of the Indian Constitution. In both writs the issue of juvenility was raised again. The apex court dismissed the writ after observing that once the review petition had been disposed, the subsequent writ could not be maintainable. However, the Writ Petition No. 200/2005 of the parents was treated as a curative petition, where the question of juvenility was raised; but the curative petition was also dismissed on February 6, 2006.

Earlier, on April 30, 2003, the petitioner moved a mercy petition for pardon before the President of India, under the provisions of Article 72(1)(c) of the Constitution

7 *State of Uttarakhand v. Om Prakash* S.T. No. 90/1995 decided on Apr. 18, 2001.

8 Reference no. 2 of 2001, and *Om Prakash v. State of Uttaranchal* Jail Appeal No. 108 of 2001 both before the High Court of Uttaranchal. The Division Bench of the high court upheld the death penalty *vide* order dated September 19, 2001.

9 *Om Prakash v. Union of India* 2019 SCC OnLine Utt 820 at para 22.

10 *Om Prakash v. State of Uttaranchal* 2002 AIR SCW 4917 : (2003) 1 SCC 648 :2003 SCC (Cri) 412 : 2002 (9) SCALE 142.

of India. The President of India, *vide* order dated May 8, 2012, modified the sentence from death penalty to life imprisonment, with a caveat that the petitioner shall serve the imprisonment until the attainment of 60 years of age. However, during the pendency of the mercy petition, the Juvenile Justice (Care and Protection of Children) Rules, 2007 came into effect, where Rule 12 provided procedure to be followed in determination of age. The convict filed an application for determination of his age, and his ossification test was conducted by a Medical Board constituted by the Meerut Jail authorities. The Medical Board reported his age around 14 years at the time of occurrence of the alleged crime. Further, through an application under the Right to Information Act, 2005, the convict appellant received an information that any minor above 10 years of age can open an independent bank account, provided he knew how to read and write. The bank also certified that no cheque book was issued for the bank account opened in the name of appellant.

The convict preferred to file another Writ Petition (Criminal) No. 1531 of 2017 before the High Court of Uttarakhand to claim benefit of juvenility, based on the school leaving certificate, where his date of birth was mentioned January 4, 1980, and the crime was committed on November 15, 1994.¹² The high court observed that the school certificate was issued on April 28, 2001, but the petitioner had never mentioned about it earlier at any stage of trial or appellate adjudication. The high court also underpinned that the proceedings under article 72(1) comes to picture at that point in time when judicial proceedings end and finality is attached to it. Proceedings under article 72(1)(c) is not a part of proceedings in an exercise of a judicial power, but rather it is an exclusive power exercised by way of pity and mercy.¹³ In *Ashok Kumar v. Union of India*,¹⁴ the apex court conclusively held that once the President has determined the issue of conferment of commutation of a sentence, the said order cannot be made subject matter of judicial review. Thus, after due deliberation, the Writ Petition (Criminal) No. 1531 of 2017 was finally dismissed by the high court on August 23, 2019. The order was appealed by Om Prakash, serving for life, and was decided by the apex court on January ,8 2025 accepting claim of juvenility on the premise discussed below.

III The latest observations by the Supreme Court

In the appeal filed by Om Prakash,¹⁵ the Supreme Court addressed following legal issues:

11 *Ibid.*

12 *Supra* note 9.

13 *Ashok Kumar v. Union of India* (1991) 3 SCC 498.

14 (1991) 3 SCC 498 : AIR 1991 SC 1792.

15 *Supra* note 1.

- (i) Whether the claim of juvenility can be invoked even after the final disposal of the case and after the President has exercised power under Article 72 of the Constitution of India.
- (ii) Whether beneficial changes in the juvenile law may be applicable retrospectively even after dismissal of the curative petition.

The Supreme Court referred to the case of *Heller v. DOE*,¹⁶ where Justice Kennedy had observed that, "... the State has a legitimate interest under its *parens patriae* powers in providing care to its citizens who are unable to care for themselves." The Supreme Court has also observed, "The 2000 Act consciously made itself applicable to all pending cases, both procedurally and substantively, which has in turn given it an element of retrospectivity."¹⁷ The apex court emphasised on the words "even after the final disposal of the case" under section 9(2) of the JJ Act, 2015, which is the heart and soul of the entire Act, 2015. Sufficient opportunities must be given to the child in conflict with law to get the benefit of the Act, 2015. Commenting upon the prior proceedings in trial court and appellate courts, the apex court has observed, "Merely because a casual adjudication has taken place, it does not mean that a plea of juvenility cannot be raised subsequently. This is for the simple reason that the plea of juvenility has not attained finality. So long as the right of a party subsists, one can never say that finality has been attained."¹⁸ Referring to some of the English decisions, the Supreme Court of India has culled out four tests, of which either one or more may apply for determining the finality of adjudication:¹⁹

- i. Was the order made upon an application such that a decision in favour of either party would determine the main dispute?
- ii. Was it made upon an application upon which the main dispute could have been decided?
- iii. Does the order as made determine the dispute?
- iv. If the order in question is reversed, would the action have to go on?"

In *Rodger v. Comptoir d'Escompte de Paris*, Lord Cairns has observed:²⁰

Now, Their Lordships are of opinion, that one of the first and highest duties of all courts is to take care that the act of the court does no injury to any of the suitors, and when the expression 'the act of the court' is used, it does not mean merely the act of the primary court, or

16 125 L.Ed.2d 257 : 509 US 312 (1993).

17 *Supra* note 1 at para 15.

18 *Id.*, para 21.

19 *Id.*, para 23. Also see: *Lily Thomas v. Union of India* (2000) 6 SCC 224 at para 56.

20 (1869-71) LR 3 PC 465, 475 : 17 ER 120.

of any intermediate court of appeal, but the act of the court as a whole, from the lowest court which entertains jurisdiction over the matter up to the highest court which finally disposes of the case. It is the duty of the aggregate of those Tribunals, if I may use the expression, to take care that no act of the court in the course of the whole of the proceedings does an injury to the suitors in the court.

In *Antulay v. R.S. Nayak*, the Supreme Court observed:²¹

The basic fundamentals of the administration of justice are simple. No man should suffer because of the mistake of the court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. *Ex debito justitiae*, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied. This is a peculiar fact of this case which requires emphasis.

The Supreme Court observed that in the instant case the claim of juvenility under section 9(2) of the Juvenile Justice Act, 2015, the procedure mandated thereunder has not been followed. Consequently, the right of raising the plea of juvenility has not ceased and therefore subsists.²² It is a mandated duty of the constitutional courts to give effect to the laudable objectives of a social welfare legislation.

On Judicial Review of the Presidential Order, the apex court observed that “The power of pardon, as conferred under Article 72 and 161 of the Constitution, is sovereign. It is a power of compassion and empathy. It is meant to remove or reduce all pains, penalties and punishment suffered by a convict”.²³ Power under Article 72 and Article 161 of the Constitution is not appellate or revisional in nature. In fact, “... the President does not amend or modify or supersede the judicial record. The judicial record remains intact, and undisturbed. The President acts in a wholly different plane from that in which the Court acted. He acts under a constitutional power, the nature of which is entirely different from the judicial power and cannot be regarded as an extension of it...”²⁴ Thus, mercy jurisprudence is a part of evolving standard of decency, which is the hallmark of the society.²⁵ In the *Shatrughan Chauhan*, the apex court observed:²⁶

21 (1988) 2 SCC 602 at para 83 : 1988 AIR SC 1531.

22 *Supra* note 1 at para 22.

23 *Id.*, para 29.

24 *Kebar Singh v. Union of India* (1989) 1 SCC 204 at para 10.

25 *Shatrughan Chauhan v. Union of India* (2014) 3 SCC 1.

26 *Id.*, para 245.

Remember, retribution has no constitutional value in our largest democratic country. In India, even an accused has a de facto protection under the Constitution and it is the Court's duty to shield and protect the same. Therefore, we make it clear that when the judiciary interferes in such matters, it does not really interfere with the power exercised under Articles 72/161 but only to uphold the de facto protection provided by the Constitution to every convict including death convicts.

The apex court in the *Om Prakash* observed that "... At every stage, injustice has been inflicted by the courts, either by ignoring the documents or by casting a furtive glance. The Appellant despite being illiterate, raised this plea one way or another, right from the Trial Court up to the conclusion of the Curative Petition before this Court".²⁷ There is no dispute *per se* on the minority age of the convict as indicated in the school certificate or determined by the medical board. Thus, the appeal was finally allowed with upholding the conviction, but set aside the sentence imposed in excess of the upper limit prescribed under the Juvenile Justice Act, 2015, and allowed to release the accused.

The apex court categorically recorded that "Therefore, it is not a review of the Presidential Order, but a case of giving the benefit of the provisions of the 2015 Act to a deserving person".²⁸ The appellant has undergone imprisonment for almost 25 years, during which time, the society has undergone significant transformation for that the appellant might be unaware of, and may face difficulties to adjust with. Hence, the apex court directed the Uttarakhand State Legal Services Authority to play a proactive role in identifying suitable government welfare schemes for rehabilitation and smooth integration of the appellant into the society upon his release, for enabling his right to livelihood, shelter and sustenance guaranteed under Article 21 of the Constitution.

IV Concluding remarks

Latin phrase '*Fiat Justitia Ruat Caelum*' (meaning "Let justice be done, though the heavens fall") serves as the foundation for a just society. Justice cannot be denied due to a past judicial error. If a grave miscarriage of justice has occurred at any stage of adjudication, the judiciary must intervene to rectify it. The justice is paramount in judicial process, and no procedural rule should stand in its way. The Supreme Court in the *A.R. Antulay* has underpinned, "Rules or procedures are the handmaids of justice and not the mistress of the justice."²⁹ The *Om Prakash* case is a leading example

27 *Supra* note 1 at para 45.

28 *Id.*, para 51.

29 *Supra* note 21 at para 83 at 672. Also see: *Hari Vishnu Kamath v. Ahmad Ishaque* (1955) 1 SCR 1104: AIR 1955 SC 233.

where the Supreme Court took course correction to address a long-standing miscarriage of justice. After a prolonged legal battle waged by the marginalized family of the accused, who languished in solitary confinement for 25 years, the apex court recognized his plea of juvenility, reaffirming its commitment to substantive justice over procedural rigidity. It is heartening that during last few years, the Supreme Court of India has set the tone for future to address wrongful convictions and innocence claims reflected through several judgments.³⁰

30 *Rahul v. State (NCT of Delhi)* (2023) 1 SCC 83; *Manojv. State of Madhya Pradesh* (2023) 2 SCC 353; *Chotaku v. State of Uttar Pradesh* 2022 SCC OnLine SC 1103; *Anokhilal v. State of Madhya Pradesh* (2019) 20 SCC 196; and *Irfan @ Bhayu Mewati v. State of Madhya Pradesh* 2025 SCC OnLine 2150.