

THE OM PRAKASH DECISION: RETHINKING JUVENILITY DETERMINATION IN INDIAN CRIMINAL LAW

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Recently, on 8 January 2025, the Supreme Court of India delivered a significant verdict reversing the conviction of the Appellant after more than two decades of the conviction, concluding that the appellant was a juvenile at the time of the occurrence. The court's categorical finding is that the previous courts, including the Supreme Court in appellate jurisdiction, erred by not following the due procedure for ascertaining the age of the appellant whenever the plea of juvenility was raised. The judgement is a landmark in more than one sense. Firstly, it emphasises that the primary task before the courts is to search for 'truth' within the legal enterprise. Secondly, it also reiterates the law that executive power can be reviewed under writ jurisdiction and that a plea of juvenility can be raised at any stage of trial or in appeal. Moreover, the judgement is a fresh take on the plight of convicts in India, who are often in the headlines when long-standing convictions are set aside. The judgement encourages stakeholders to provide feedback and suggest reforms for the Juvenile Justice Regime, particularly because it is governed by both constitutional and statutory mandates. To the least, the judgement deserves to be read, re-read, and commented upon. This comment is one such attempt.

I. INTRODUCTION

"Why is it not just and proper to treat these juvenile offenders, as we deal with neglected children, as a wise and merciful father handles his own child whose errors are not discovered by the authorities?"

-Judge Julian Mack, *The Juvenile Court*, 23 Harv. L. Rev. 104 (1909).

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“People, don’t you understand

The child needs a helping hand

Or he’ll grow to be an angry young man some day

Take a look at you and me

Are we too blind to see?

Do we simply turn our heads

And look the other way”

-In the Ghetto; performed by Elvis Presley in 1969

The recent judgement where the Supreme Court highlighted the failure of the judicial system to properly address the appellant’s claim of juvenility, emphasising the constitutional mandate for the reformation, rehabilitation, and reintegration of juvenile offenders, is rather unusual.¹ The two-judge bench, consisting of Justices M.M. Sundresh and Aravind Kumar, clarified that a plea of juvenility, even if inadequately adjudicated, does not lose its validity for subsequent consideration.² We have seldom seen the Supreme Court write a prologue that runs almost three-fourths of the judgement with an analysis that is small, succinct, and sharp to the context: A 14-year-old illiterate boy convicted of a triple murder, including that of his employer, a retired brigadier, has no respite from the justice machinery, perhaps because the machinery is swayed by the gruesome facts or perhaps because the poor boy could not afford a counsel who can direct the court towards the law, i.e. that plea of juvenility does not hinge around the accused’s bank account or any personal statement but must be determined strictly in accordance with the law on ‘presumption and determination of age’. Simply put, the judgement in *Om Prakash* is the rarest of the rare in the ‘rarest of rare’ jurisprudence. The sad reality is that a man languished behind bars for almost three decades before he was declared a child at the time of occurrence. The instant case is merely one such in the long list of wrongful convictions.³

II. A LONG CHAIN OF EVENTS

The facts are not in dispute. For the charge of culpable homicide amounting to murder dated 15 November 1994, the child, in the format of a statement, gave his name and particulars before the Trial Court in 2001. In reply to one question,

¹ *Om Prakash v Union of India* 2025 SCC OnLine SC 47 (*Om Prakash*).

² *ibid.*

³ Annual Statistics Reports from 2016 to 2022, Project 39A <<https://www.project39a.com/annual-statistics-report-2022>> accessed 20 January 2025.

the child responded that “he had opened a bank account and that a chequebook had been issued”. The irrelevant statement in the context of juvenility was treated as a sheet anchor in the child’s conviction. The trial court presumed that the statement regarding the bank account showed that Om Prakash was a major, and as such, he was sentenced to death as the ingredients of the crime stood satisfied. At the stage of appeal before the High Court, when the plea of juvenility was reiterated, a reference was again made to the appellant’s bank account and the issued chequebook to dismiss the plea. The matter reached the Apex Court via Appeal (Crl.) 824 of 2002, which was again dismissed. Two paragraphs from the Supreme Court order dismissing the appeal shall befit:

“Regarding the age of the appellant, a contention has been raised that he was juvenile at the time of the commission of the crime on 15.11.1994 because he gave the age as 20 years in his statement recorded under Section 313 Cr.P.C. on 07.03.2001. Apart from the fact that on behalf of the appellant no proof was adduced regarding his age, the High Court noted that he admittedly opened the bank account in Punjab National Bank at Dehradun on 09.03.1994. Passbook and cheque book were exhibited in trial. The High Court observed that the appellant would not have been in a position to open the account unless he was a major and declared himself to be so. That was also the view taken by the trial Court. The approach of the Trial Court as well as the High Court on this aspect cannot be faulted.

[...]

As held in Amrutlal Someshwar Joshi v State of Maharashtra,⁴ mere young age of the accused is not a ground to desist from imposing death penalty, if it is otherwise warranted. Moreover, in the present case, none is dependent on the appellant. There are no mitigating circumstances in his favour. The accused is a menace to the society and it seems to us that the death sentence is the most appropriate punishment in this case... Accordingly, the sentence of death is confirmed. The appeal is dismissed.”

After the dismissal of the appeal by the Supreme Court, the appellant thereafter preferred a review petition and, on its dismissal, a mercy petition before the Governor of the State of Uttarakhand, which was also rejected. A writ petition under Article 32 was thereon filed, which was dismissed, giving liberty to file a curative petition against the dismissal of the review petition on the earlier occasion. The curative petition was dismissed on 6 February 2006. Meanwhile, the appellant’s mother filed a mercy petition before the Hon’ble President of India. Amid the pendency of the Mercy petition, the Appellant’s ossification test was done, indicating that the Appellant was 14 years of age at the time of occurrence.

⁴ *Amrutlal Someshwar Joshi v State of Maharashtra* (1994) 6 SCC 200.

The Mercy petition resulted in the commutation of the sentence to life imprisonment, added with the caveat that the Appellant will not be released until the attainment of 60 years of age. In a Right to Information application, the appellant had later gathered information that any minor could have opened a bank account with the concerned bank and also that no chequebook had been issued.

A subsequent curative petition was rejected by the registry, and a subsequent writ petition invoking Article 226 of the Constitution was dismissed, observing the limited scope of reviewing the executive order, i.e. the President's consideration of the Mercy Petition. The appellant thereon filed SLP (Crl.) No.(s) 2214 of 2022,⁵ which has been allowed by the 8 January 2025 order — the subject of this case comment.

III. THEMES UNDER REVIEW

The present judgment examines key principles that shape juvenile justice ('JJ') jurisprudence, particularly *Doli Incapax*⁶ and *Parens Patriae*,⁷ which underscore the state's responsibility to protect and rehabilitate children. These principles are deeply embedded in constitutional provisions⁸ and criminal law,⁹ yet their application has evolved in response to societal pressures and high-profile events, such as the post-Nirbhaya shift in criminal law reforms and the enactment of the JJ (Care and Protection of Children) Act, 2015. *Doli Incapax* posits that children below a certain age are presumed incapable of criminal intent due to their inability to comprehend the consequences of their actions. Complementing this, *Parens Patriae* emphasises the state's duty as a guardian, responsible for protecting and rehabilitating minors within the legal system, ensuring their welfare and reformation.

However, the present case was not dismissed on technicalities; rather, it suffered from a systemic disregard of statutory safeguards. The law has been clear in each of the 1986, 2000, and 2015 statutory regimes. Under Section 2(h) of the JJ Act 1986,¹⁰ juvenile meant "a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years." Under section 2(k) of

⁵ *Om Prakash* (n 1) I.

⁶ D Hamer and T Crofts, 'The Logic and Value of the Presumption of *Doli Incapax* (Failing That, an Incapacity Defence)' (2023) 43(3) Oxford Journal of Legal Studies 546 <<https://doi.org/10.1093/ojls/ggqado10>> accessed 20 January 2025.

⁷ Aanchal Kabra and Pratyay Panigrahi, 'Crimes by Children in Conflict with the Law – Heinousness, Acceptability, and Age of Adulthood: A Comprehensive Critique of the Present Juvenile Justice System' (2020) 32 National Law School of India Review 1; Sallyanne Payton, 'The Concept of the Person in the Parens Patriae Jurisdiction Over Previously Competent Persons' (1992) 17(6) The Journal of Medicine and Philosophy.

⁸ Constitution of India, arts 15(3), 39 and 51(a).

⁹ Juvenile Justice (Care and Protection of Children) Act 2015; Penal Code 1860, s 498A; Nagarik Suraksha Sanhita 2023, s 144.

¹⁰ Juvenile Justice Act 1986, s 2(h).

the 2000 Act,¹¹ the definition clause underwent modification with the juvenile or child coming to be defined as a “person who has not completed eighteen years of age.” Under Section 2(12) of the 2015 Act,¹² child again meant a person who has not completed eighteen years of age. At the time of the offence, the accused was, in no case, more than sixteen years of age and, therefore, a child. With the change in law, the definition was made gender neutral, and while the law stated that the ‘plea of juvenility could be raised at any stage of proceedings,’ the convict rightfully persisted in taking his plea of juvenility. It was only unfortunate that the plea was to no avail.

The plea of juvenility can be raised at any point in the proceedings. Section 9(2) of the JJ Act 2015,¹³ reads that a plea of juvenility may be “raised before any court, and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act”. The 2015 law is in tandem with Section 7A of the 2006 amendment to the 2000 Act, where it was specifically provided that “*claim of juvenility may be raised at any stage...even after final disposal of the case*”.¹⁴ This provision underscores the flexibility granted to parties in asserting their juvenility claim, irrespective of the stage of proceedings. Noting the statutory mandate, the Supreme Court thus observed:

“21. We place emphasis on the words ‘even after the final disposal of the case’ in Section 9(2) of the 2015 Act. As stated, this provision being the heart and soul of the entire Act, must be given its fullest meaning and interpretation...”

22. 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...To put it differently, even assuming a plea of juvenility was raised but not considered appropriately at the time of disposal of a Special Leave Petition/Statutory Criminal Appeal, a Review Petition, or a Curative Petition thereafter, it would not bar a competent Court from deciding the said issue by following due procedure.”

Thus, by necessary implication, this legislative design renders the 2015 Act retrospectively applicable for determining the question of juvenility, even in

¹¹ Juvenile Justice (Care and Protection of Children) Act 2000, s 2(k).

¹² Juvenile Justice (Care and Protection of Children) Act 2015, s 2(12).

¹³ Juvenile Justice (Care and Protection of Children) Act 2015, s 9(2).

¹⁴ *Ram Narain v State of U.P.* (2015) 17 SCC 699; *Hari Dutt Sharma v State of U.P.* 2021 SCC OnLine SC 3689.

respect of offences committed prior to its enactment. The focus of the inquiry is not the date of the claim but age of offender on the date of commission of the offence. Thus, for an offence committed in 1994, determination of juvenility must be made in accordance with the 2015 Act.

IV. COURTS, 'TRUTH,' AND 'PARENS PATRIAE'

Concomitant to the statutory mandate is the quest for truth that courts are bound to undertake. The judgement in *Om Prakash* exemplifies this socio-legal dynamic, offering a powerful commentary not only on the errors of previous adjudications but also on the normative function of Courts in our legal system. Here, the Court emphasises that, having been entrusted with the responsibility of adjudication, it holds the final authority over what constitutes admissible facts and the interpretation of laws, which ultimately shapes the 'Truth' in legal disputes. In this case, the few initial pages of the judgement are exclusively reserved for laying down foundational principles, including those governing JJ. In seriatim, the reader witnesses celebrated quotes of Lord Atkin,¹⁵ Justice V.R. Krishna Iyer, and a catena of judgements placing thrust that Courts are bound to play an active role while pursuing truth, especially when the Constitutional Articles 15(3)¹⁶, 39(e)¹⁷ and (f),¹⁸ 45,¹⁹ and 47,²⁰ emphasise the need for special care for children. The doctrine of *parens patriae* is an age-old doctrine. The task before the State is clear, and so is the duty of the Court to ensure that the State does not shrug off its responsibility: "if a citizen is in need of someone who can act as a parent who can make decisions and take some other action, sometimes the State is best qualified to take on this role".²¹ *Parens patriae* is not an unwarranted encroachment on individual and familial rights but a positive obligation that the welfare states have volunteered to tackle vulnerability and undernourishment, be it physical, emotional, or societal.²² The principle that the State will act in the best interest of the child cannot be effectuated with the perception that culpability and crime subsist notwithstanding the age. The factum of proof in such cases takes the front seat. We must have a look at the statutory prescriptions in this regard.

On bare perusal, it is evident that the law nowhere gives primacy to the presence of a bank account as a determining factor for the age of the accused. In other words, at later stages, when the plea of juvenility was taken and the report of ossification received, it was not just for the Courts to reiterate the statement of

¹⁵ *United Australia Ltd v Barclays Bank Ltd* 1941 AC 1 (HL).

¹⁶ Constitution of India, art 15(3).

¹⁷ Constitution of India, art 39(e).

¹⁸ Constitution of India, art 39(f).

¹⁹ Constitution of India, art 45.

²⁰ Constitution of India, art 47.

²¹ *Om Prakash* (n 1) 11.

²² *ibid* 10-11.

the accused qua bank account and thereby conclude the guilt.²³ In other words, as the Supreme Court concluded, the Appellant was prejudiced by the act(s) of the Court.²⁴

The judgement categorically finds that the admission made regarding the bank account under Section 313 Cr.P.C., 1973, was “*irrelevant in the context of juvenility*”.²⁵ The conviction was, therefore, upheld in subsequent appeals on irrelevant consideration. When the appeal reached Apex Court in 2002, the Appellant relied on two new pieces of evidence. The first was the birth certificate issued by the Board School dated 2001, and the second was the fact that it was the deceased employer who had filed the details of the Appellant to open a bank account. The appeal was unjustly dismissed, rendering these vital proofs otiose.

Noting all of this, the Court comments on the grave injustice perpetrated as:

*“50...We would only state that this is a case where the Appellant has been suffering due to the error committed by the Courts. We have been informed that his conduct in the prison is normal, with no adverse report. He lost an opportunity to reintegrate into the society. The time which he has lost, for no fault of his, can never be restored.”*²⁶

Thus noted, the Court directed the State Legal Service Authority to play a proactive role in the Appellant’s rehabilitation and smooth reintegration into society, especially since the Appellant had undergone “*imprisonment for almost 25 years, during which time the society has undergone a significant transformation which the Appellant might be unaware of and find difficult to adjust with*”.²⁷ The question, however, remains: can such directions ever balance equity?

V. CONCLUSION

“The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law”, had proclaimed the great jurist.²⁸ A few paragraphs before this line is another quote: “*In societies like ours, the command of the public force is entrusted to the judges in certain cases, and the whole power of the state will be put forth, if necessary, to carry out their judgements and decrees*”.²⁹ This moral and positive force, coupled with the potential prophecies, often makes the criminal justice system a perilous pitfall. Nothing illustrates it better than the

²³ *ibid* 27.

²⁴ *ibid* 28.

²⁵ *ibid* 33.

²⁶ *ibid* 50.

²⁷ *ibid* 52.

²⁸ O W Holmes Jr, ‘The Path of the Law’ (1897) 10 Harvard Law Review 457.

²⁹ *ibid*.

instant case where wrongful conviction was sustained for decades with persistent dismissal of juvenility pleas.

In *Roper v Simmons*³⁰ the case which historically rendered the infliction of the death penalty on juveniles unconstitutional, an exhaustive *amici brief* was filed by the American Psychological Association.³¹ The brief has nothing which is not spoken of in the general JJ literature. It is replete with cogent evidence and literature that situate children as a separate class of offenders or ‘beings in conflict with law.’ Some of the arguments are worth repeating here. In arguing against the provision for the death penalty for children, the *amici* take recourse to socio-psychological studies, in addition to the Eighth Amendment plea.³² It was submitted that a) adolescents think and behave differently than adults in numerous ways, which undermines any justification for the death penalty for them; b) adolescents are unable to carry out a risk analysis, i.e. they do not consider the consequences of their actions properly; c) adolescent brain is not mature; d) It is next to impossible to predict future outlook of a child offender, and importantly; and e) the lapse of time between crime and sentencing is a sentencing hazard, i.e. assessment of an adolescent capital defendant is compromised as the child grows up into a man. It is thus very difficult to imagine how the now innocent man in *Om Prakash* reflects on the crime committed by Raju, a child who then was.

The case of *Om Prakash* was not the first.³³ In certain terms, it will not be the last. The JJ question is more of education, upbringing, nourishment, and dreams than of labelling and conviction. JJ questions are about foundational principles,³⁴ about deciding basic questions with certainty and courage, and moreover, to ensure that a child is not deprived of his promised land because of an error committed *de hors* agency. Taking everything into perspective, the criminal justice system seemed to have an uphill task.

In conclusion, the case of *Om Prakash* serves as a reminder of the complexities inherent in JJ, where the intersection of societal expectations, psychological factors, and legal principles creates a delicate balance. Going forward, it is crucial that the criminal justice system not only addresses the immediate concerns of law but also ensures a robust and principled approach to safeguarding the rights and potential of juvenile offenders, guided by a framework that prioritises rehabilitation over retribution.

³⁰ *ibid.*

³¹ *Roper v Simmons* 2005 SCC OnLine US SC 12 : 161 L Ed 2d 1 : 543 US 551 (2005).

³² US Constitution Eighth Amendment.

³³ *Om Prakash* (n 1).

³⁴ Juvenile Justice (Care and Protection of Children) Act 2015, s 3.