In Defence of Arnit Das v. State of Bihar : A Rejoinder

By Ved Kumari*

Cite as: (2002) 2 SCC (Jour) 15

Since the publication of the case comments by the present writer and B.B. Pande on Arnit Das (hereinafter referred to as Arnit Das-I) two developments are worth noting. One is the dismissal of the review petition of Arnit Das by the Supreme Court (hereinafter referred to as Arnit Das-II). The other is the response to the comments by R.D. Jain written in defence of Arnit Das-III supported by the editorial comments from Chandrashekhar Pillai. Though R.D. Jain and Chandrashekhar Pillai support Arnit Das-I, they do so on different grounds. This article analyses all these viewpoints and reiterates that the age at the date of commission of the offence continues to be and ought to be relevant for deciding the applicability of the Juvenile Justice Act. The situation under the Juvenile Justice (Care and Protection of Children) Act, 2001 remains the same as the relevant provisions and scheme are similar to those of the Juvenile Justice Act, 1986 (JJA).

A. Review of Arnit Das-I

The petition for review of Arnit Das-I was filed on 4-12-2000 on the ground, inter alia, that the decision was contrary to the earlier decision of the three-Judge Bench in Umesh Chandra. Umesh Chandra was decided under the Rajasthan Children Act, 1970 and it was held that the age at the date of commission of the offence was relevant for determining applicability of the Act. Admitting the review petition, K.T. Thomas and R.C. Lahoti, JJ. by their order of 19-1-2001 directed the matter to be heard by a five-Judge Bench. The five-Judge Bench while dismissing the petition on other grounds refused to answer the question of relevant date for determining the applicability of the JJA It said that in view of the fact that the accused in the present case was not a juvenile on the date of the offence, the above question was of purely academic interest for this case.

The present writer had taken a similar view and had argued that in Arnit Das this question had not survived for decision in view of the court's finding of age. Hence, Arnit Das is not an authority for determining the relevant age for applicability of the Juvenile Justice Act or for that matter for that of the JJ (C&P) Act. However, the controversy generated by the conflicting opinions of the Supreme Court in Arnit Das and Umesh Chandra, does need a closer scrutiny and a threadbare discussion of the implications of each position.

The Supreme Court in Arnit Das accepted that persons who were below the specified age on the date of the offence and continued to be so when presented before the court, were entitled to be dealt with under the provisions of the Juvenile Justice Act. It however, did not think it right to extend that "benefit" to persons who ceased to be so when presented before the court for the first time. The rationale for this proposition is that a "child" who had evaded arrest or had not been brought or presented before the court till the age of 50, will have to be sent to the homes housing children below 16 years of age. The Court, however, has not considered the question of dealing with a child attaining that age after proceedings were initiated under the Juvenile Justice Act.

The consequence of Arnit Das-I proposition when applied to a case of murder by a boy of 15 years and nine months old, is as follows:

**Consequence of Arnit Das-III: Offence committed**

Murder 15 years 9 months

**Orders**

- Boy of 15 years and 9 months
- Within 3 months
- Section 21 JJA — orders that may be passed
  - 1. Release after due admonition.
  - 2. Placement with parent or guardian.
  - 3. Placement with fit person or fit institution.
  - 4. Supervision in addition in case of 2 or 3 above.
- Section 302 IPC — sentences
  - Death penalty or life imprisonment, with fine
difference in consequence occurs for no other reason except for the fact that the latter grew up by the time he was produced before the court.

Arnit Das does not ask the question who caused the delay? It is immaterial for the court whether it was the accused or any other agency that caused the delay. However, the consequence of such delay will be borne by the person who was a child on the date of the offence but ceased to be so by the time he or she was produced or appeared before the court.

Result::Delay bySuffererChild

Arnit Das proposition implies that

- It is justified in law to impose penal consequences on a person for the fact of growing up, if in the past he or she had committed an offence.

- Drastically different sentences may be passed on a person who appears or is produced before the court expeditiously compared to the other who does not so appear or is not so produced, even if the offences committed by them are the same.

- It is irrelevant whether the delay in production of the accused before the court was caused by himself or herself or by somebody else.

- There is a duty on the suspects to present themselves before the court at the earliest opportunity to avoid more serious penal consequences. In case they fail to do so, they do so at their own peril.

- This proposition does not violate either Article 14 or 20 of the Constitution.

In ordinary criminal jurisprudence till now the basis for penal liability had been very different. Penal liability accrues for the offence committed and not for post-event conduct of the offender. It is the duty of the enforcement agency to bring the culprit to book. No “benefits” accrue automatically to a suspect, accused or an offender for presenting oneself to the court. An adult accused who hands himself over to the police immediately is not entitled to any benefits for doing so, nor is the other who evades arrest subjected to drastically severe punishment for evading such arrest. Then what distinguishes the case of children from that of the adults?

The proposition seems to be that all persons, children or adults, are responsible and liable for penal liability for their actions. Juvenile justice is only an exception and a “benefit” extended to children during the period of their juvenility, which ceases on their ceasing to be a juvenile. This proposition, however, is contrary to the proposition specifically recognised in Section 3. It extends the “benefit” to a child who ceases to be so during the pendency of the proceedings. Hence, if a child becomes 50 years old or so during the pendency of proceedings, he or she will still be entitled to the “benefit” of the Juvenile Justice Act. As the law stands today, this proposition leads to the following consequence:

Offence committedAccused Arrested and producedAge on the date of orderOrdersMurderBoy of 15 years and 9 monthsWithin 3 monthsImmaterial in view of Section 3 of the Juvenile Justice Act in view of Section 3 of the Juvenile Justice Act Section 21 JJA â€“ orders that may be passedA A A 7. Release after due admonition.. Release after due admonition.. Placement with parent or guardian.. Placement with parent or guardian.. Placement with fit person or fit institution.. Placement with fit person or fit institution.. Supervision in addition in case of 2 or 3 above.. Supervision in addition in case of 2 or 3 above.. Fine if above 14 and earning.. Fine if above 14 and earning.. Sending to special home till 16 or in exceptional cases till 18.. Sending to special home till 16 or in exceptional cases till 18.. Sending to special home till 16 or in exceptional cases till 18.. No imprisonment.. No imprisonment in default of arranging security.. No imprisonment in default of arranging security.. Section 22 JJA â€“ orders that may not be passedA A A 5. No death penalty.. No death penalty.. No imprisonment.. No imprisonment in default of arranging security.. No imprisonment in default of arranging security.. A A A 8. No imprisonment in default of failing to pay fine.. No imprisonment in default of failing to pay fine.. Murder15 years 9 months â€“ boyAfter 3 monthsImmaterialSection 302 IPC â€“ sentences Death penalty or life imprisonment, with fine Death penalty or life imprisonment, with fine

The only difference in the two cases is that one continued to be a child on first appearance while the other ceased to be so. In order to pass the test of equality before law and equal protection of law, it must be proved that these two constitute a class different from each other. In addition it must also be proved that the criteria distinguishing them have a reasonable nexus with the object to be achieved by such classification. One fails to understand any reasonable criterion or nexus between the criterion and the object sought to be achieved.

While the Supreme Court posed the question what happens if a child became 50 years old by the time of first appearance, it did not raise the same question in case of a child who became 50 years by the time of final order. There are no reported judgments where a child had actually become 50 years by the time of first appearance. However, there are judgments where the offender had become 23 or more by the time of final disposal of the case though a juvenile on the date of commission of the offence.12 In all these cases, the courts have not questioned the rationality of continuing to deal with them as children provided by the provisions of the Juvenile Justice Act. Hence, it becomes more difficult to
comprehend the rationale of Arnit Das-I3 differentiating a child produced before the court immediately after the commission of the offence from the other who was not so produced.

B. Rejoinder to "In Defence of Arnit Das" and the editorial comment13

R.D. Jain and Chandrashekhar Pillai, both have taken positions supporting Arnit Das-I3. However, their arguments are substantially different from each other. While Chandrashekhar Pillai challenges the very rationality of Section 3 of the Juvenile Justice Act, R.D. Jain's position is not very clear.

On the one hand R.D. Jain states that in view of the calendar of obligations of various agencies provided under the juvenile justice "there is hardly any scope of the delay being caused at the end of the enforcement machinery provided under the Juvenile Justice Act". On the other hand he notes "instances ... confronting the courts when the proceedings continued until the juvenile attained the age of more than 25 years and the proceeding had to be dropped". If every agency has been following the deadlines prescribed for discharge of their obligations, how come children in some cases became more than 25 years by the time of the disposal of proceedings? Having recognised that children in some cases do become 25 or more by the time of disposal of their cases, he agrees that they are entitled to be dealt with under the provisions of the Juvenile Justice Act. He states:

"A juvenile committing an offence would unerringly get the benefit of the Juvenile Justice Act and if such a delinquent is brought before the Magistrate/Sessions Judge, when he is still juvenile, the pendency of inquiry will not have any impact and the juvenile ceasing to be so during the course of inquiry, would continue to be treated as juvenile."

The above statement is however completely opposite to what he states a few paragraphs later:

"When the possibility of correction of a juvenile is absent and the offender has attained an age beyond corrigeibility, the protective umbrella of the Juvenile Justice Act cannot be extended to him/her."

According to R.D. Jain the word "inquiry" under Section 3 refers to the stage when the proceedings before the Magistrate have commenced. He argues that the Juvenile Justice Act does not take care of the stage after the occurrence and before the initiation of proceedings and it is to that stage Arnit Das-I3 applies. In addition to the incongruous result this position causes, 14 it is difficult to understand the rationale for differentiating the two situations. How is there a possibility of correction of a juvenile who was a juvenile at the time of first appearance but became 25 by the time of disposal? On the other hand, how is that possibility lost if the child had crossed the line on first appearance but was 25 at the time of disposal?

R.D. Jain further argues that the law has to provide a balance between the conflicting interests, namely, interest of the accused and the demand of security of persons and property of people. If he has no objection to the provisions of Section 3, then how does excluding those who cease to be children on first appearance but may be 25 or more on the date of disposal, provide the balance between the conflicting interests?

He further justifies Arnit Das-I3 for excluding the protection of the Juvenile Justice Act to be availed by a juvenile who disappears and is not apprehended for years. "After all the law has to be interpreted in a manner so as to impress upon the law-breakers that non-observance of law is contra-productive." He certainly seems to overlook that Arnit Das-I3 makes no difference in the exclusion of a child from the Juvenile Justice Act whether the child caused the delay or somebody else was responsible for it.

The challenge posed by Chandrashekhar Pillai is more serious and merits closer scrutiny. He questions the absence of critical examination of the "trend of letting off adult offenders only on the ground that they were juvenile delinquents at the time of commission of the act". He categorically objects to quashing of sentences of juveniles who had ceased to be so by the time their cases are disposed of. He opines that:

"In fact there is no justification for the court to quash the sentence imposed on these delinquents. One of the aims of the Juvenile Justice Act is to help prepare the delinquent juvenile to be received in the society on his attaining maturity. In the above cases the juveniles have already crossed the age of juvenility and as such instead of being let off they could have been sent to prison to serve their terms. To set aside their sentence while maintaining conviction does not serve any purpose other than the emotional satisfaction that they have not been punished for crimes committed by them during juvenility. If the purpose of the law is not to attach criminal responsibility or for that matter to resort to soft handling the intensity of their responsibility could be lessened and they be dealt with leniently rather than being let off when they are adults inviting the wrath of criticism from the public."

He further finds no justification for declaration by the Supreme Court in Umesh Chandra8 that the Children Act, 1960

"was enacted to protect young children from the consequences of their acts on the footing that their mind at that age could not be mature for imputing mens rea as in the case of an adult. ... In fact there does not appear to be any basis for this formulation. The Juvenile Justice Act essentially lays down elaborate procedure for dealing with juveniles who are
found to be delinquents. Their capacity or capability to commit crimes are to be considered in determining their culpability. The act aims at the welfare of those who are found to be delinquents and not to all juveniles. In the administration of criminal justice many impressions remain uninterrogated. Till somebody ventures to explore their philosophical underpinnings they are taken for granted. It seems to have been the general impression shared even by the Supreme Court that age of applicability was to be determined at the stage of commission of delinquent act. The present Bench of the Supreme Court has pried open this impression and argues that this impression has no foundation.

Chandrashekhar Pillai's comments on the one hand and the comments on Arnit Das by the present author and B.B. Pande are reflections of the competing responses of the classical school and juvenile justice to crime in society. While the classical school tends to protect society by punishing the offender, juvenile justice tends to protect society by reforming delinquents by care and protection. The classical school is based on the "free will" and "pain and pleasure" theories and looks at the offence. Juvenile justice is based on the twin concepts of mens rea and parens patriae and seeks to ensure the best interests of the juvenile. Juvenile justice assumes that children do not have the same mental capacity as adults to take full responsibility for their actions. For the same reason, they are more amenable to reform than adults. Juvenile justice seeks to provide protection to society by protecting, reforming and rehabilitating juvenile delinquents.

With this understanding, the law provides that children below the specified age should be dealt with differently and away from the adult offenders. Unless this understanding is challenged and Section 3 of the Juvenile Justice Act deleted from the statute-book, exclusion of children by reference to their age at the date of first appearance will lead to the incongruities mentioned above. Even abolition of Section 3 is not going to provide a rational justification for choosing a date other than the date of offence as determining the applicability of the Juvenile Justice Act. In the absence of a provision similar to Section 3, persons below the specified age will be entitled to be dealt with under the Juvenile Justice Act, only if they remain below that age at the date of disposal of their case. It would mean that differential consequence would accrue to persons committing the same offence at the same age if their cases are not decided within the same time-frame. For example, a child of fifteen years of age committing murder will be entitled to the Juvenile Justice Act if his case is decided within one year but will not be so entitled if it took longer than that. The justification for such a situation will be that in the latter instance, he is deemed to have acquired sufficient maturity by the time of disposal of his case while in the former he is still immature. This position goes again to the root of penal liability. Whether maturity of a person at the time of disposal of the matter or at the time of commission determines his or her criminal responsibility? Can a legally insane person be punished for the offence committed in that state if he gains sanity post-incident? Children are not insane but the rationale of differential treatment to them is linked with their mental immaturity at the time of commission of the offence. Any act committed by a child between the age of 7-12 is not an offence "who does not have sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion".16 (emphasis added) There is no possibility of arguing that if by the time of his first appearance he gains such maturity, he may be punished for his acts. The mere gaining of necessary maturity post-event does not satisfy the requirement of the basic principle of criminal liability.

There is a growing trend in some western States, notably USA and England and Wales, of lowering the age for excluding younger offenders committing violent or grave offences from the arena of juvenile justice. Chandrashekhar Pillai has stopped short of asking for similar exclusion. His objection is limited to setting aside the sentences on persons who had ceased to be children by the time of the final order. He is not asking for penalisation of children committing any offence - grave or petty - if they are still children on the date of final disposal.

It is submitted that this debate has been occasioned due to the difference between what the law provides and what traditional criminal lawyers expect it to provide. The Juvenile Justice Act leaves no scope for penalisation of persons who committed offences while they were children. Having regard to the various provisions in the JJA one cannot perhaps hazard this view. The writer's discussion on the basis of the JJA, might, with profit, be also noted. The Act stresses on care, protection and treatment of the delinquent children rather than on their culpability. A traditional criminal lawyer trained in penalisation as the proper response to crime feels a growing discomfort with this approach. Loose drafting of various provisions of the Juvenile Justice Act has only added to the problem. Usage of such drafting to hold the date of first appearance as relevant for applying the Juvenile Justice Act, however, completely ignores the accepted principles of criminal liability in traditional criminal law as well as those of the juvenile justice. Unfortunately, the relevant provisions of the new legislation, namely, the JJ (C&P) Act also have used similar language and do not help clarify the position. However, as the relevant provisions in the two enactments are pari materia, there can be no doubt that the age at the time of commission of the offence continues to determine applicability of the JJ (C&P) Act also in accordance with the three-Judge Bench decision in Umesh Chandra.

*Â Â Professor of Law, University of Delhi

- Ved Kumari, "Relevant date for applying the JJ Act", (2000) 6 SCC (Jour) 9
The basic tenets of these theories are that all human beings are free agents and they choose to commit crime after weighing the pros and cons of committing crime. They commit crime when the pleasure derived from the crime will be more than the likely pain to be inflicted for committing it. Return to Text

- Section 82 of IPC Return to Text
- Sections 2(k), 3, 7, 13, 49 Return to Text