

MEDICOLEGAL ASPECT OF AGE: A REVIEW ARTICLE**Thorat Vidhyashree Jagannath**

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ABSTRACT

Identification means establishment of individuality of a person or establishment of personality of one individual, living or dead. Age is the important data required for identification in living or dead. It is necessary in Criminal cases, such as persons accused of assault, murder, rape etc, interchange of newborn babies in hospital, and in cases of impersonation. In Civil cases, like marriage, inheritance, passport, insurance claims, disputed sex, missing persons, etc. After the age of 25 years, the estimation of age becomes more uncertain. A careful examination of all factors may enable the doctor to make a fair approximation to the decade within which a person may be. Points mentioned here in the article have importance in medico legal cases Criminal or Civil, where age of a person is determined by medical officer on requisition from the police officer or Magistrate.

Key words: Age, Medicolegal, Identity.**INTRODUCTION**

External inspection of the dead permits only an approximate estimate of age. It is a primary characteristic in the identification and its estimation is of considerable importance. The skeleton and the teeth are the principal sources of information towards the age estimation. Krogman(1960) reviewed the reliability of the identification of human skeletal remains.¹ Where the age exceeds 25 years, there occurs great variability due to intrinsic and extrinsic factors, but it is possible to attain accuracy to one year in the first two decades. After 25 years, reliability is only within a decade. Here, the pubic symphysis is of best value and with other parts of the skeleton, better range of accuracy may be achieved.

It is convenient to discuss the evidence of age in three phases, namely:

- The fetus and the new-born infant.
- The children and young adults under the age of 25 years.

- The adults over the age of 25 years.

Age in the fetus and the Newborn infant-

The main problem with this group is to decide whether the infant was viable, i.e. it was born after 210 days of gestation and if viable, whether it was capable of leading an independent existence.

The age of an individual, up to about 25 years, can be determined, within a range of one to two years, from a combination of data provided by 1) teeth 2) ossification of bones 3) height and weight 4) miscellaneous particulars which include: a) birth record b) changes occurring at puberty c) changes due to old age. In clinical forensic medicine, most cases which come before the medico legal expert for age determination.

After the age of 25 years, estimation of age becomes more uncertain, whether in the living or in the dead. Premature aging may be produced by illness, malnutrition, suf-

ferings and anxiety. White hair may appear in quite young people due to grief or shock. It is difficult to achieve an accuracy of even five years in estimating the age after the full permanent dentition and fusion of all the centers of ossification of long bones. The ossification of cartilage in the hyoid, the fusion of the greater horns of the hyoid to the body and of manubrium and xyphisternum with the body of the sternum, the lipping of the vertebrae, etc. all occur somewhere between 40-60 and may be suggestive of advancing age but give no precise evidence. Hence, a careful consideration of all the factors must be taken to reach an approximation under such situations.²

Evidence of the age is necessary in the following circumstances-

1] Criminal responsibility 2] Judicial punishment, 3] Kidnapping 4] Rape 5] Marriage 6] Attainment of majority 7] Employment 8] Infanticide 9] Criminal abortion 10] Impotence and sterility 11] Competency as a witness 12] Identification 13] Senior citizen concession, old age pension and retirement dispute.

1] Criminal responsibility-

In law, responsibility means liability to punishment. Under section 82 IPC, a child under the age of seven is incapable of committing an offence. This is so because the action alone does not amount to guilt unless it is accompanied by a guilty mind and a child of that tender age cannot have a guilty mind or criminal intention with which the act is done.³ This presumption, however, is only confined to offences under the IPC but not to other Acts e.g. the Railway Act {Act IX of 1890}. Thus, a child of this age will be punished if it does anything maliciously to wreck or attempt to wreck a train, to hurt or attempt to hurt persons traveling by railway by or to endanger the safety of persons traveling by railway by willful act or by omission or by way of rash or negligent act or omission.

In a case where a lad of about 6 years of age, was sent to the Sessions Court, Badaun for trial under ss 127-180 of the Indian Railways Act 1890, on charges of pelting stones at the engine of the 10-down mixed train, the learned district judge held the accused guilty; but taking the lad's tender age into consideration, the judge ordered him to be let off with admonition, on his father executing a bond of a sum of Rs 100, binding himself in such penalty to prevent the minor accused from again being guilty of any of the acts referred to in ss 127 and 180 of the Indian Railways Act 1890.⁴

In India under section 83 IPC, a child above seven and below twelve years of age, is presumed to be capable of committing an offence if he has obtained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. The law presumes such a maturity in a child of that age, unless the contrary is proved by the defense. On the other hand, according to English law, the incapacity to commit a crime by a child between eight and fourteen years is to be presumed until the contrary is proved.⁵ Under section 89 IPC, a child under 12 years of age cannot give valid consent to suffer any harm which can occur from an act done in good faith and for its benefit, as for example, a consent for a surgical operation. Only, a guardian can give such consent.

Under section 87 IPC, a person under eighteen years of age cannot give valid consent, whether express or implied, to suffer any harm which may result from an act not intended or not known to cause death or grievous hurt, as for example, a wrestling contest.

2] Judicial Punishment-

Whipping as a punishment has been abolished under the Central act (No 44 of 1955) and nobody can now be sentenced to

whipping. The Bombay Children Act 1948 provides that a child means a boy or a girl who has not attained the age of 16 years, and a youthful offender means any child who has been found to have committed an offence, and who shall not be sentenced to death or life imprisonment. A child charged with the commission of an offence shall be tried by the Court of a Chief Judicial Magistrate or in any court specially empowered under the Children's Act 1960 or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders, and, on conviction, may be sent to certified school or a fit person institution, but must not be detained there beyond the age of 18 years. The state government may order a youthful offender who has attained the age of 16 years, detained in a certified school, to be transferred to a Borstal School established under the Borstal School Act 1929, in the interest of discipline or for other social reasons.

A youthful offender may also be committed to the care of his parent or guardian or any other adult relative, who will be required to execute a bond to be responsible for the good behavior and the wellbeing of the youthful offender for a period of at least three years. If the offence committed by a youthful offender is punishable with fine, and youthful offender himself is over the age of 14 years, the offender may be ordered to pay the fine. Under the Children and Young Persons Act 1933, of England, a person under the age of 18 years cannot be sentenced to death.

Age itself is not generally enough to reduce the sentence of death to life imprisonment, though there are now some cases where the youth of the offender has been accepted as a mitigating factor.⁶

3] Kidnapping-

This means carrying away a person from, lawful guardianship by illegal

means. Under section **369 IPC**, to constitute a crime of kidnapping or abducting a child with the intention of taking dishonestly any moveable property from its person, the age of such a child should be under **ten years**. Section **361-366 IPC** lay down that it is a crime to kidnap or abduct a minor from lawful guardianship if the age of boy is under sixteen and that of a girl under eighteen years.⁷ Section **366A, 372, 373 IPC** lay down that it is an offence to procure a minor girl for illicit intercourse or to sell or buy a minor girl for purpose of prostitution, If her age is under **eighteen** years. Section **366B IPC** lies down that it is an offence to import into India from foreign country a girl for purpose of illicit intercourse, if her age is less than **twenty-one** years.

4] Rape-

Under section **375IPC** Rape is defined as unlawful sexual intercourse by a man with a woman without her consent and against her will or with her consent and when the consent is obtained by force, fear or fraud or sexual intercourse with any woman below the age of 15 years even with own wife.⁸ **or** any other girl under **sixteen** years of age even with her consent constitutes the offence of rape. According to the law of England, a boy under 14 years of age is presumed to be incapable of committing rape. In India, there is no such limit of age at which a person may be presumed to be physically incapable of committing rape, however the court is guided in this respect by ss 82 and 83 of the Indian Penal Code 1860.

5] Marriage-

Indian law under the Hindu Marriage Act has defined the marriageable age of a boy and girl. Legally a boy in India needs to be 21 and girl needs to be 18 years of age at the time of marriage.⁹ Under the Child Marriage Restraint (Amendment) Act 1978, a male who has not completed 21 years and a female who

has not completed 18 years of age, shall be considered as a child, and any marriage in which one of the spouse is a 'child', will be considered as a child marriage and the parent or guardian of such a child shall be liable for punishment. This offence will be treated as a cognizable offence only for the purpose of investigation by the police.

6] Attainment of majority-

Under Indian Majority Act {Act IX of 1875} person domiciled in India attain majority on completion of **eighteen** years, except when under a guardian appointed by a court, or under a Court of Wards, when the individual attains majority on completion of **twenty-one** years. Persons under this age are minors. After attainment of majority, a person acquires full civil rights and responsibilities. A minor cannot make a valid will, sell his property, or serve on a jury.

Under the Bombay Prevention of Hindu Bigamous Marriage Act 1946, a minor means any person who is under 16 years of age.

7] Employment-

Twenty five years is ordinarily the limit for entering into government service. The constitution of India 1950 provides that a child below the age of 14 years shall not be employed to work in any factory or mine or engaged in other hazardous employment. Under the Factories Act 1948, an 'adult' is defined as a person who has completed his eighteenth year, an 'adolescent' is defined as a person who has completed his fifteenth year but has not completed his eighteenth year, and a 'child' is defined as a person who has not completed his 15th year. A young person means a person who is either a child or an adolescent. A child who has not completed his 14th year shall not be required or allowed to work in any factory. A child who has completed his 14th year or an adolescent shall not be required or allowed to work in a factory unless a certificate of fitness

granted to him by a certifying surgeon is in the custody of the manager of the factory, and such a child or adolescent carries, while he is at work, a token giving a reference to such a certificate. While at work in the factory, an adolescent who is granted a certificate of fitness to work in a factory and carries a token giving reference to the certificate shall be deemed to be an adult for all purposes. No child shall be employed or permitted to work in any factory for more than four and half hours in any day and between the hours of 7 pm and 6 pm. No adult worker shall be required or allowed to work in any factory for more than nine hours in any day and for more than 48 hours in any week. The period of work of adults employed in a factory shall be so fixed in each day, that no period shall exceed five hours and no worker shall work for more than five hours before he has had an interval of at least half an hour.

India has ratified the convention concerning night labour of young person's employed in an industry, which was adopted by the International Labour Conference as its thirty-first session held in 1948. This convention provides that young person's between 15 & 17 years of age shall not be employed in factories, mines, railways and ports for a period of at least 12 consecutive hours, including an interval of at least seven consecutive hours between 10 pm and 7 am.¹⁰

The Bombay Shops and Establishment Act 1948, provides that a child who has not completed 12 years shall not be employed in these establishments. No employee shall be allowed to work in any shop or commercial establishment for more than nine hours in a day and 48 hours in any week. Women shall be prohibited from work before 6 am and after 7 pm.

Under the Indian Mines Act 1923, as modified up to the 1 October 1938, no child

shall be employed in a mine, or be allowed to be present in any part of a mine which is below the ground. A person who has not completed his seventeenth year shall not be allowed to be present in any part of a mine which is below the ground, unless a certificate of fitness granted to him by a qualified medical practitioner is in the custody of the manager of the mine, and he carries, while at work, a token giving a reference to such certificate.

Under s 22 of the United Provinces Excise Act 1910, a licensed vendor is not permitted to sell any spirit or intoxicating drugs to persons apparently under the age of 16 years, while under s 23, a licensed vendor is not allowed to employ children under the age of 14 years in the premises in which foreign liquor or country spirit is consumed by the public.

8] Infanticide-

An immature infant is not capable of maintaining a separate existence after birth, So in a charge of infanticide, where a newly born infant is alleged to have been killed, it is necessary to determine whether the infant had attained the age of viability, which is certain after the 210th day of the intra-uterine life and may, in exceptional cases, be after the 180th day. An infant born earlier than this period is not, in ordinary circumstances, capable of maintaining a separate existence after birth. Hence the charge of infanticide may fall through if the infant is proved to be under the age of six months of intra-uterine life.

9] Criminal Abortion-

It is necessary to recognize the stage of development of the product of conception in view of the enhanced punishment for the crime after the pregnancy has advanced beyond the stage of quickening. It is also necessary to find out if the woman has passed the child bearing period, lest it might be a false charge.¹¹

10] Impotence and sterility-

A boy is sterile though not impotent before puberty. There is no upper limit regarding potency or sterility of man. Women become sterile after menopause.

11] Competency as a witness-

Under section 118 IEA, no age limit is laid down for this purpose. That means there is no fixed age limit at which a person may or may not give evidence in a court of law. According to s 118 of the Indian Evidence Act 1872, every person is competent to testify, unless the court considers that he is prevented from understanding the questions put to him or from giving rational answers to those questions due to tender age, old age, disease, whether of body or mind or any other cause of the same kind. Before a child of tender years is examined as a witness, it is necessary for the court to be satisfied that the child is capable of understanding the difference between truth and falsehood and the necessity of speaking the truth. Under the Indian Oaths Amendment Act 1939, the unsworn evidence of a child under 12 years of age is admissible, if the court or person having authority to examine such witness is of the opinion that, though he understands the duty of speaking the truth, he does not understand the nature of an oath or of an affirmation.¹²

12] Identification-

The determination of age may be required for the identification of an individual, living or dead. When a person suddenly appears after many years and claims to be the missing individual or when a dead body is produced as that of the missing person, complete identification becomes absolutely necessary. The approximate age is an important link in any chain of identity data.

13] Senior citizen concession, old age pension and retirement dispute

Now a days provisions such as concessional fares during travel, priority in

allocation of certain essential amenities are made available especially to senior citizens. A person above the age of 60 years is said to be a senior citizen in India. All the government agencies have a prescribed age of superannuation. Sometimes people try to delay the re-

tirement day by hiding the age. In such cases particularly in absence of any legal documents, the age of a person has to be fixed on the basis of personal examination of an individual.

Table No 1: Distribution of medicolegal importance of age starting from weak of fertilization to old age:

| Age | Medicolegal Importance |
|--|--|
| 3 lunar months(12 weeks of pregnancy) | For termination of pregnancy till this duration, decision about the applicability of the indications provided by the M.T.P. Act can be exercised by 1 doctor alone. Above this age of the foetus, opinion of 2 doctors is necessary to decide whether the indications of M.T.P. Act are applicable or not. |
| 5 lunar months (20 weeks of pregnancy) | This is the maximum period of gestation for use of the indications of the M.T.P. Act in the termination of pregnancy. Above this age, pregnancy can be terminated only on the grounds of mother's life being in danger. |
| 7 lunar months (210 days) | A foetus at this age is considered to be viable |
| 9 lunar months | Full term foetus |
| 1 year of extra-uterine life | Till completion of one year, a baby is an infant. Killing of such a baby amounts to infanticide. |
| 3 years | To collect (half) fare in public transport buses |
| 5 years | a) Criminal responsibility- Section 130 of Indian Railways Act 1890. b) To collect (half) fare in railways. c) To admit in the first standard of elementary school. |
| 7 years | Criminal responsibility – Section 82 of Indian Penal Code 1860. |
| Above 7 years below 12 years | Criminal responsibility – Section 83 of Indian Penal Code 1860. |
| 10 years | Kidnapping a child for stealing movable property- Section 369 of Indian Penal Code 1860. |
| 12 years | a) Criminal responsibility- exception section 84 and 85 of Indian Penal Code 1860 b) > 12 consent for physical examination- Sec 89 of Indian Penal Code Amendment Act 1860. c) < 12 – oath not necessary- Indian Oaths Amendment Act 1939. d) Considered adult for drug therapy e) To collect full fare in all modes of transport. |
| 14 years | Employment in a factory as a child – under the Indian Factories Act 1948. |
| Above 15 below 18 years | Adolescent employee in a factory |
| 16 years | a) Consent for sexual intercourse- Section 375 of Indian Penal Code |

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|-------------|--|
| | 1860. b) Kidnapping boys from legal guardianship – Section 361-366 of Indian Penal Code 1860. |
| 18 years | a) Majority b) Consent for procedures involving risk of life- Section 87 of Indian Penal Code 1860 c) Adult-Indian Factories Act 1948 d) Kidnapping female from legal guardianship-Sections 361-366 of Indian Penal Code 1860. e) Casting votes for local bodies assembly and Parliament elections. f) To obtain driving license g) <18 male and female offenders to be tried under Juvenile Justice Act 2000. |
| 21 years | a) Majority for those under guardianship of court of wards b) Marriage contract for female c) Importing from foreign countries females for the purpose of illicit sexual intercourse – Section 366B of the Indian Penal Code 1860. |
| 25 years | To contest state assembly elections |
| 30 years | To contest parliamentary elections |
| 55-58 years | Retirement age for all state government employees |
| 60 years | Retirement age for all central government employees To obtain concession in fare for senior citizens in railways and Indian Airlines |
| 65 years | Retirement age for all government employees. |

DISCUSSION:

Identity means the determination of the individuality of a person. The question of identification of a living person is mostly the concern of the police and is raised in criminal courts in connection with absconding soldiers and criminals, or persons accused of assault, rape, sodomy or murder; or when there is mix-up of newborn babies in hospitals, or young lost children; and occasionally, in adults who have lost their memory. It is also frequently raised in civil courts owing to impersonation practiced by people to secure unlawful possession of property, insurance claims or to obtain the prolongation of a lapsed pension. The principle means, which enable one to form a fairly accurate opinion about the age of an individual, especially in

earlier years, are teeth, height and weight, ossification of bones and minor signs.

Criminal responsibility, Marriage contract, Kidnapping, Rape, Attainment of majority, Competency as a witness, criminal abortion, Infanticide, Judicial punishment, Eligibility for employment, Senior citizen concession, old age pension and retirement disputes are the cases in which a medical man is called upon to give his opinion as regards age. Medical evidence relating to age is an expression of opinion based on clinical examination. The doctor should have reasons in support of his conclusion and explain why he came to that conclusion by an examination of the teeth, height, weight, etc. He should place before the court an analysis of these factors showing what normally is to be expected at

the age given by him, what is the margin of error permissible and when approximately these factors or any of them would present a different picture so as to make out a reasonable probability of age.

CONCLUSION

Age plays very important role in identification of individual whether living or dead, Also in medico legal cases, criminal or civil to find out accused or cause of death and to pass the correct judgment in court with the help of medical evidences.

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