Determining the Victim's Age

What are the Government's Intervention?

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- Two important amendments were made in the law, pursuant to the Delhi gang rape of December 2012.
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- The age of consent was raised from **16 to 18 years**
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- The **juvenile delinquent** was to be treated as major if his age is between 16 and 18, and based on his mental and physical capacity to commit the alleged heinous crime and ability to understand the consequences.
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- The first amendment, made in the IPC, relates to the victim of rape and the second, to a child in conflict with law.
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How the age is determined?

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- There are two common sources used in the criminal cases for determining the age of a child — **documentary and biological**.
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- Documentary evidence is where the birth of the child is entered in a book to be maintained by a credible agency.
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- Biological evidence is obtained from a medical examination specifically oriented towards determining the age of a child.
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- However, as a medical test cannot determine the precise age, it is considered only in the absence of other evidence.
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What the research study reveals?

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- A research study of 100 cases of rape of minor girls has revealed that the most common practice by the investigating agency has been to collect school certificates.
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- Though school certificates were produced in 79 cases, these were admitted by the court as credible only in 21 cases.
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- Similarly, though the **ossification test for determining age** was conducted in seven cases, the victim was admitted by the court as a minor girl in just one case.
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Is there any standard procedure?

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- The main objective of the defence counsel is to cast suspicion in the recorded date of birth and to prove that the girl is not a minor.
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- In addition, if the case falls in the category of alleged **statutory rape — consensual sex with a girl under the age of consent** — the whole case falls.
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- The burden of proving the age of the victim is on the prosecution and there is no standard procedure to guide the police.
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- The situation is quite different for determining the age of a child in conflict with law.
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- The law here is more precise and accused-friendly.
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What the Juvenile Justice act says?

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- Section 94 of the newly enacted Juvenile Justice Act of 2015 clearly lays down the procedure for determining the age of a juvenile delinquent.

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- It says that the date of birth certificate from the school or matriculation or the equivalent certificate from the concerned examination board shall be the preferred evidence for determining age.
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- Determining age on the basis of an ossification test shall be resorted to only in the absence of the above certificates.
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- The extent of ossification and the union of epiphysis in bones are helpful for determining age.
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- But variations in climatic, dietetic, hereditary and other factors affecting people from different states make it difficult to formulate a uniform standard.
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Way ahead:

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- An amendment should be made in the POCSO Act and the procedure of determining age of a child in conflict with law as prescribed in section 94 of the JJ Act of 2015 should be applied to the victims of rape as well.
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- The six-month margin of error can be added to the range of age estimated on the basis of the ossification test.
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- Such changes in law will surely put to rest the confusion created by the defence lawyers.
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- This will not only give clarity to the medical doctors for firmly deposing in the court but will also help the investigating agencies in collection of proper evidence about the age of the victim.
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