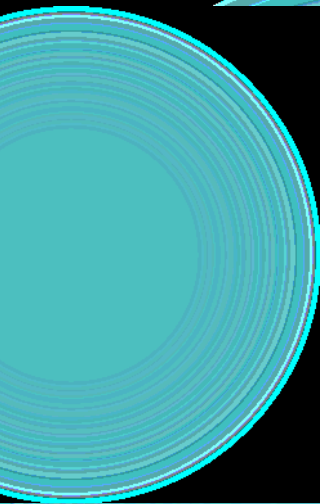


Section 94 Juvenile Justice Act 2015





**SECTION 94.
PRESUMPTION AND
DETERMINATION OF AGE**

1. Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

2. In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake process of age determination, by seeking evidence by obtaining-

(i) The date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) The birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the above, age shall be determined by an ossification test or any other latest medical age determination test conduct on the orders of the Committee or the Board:


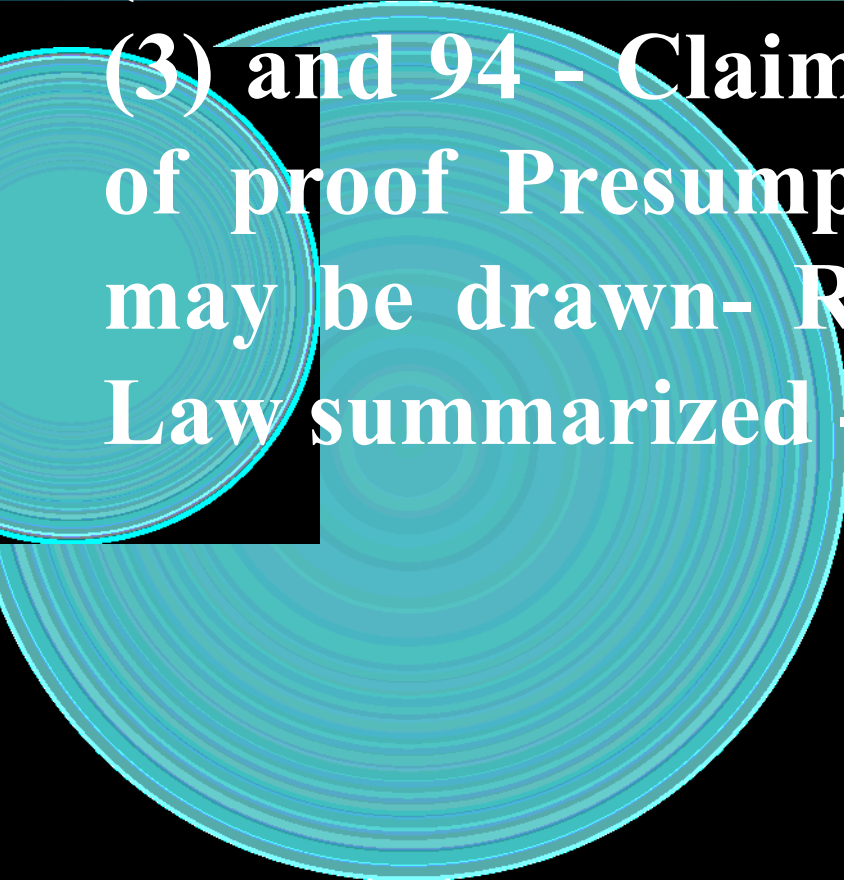
Provided such age determination test conducted on the order the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board 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.



A.



Juvenile Justice and Children's Acts Juvenile Justice (Care and Protection of Children) Act, 2015 - Ss. 9(2), (3) and 94 - Claim of juvenility before court - Burden of proof Presumption in favor of claimant – When may be drawn- Rebuttability of such presumption – Law summarized -



► Held, when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden - However, the documents mentioned in Rules 12(3) (a) (i), (ii) and (iii) of the JJ Rules, 2007 made under the 33 Act, 2000, or, the documents mentioned in S. 94(2) of the 33 Act, 2015, shall be sufficient for prima facie satisfaction of the court, once the document(s) in question have been proved in accordance with Ss. 35 and other provisions of the Evidence Act, 1872 Or the basis of the aforesaid documents a presumption of juvenility may be raised - Further held, the said presumption raised on the basis of the abovesaid documents is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side - Evidence Act, 1872 - s. 35 - Juvenile Justice (Care and Protection of Children) Act, 2000 - Ss. 7-A and 49 - Juvenile Justice (Care and Protection of Children) Rules, 2007, Rr. 12(3) (a) (i), (ii) & (iii)



▶ B.


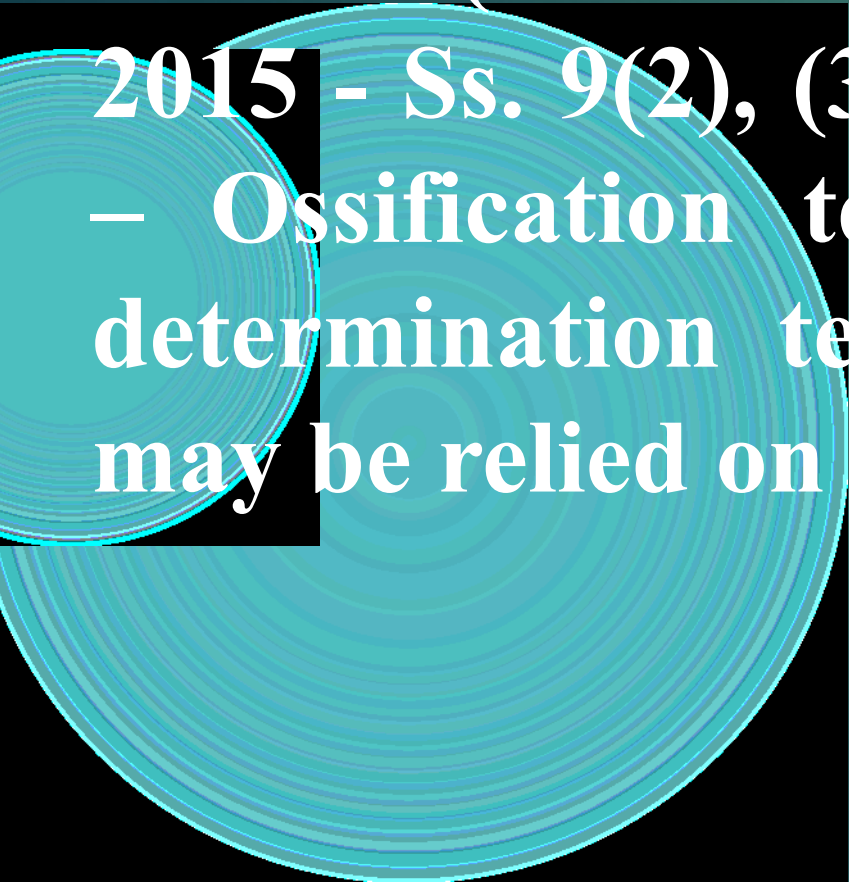
- ▶ **Juvenile Justice and Children's Acts - Juvenile Justice (Care and Protection of Children) Act, 2015 - Ss. 9(2), (3) and 94(2) - Claim of juvenility Determination of age on basis of evidence such as school records/ matriculation certificate, or any other private or public document Proof of, as per provisions of the Evidence Act, 1872- Necessity of**
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► Held, school record would have to be considered as per S. 35 of the Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents. Similarly, document in consonance with public documents, such as matriculation certificate can be accepted by the court or the JJ Board provided such public document is credible and authentic as per S. 35



▶C.

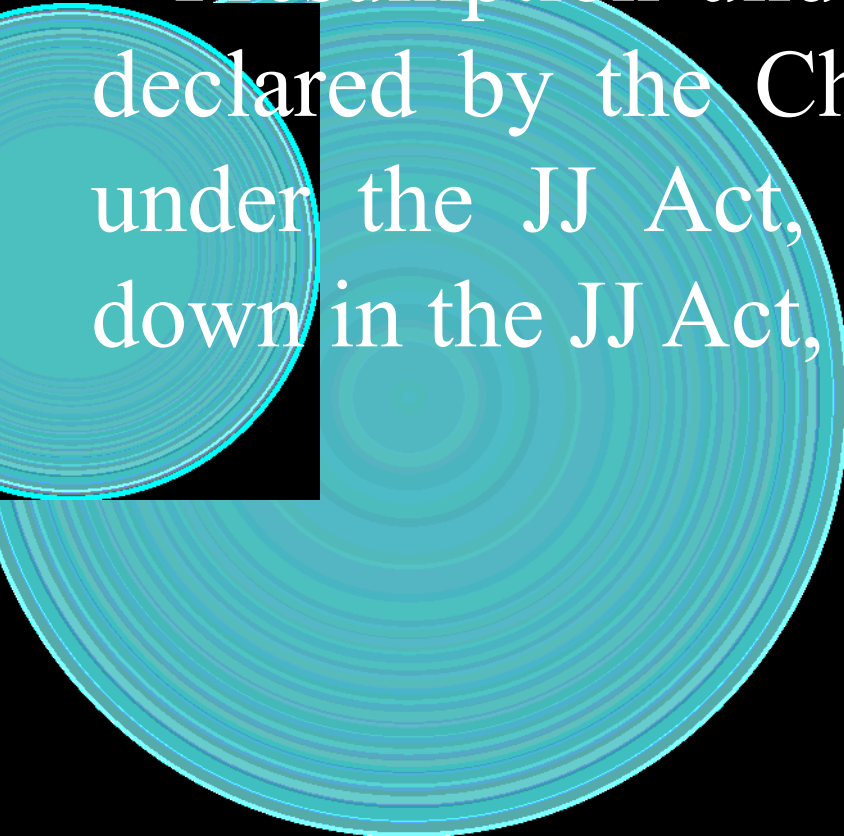
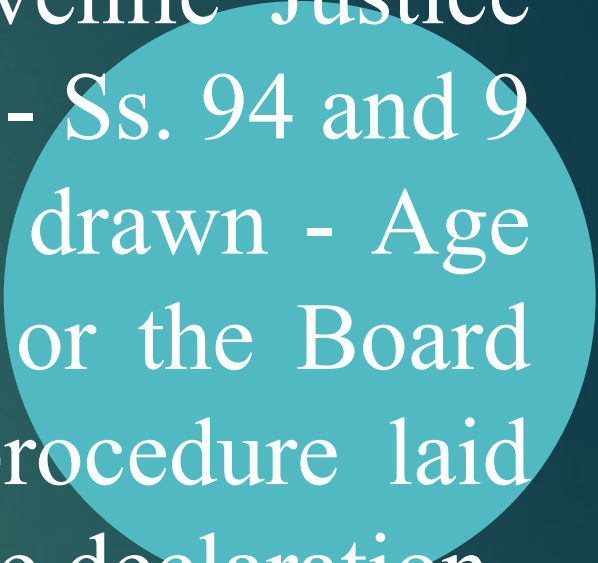

▶ **Juvenile Justice and Children's Acts - Juvenile Justice (Care and Protection of Children) Act, 2015 - Ss. 9(2), (3) and 94(2) - Claim of juvenility – Ossification test, or, any other medical age determination test When, and Extent to which may be relied on -**



- Held, such test(s) cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination - Such evidence, held, not conclusive evidence but only may be a very useful guiding factor to be considered in the absence of documents mentioned in S. 94(2) of the JJ Act, 2015 – Evidence Act, 1872, S. 45



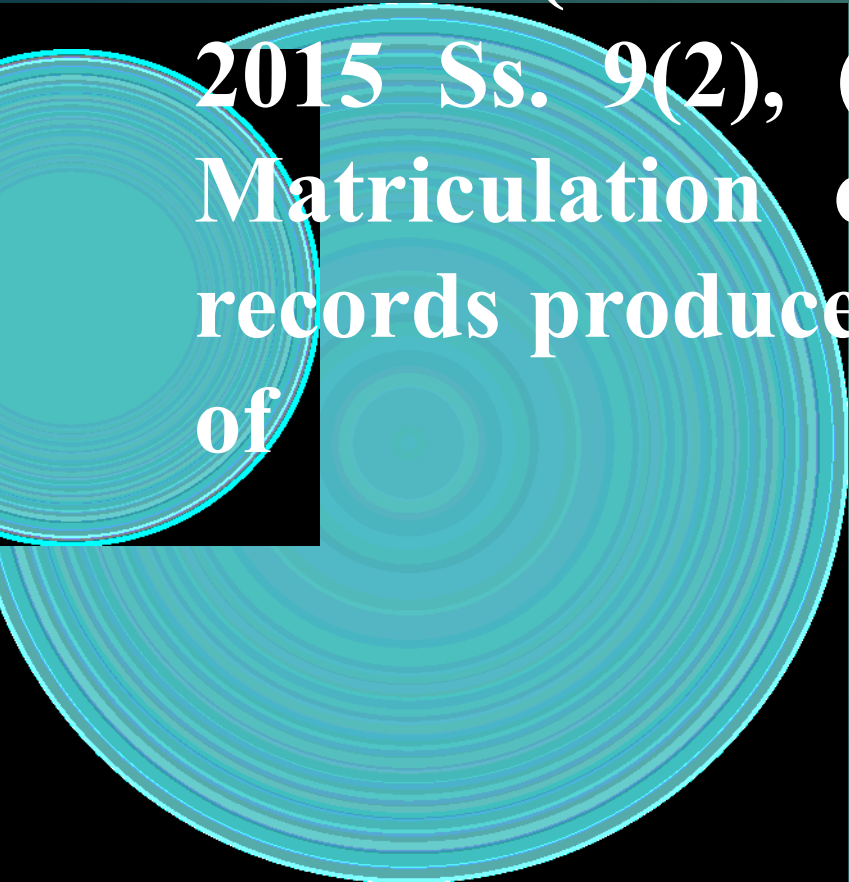

▶ D.

- ▶ Juvenile Justice and Children's Acts - Juvenile Justice (Care and Protection of Children) Act, 2015 - Ss. 94 and 9
 - Presumption under s. 94 - When may be drawn - Age declared by the Child Welfare Committee or the Board under the JJ Act, 2015, after following procedure laid down in the JJ Act, 2015 - Nature of such age declaration
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- Held, the age so recorded by the Committee or the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person



▶ E.

- ▶ **Juvenile Justice and Children's Acts Juvenile Justice (Care and Protection of Children) Act, 2015 Ss. 9(2), (3) and 94 Claim of juvenility – Matriculation certificate and school admission records produced whether reliable- Determination of**
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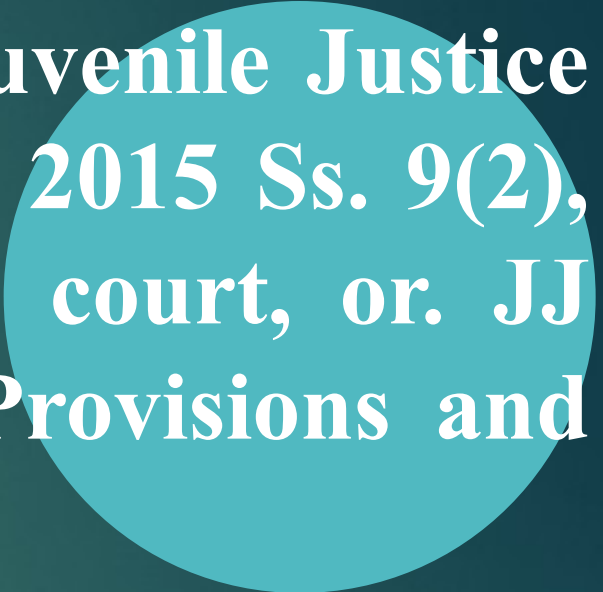
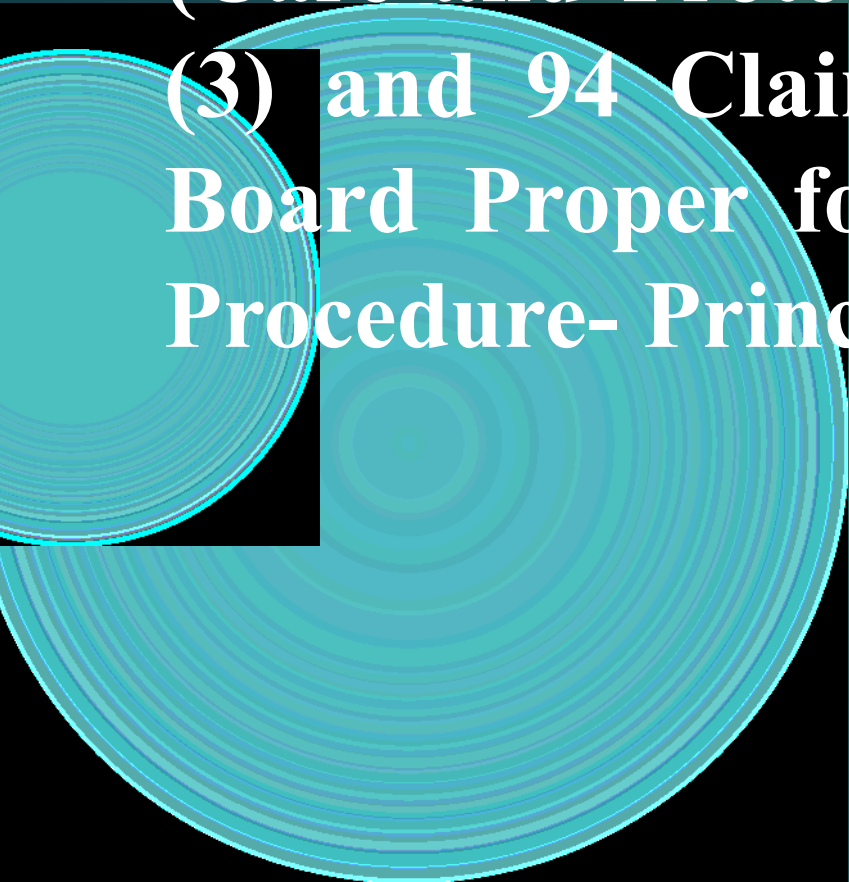
► Date of birth as recorded in the school admission records, as well as the matriculation certificate issued by the Board concerned found to be the same, namely, 25-09-2004 and the incident occurred on 05-05-2020 Prosecution did not produced any evidence in rebuttal Dispute over signature of claimant-accused on the admission forms of Class 1, held, not material - Resultantly, the claimant-accused, held, to be only 15 yrs 7 months of age on the date of the incident i.e. less than 16 yrs of age and, therefore, claim of juvenility, held, to be rightly allowed by the courts below

Evidence Act, 1872 – S. 35 Juvenile Justice (Care and Protection of Children) Act, 2000- Ss. 7-A and 49 (as inserted by Act 33 of 2006 with effect from 22-8-2006) - Juvenile Justice (Care and Protection of Children) Rules, 2007, Rr. 12(3)(a)(i), (ii) & (iii)



▶ F.

▶ **Juvenile Justice and Children's Acts Juvenile Justice (Care and Protection of Children) Act, 2015 Ss. 9(2), (3) and 94 Claim of Juvenility before court, or. JJ Board Proper forum applicability of Provisions and Procedure- Principles Clarified**


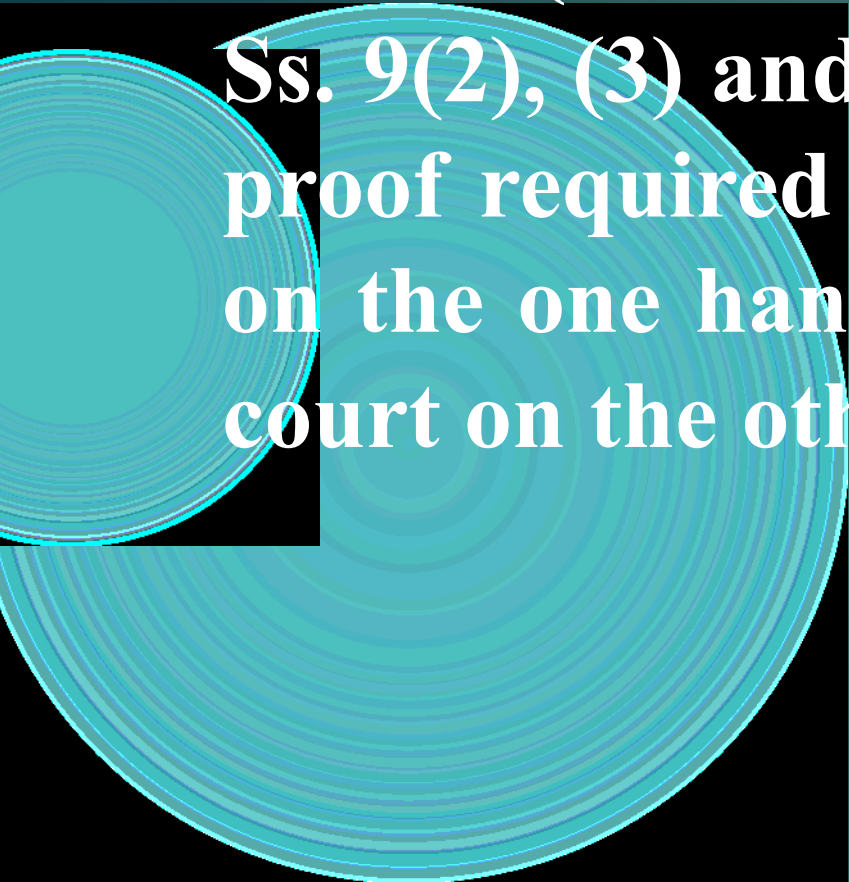


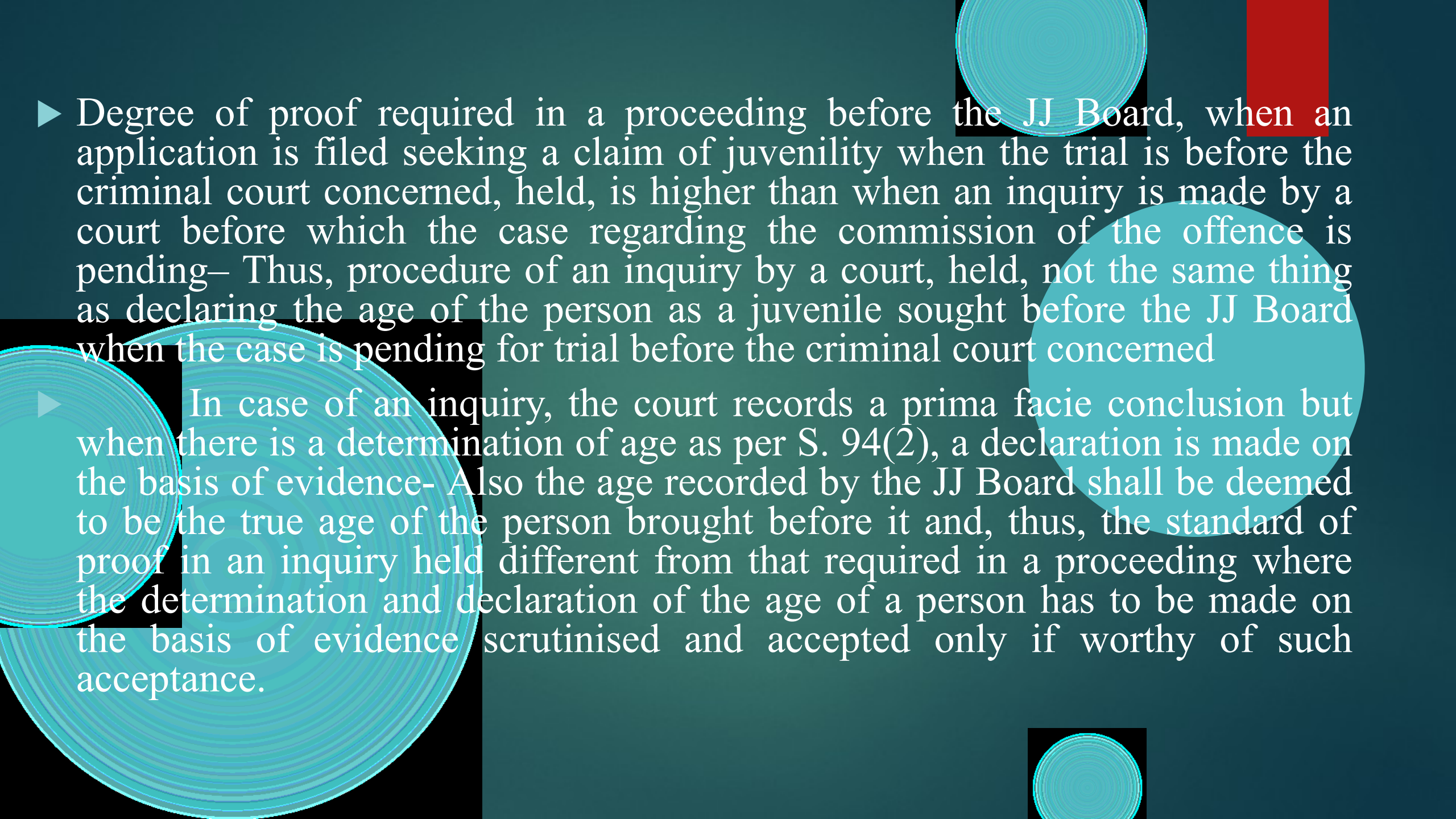
- ▶ Held, claim of juvenility can be made either before the court or the JJ Board and when the issue of juvenility arises before a court, it would be under Ss. 9(2) & (3) but when a person is brought before a committee or JJ Board, S. 94 applies - Further, when application is filed before the court claiming juvenility, S. 94(2) would have to be applied or read along with S. 9 (2) so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be Further, when an application claiming juvenility is made under S. 94 before the JJ Board when the matter regarding.



▶ G.

▶ **Juvenile Justice and Children's Acts - Juvenile Justice (Care and Protection of Children) Act, 2015- Ss. 9(2), (3) and 94(2) Claim of juvenility – Degree of proof required in a proceeding before the JJ Board on the one hand, and, procedure of an inquiry by a court on the other hand - Distinguished and clarified**





▶ Degree of proof required in a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the criminal court concerned, held, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending— Thus, procedure of an inquiry by a court, held, not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal court concerned

▶ In case of an inquiry, the court records a prima facie conclusion but when there is a determination of age as per S. 94(2), a declaration is made on the basis of evidence- Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it and, thus, the standard of proof in an inquiry held different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.



- ▶ **Juvenile Justice and Children's Acts - Juvenile Justice (Care and Protection of Children) Act, 2015 - Ss. 9(2), (3) and 94(2) - Claim of juvenility – Duty of court Abstract formula for determination of age,**

held, neither feasible nor desirable and, thus, age has to be determined on the basis of the material on record and on appreciation of evidence adduced by the parties in each case - Therefore, a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was Juvenile



▶ I.

- ▶ **Juvenile Justice and Children's Acts - Juvenile Justice (Care and Protection of Children) Act, 2015 - Ss. 9(2), (3) and 94(2) Claim of juvenility - Probability of two views on same evidence -**
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- Held, in such situation, the court should lean in favour of holding the accused to be a juvenile in borderline cases - This, held, to be in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law At the same time, the court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences



▶ J.

▶ **Juvenile Justice and Children's Acts Juvenile Justice (Care and Protection of Children) Act, 2015 Ss. 9(2), (3) and 94 juvenility - Stage and effect of delayed Claim -**



- Held, a claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case - Thus, a delay in raising the claim of juvenility cannot be a ground for rejection of such claim and it can also be raised for the first time before Supreme Court

ASWANI KUMAR SAXENA VS MP(2012) 9SCC 750

- NATURE OF ENQUIRY EXPLAINED
- JJB MUST CONDUCT INQUIRY “BY SEEKING EVIDENCE BY OBTAINING”
- EXCLUSIONARY RULE APPLIES.
- JJB NOT TO CONDUCT A ROVING ENQUIRY AND GO BEYOND CERTIFICATE UNLESS ESTABLISHED THAT THE CERTIFICATE WAS OBTAINED BY FRAUD OR MANIPULATION.

HARIRAM VS RAJASTHAN (2009) 13 SSC 211

- Juvenile law is meant to be different from adult justice system.
- Law is rehabilitatory and not adversarial.
- Difference yet to be appreciated.
- All Persons below 18 at the time of commission of offence are entitled to benefit .
- Plea can be raised at any stage even after completion of trial.

RAM DEV CHAUHAN VS ASSAM AIR (2001) SC 2231

- School records were not accepted because the source of information regarding date of birth was not proved. Register was not properly maintained.
- Even medical report according to which age could be around 16 years was not accepted .

BHOLA BHAGAT VS STATE OF BIHAR (1997) 8 SCC 720

- ▶ Statement of accused under section 313 Crpc and assessment of age by trial judge was accepted as valid proof of age in absence of any challenge by the state either in HC or in SC.
- ▶ Held- if HC doubted assessment of is by session judge and Enquiry could be ordered.
- ▶ State of Haryana vs Balwant Singh 1993 Supp SCC 1 was held not to be a good law.

PAWAN VS UTTARANCHAL (2009)15 SCC 259

- ▶ Juvenility was claimed on the basis of school leaving certificate and statement u/s 313 CrPC. SC held that since no plea was raised in trial court or the High Court and school certificate was obtained after conviction it was not accepted even for directing and enquiry.
- ▶ Statement u/s 313 is hardly determinative of age.

The legal principles for determination of juvenility under the JJ Act, 2015 can be summarised as follows:

(1) A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before the Supreme Court.

(2) An application claiming juvenility could be made either before the court or the JJ Board)

(3) When the issue of juvenility arises before a court, it would be under sub sections (2) and (3) of Section 9 of the JJ Act, 2015 but when a person is brought before a committee or JJ Board, Section 94 of the JJ Act, 2015 applies.

(4) If an application is filed before the court claiming juvenility, the provision of sub-section (2) of Section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of Section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

- ▶ 5) When an application claiming juvenility is made under Section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a court, then the procedure contemplated under Section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the criminal court concerned, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide Section 9 of the JJ Act, 2015).

- ▶ (6) When a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, the documents mentioned in Rules 12(3)(a) (i), (ii) and (iii) of the JJ Rules, 2007 made under the JJ Act, 2000 or sub-section (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised.
- ▶ (7) The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.
- ▶ (8) Under Section 94 of the JJ Act, 2015, a presumption is raised that when a person is brought before the JJ Board or the Child Welfare Committee ("the Committee") (other than for the purpose of giving evidence) and the said person is a child, the JJ Board or the Committee shall record such observation stating the age of the child as nearly as may be, and proceed with the inquiry under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age. Thus, in the initial stage a presumption that the child brought before the Committee or the JJ Board is a juvenile has to be drawn by the said authorities. The said presumption has to be drawn on observation of the child. However, the said presumption may not be drawn when the Committee or the Board has reasonable grounds for doubt regarding the person brought before it is a child or not.

▶ (9) Thus, where the said Board or the Committee has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the JJ Board or the Committee, as the case may be, shall undertake the process of age determination by seeking evidence by obtaining:

(a) The date of birth certificate from the school, or the matriculation or equivalent certificate from the examination Board concerned, if available; and in the absence thereof;

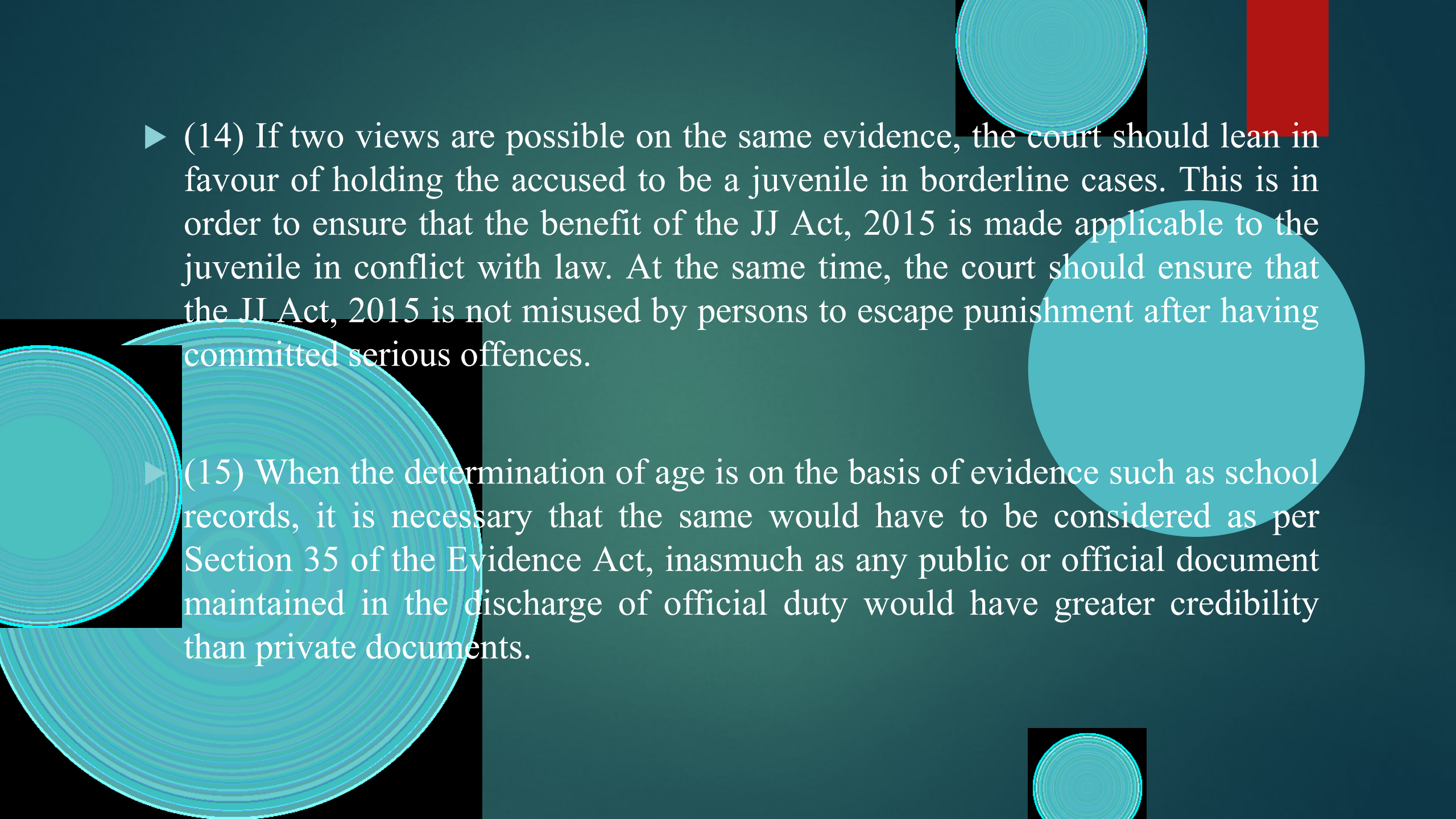
(b) The birth certificate given by a corporation or a municipal authority or a panchayat;

(c) And only in the absence of (a) and (b) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.


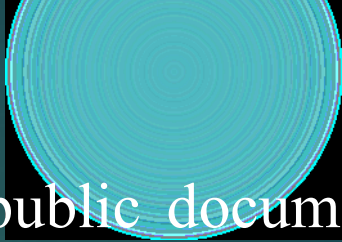
▶ (10) The age recorded by the Committee or the Board to be the age of the person so brought before it shall for the purpose of the JJ Act, 2015 be deemed to be the true age of the person. The deeming provision in sub-section (3) of Section 94 of the JJ Act, 2015 is also significant inasmuch as the controversy or the doubt regarding the age of the child brought before the Committee or the JJ Board is sought to be set at rest at the level of the JJ Board or the Committee itself.

- ▶ (11) The procedure of an inquiry by a court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal court concerned. In case of an inquiry, the court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of Section 94 of the 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.
- ▶ (12) It is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.
- ▶ (13) A hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

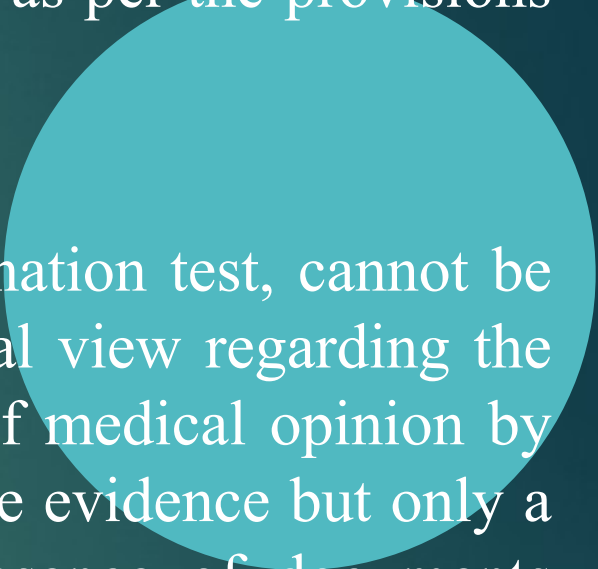
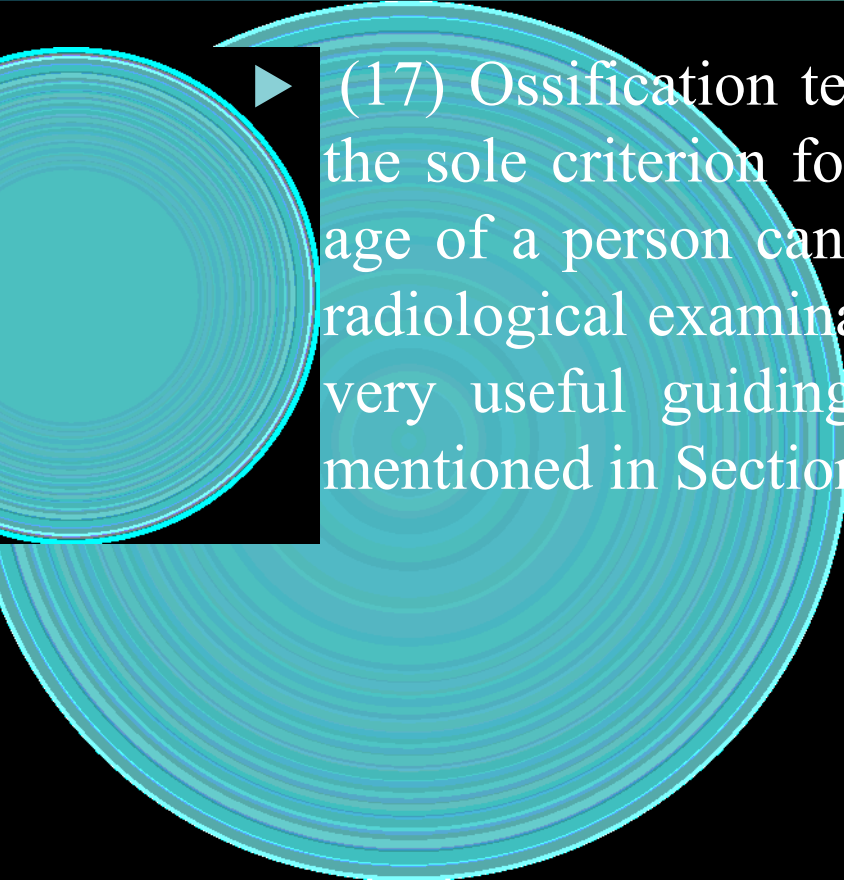


▶ (14) If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.


▶ (15) When the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.



▶ (16) Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the court or the JJ Board provided such public document is credible and authentic as per the provisions of the Evidence Act viz. Section 35 and other provisions.



▶ (17) Ossification test or any other medical age determination test, cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.



Thank You

