JHARKHAND STATE LEGAL SERVICES AUTHORITY

Reading Material

STATE LEVEL WORKSHOP ON JUVENILE JUSTICE SYSTEM

(Target Group : Child Welfare Officers, Member of Juvenile Justice Board, CWC)

Venue : Arya Bhatt Hall, Opp. Ranchi College, Morabadi **Date : 21st July, 2012**

Organized by:
Jharkhand State Legal Services Authority (JHALSA), Ranchi
under the aegis of
National Legal Service Authority (NALSA), New Delhi

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Key Responsibilities and Approach

By **Hon'ble Mr. Justice Altmas Kabir**
Judge, Supreme Court of India

While adopting the Declaration of the Rights of the Child on 20th November, 1959, the General Assembly of the United Nations laid down ten principles designed to enable children, irrespective of race, colour, sex, language, religion or origin, to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. This was followed up by the adoption of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as the "Beijing Rules", on 29th November, 1985. As a member country, India enacted the Juvenile Justice Act, 1986, in keeping with the Beijing Rules, but after the adoption of the Convention of the Rights of the Child by the United Nations in 1987, the said Act was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000.

The 2000 Act made a conscious distinction between juvenile who had committed offences and were referred to as "children in conflict with law" and children from indigent backgrounds who were in need of care and protection. The Act was, therefore, divided into two broad parts. While the first part comprising Chapter II deals with juveniles in conflict with law, Chapter III makes provision for children in need of care and protection. In this article the focus is on Chapter II of the Act and the role of the Principal Magistrate and the other Members of the Board in dealing with juvenile delinquency.

Section 4 of the 2000 Act empowers the State Government to constitute one or more Juvenile Justice Boards in each District to be comprised of a Magistrate and two social workers, of whom at least one is to be a woman. Such Board is to constitute a Bench having powers conferred by the Code of Criminal Procedure on a Metropolitan Magistrate or a Magistrate of the First Class with the Magistrate on the Board to be designated as the Principal Magistrate.

The provisions of the 2000 Act are rehabilitation oriented and the procedure prescribed under the Act and the Rules framed thereunder are child-friendly and not adversarial. The Bench, therefore, has to deal with juvenile delinquency from a point of view which is entirely different from the procedure prescribed for adults under the Code of Criminal Procedure. Necessarily, the Principal Magistrate, who is a member of the judicial service and is used to the provisions of the Code, has to undergo a complete mental metamorphosis and attitudinal transformation while discharging his or her duties under the 2000 Act. The two Members, who probably have little legal experience, have to blend their expertise in the field of social welfare with the legal parameters to effect solutions which are rehabilitation oriented which is the primary object of the 2000 Act.

However, it is for the Principal Magistrate to guide the other Members of the Board and to carry them as a team to achieve the objects of the Act. One of the most important objects that the Act seeks to achieve and has to be kept in mind by the Juvenile Justice Board is the speedy disposal of enquiries contemplated under the Act. If the infrastructure is not available, it is for the Board and, in particular the Principal Magistrate, to ensure that the same is made available. Each Member of the Board has to be sufficiently sensitised to understand the trauma a child, who is removed from his normal surroundings or familiar faces, suffers when faced with an unfamiliar situation which he or she is unable to handle. If is, therefore, the moral, if not legal, duty for the Members of the Board and the Principal Magistrate in particular, to ensure that all those involved in the juvenile justice delivery system, from the Probation Officers to the Superintendents of the different Homes

contemplated under the Act, perform their duties conscientiously and without resorting to unfair means. Children are hardly in a position to raise their voices in protest against injustice, but if the same is brought to the notice of the Board, its members must act with alacrity and not shirk their responsibility in dealing with the problem.

It would be a complete negation of the provisions of the 2000 Act if the case of a juvenile in conflict with law is allowed to remain pending indefinitely for whatever reason. It is the duty of the Board to keep track of such cases so that they can be disposed of at the earliest opportunity and the juvenile and his guardians cease to be exploited by unscrupulous players within the juvenile justice delivery system.

The Juvenile Justice (Care and Protection of Children) Rules, 2007, provides a comprehensive procedure to be followed in dealing with juveniles in conflict with law. If the same is implemented in its true spirit, considerable change can be brought about in the Juvenile Justice delivery system and can help juveniles in conflict with law to return to the mainstream of society and become responsible citizens, instead of being transformed into hardened criminals.

Section 6 of the 2000 Act enumerates the powers of the Juvenile Justice Board and provides that the Board when constituted for a district shall, notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in the Act, have exclusive power to deal with all proceedings under the Act relating to juveniles in conflict with law.

A grave responsibility has been entrusted to the Juvenile Justice Board which is exclusively empowered to deal with offences relating to children and to rehabilitate such children so that they became responsible members of society instead of being criminalized. It is for the Board and its Members to discharge such responsibility in the true spirit of the special law for children and in the interest of the children who come under their jurisdiction.

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A Cry For Justice

Chenchu Hansda was 14 years old when he was convicted to 14 years imprisonment in 1999, the year HAQ brought out its first status report on children. He had been arrested as part of a mob that went on rampage in Orissa, setting on fire a Christian missionary Graham Staines and his two sons. While the co-accusedall adults managed to get released on bail, nothing moved for Chenchu. He said he was not part of the mob, but the courts found him guilty. In 2005, the Orissa High Court sentenced prime accused Dara Singh and another to life, acquitting the rest. All 11 of them but Chenchu. It took seven years for his case to travel from the Juvenile Court to the Additional District Judge's Court in Bhubaneshwar for further appeal. It mattered little that both the courts were in the same building and that child rights activists and lawyers had been relentless in campaigning and demanding justice for the boy throughout this time. After a year in an adult jail, he was moved to an Observation Home on a petition fled by activists. As he turned 18, he was shifted back to the adult prison, where he remained till he was released at the age of22 years. Condemned and convicted for getting embroiled in a riot, a politically motivated adult action, Chenchu is today an illiterate, unskilled and broken young man with a bleak future. Open Learning Systems (OLS), an Orissa-based NGO that has stood by Chenchu all these years, finds it difficult to find sponsors to help his cause, because a 'child in conflict with law' is still seen by the society at large as a criminal! Chances of a job are better outside the village where few would know him but he is reluctant to go, leaving behind his dependent, old parents. It is also not fair, argues Kasturi Mohapatra of OLS, that he be separated again from his family after such a long and agonising wait. But Chenchu has few options.

No one would know the turbulence in the life of Mamta, a girl of 7 years from Hyderabad, till her parents separated. [1] Her mother discovered that the father had been sexually abusing his daughter and even continued to do so after separation, using his visiting rights as he took the children out. Mamta's brother was aware of this but was too small to understand the gravity of the situation. In 2006, through extensive counselling certain exercises and games - and with the help of a crisis intervention centre, HAQ learnt from the girl the extent of her abuse. A report "arguing for the best interest of the child" was submitted to the court, which in 2007, helped decide the case in favour of the mother, awarding her the custody of the children, while the father was allowed to visit the children in a specified public place only for two hours a month. The father has challenged this order. HAQ continues to provide legal advice to the mother and is happy to see she has learnt to cope with legal matters.

17 year old Prawal, originally from Jalpaiguri, West Bengal, is staying in an Observation Home for Boys in Delhi, for over two years now. Caught for the murder of his employers in a fit of rage-he was a domestic worker with an aged couple-there could be more to his story than meets the eye. HAQ was called in by the Principal Magistrate of JJB for counselling the boy who appeared unnaturally quiet, depressen and dejected before the Board. Prawal admits to the murder, though every available evidence points against this fact. His previous employers, a doctor family, as well as the OHB teachers and officials find him hardworking, skilled, honest and rarely angry or impulsive. According to sedate boy. During counselling too, the boy was found to be very polite, soft-spoken and an introvert. He insisted be had killed the couple because in the 7-10 days he worked with them, they never gave him much

1. Names of children in HAQ case studies used in this report have been changed to protect their identity. The cases of Chenchu, Lakra and Pahadiyas are however well known.

to eat, keeping him forever hungry and irritable. On the day of the murder, they had compounded this with constant nagging about work. While he case is still being heard, HAQ has recommended that he be shifted to or placed under the supervision of a psychiatric institutein the city, such as VIMHANS. The OHB welfare officer insists be is a very good boy and skilled tailor, earning up to Rs. 2000 a month from his stitching at the hime. Prawal himself wants to go back to Jalpaiguri once be is released after three years - that's maximum sentence period under the law - and start a tailoring shop.

Saurabh Chaudhuri, a 13-year-old boy from Bihar, was working as domestic help in Paschim Vihar, Delhi. He was regularly beaten up by the family. One day in 2006, after a severe manhandling by Priya, the lady of the house, Saurabh managed to land up before the CWC and a complaint was registered with the police station by Childline. The CWC sought legal support from HAQ for Saurav. The case went on for almost three years, moving from judge to judge with constant pressure on their part to arrive at a compromise, as it would apparently have been difficult to prove guilt. It is only after both the boy as well as HAQ insisted on filing charges that the magistrate gave a new date of hearing. In the mean time, the main accused got married and moved to another city. The judge argued that it was "difficult"for her to come to the hearings as she was now married! HAQ managed to get the boy an increased amount of compensation but only after the case dragged on for about a year more.

Chenchu, Mamta, Prawal, Saurabh. Different lives, dissimilar backgrounds, yet a single unfortunate incident was enough to change each individual destiny in one stroke, bringing the children before the care and justice system of the state and into a lifetime of turmoil. These stories may seem far removed from the image of childhood in our minds, which is a time of innocence, discovery, learning and freedom from responsibility. But they prove that children are no less a product of the society, context and environment they grow up in and learn from than the adults who are supposed to nurture, guide and protect them.

Incredible as they sound, these stories are really a microcosm of the working of juvenile justice system in India. A fascinating portrayal of all that is wrong with the law, its implementation, the government's care system, and the attitude of police and judiciary towards children who unwittingly come before the State for care and justice.

The reality in India as well as much of the world is that millions of children,[2] including those who need more care and protection than the rest for physical and psychological reasons, are growing up without it. They are neglected, forced to work, abused, incarcerated, and denied justice as well as their basic right to dignified living. Being soft targets, children are extremely vulnerable to natural or manmade disasters, cruel twists of fate, criminal elements and the society's sins of omission and commission. In a poor and less developed country like India, where the media and civil society are less vigilant, children often fall out of the cracks of the very system that is designed to protect them and give them justice. India's children were declared a 'supreme national asset'in 1974,[3] yet over 40 per cent of 440 million children are still estimated by the government to be in need of care and protection.[4] Some 10 per cent of the children or 44 million are destitute, including 12.44 million orphans, many of them living in institutional care. The institutions for children in conflict with the law are home to about 40,000 children.[5] In fact, if all child rights indicators were to

2. *For example : Save the Children's Contribution To End Violence Against Children In Institutional Settings Sharing Good Practice and Key Recommendation Human Rights Watch and American Civil Liberties Union, Custory and Control Conditions of Confinement a New York's Juvenile Prisons for Girls. September 2006, Human Rights Watch, Cruel Confinement, Abuse Against Detained Children in Northern Brazil April 2003.*
3. *The National Policy for Children 1974.*
4. *Study on Child Abuse : India 2007, Ministry of Women and Child Development, Government of India, 2007.*

become a critical measure of the Human Development Index, India would fare far worse that her current rank of 132 among 179 countries[6] because of its poor performance in child protection[7].

This is exactly what **Blind Alley, HAQ's report on Juvenile Justice in India**, tries to focus on. That despite apparently the best of intentions, several welfare schemes, a liberal democratic government, and 24 years of working laws on justice for children, several thousands of India's children are routinely neglected by the government's care system and often ill-treated and tortured beyond imagination and comprehension. That justice is routinely delayed, even denied, to the children who approach the system seeking care and protection, or come into conflict with law due to economic or work pressure, or are often taken into and detained in custody needlessly by a callous administration, resulting in an ultimate denial of their right to life. That the task ahead of the administration is gigantic, yet there is little will to meet the challenge with empathy while upholding the constitutional rights of the children as free and thinking human beings.

Since 1999, HAQ: Centre for Child Rights has used its might and raised its voice to protect the rights of children and demand the recognition of their role in the society as well as share in the economy. Since 2003, HAQ has supported and represented neglected children in their fight for care and protection, and since 2005, in their fight for justice, providing legal and other aid to children coming in conflict with the law.

Thus, HAQ works with two categories of children who come under the purview of the Juvenile Justice system in India: Those who are in need of care and protection mostly victims of abuse, violence, exploitation and neglect and those coming in conflict with law. HAQ provides legal support to children in need of care, protection and justice, assists in tracing families and bringing services to children (such as counselling, sponsorship and rehabilitation support), advocates for change in law and programmes, and monitors implementation of juvenile justice by engaging with the system as well as through research and documentation. The children may be referred to HAQ by the Child Welfare Committee, police, schools, other NGOs, family, friends, a concerned citizen - practically anybody. HAQ helps them deal with their own demons as well as police, regular courts and the Juvenile Justice Board (JJB).

In this report, HAQ collates the stories of all these children to distil its experiences and problems faced so far, as well as the challenges that still lie ahead. The overarching aim of this report is to present an overview of the juvenile justice system in India as it exists today with all its inadequacies, to highlight and question the slow process of and resistance to change, raise vital questions on the glaring gaps and shortcomings in the system, and offer suggestions on how they could be filled and set right. It also demands precedence to true restoration over institutionalization at any cost and, in the interim, real development of children within the institutions.

None of this can happen without a radical change in the attitudes of lawmakers, judiciary, administrators, government and other sector players and respect for the rights of the child. HAQ demands that a genuine concern for the child's future and her rights be mainstreamed into the juvenile justice process at every step. We must hear the child, respect her rights and let her know we care, or else we shall have failed her.

That Justice is a blind goddess/Is a thing to which we black are wise/
Her bandage hides two festering sores/That once perhaps were eyes.

Langston Hughes, American Poet

5. *http://www.childlineindia.org.in/cr_CPI_parentalCare_2.htm.*
6. *http://hdrstats.undp.org/2008/countries/country_fact_sheets/cty_fs_IND.html.*
7. *Working Group on Development of Children for the Eleventh Five Year Plan (2007-2012) - A Report, Ministry of Women and Child Development, Government of India, Page 53.*

Endnote

A lot has been achieved in the course of HAQ's work on child protection of over four years. The biggest of these is that many more actors have come into play. "Stakeholders" is a term that has come to be criticised by many but there is no better way to describe these actors, who include individuals, lawyers, NGOs, Government agencies, police, judiciary, media as well as the Ministry of Women and Child Development.

The year 2005-06, when HAQ started working in earnest in juvenile justice, is also the year of many firsts in child protection in India. The Country Report on the UN Study on Violence against Children 2005 became the mirror for the Department of WCD to look at issues of child protection with greater focus and start thinking towards building a protective environment for children. Other significant developments include The National Commission for Protection of Child Rights Act, 2005, the new National Plan of Action for Children, 2005, and most important, the creation of an independent ministry for WCD in early 2006. Seeds were sown by the ministry for an Integrated Child Protection Scheme to improve the implementation of existing child protection laws and services, help set up a data management system to maintain information on children in difficult circumstances, and strengthen family support and counselling to aid vulnerable families for giving necessary care and protection to their children.

HAQ has played a very pro-active role in some of these historic developments, engaging with the government and raising concerns, hoping to drive bureaucratic thinking towards a more rights-based approach and action. High courts too have been active in pronouncing judgements and ordering steps to ensure justice to children and establish a child-friendly protection system. We have seen innovation by judicial officers m the face of scarce infrastructure, sensitivity towards the child, and courts ensuring translation and child-friendly cross-examination. The child is now given preference while the statement is recorded and even a parent, who is not a witness, is allowed to be present.

Justice for children

An unending battle

Yet, the more things change, the more they seem to be the same. Even as the Government has been engaging with the civil society and taking a fresh look at child protection, thousands of children are routinely falling out of the safety net.

In his new book The Idea of Justice, economics Nobel laureate Amartya Sen has argued for a new way of looking at justice. Speaking againsta "long-range search for perfectly just institutions" and a hunt for "spotless justice", Sen says societies full of actual human beings will never agree on a final, perfect set of institutions and rules. The search for a perfect set of arrangements for society can distract us from tackling real-life, immediate injustices and "there are remediable injustices around us which we want to eliminate". Thus, the starting point for any discussion on justice should begin with the current reality and then ask where do we go from here and how? "The working of democratic institutions, like that of all other institutions," he writes, "depends on the activities of human agents."[1]

Nowhere is this truer than in the field of child justice in India. Asha Bajpai has described the implementation of juvenile justice as "a history of hopes unrealised and promises unfulfilled". "The

1. Amartya Sen, The Idea of Justice, Penguin UK, 2009

judges, the law enforcers, police, the probation officers and other staff have not carried out the spirit of the Act," she says[2] and we agree. From the Pahadiya boys in the 1970s to the latest case before HAQ of eight-year-old Sheena, hospitalised for four days after brutal rape by a neighbour, things have changed radically yet remained the same in many ways. The law has changed thrice since 1986, when the first Juvenile Justice Act was promulgated, leading to greater awareness and knowledge, yet the children still get tossed around by the system and the victimisation never stops. It still doesn't surprise us that parents, even children themselves, choose silence and humiliation over reporting and lodging complaints.

The thinking on and understanding of juvenile justice across the world, as it is in India, is still at a very nascent stage and evolving. With rapid changes in society, especially with information technology shrinking the world and bringing countries and peoples much closer, the nature of offences committed against and by children also adopts different dimensions, requiring changes in law and understanding how to deal with it. Caught between the old and the new, justice for children is both delayed and diminished.

For the police, children are just so much trouble!

Police remains the first point of injustice in the justice delivery system for the child. Even as this chapter was being written, Sheena's case came to HAQ. Her parents were away at work when a 20-year-old forced himself on her at 12.30 in the afternoon. The frail eight-year-old kept bleeding silently till 6-6.30 pm when finally somebody called 100 and police arrived. Yet, no medical attention was available to her until 10 at night when she was finally hospitalised and put on oxygen supply. What was the police doing all this while? Probably completing formalities and waiting for a female colleague to take charge, as required by law.

It was only 24 hours after the incident that the police woke up and informed an NGO, in this case HAQ. When a counsellor and a lawyer from HAQ went to the hospital and met the child, her mother and the police, the first statement spoken by the male police person accompanying the female case-in-charge was that the child had been giving conflicting versions. "She first said she was bitten by a dog, then she said she got hurt by a pipe while playing", he said nonchalantly.

Unclear about what he was suggesting, the counsellor asked if he thought the child had not been raped. "No", said the cop, adding to the confusion, "I don't mean that. She has been raped but we don't know what to believe. We cannot arrest anyone since the child doesn't know the name of the accused. All she knows is that he is from Bihar and stays in her building."

But was this not a good enough clue for the police to carry out an investigation and begin interrogation and search? The girl came from a locality full of people from West Bengal, so finding a few Biharis in a particular building didn't really seem a herculean task to us. But police had their own logic and pace of work. So yet again, we had to call a senior police official to intervene and ensure a proper investigation and all possible help for the child.

Despite several trainings and sensitisation programmes by NGOs such as HAQ where gender or child protection issues are discussed threadbare, very little seems to be getting translated into action. When a child is apprehended and booked for committing a crime, the police act immediately, even subjecting young boys to torture at the police station to get them to admit to the crime, whatever the facts of the case. Yet, when a child is abused and an adult accused has to be caught, they slow down. Why the delay in necessary investigation and interrogation for an adult? This general apathy worries us greatly since incidents of crime are routine in the capital, where the Special Police

2. Asha Bajpai, Child Rights in India, Law, Policy and Practice, OUP, 2004, Page 287

Unit for Women and Children (earlier the Crime against Women Cell), is sincerely trying to activate Special Juvenile Police Units at all district level police stations and designate two police officers as Juvenile Welfare Officers at every station.

Progressive law, regressive procedures

The problem with India's juvenile justice system lies in the structure and content of the law, which covers both children in conflict with the law and children in need of care and protection, as well as its interpretation and implementation. This is partly because the understanding as well as the discourse and jurisprudence around juvenile justice are still developing across the world and there's really no uniform understanding. Also, there is no consensus on if there is a need for a separate law on offences against children or a separate chapter within the Indian Penal Code (IPC) to address all forms of violence, abuse and exploitation of children.

The IPC is the main criminal law that defines offences and provides for punishment, a copy of it lies in every police station, so police find it easy to relate to it. Special legislations are treated as secondary to the IPC, especially if they are on women and children, which are soft subjects for the politician or police. Yet, proponents of a special law for child abuse argue that without it, children's issues will remain at the periphery and child-friendly procedures will be compromised for procedures meant for adults.

"A situation I found very peculiar in Ethiopia as a lawyer was that children were receiving what is in effect a punishment irrespective of their culpability -they had to go to the rehabilitation centre sometimes for a couple of years and there were sanctions if they didn't comply. I suspect there has been a rush to diversion for all the right reasons but this aspect has not been a priority or fully built into the system.

The Beijing rules say that there should be a process of review of the child's decision to admit responsibility but have not seen this in practice and it is not clear what or who would trigger this review. Certainly in Ethiopia children were almost never represented and would follow what they were told to do in the child protection units (for the lucky ones who were arrested in an area where there was a child protection unit), so it is not the case that the child would be following legal advice or that their lawyer would demand a review of their admission. Otherwise it would just be in the hands of a well-meaning police officer to do this and in the circumstances this would be highly unlikely.

I interviewed lots of children who said they had not actually done the offence they had been 'diverted' for, but who usually agreed that they were close to being in serious trouble with the police in more general terms so in that sense the diversion was a very positive outcome for them."

Frances Sheahan, UK-based Child Rights Consultant

HAQ feels as long as police use the archaic Criminal Procedure Code to deal with children, they will remain far from justice. A separate procedural code for dealing with children, for both victims of crime as well as those in conflict with law, along with changes in the Indian Evidence Act are needed urgendy to ensure a child-friendly legal system.

The concept of diversion and restorative justice, on which the entire international understanding ofJJ is based, also differs from country to country. Under the Beijing Rules, voluntary admission of guilt is a precondition for diversionary measures to come into force and diversion can happen at lots of different levels - social worker, police station or judiciary.

There is a great deal of ambiguity in India on what is meant by diversion. Diversion as understood in international law cannot apply here since a child cannot be subjected to the rules of plea bargaining. The predominant concept is of diversion into a different justice delivery (trial) mechanism. It is not meant to be a trial, yet children in conflict with law continue to be subjected to it. The outdated CrPc makes it difficult to ensure that such a child is not meant to be treated as a criminal. This is despite a JJ law that has changed for the better, from retribution to restoration and towards diversionary measures such as group counselling, community service and release on advice or admonition.

Many fresh challenges

Several new issues are coming up both in law and practice, some of which might even necessitate a change in the law.

- **Signed statements :** The Delhi High Court has made it clear that police cannot ask children to sign any confessions/ statements, but to no avail. Not only have police continued with the practice of recording confessionals, which is prohibited even by the CrPC, the JJBs too have sometimes admitted such statements as evidence in violation of the order given in response to action by an individual activist Minna Kabir. In Delhi, such statements are now called Child's Version and a format has been developed to record it just for police inquiry.

In Delhi, homes now have playgrounds, hot water, painting exhibitions...

Honest efforts by a few committed individuals can bring about a miracle. After the High Court Committee started work in Delhi, the juvenile justice system has improved radically, making it probably the best place to be in India for a child in conflict with law or needing care and protection compared to any other state.

- At the Alipur boys' home, living conditions and infrastructure are much better. There's enough room for the kids and hot water is available for use.
- Playgrounds have now come up for the boys at Alipur, Lajpat Nagar and Kingsway Camp homes. Matches happen regularly at Kingsway Camp. Sports Day arid Holi were celebrated this year, and an exhibition of painting by the boyssome of them quite talented--was held.
- Once a month meeting with parents has now become once a week.
- Children being in observation home for more than three years, the maximum allowed by law, is now a thing of the past. Bails are readily given too.
- A medical unit has come up at Kingsway Camp and medical check-ups have begun in other homes.
- The Narela home was dilapidated and unfit for living, and in July 2008, the Committee ordered it to be closed by 31 December. It was another matter that a NCPCR visit there in September led to a stern report by the Commission, leading to wide media campaign. The closure deadline of 31 December was met.
- Registration of homes is almost over. A complete database of these homes, their staff, facilities and number of children is expected to be ready soon.
- Computerisation of data about the children in homes is in progress and will be completed by the end of the year.

- The number of cases pending before the Juvenile Justice Boards has come down from over 4,000 in 2007 to less than 2,000 now and could dip to 1,500 by yearend.
- Many children have been restored to their families, even those outside Delhi. All CWCs are working hard on this.
- CWCs are now attracting committed people. The working conditions have improved along with their honorarium.
- Delhi Police is taking child rights more seriously than perhaps any other police force in the country. They have developed a unique web platform providing information about lost and found children. A training manual has been developed and Special Juvenile Police Units have come up.
- The JJBs are now offering legal aid and a few facilities for these lawyers, such as a photocopier and a space of their own at Kingsway Camp.
- The biggest positive is the new awareness of children's rights. The upper judiciary is sensitized and the Judicial Academy is working on sensitizing the district judiciary.

- **Interrogation and custody:** Police cannot "interrogate" a child in conflict with law nor ask the JJB for permission to keep him or her in custody for interrogation. But police feel they must do some questioning to solve the crime that the child is alleged to have committed, especially if it is a heinous offence. Some method of questioning by police thus needs to be worked out within the JJ framework. Once the SJPUs, for instance, at all district level police stations in Delhi become active and the Department of Women and Child Development provides two social workers as per the law, they can hopefully ensure that children are questioned, preferably out of the station, without force or torture. Delhi Police will have to work out ways to ensure that the SJPUs don't look like regular police stations and are situated outside one.
- **Conviction record:** The law clearly says any record of conviction of a child or a person as a child cannot be used to disqualify him from employment. In the case of some jobs where employers need to fill out a form for police verification of persons to be employed, especially children of 14-18 age group, as domestic servants, police often wonder whether or not to disclose the child's involvement in crime, if any. The employer has the right to this information for their own safety. But the juvenile justice law has tied the hands of the police and this grey area needs to be clear.
- **Charge sheets:** If children are not to be treated as criminals and no FIRs are lodged, there should be no charge sheets for children, right? But CrPc requires charge sheets, so the term charge sheet needs to change. In Delhi, there is a move to use Final Police Report or Police Investigation Report in place of charge sheet. Police have also been told that in cases involving non-serious offences requiring less than seven years' punishment, this report ought to be filed within a certain time, or else the cases would be treated as closed.
- **Community service:** Is the police station an ideal place for community service by children? How will exposure to police behaviour impact children? How is community service at a police station different from a child being in contact with the police as an offender, especially when the principal idea is to minimise contact between children and police? What kind of community service can they perform in the police stations? There are no answers to these yet and they need more discussion.

The Draft Guidelines for Police developed according to the orders of the High Court Committee on Juvenile Justice say: "As far as possible the Child in Conflict with Law should be interviewed at premises which do not give the child a feeling of being in a police station or under custodial interrogation. If the parents of the Child in Conflict with Law want the child to be interviewed at his or her home, it may be done, The summary of such an interview shall be recorded in the form of the "Version of the Child in Conflict with Law" and in case the summary repeals that the child has been subjected to any neglect/ abuse/ ill treatment etc by anyone or forced to accept a situation of conflict, then necessary action should be immediately initiated against the perpetrator(s) of such acts".

- **Family restoration:** The first priority under JJ Act is to hand over children to their family but home studies which should back any decision to send the child back home are faulty in many ways, such as forms being filled by Welfare Officers/Probation Officers without even visiting the family and making moral judgements on the character of the child. The principle of best interest of the child takes a back seat in favour of the paper work. Establishing and maintaining linkages with authorities in the state/district of origin is rare, and the CWC/JJB is often found consulting on its own with reliable NGOs in the child's home state to trace the family, restore the child and keep track.

- **Counselling services:** Mental health services such as counselling are yet to become an essential measure for rehabilitating children, due in part to dearth of social workers and trained counsellors. These are challenges that India as country will have to overcome as, unknown to all, an increasing number of children are falling out of the social security and safety net.

- **Rehabilitation alternatives:** Measures such as foster care, sponsorship and adoption are mentioned in the JJ Act but little progress has been made on the ground. Follow-up is poor in the case of foster care and sponsorship, making it unattractive for civil society organisations. Adoption has assumed an ugly face with adoption agencies turning into rackets for selling children outside the country even as several parents are waiting in queue. That information too is not shared publicly.

During a visit to an observation home in Bangalore in December 2008, several children told Human Rights Watch that they were subject to electric shocks and during questioning. A 17-year-old said he was beaten until he confessed. "They picked me from my house at 3 am. I was beaten up and kicked on my head, legs and back. I was also given electric shocks. I admitted that I had stolen the phone but they kept on beating me because they wanted me to say I had stolen some other phones also. But I had not stolen them." He was kept in police lock up for four days before being produced before a magistrate. Police listed his age as 19.

- **Stigmatisation:** Girl victims of sexual abuse face segregation in institutions and are treated as "bad girls", even disowned by families. Rehabilitation of children in conflict with law is particularly difficult as their record travels with them all their lives. Stigmatisation and lack of access to and/or poor quality of education and vocational skill programmes in institutions not only erode these children's self-esteem but also fail to ensure their social reintegration. Rehabilitation schemes of both government and private sectors have failed to touch their lives. The corporate sector can play a big role in helping these children through mentorship and rehabilitation programmes and with job opportunities, but it has not happened. This is the most crucial issue for children coming in conflict with law or sexually abused children.

- **No protection for children:** Child protection is an empty slogan in our polity and society. Judging by the number of questions asked in Parliament, protection of children gets the least priority. HAQ]s own budget studies have shown that this has not only received the least attention from policymakers and politicians, coming after education, development and health, it also gets the least allocation in the budget. So far, there were only four central government schemes for street and working children, adoption and institutional care. All are now subsumed into the much-awaited Integrated Child Protection Scheme (ICPS), which was finally approved in February 2009. But the very small outlay of Rs 60 crore in 2009-10 and lack of information about the final version of the scheme, even with those who helped the Ministry prepare the draft, raise doubts about the ministry's commitment.
- The other worry is that full-fledged programmes like the ICPS too will now be run by societies registered under the Societies Registration Act. In an alarming trend of "burden-shifting", most of the flagship programmes for children are being handed over to private bodies and NGOs for implementation. The state has abdicated its responsibility of not only implementing them but also monitoring these new bodies, which should have been welcome only as visitors and consultants, providing technical assistance and management expertise.

The National Plan of Action for Children 2005 has provided more space for child rights to be heard. It has a chapter on child participation, in which the very first goal emphasizes promotion and respect for the views of all children, including the views of the most marginalized, especially girls, within the family, community, schools and institutions, as well in judicial and administrative proceedings. The goal talks about facilitating children's participation in all issues affecting them. This Plan of Action must be implemented forthwith in both letter and spirit and states and Union territories too must formulate and implement their own Plans.

An ideal child-friendly justice delivery system, with all its institutions and members, should be totally separate from the adult system and be more aware and child rights-oriented. For this to happen, the government as well as the juvenile justice system must urgently address the areas of concern summed up above and adopt the following measures (next page).

Major laws and policies for children

- Guardian and Wards Act, 1890
- Factories Act, 1954
- Hindu Adoption and Maintenance Act, 1956
- Probation of Offenders Act, 1958
- Bombay Prevention of Begging Act, 1959
- Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960
- National Policy for Children, 1974
- Bonded Labour System (Abolition) Act, 1976
- Child Marriage Restraint Act, 1979
- Immoral Traffic Prevention Act, 1986
- Child Labour (Prohibition and Regulation) Act, 1986

- National Policy on Education, 1986
- Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1987
- National Policy on Child Labour, 1987
- SC/ST (Prevention of Atrocities) Act, 1989
- Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 and its Amendment Act 2003
- National Nutrition Policy, 1993
- Transplantation of Human Organ Act, 1994
- Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994
- Information Technology Act, 2000
- Persons with Disabilities (Equal Protection of Rights and Full Participation) Act, 2000
- Juvenile Justice (Care and Protection of Children) Act, 2000 (now Amendment Act 2006)
- National Health Policy, 2002
- National Charter for Children, 2004
- National Plan of Action for Children, 2005
- Commission for the Protection of Child Rights Act, 2005
- Prohibition of Child Marriage Act 2006 and
- All State Legislations pertaining to children

Every child comes with the message that God is not yet discouraged of man

Rabindranath Tagore

HAQ recommends

- Building a strong cadre of Juvenile Justice Welfare Officers at the police stations and strengthening the Special Juvenile Police Units through regular training and interaction.
- More lawyers/organisations for children and free legal aid for the poor is the first step to ensure right to legal representation. Legal aid services for children unrepresented by a lawyer must become a necessary component of all enactments related to all children. At the same time quality of legal aid Services must improve. Free legal aid should not lead to a compromise in the quality of service, as often happens now.
- New and additional infrastructure on change in the existing infrastructure in all courts dealing with children is required immediately enabling environment and change in the style of functioning of these bodies is an essential pre-requislte to let the child feel free and secure in order to express himself/herself.

Measures for child victims of sexual abuse and other crimes

The Supreme Court, in cases dealing with child victims, particularly victims of child sexual abuse, has in the past directed

- In-camera trials be held;
- Use of video-conferencing or a screen between the victim and the accused be ensured so that at no point the victim has to come in contact with the accused or undergo the trauma of facing the accused;
- No direct questions be put to a victim of child sexual abuse and questions for cross-examination must be given in writing to the presiding officer, who may pose them to the victim in a manner that is not embarrassing and not resulting in re-victimization;
- Sufficient break be given while recording the testimony of a child;
- Identity of the child be kept confidential and the victim be referred to as the prosecutrix and not by name during the trial;
- Crisis intervention centres be established and counselling provided to the victims; and
- Other methods be adopted for victims of sexual exploitation and trafficking that support principles of natural justice and fair trial.

- These directives need to be implemented immediately and all judges and lawyers must be aware of them. The Government of India must seriously invest in and plan the monitoring of the implementation of Supreme Court's directives.
- All minor victims of crime are not necessarily children in need of care and protection of law. Courts must remember that every child who comes before them does not require to be institutionalised. At the same time, other than the trial, courts have no jurisdiction in matters concerning rehabilitation and social re-integration of these children. CWC is the authority to conduct all the inquiries for them, irrespective of whether or not they are victims of crime.
- No court must order the child to be placed in\an institution merely to ascertain "recording of voluntary statement ofthe child", except when parents are the accused.

Measure for Children in Conflict with Law

- There should be a ban on referring to previous cases against the child while other case/s are heard or using them to deny the child bail, prejudice the current case or victimize him/her in anyway.
- Age Verification should happen at the earliest. In case of doubt, police should get the age of certificate from the school, so that the child is not sent to an adult prison.
- If a child has been produced in the JJB in the past, the age proof of the previous case should be considered final.
- No court must detain a child in a place meant for adults.
- The Social Investigation Report should be made at the earliest. The job of making the SIR

should also be given to credible NGOs.

- All children in homes who have completed three years' stay or attained 18 years should be released immediately without any hearing.
- Proper medical facilities should be immediately provided in the homes.
- Children need to be informed about their-rights under the laws and in the legal system.
- Social workers in the JJB should always be the first point of contact for any child appearing before the Board. The child and/ or the lawyer should be allowed to present their case before the Magistrate only after they have interacted with the social-workers. The workers too must have a degree in law and special training in child rights and child psychology.
- Right from the point of arrest up to adjudication before the competent authority, as well as assessment, placement and everyday living within the institutions, the child's opinion should not only be heard but also given due weight in accordance with his or her age and maturity.
- The philosophy of 'best interest' underlying the administration of justice should be applied not just in letter but also in spirit.
- Children's voices need to be heard in family courts. A guardian ad litem or representative or a counsel in the family court should aid the child. This service should be totally free from hierarchical and functional interference and enlist assistance from experts in behavioural sciences. It must also act as the direct link between the children and courts and become the ultimate point of reference.
- Regular training must be held to build the capacities of the people in the JJB, CWC and related fields and improve their sensitivity towards children and understanding of child rights. The CWC should be able to easily get external help if necessary.
- Indian law does not recognise sexual abuse of boys. As one of the several petitioners, HAQ. was fortunate to get the final Delhi High Court judgement on July .2 on reading down of Section 377 of the IPC under which cases of sexual abuse of boys are booked. Sec 377 actually deals with what the law terms as "unnatural offences" rather than sex between males/boys. Moving forward from this judgement, Parliament must demand a separate law on child sexual abuse.
- Improved probation services require not only more trained officers but also adequate investment to ensure proper supervision and follow-up.
- The environment in the JJBs should be child-friendly and very unlike a regular court. Doing away with elevated platforms for the magistrate and other members, lawyers and the staff in every JJB is just the first step towards that.

Unloved : The Child In India

Who is a Child ?

The Indian state defines a child variously. While the JJA (Section 2k) defines a child as any person up to the age of 18 years, and is in harmony with the UNCRC, other laws do not. As we saw earlier, the 1986 JJA defined a juvenile as a boy less than 16 years old or a girl less than 18years old. This definition was altered by the 2000 Act, adopting the CRC's age limit.

While the ideal age to cast a vote or get a driving licence is 18 years, the right age for marriage has been kept at 21 for a boy and 18for a girl. The age of consent for girls remains at!6 years (15 years or puberty in case she is married). The Child Labour (Prohibition and Regulation) Act, 1986 defines a child as a person below 14 years. Confusion over age has been the biggest deterrent against speedy justice for the child in need.

Increasing vulnerability

Hie state of our children

The vast majority of India's children at risk have to contend with the ever-revolving doors between the care and justice systems. The failure of the legal and administrative machinery to respond to their needs of care and protection often sends them back and forth between the two systems. As Arvind Narrain says, "the expansion of the category of children in need of care and protection has led to serious questions as the system still remains custodial in nature and what one in effect does is bring more children within a criminal justice framework."[1] Even children, who have committed no offence but are deprived of parental care and shelter, routinely end up in the formal justice system in India supposedly for their own good. And since often the care system resembles the prison system, children prefer to remain out of it, surviving anywhere, even on the streets, resulting in a vicious cycle of neglect and criminalization.

Even in the case of unaccompanied and refugee or shelter-less children - children who need the care of the state simply because they have no other optioninternational standards require that the child is treated in a manner consistent with the promotion of his or her sense of dignity and worth and that decisions are clearly taken in thebest interests of the child, taking into account age and special needs, allowing the right to express own views, and without curtailing fundamental rights and freedoms.

A 2005 International Save the Children Alliance (ISCA) report for the UN says "violence in the family, including physical, sexual and psychological abuse as well as neglect, abandonment and discrimination, not only has a major impact on the child's well-being and development, it fundamentally affects a child's choices and may force her or him into coping strategies that often lead to further victimization or criminalization". [2] Thus, often the primary factor that brings children into conflict with the law is the breakdown of their familial, protective and familiar environment, the same situation that makes them children in need of care and protection.

Interestingly, the ISCA report also says,"therealityis that a majority of children will break the law at least once before they become18".Morepertinently,thenatureofsuch offences is almost

1. *Arvind Narrain, The Juvenile Justice (Care and Protection of Children) Act, 2000. A critique in Children in Globalising India. Challenginf Our Conscience HAQ: Centre for Child Rights, 2002.*
2. *The Right Not to Lose Hope : Children in Conflict with the law. A contribution to the UN Study on Violence Agaisnt Children, Save the Children UK, 2005*

always trivial. Studies show 90 percent of children who come into conflict with the law or come into contact with the justice system are one-off and first-time offenders and three-fourths of them will usually have committed petty crimes like stealing of goods, offences that ironically don't make an adult a criminal, but can help put a child behind bars. In many countries certain acts are considered as offences when committed by children but are considered to be no offence when committed by adults.[3] Also, very few of these children go on to become career criminals, if ever, and don't pose a threat to the community. This brings into question the very need to keep them in detention, especially for years together as it happens in India. According to Dr Hira Singh, former director, National Institute of Social Defence, Ministry of Welfare, government of India, "it is generally seen that even when the child has been recognized as an offender, he or she is more of a victim of certain situational compulsions rather than a perpetrator of crime[4].

Notwithstanding this, more than one million children, most of them boys, are in detention worldwide, says Save the Children. More than 90 per cent of them are in remand, awaiting trial. Many of them are simply trying to survive and thus in need of protection but are unfortunately criminalized as they enter the formal justice system because of the absence of a child-centred justice system in many nations.[5]

A similar situation exists for girls even though few of them commit any crime. Girls from poor families, unable to survive on the street as in India, are often trafficked into child labour or prostitution. Almost always, children in actual or potential conflict with law emerge out of the children deprived of the basic needs for survival and in urgent need of protection, and more so from underprivileged families and communities, including discriminated minorities such as the tribal. Often, as experience in India or even the US shows, prejudice related to social or economic status may not only bring a child into conflict with law even when no crime has been committed but also influence and decide the future course of justice delivery.

Statistics on children who are in conflict with law or have fallen into delinquency reveal they often come from a particular background, or rather are found in a particular background, including growing up in violence and exclusion. Over 72 per cent of the children apprehended for being in conflict with law, says the National Crime Records Bureau (NCRB), come from households with an annual income of less than Rs 25000. The next biggest group, 27.3 per cent, belong to the families with an annual income of Rs 50,000-Rs 2 lakh. The share of such children from the upper middle-income group of Rs 2-3 lakh is only 0.16 per cent, while the remaining 0.19 per cent came from those earning more than Rs 3 lakh.[6] Either the children of the rich do not commit crimes as frequently as the poor, or they manage not to get apprehended and charged.

The Government of India recognises that some children are living in especially different circumstances and includes orphans, street children, beggar children, migrant children, children affected by human made and natural disasters, drug addicts, children of nomads, refugee children, slum and migrant children, children of commercial sex workers, children of prisoners, children affected/ by in armed conflict, displaced children, evicted children, young children in charge of siblings, children born as eunuchs or brought up by eunuchs and other children who need care and protection in this category. [7] These are children who are victims of abuse and exploitation, or victims of their social, political and even geographical circumstances. Many of them are included in the JJA as CNCP.

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3. The UNICEF Innocenti Digest.
4. Hira Singh : Current Issues in Juvenile Justice Administration, Unpublisedh text
5. The Right Not to Lose Hope, of cit.
6. Crime in India 2006, National Crime Records Bureau, Ministry of Home Affairs, Government of India.
7. Working Group on Development of Children for the Eleventh Five Year Plan, op cit.

Violence against children is particularly rampant in India. Every year around 26 million children are born in this country[8], which is also home to the world's largest number of children out of school - 19 per cent of all children. Most of them end up as child labour. The 2001 census[9] put the number of child labour in the country at 12.66 million, while unofficial estimates range from 14 million to 50 million. The same census also found 4 lakh children under the age of four in some form of work. As a recent (May 2008) High Court judgement in UP said, "We felt that if it was ensured that every child was present in school as mandated by the said Constitutional provision and the decisions of the Apex Court as well as this Court, when any child was found out of school during school hours it could be presumed that such a child had run away because he had been abused at home or he/she was a trafficked child or a child engaged in unacceptable or illegal child labour."[10]

Of the lucky 81 per cent who are enrolled in a school, close to 53 per cent drop out before completing middle school or the eighth standard and 70 per cent do not complete full schooling or the secondary level. Of the dropouts, 66 per cent are girls. Some 46 per cent of the children come from scheduled castes, 38 per cent from scheduled tribes and almost all affected by HIV/AIDS or infectious diseases are still out of school. Most of these children end up in difficult circumstances, that is, in need of care and protection.

There are 420 million children in India, or over two fifths of the population, but they do not vote and apparently do not constitute a politically powerful lobby. In the last four years, on an average, only 2.7 per cent of the questions asked in Parliament by members related to children. Ironically, even as 60 per cent of these questions were on education.

Myths We Need to Break

- Child abuses is a western concept.
- All empowered adults protect their children.
- Educated and upper-class people never abuse children.
- Those who abuse children are mentally ill arid need to be treated more than punished.
- Child abuse happens in slums/poverty-stricken areas/some regions/some communities/ dysfunctional families/big households.
- Home is the safest heaven and the family is ALWAYS the best place for the child.
- Spare the ROD and SPOIL the child.
- Boys are not sexually abused and there is no need to worry about or protect a male child.
- Girls ask for it by behaviour or improper dressing.

Parliamentarians haven't yet managed to pass a law that makes education of children compulsory, free and equitable. Right now, a public debate is raging to ensure that the draft law, called The Right Of Children To Free And Compulsory Education Bill, 2008, genuinely provides equal, free and compulsory education to all children and does not encourage different systems of education for the rich and poor, public and private.[11] For good reason too. The International Labour

8. Mapping India's Children : UNICEF in Action, UNICEF, 2004.
9. As has been listed in the National Plan of Action for Children, 2005.
10. Criminal Miscellaneous Writ Petition No. 15630 of 2006, Vishnu Dayal Sharma, petitioner vs. State of UP and others, Judges Hon'ble Amar Saran and Shiv Shanker.
11. The bill was passed by Parliament on 4 August 2009.

Organisation (ILO) estimates that each extra year of education till age 14 results in 11 per cent extra annual earnings in the future.[12]

Even more shocking is that such a dismal state of affairs has existed for a long time. In India, abuse of children and violence towards them is partly allowed or even encouraged by culture, beliefs, traditions, superstitions and claimed economic realities. Subtle forms of violence against children - manifested in child marriage, outdated practices including and similar to Devadasi' (dedication of girls to gods and goddesses) or genital mutilation in some communities such as the Bohri Muslims, superstitions such as sex with a young virgin for curing sexually transmitted diseases - are justified op grounds of culture, tradition and religion.

Psychological and physical violence towards children is routine, for instance, slapping, hitting, pulling by the hair and boxing the ears as punishment at home or in schools. In many poor families, the child is forced to work, hard and unrelentingly, from an early age to supplement the family kitty or simply in order to survive, even as his or her physical and emotional well being as well as schooling is blatantly neglected.

> "The petitioner through the present petition contends that the narrow understanding and application of rape under Section 375/376 IPC only to the cases of penile/ vaginal penetration runs contrary to the existing contemporary understanding of rape as an intent to humiliate, violate and degrade a woman or child sexually and, therefore, adversely affects the sexual integrity and autonomy of women and children in violation of Article 21 of the Constitution."
>
> *Sakshi vs. Union of India & Others, Writ Petition (Cri) No. 33 of 1997 with SLP(Crl.) Nos. 1672-1673 of 2000*

Sexual abuse cuts across class, religion, caste or ethnicity. Even in educated, high-income families, sexual abuse might be frequent. What has been a matter of deep concern when addressing laws dealing with child sexual abuse is that most forms of sexual abuse that do not amount to rape is dealt with lightly. The most horrific forms of sexual abuse that children are subjected to, such as penetration in other parts of the body or forcing the penis into a child's mouth, is covered under Section 354 of the IPC which is about "outrage of modesty". It is a bailable offence with a punishment of imprisonment that may extend to two years or with a fine or with both. Only rape and sodomy can lead to criminal conviction. The word rape does not include boys and sodomy is tagged under 'unnatural offences', while intercourse is often interpreted to mean sexual relationship with an adult.[13]

The inadequacy of this law first came to light when in Delhi, even though a six -year old girl had been systematically abused through fingers in her vagina and anus, made to perform oral sex over a period of time as well as forced to witness sexual orgies by her father, the Delhi High Court held that no rape had taken place but that the accused was guilty of only molesting the child. Even the Supreme Court, while giving its final order, did not expand the definition of rape but only laid down guidelines for examination of child victim in court.[14]

The Law Commission of India has recommended measures to redefine rape laws to prevent the

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12. IPEC : Investing in Every Child An Economic Study of the Costs and Benefits of Eliminating Child Labour, IEO, Geneva, 2003.

13. Pinky Virani, Bitter Chocolate, Child Sexual Abuse in India, New Delhi, Penguin 2000, page 25-26.

14. "There is absolutely no doubt or confusion regarding the interpretation of provisions of Section 375 IPC and the law is very well settled. The inquiry before the Courts relate only to the factual aspect of the matter which depends upon the evidence available on the record and not on the legal aspect. Accepting the contention of the writ petitioner and giving a wider meaning to Section 375 IPC will lead to a serious confusion in the minds of prosecuting agency and the Courts which instead of achieving the object of expeditiously bringing a criminal to book may unnecesarily prolong the legal proceedings and would have impact on the society as a whole. We are therefore, of the opinion thatit will not be in the larger interest of the State or the people to alter the definition of "rape" as contained in Section 375 IPC by a process of judicial interpretation as it sought to be done by means of the present writ petition." Sakshi v. Union of India & Ors. (Writ Petition (Crl.) No. 33 of 1997 with SLP (Crl.) 1672-1673 of 2000).

sexual abuse of children and women, which is yet to be adopted.[15] Concerned with the lesser sentences given to culprits committing sexual assault of different forms due to absence of a stricter law, Delhi High Court has asked the Centre to consider the Law Commission report and include "digital rape" while widening the definition of rape. The court made the observation while dismissing an appeal filed by 54-year-old Tara Dutt, father of four daughters, who was convicted of committing digital rape on a five-year-old relative in 1996. Digital rape is inserting finger into the victim's private part. On June 7, 1996 evening, Dutt had forced his fingers into the private parts of a five-year-old daughter of his relative, when her mother, a domestic help, was away for work. Initially, police booked Dutt on charge of rape (the maximum punishment would be life sentence) but later the trial court converted the offence into outrage of modesty and the sentence to the maximum punishment of two years'jail term.[16]

> "Unfortunately the criminal law of our country does not recognise this form (digital rape) of sexual assault as a heinous crime. As a result, the culprit gets convicted for use of criminal force to outrage the modesty of a woman," Justice S Muralidhar observed.
>
> "It is a matter of grave concern that nothing has been done till date....Absence of stringent law to deal with impunity," the court said.
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> *Press Trust of India, "Widen definition of rape for stringent punishement Delhi High Court," New Delhi, 3 May 2009*

Societal scorn is also eloquent in the rampant killing of girl children in their mothers'womb, and by neglect as well as sexual abuse when they are out of it. For every 1000 boys of 0-6 years, there are only 927 females in India, even fewer in northern states. India has the world's largest number of sexually abused children, with a child below 16 years raped every 155th minute, a child below 10 every 13th hour, and one in every 10 children sexually abused at any point in time.[17] India also has the largest number of missing children. The National Human Rights Commission (NHRC) says that on an average, 44,000 children are reported missing every year. Of these, as many as 11,000 remain untraced. Delhi, for instance, had over 7,000 children missing in 2006, though police claimed they were able to track 75 per cent of these.[18]

Child abuse takes various forms. It includes physical injury, negligent treatment or maltreatment, psychological and emotional harm, sexual abuse, trafficking, and economic exploitation (as in the case of ill-paid, often tortured, child labour)in short, any action or attitude that causes or may cause harm to the child's development, protection, survival and role in society. Most of these abuses go unreported, including crimes, especially when they happen to children from poor families or those belonging to socially marginalised communities. Even otherwise, cases of serious abuse, such as sexual abuse, may be often swept under the carpet within households, ostensibly to protect "family honour", while lesser abuses may not be considered serious enough to report in a culture that tacitly allows violence towards children, particularly girls. Rape of girl children still goes unreported due to social stigma and fear of harassment, while kidnapping or trafficking cases can often get categorised under missing children, to take just two examples.

According to the latest edition of Crime in India, published every year by the National Crime Records Bureau (NCRB), Ministry of Home Affairs, the number of crimes committed against children went up by 7.6 per cent to 20,410 in 2007, from 18,967 in 2006, accounting for 1.8 per cent of all crimes reported. Delhi accounts for 9.9 per cent of the crimes against children, ranked fourth

15. Law Commission of India, 172nd Report on Review of Rape Laws, March, 2000.
16. Press Trust of India. "Widen definition of rape for stringent punishment Delhi High Court, Delhi, May 03, 2009.
17. Sub-group Report, Child Protection in the Eleventh Five Year Plan (2007-12), Ministry of Women and Child Development Government of India, Page 15.
18. NHrC, ISS, UNIFEM, Trafficking in Women and Children in India, Orient Longman, 2005.

after Madhya Pradesh (21 per cent), Maharashtra (13.3 per cent) and Uttar Pradesh (11 per cent).[19] However, in terms of crime rate it is far ahead of all - 12.2 per cent. All these numbers obviously exclude the under-reporting.

There is no legal definition of child abuse or child sexual abuse in India. The rate of conviction is poor and cases go on forever, delaying and often denying justice.

There is no legal definition of child abuse or child sexual abuse in India. The rate of conviction is poor and cases go on forever, delaying and often denying justice. The conviction rate at the national level for crimes against children stood at only 36.6 per cent in 2007. [20] Thus, there is further victimization of the child through the legal procedure.

A study conducted by the Ministry of Women and Child Development (MWCD) in 2007 found two out of every three children to be physically abused, mainly by the parents. More than half were also victims of sexual abuse. While the states of Assam, Andhra Pradesh, Bihar and Delhi reported the most abuse, the children most likely to be maltreated in this manner were children on the streets, working children and, surprisingly enough, children in institutional care.[21]

Add to this the children affected by violence. Some 19 out of the 28 states of India face internal armed conflicts, which are characterised by gross violations of international human rights and humanitarian laws, both by the security forces and the armed opposition groups.[22] Be it Naxalites, government security forces and Salwa Judum, all have recruited and used children in the on-going conflict in Chhattisgarh, one of the 12 states plagued by internal violence. While there are no clear estimates, the Naxalite militants (fighting against the state of India), the Salwa Judum (state-sponsored militia used in anti-insurgency operations) and the government security forces are all recruiting children (both boys and girls) to training camps where they are taught to use weapons and explosives.[23] Many children have dropped out of schools and become Special Police Officers, lured by the monthly salary of Rs 1500. Children are routinely getting killed because they are suspected Naxals or attacked by the Naxals as informers. Education is disrupted because either the Naxals have destroyed the schools or worried parents have pulled children out of schools in the wake of violence.[24] Many schools have been turned into camps for refugees. Now even the Orissa government is following suit. In November 2008, it announced a plan to recruit around 2,000 local tribals as special police officers to counter Naxalite insurgents.[25]

Thus, children today are growing up in an environment of violence, both in the private space and public. They are even being trained and used to perpetuate violence. On a daily basis, they confront ethnic and communal violence, state-sponsored violence, sexual abuse and exploitation in all forms. The latest Crime in India says 5,045 cases of rape of children were reported in 2007,6.9 per cent more than in 2006. Worse, reporting of kidnapping and abduction went up sharply by 25 per cent to 6,377 cases. In Delhi on the other hand, a 12.6 per cent decline is reported in child rape cases while there is a 4.2 per cent increase in child kidnapping between 2006 and 2007. Madhya Pradesh reported the highest figure of 21 per cent, or 4,290 cases, out of 20,410 total crimes committed against children in the country.

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19. Crime in India, 2007, National Crime Records Bureau, Ministry of Home Affairs, Government of India, http://nerb.nic.in/cii2007/home.htm.
20. Ibid
21. Study on Child Abuse : India 2007, Ministry of Women and Child Development, Government of India.
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23. Human Rights Watch, Dangerous Duty - Children and the Chhattisgarh Conflict, July 2008.
24. Human Rights Watch, Dangerous Duty - Children and the Chhattisgarh Conflict, July 2008 page4-7.
25. Letter from Human Rights Watch to the Orissa government http://www.hrw.org/en/news/2009/01/27 /India don't-recruit-children-special-police.

Rising offences, higher insecurity

Crimes against and by children

What is the state of the "crimes" committed by children in India? What about the crimes committed against children? A true answer to this question is difficult to obtain partly because of underreporting of both types of crimes. Further, any proper study of juvenile justice in India is hampered by a near-total absence of qualitative and quantitative data on both the categories of children addressed by the JJ Act. The only data available are from Crime in India, the annual publication of the National Crime Records Bureau (NCRB), especially the data on "juvenile delinquency", which provide a glimpse of the vast number of children requiring care and justice services. The Ministry of Social Welfare and the Ministry of Women and Child Development provide some data through occasional studies.

According to the Ministry of Women and Child Development, 40 per cent of India's children, or close to 170 million, are in need of care and protection.[26] This staggering number not only shows up the Indian society and parents in poor light but also fixes the scanner on the abysmal failure of the civil administration and the formidable challenge before the juvenile justice machinery. Delhi has half a million such children, being the capital and therefore a major destination for children from all over the country in search of better opportunities.

What about the children in conflict with law? The latest issue of Prison Statistics,NCRB,puts the number of "prisoners" in Delhi in the age group of 16-18 years at 64 and those under trial at 567 at the end of 2006.[27] The number would be far higher once we add the age group of 7 to 15 years' children, who will not be in prisons but observation homes. Over the years, there has been a steady increase in the number of children in conflict with law, from 17,203 in 1994 to 34,527 in 2007.The most common offences alleged to have been committed by children have been found to be: death due to negligence, attempt to murder, robbery or aiding robbery, hurt, and auto theft.

Interestingly, the share of girl offenders has consistently gone down, from 29.1 per cent in 1999, the highest so far, to 5.4 per cent in 2007. Looking at the data trend, it is clear that the slump happened because of the sharp rise in the total number of crimes by boys, once the age group of 16-18 years was included under children in 2001. The number of total crimes by boys zoomed upwards by 126 per cent from 13,854 in 2000 to 31,295 in 2001, squeezing the share of crimes by girls. Even in terms of overall numbers, crime by girls has shown a secular and steady decline from 2003 onwards, stabilising at less than 2000 compared to around 4000-5500 before that. All the four categories of causing hurt, Prohibition Act, riots and cruelty by husband and relatives, under which girls are commonly apprehended, have seen a decline, and it has been especially sharp for Prohibition Act.

26. Study on Child Abuse : India 2007, Ministry of Women and Child Development, Government of India.
27. Crime in India 2006, National Crime Records Bureau, Ministry of Home Affairs, Government of India http://ncrb.nic.in/PS12006/prison2006.htm.

Incidence and Rate of Juvenile Delinquency under IPC (1994-2007)				
Year	Incidence of		Pesentage of Juvenile Crimes to Total Crimes	Rate of Crime by Juveniles
	Juvenile Crimes	Total Cognizable Crimes		
1994	8,561	16,35,251	0.5	-
1995	9,766	16,95,696	0.6	-
1996	10,024	17,09,576	0.6	-
1997	7,909	17,19,820	0.5	0.8
1998	9,352	17,78,815	0.5	1.0
1999	8,888	17,64,629	0.5	0.9
2000	9,267	17,71,084	0.5	0.9
2001*	16,509	17,69,308	0.9	1.6
2002	18,560	17,80,330	1.0	1.8
2003	17,819	17,16,120	1.0	1.7
2004	19,229	18,32,015	1.0	1.8
2005	18,939	18,22,602	1.0	1.7
2006	21,088	18,78,293	1.1	1.9
2007	22,865	19,89,673	1.1	2.0

Source : Crime in India 2007, NCRB

* Boys in the age group of 16-18 years considered juvenile since 2001.

Children Apprhended under IPC and SLL Crimes by Gender (1994-2007)				
Year	Boys	Girls	Total	Percentage of Girls
1994	13,852	3,351	17,203	19.5
1995	14,542	4,251	18,793	22.6
1996	14,068	5,030	19,098	26.3
1997	14,282	3,514	17,796	19.7
1998	13,974	4,969	18,923	26.2
1999	13,088	5,372	18,460	29.1
2000	13,854	4,128	17,982	23.0
2001	31,295	2,333	33,628	6.9
2002	33,551	2,228	35,779	6.2
2003	30,985	2,335	33,320	7.0
2004	28,878	2,065	30,943	6.7
2005	30,606	2,075	32,681	6.3
2006	30,375	1,770	32,145	5.5
2007	32,671	1,856	34,529	5.4

Source : Crime in India 2007, NCRB

Social background of children in conflict with law

- 71 percent of these children belong to families with an annual income up to Rs. 25000 ($625) a year.
- 64.4 per cent of the total juveniles 'arrested' during the year 2005 are illiterate and 38 percent have primary level education.
- Over 8 per cent are homeless.
- 91.7 per cent of the juveniles apprehended are in the age group 16-18 years.
- More boys than girls come in conflict with law. Only 6.3 per cent of the apprehended children are girls.

Source : Crime in India 2007, NCRB

State-wise Classification of Juvenile Apprehended* (Under IPC and SLL) by Attributes During 2007

State/UTs	Education					Family Background			
	Illiterate	Primary	Above Primary but Matric/ H.Sec.	Matric/H. Sec. & above	Total	Living with Parents	Living with Guardians	Home less	Total
Andhra Pradesh	749	707	317	180	1953	1335	251	367	1953
Arunachal Pradesh	20	46	39	0	105	50	55	0	105
Assam	255	246	362	292	1155	514	371	270	1155
Bihar	491	349	592	37	1469	1106	297	66	1469
Chhattisgarh	346	842	553	286	2027	1527	350	150	2027
Goa	20	29	23	5	77	64	8	5	77
Gujarat	520	1348	726	284	2878	2357	260	261	2878
Hariyana	214	515	945	166	1840	1690	104	46	1840
Himachal Pradesh	5	8	75	57	145	145	0	0	145
Jammu & Kashmir	3	2	3	7	15	15	0	0	15
Jharkhand	161	185	109	54	509	306	132	71	509
Karnataka	50	88	419	60	617	512	81	24	617
Kerala	14	159	318	184	675	611	44	20	675
Madhya Pradesh	1752	2618	2231	749	7350	5597	1364	389	7350
Maharashtra	1236	3063	2045	492	6836	5792	870	174	6836
Manipur	0	0	0	0	0	0	0	0	0
Meghalaya	55	40	6	5	106	70	35	1	106
Mizoram	0	32	59	0	91	91	0	0	91
Nagaland	0	0	0	0	0	0	0	0	0
Orissa	148	217	229	64	658	435	157	66	658
Punjab	44	41	29	15	129	129	0	0	129
Rajasthan	539	743	699	143	2124	1899	200	25	2124
Sikkim	38	48	8	0	94	94	0	0	94
Tamilnadu	6391	680	394	8	1721	1185	247	289	1721
Tripura	1	1	0	0	2	0	2	0	2
Uttar Pradesh	56	1714	102	98	427	381	46	0	427
Uttarakhand	6	32	34	57	129	100	29	0	129
West Bengal	51	48	41	5	145	96	35	14	145
States	**7413**	**12258**	**10358**	**3248**	**33277**	**26101**	**4938**	**2238**	**33277**
Andaman & Nicobar	0	40	32	3	75	69	6	0	75
Chandigarh	15	25	58	20	118	112	4	2	118
Dadra& N. Haveli	0	9	2	0	11	11	0	0	11
Daman & Diu	3	0	0	11	14	11	3	0	14
Delhi	490	270	170	40	970	711	145	114	970
Lakshadweep	0	0	0	0	0	0	0	0	0
Puducherry	5	57	0	0	62	59	3	0	62
UTs	513	401	262	74	1250	973	161	116	1250
India	**7926**	**12659**	**10620**	**3322**	**34527**	**27074**	**5099**	**2354**	**34527**

Source : Crime in India 2007, NCRB Note:The word asserted had been used by the National Crime Records Bureau in this table despite change in the law. Under the JJ Act, children to be apprehended and not arrested. HAQ has changed it.

One reason could be that, to paraphrase a Delhi High Court judge, the JJ system has been designed keeping boys in mind. The terminology, the processes, the homes, the courts, it is almost as if girls do not exist. Although there is no clear evidence, it does seem that either girls have forsaken the path of crime or police have been booking fewer girls after the 2000 Act.

Of the many social and economic factors that push children towards crime, the most important are lack of education and poverty. In 2006,64 per cent of the total children arrested were either illiterate or had studied only up to primary level. Also, 92 per cent of the children came from very poor families, earning about Rs 4000 or less a month. In fact, over 72 per cent came from die poorest families that earned less than Rs 2000 a month, that is, those living even below the official all-India average poverty line of Rs 2500 a month.

Homelessness is the third biggest factor. The biggest group of children needing care and protection are the street children, many of who are actually missing children. In Delhi, 1100 children between 8 and 12 years went missing in 2008, out of which 200 have still not been traced, and January 2009 again saw another 100 go missing, forcing police commissioner Y S Dadwal to hold a meeting with his senior colleagues. An estimated 30 million children, who have either run away from their families or got separated from them for various reasons, are living on the streets. Railway stations are the second most preferred home for these children, said a National Human Rights Commission study in 2004. Every year, more than a thousand children land up there. In 2007,1141 missing children were found at the New Delhi Railway Station, said the Railway Police Force. Interestingly, in personal interviews, many of these children say that they prefer to remain in their "transitory" homes rather than living miserably in government-run children homes.

Under the JJ Act, children are to be apprehended and not arrested, yet the Crime in India statistics continue to use arrested. A word of caution about the data. For all we know, the NCRB statistics could be the tip, at best half, of the iceberg. The table next page gives an idea of the nature of the disposal of cases, which in turn is a reflection on the "attitude" of the juvenile justice system. It is clear that the number of convictions (the number of children sent to Special Homes, where they go if found guilty of the charge) is higher than the acquittals.

"While at the national level, reported cases of crimes by children in conflict with law have gone up between 2007 and 2006 by 4.7 per cent, in Delhi the number has reduced substantially by 21 per cent. The number of children in conflict with law apprehended by the police has also gone down in Delhi by 35.9 per cent, whereas at the all-India level this number has increased by 7.4 per cent."

Status of Disposal of Cases of Children in Conflict with Law (1998-2006)								
Year	Arrested and sent to Courts	Sent to home after advice or admonition	Released on probation & placed under care of		Sent to Special Homes	Dealt with Fine	Acquitted or disposed of otherwise	Pending disposal
			Parents/ Guardian	Fit Institution				
1998	18,964	2,620	3,889	829	1,751	908	2,107	6,860
1999	18,460	1,656	5,298	768	1,281	832	3,358	5,267
2000	17,982	2,619	3,091	2,012	1,864	609	1,132	6,656
2001	33,628	4,127	4,833	1,003	4,037	897	4,436	14,296
2002	35,779	3,236	11,338	1,240	3,381	908	1,693	13,983
2003	33,320	3,413	9,074	1,526	3,936	1,592	1,730	12,049
2004	30,943	3,848	5,662	1,138	4,942	1,256	1,957	12,140
2005	32,681	3,807	5,578	1,933	4,423	1,361	1,801	13,778
2006	32,145	4,036	5,723	1,482	4,510	1,023	1,579	13,792
2007	34,527	4,476	6,324	1,336	5,077	1,543	1,474	14,297

Source : Crime in India 1998-2006, NCRB

Cases pending disposal imply that the children are either kept in observation homes or may have been released on bail. HAQs experience says police usually don't make an effort to verify the age of the child, instead sending him by default to adult prison and "under-trialhood". It is quite possible then that many of the apprehended may not be appearing on the NCRB's books, even in the age group of 16-18. But they will eventually surface in observation homes, so a combination of the number of children in observation homes and the numbers of children caught by police and released on bail, will better capture the total number of children coming into conflict with law. However, no public records are available on the number of children released on bail and there seems to be a great hesitation among the department officials in sharing such information with the public.[28]

Children need love,
especially when they do not deserve it.

Harold S Hulbert, Child Psychiatrist

28. Sub Group report on Child Protection for the Eleventh Five Year Plan 02007-2012) Ministry of Women and Child Development, Government of India.

National Commission for Protection of Child Rights Report on Visit to Gumla & Ranchi, Jharkhand

Children of Jharkhand Trafficked to Delhi & other Metro Centres Entitlement to Right to Education & Other Child Rights

Background of the Visit

Pursuant to the highlighted case of rescue of a minor girl from Jharkhand, working as domestic help in Dwarka, Delhi who was repeatedly abused, tortured, and left locked in the house for 5-6 days without food and other amenities, the Commission took cognizance and decided to intervene. The case was monitored on day-to-day basis and the larger issue of mass exodus of minor children especially girls from their villages in Jharkhand to the metro cities to work as domestic helps was looked into. The Commission was in touch with the Jharkhand Government Resident Commissioner's office in New Delhi. In this context a visit to Gumla and Ranchi, Jharkhand was planned to understand the issue of migration transforming into trafficking of children. Information from some of the CWCs of Delhi regarding the number of children transferred to Gumla / Jharkhand in last six months was collected. Inputs and data from Childline was also solicited to enable the members of the team to interact with the District and State Administration.

Constitution of the Team

At NCPCR a team with the following members was constituted to visit the source point of the children trafficked to Delhi, i.e. Gumla in Jharkhand located at a distance of 94 kms. from Ranchi the State Capital, to interact with the Children restored and ensure that they are accorded their entitlements, interact with the Village Mukhiyas & Block Pramukhs; District Administration Officials, Civil Society Organisations to receive a feedback on the related issues from the ground zero, arrive at the primary level interventions at the Village level and the District level to counter the social malaise of child being trafficked. The team was also expected to interact with the State Level functionaries in attaining a secondary level interventions and also have a Inter-State coordination with the States hosting such children:

1. Dr. Dinesh Laroia - Member, NCPCR
2. Mr. Vinod Kumar Tikoo - Member, NCPCR
3. Mr. B. K. Sahu - Registrar, NCPCR
4. Dr. Ramanath Nayak - Sr. Consultant, NCPCR

Purpose of the visit

1. To review the existing mechanism of preventing trafficking / migration of minor children especially girls from the tribal areas of Jharkhand.
2. To suggest measures for further strengthening of the process of putting an end to trafficking and to upscale the intra-State and inter-State coordination among the State and Civil Society Organisations.
3. To sensitize the administration on the issue and to develop effective mechanism in putting an end to the menace.

Date: 27.4.2012

Visit to "Children Home" run by Bhartiya Kisan Sangh @ Bijupara, Distt Ranchi (45 kms from Ranchi):

Team had prior information that 9 minors (8 girls and one boy) rescued from Delhi were presented before the Child Welfare Committee (CWC) Ranchi, Jharkhand and were currently put up at this particular Home. The children already admitted to KGBV School, Gumla (for girls) and Indradhanush School (for Boys) were seen in well clad school uniforms and apparently quite happy on their being in their home environs.

The rescued and restored children at the Bharatiya Kisan Sangh Children Home, Bijupara, Distt Ranchi

Their parents were already informed of their return to Gumla and some of them had already come and met the children. Personal interaction in a friendly environment conducted with all the children. Salient general findings which emerged from the interaction are:

- Majority of the girls were instigated to leave the village by one of the neighbour or relative only, who had already worked in such metro centers. The children had accompanied these known persons to their destinations, mostly Delhi;
- In majority of cases parents had not consented for their migration;
- Prospects of a better life style, dream of earning good money were the main factors on which these girls were lured to leave their village.
- Some of the children were handed over to the unknown persons and few had exchanged hands for 3-4 times before reaching Delhi, thus raising suspicions of a full fledged organized trafficking racket.
- In Delhi all of them were made to stay at "OFFICE" where there were other children also (most probably referring to the placement agency);

- After varying time interval (1day-1 month)theywereplacedin some homes as domestic help;
- They were neither informed about their emoluments, the nature of duties, or even the hours of work;
- They all denied that their parent received any money on their migration to Delhi;

- All of them accepted that they were ill-treated at their homes by the"UNCLES& AUNTIES"and even by their children also;
- Insufficient food, long working hours and abuse in varying forms and degrees was reported by all;
- 5 girls interacted, informed that being unable to handle the illtreatment/torture any further, finally ran away from their "NEW HOMES in DELHI" and tried to board either the auto rickshaw, rickshaw or buses for New Delhi Railway Station;
- It is at this juncture that one of the good Samaritan stook note of them and handed the mover to the police/childline and finally through CWC to Children Home Ranchi;
- Regarding the girl locked up in the Dwarka home, she admitted physical abuse by her employers;
- All the girls were wearing neat, tidy school uniforms and were seemed to be satisfied with the type of facilities provided to them;
- All the girls interacted with were ambitious and wished to pursue their dream through education & hard work.

Meeting with the NGOs:

The NCPCR Team also interacted with the Civil Society Organizations working in the various are as of Child Rights in the State. The meeting was organized through the State Manager of Plan India in their Conference Hall. The Team sought in puts from the NGOs on the issues that emerged from working in the field. Some of the important issues that emerged during the discussion relating to the migration and trafficking of the children were:

- Abject poverty, illiteracy, ignorance, difficult access areas, shrinking land holding by the local populace, network of placement agencies through, living groups were cited as main reasons for large-scale migration from Jharkhand to other cities.
- The functioning of KGBV was lauded, the State Government has enhanced the classes upto the +2 level thereby imparting education upto 12th Std. It was unanimously opined that strengthening of KGBVs and increasing the number of KGBV to two per block will definitely act as a deterrent in child trafficking as more girl students will be taken into the fold of education.
- Absence of Observation Home in Ranchi for girls and also provision of a Children Home was discussed.

The Team from NCPCR interacting with the NGOs operating in the field area in Gumla & Ranchi, Jharkhand

- Need for mechanism to stop girls at Railway stations, sensitization of TTEs, constituting the child protection squad, etc. was also discussed.
- Issues like strengthening of health services for adolescent girls, distribution of iron, folic acid tablet, inclusion of adolescent girls in ICDS, revamping of NCLP schools for drop-outgirls were also dealt with in detail.
- Limitations and problems faced by NGOs during the process of rescue were discussed and more coordination from the State Government officials was demanded by the representatives NGOs.
- Issue of fake marriage staged by the Traffickers, as a means of trafficking also cropped up.
- While discussing the issue of child health, it was shared that malnutrition rates are very high but MTC (Malnutrition Treatment Centers) were reportedly working properly and AWC were also distributing food properly.
- Need for improving the quality of education was also stressed upon.
- The NGOs strongly felt the need of strengthening the PRIs so as to make them centre of registration. The demand for making the pramukhs accountable for any missing was discussed.
- Last but not the least it was felt that the issue of Trafficking should find place in the syllabus of police training.

28.04.2012:Visit to GUMLA:

On the way to Gumla, team halted at 'Government Residential School for Tribal Boys' managed by Ministry of Tribal Affairs at Baridih. The school is housed in a well spread complex with a section of building in a depilated condition which reportedly has been declared 'unfit for use', but stands there, part of which is being used as open kitchen. Approximately 248 children are staying in the hostel. Practically3-4 children are sharing one room. Food was being distributed at the time of visit and the quantity and quality of distributed food appeared to be satisfactory.

The Govt run Tribal Residential High School, Baridih,Ranchi;

The toilet block of the new unused building built just one year ago

Room being used by a student without any electricity kerosene oil lamp being used

The new building with plaster peeling off from the floors, the building in an unusable condition, the toilet block without any water and with jammed pipes.

One of the major issues which emerged during the interaction with the children was that school does not have functional toilet complex and irrespective of the season the children have to go to river side which is approximately 1 and a 1/2 km from the school for bathing and other utilities. Restructuring of the toilet complex, repairs to the new building yet to be handed over to the school but not fit to be used. It was also noted that in the residential school the children are not getting vaccination and as such medical facilities are either not available or very poorly available to them. When a group of children were asked to name their immediate requirements, it was astonishing to know what they wanted was too trifle and shocking that the State could not provide. The list included:

a) Separate broom for each room so that they could keep their rooms clean.

b) Regular replacements for fused bulbs in the rooms to ensure that they could study.

c) "Khataka"-(Electric switch) for switching on or off the bulb as they were scared to connect loose live wires (causing electric shocks) for turning on or off the bulb. Even a switchboard could help them in avoiding the frequent electric shocks while connecting the live wires.

d) Ceiling fan as the temperatures go up to 48 degrees in summers and the heat is unbearable.

e) Some play material for the physical activity and entertainment.

f) Also kerosene and lamps while there is no electricity, particularly examination time.

In spite of hardships faced and gaps in the services provided, the students seemed to be quite contended and satisfied being in the schools and determined to study further.

Visit to KGBV Bharno, District Gumla:

The Kasturba Gandhi Balika Vidyalaya School is housed in a pucca building with proper boundary wall and houses approximately 168 girls against the sanctioned strength of 240. The school does not have proper electricity connection and a generator set is available which operates only up to 9.00 p.m. only. The electric pole has come in front of the school building and is not connected as there is no transformer. Most of the young girls were staying in the first floor. Staircase to the first floor is without a railing and the girls sleep on the first floor during the night. For the last 2 and half years has not been given its completion certificate.

KGBV School Bharno, Distt Gumla has a inmate strength of 148 children against a strength of 240

Many of the girls in this class VIII seem to be quite bright and determined to pursue their career

The children are forced to stay in a large dormitory with uncovered windows, without doors, without proper electricity connection, without railing on the staircases. When asked how a girl child will relieve herself in the middle of the night in absence of electricity as the toilet block with just 4 WCs on the ground floor, the teacher responded that in such a condition the torch is being used. However, the torches are not being provided by the school. While interacting with the girls, all acknowledged that staying on the first floor in extreme weather condition is risky and they all are scared during the night. The toilet complex of the school with a strong stench emanating from it was not in a useable condition, there was no running water in the toilet of school complex. There is a provision of constructing Toilet block on the First Floor, but the same is yet to take shape. However, all the girls interacted with, were strongly determined to pursue their dreams.

Inadequate & unhygienic condition of the toilet block on Ground Floor of KGBV School, Bharno

The girls are made to stay on the 1st Floor and are scared to come down to Ground Floor to relieve themselves during night time in absence of electricity

Meeting with the District Officials at Gumla:

The meeting began with an address by the NCPCR Team on the purpose of visit and attempting to combat the issue of migration which is distinguished by a very thin line with trafficking of the young minors from centers like Gumla to Metro centers like Delhi, etc. The District administration shared their shortcomings in preventing the trafficking. Sub-optimal coordination with other State Governments, NGOs and general public at large were cited as one of the main reasons. It was strongly felt that empowering of the Village Chowkidar (the village chowkidar is a public servant on the rolls of the District administration), Gram Panchayat, the Gram Pramukh and the Block Pramukh will be of great help in sorting out the issue. The need was felt to make the village Chowkidar responsible for informing the Gram Pramukh on any missing child from the village, who in turn can further take it up with the Block Pramukh, the concerned NGO working in the area, the Police and even the District level AHTU. However, the need for public display of child help line number and other important numbers was stressed upon and it was agreed by the District officials that it will soon be carried out. It was also impressed that to avoid re-trafficking of the girls, the details of already acknowledged traffickers of the children will be circulated among the various pramukhs in the block by the police personnel. The issue of child trafficking should be discussed among VHNDs and other Panchayat meetings.

The need on various preventive measures like augmentation of vocational training, increasing employability, expansion of SHGs and greater utilization of schemes like Rashtriya Mahila Kosh was emphasized. Non-availability of children home and observations home at Gumla was also cited as a bottleneck in the functioning of CWCs. However, the District administration was advised to immediately enroll the existingNGOs-run homes and children homes under the 'Umbrella of JJ Act 2000', by registering them u/s 34(3).

The issue of foster care also arose during the meeting and CWC members present informed that they have received more than 200 applications from the prospective foster parents as Gumla is one of the 3 Districts listed in the foster care scheme launched by the State Government.

The Team interacting with the District Administration, the NGOs the Civil Society, and PRI personnel at Gumla. The meeting was attended by over 60 participants to discuss the issues causing concern to all and sundry on trafficking of children

However, the visiting team felt that proper and adequate action should be taken for identifying the suitable foster parents and adequate subsequent monitoring mechanisms are put in place. Lack of basic infrastructure facilities was big hindrance for the smooth functioning of the CWC. The Team recommended to the Deputy Commissioner to extend full cooperation to in providing adequate support including the infrastructure support as required under the ICPS. The District administration admitted that they will be publicizing the important numbers and issue of child trafficking in general public through posters, pamphlets, Nukkad Nataks, wekly markets and other related cultural activities. The Team emphasized the need to make the NGOs and other Civil Society towork in close coordination with the administration in an earnest attempt to put an end to this social malaise of trafficking of children.

Meeting with the State Government officials at the State Secretariat, Ranchi:

The visiting team from the National Commission for Protection of Child Rights (NCPCR) shared their observations in a meeting held with the State Government based on their visit to the field areas in the districts of Gumla and Ranchi, which included visits to the Children Home run by Bhartiya Kisan Sangh at Bijupara, the MTC run by the Health Department, the Tribal Residential High School run under the auspices of Ministry of Tribal Affairs, KGBV School under SSM. The observations of the Team also included interactions with the children rescued and restored to their home town, the students studying at the Tribal High School and their teachers, the children studying at the KGBV School and their teachers, various stakeholders including the NGOs working in the areas of child rights. The team pointed out various gaps and anomalies observed in the delivery system, which could have been addressed easily only by having a proper monitoring mechanism in place. They expressed their concern over the delay in constituting the State Commission for Protection of Child Rights, non-utilisation of ICPS funds in previous year and delay in grounding of the DCPS, lack of Children Homes and Observation Homes in the State (Jharkhand has 10 Observation Homes and just two Children Homes in Jamshedpur and Deogarh districts out of 24 Districts of the State) delay in imparting of training to SJPUs, delay in providing infrastructure support to AHTUs like provision of Jeeps, delay in providing adequate support to CWCs etc. They urged all the departments present there to ensure inter-departmental coordination and cooperation while dealing with the issues of according various entitlements to children.

Responding to the observations of the NCPCR team the State Government informed that SCPCR has already been constituted and the final approval of the same is being awaited from the office of the Chief Minister to finalise the name of Chairperson and Members.

With regard to establishment of Children Homes in the State in general and at Ranch! and Gutnla in particular, the Department assured that this would be expedited and presented before the PAB. The visiting team was assured of strengthening of the Child Welfare Committee (CWCs) and District Child Protection Units (DCPUs)at the earliest possible. The department asked for three months' time to initiate actions on orientation of CWCs, accelerating the recruitment of the personnel required for implementation of ICPS and registration of all the child care intuitions in the State under JJ Act [as required under Section 34(3) of JJ Act, 2000].

The Department of Social Welfare assured that it will evolve the mechanism to work in coordination with the Anti-Human Trafficking Units (AHTUs) and NGOs on the issue of trafficking and missing children. It was also agreed upon that the routine survey undertaken by the Sarv Siksha Abhiyan (SSA) to include a separate column on the missing children.

The State Government felt that the process of migration cannot be checked as everyone looks forward to better opportunities and ensuring better livelihood option. However, to check the illegal migration of children, the IGP (C1D) heading AHTU agreed to issue ID cards to those NGO personnel who visit Railway Stations/Bus Stands, so as to ensure protection of such children being carried by unsuspecting traffickers to places like Delhi, Mumbai etc. Such IDs will help the NGOs by not being harassed by the GRP and CISF at the Railway Station and Bus Stands. State Government also stressed the need to plug the "Pull Factor" by working on the control by some kind of legislation on registration of placement agencies and their monitoring and due regulation. In this context it was informed that already some efforts are being put in place by the Delhi Government and in fact the member of the SCW of Jharkhand was called to attend a consultation by the Delhi Government recently, who could brief the State on thedeliberations. Meantime, it was felt that an officer of the Jharkhand Government could be designated as a Nodal Officer and be placed at the Resident Commissioner's Office in Jharkhand Bhawan in Delhi and a provision of short stay home in every metro city could be thought of. The Development Commissioner suggested the agencies working on rescue of children in Delhi could cross verify the name of the parents/guardians of the rescued children from the voters' list of the State Election Commission, which the representative of Shakti Vahini one of the NGOs engaged in rescue of children from Jharkhand informed could not be practical on account of various reasons including the list not being updated and the errors normally encountered in data entry of the Voters List.

It was emphasized that the role of NGO as handholding could be vital in spreading the awareness among parents and community, undertake preventive rescue, rescue from the railway station, destination point and ensure implementation of schemes like SABLA for their rehabilitation to prevent re-trafficking.

The NCPCR team was informed by the State Government that the RTE Rule has already been notified on 11th May 2011 and efforts are on to popularize the same. The State has 40 thousand primary schools and the geographical locations of the schools comply with the RTE Rules. While responding to the observations of the NCPCR team on the condition of the KGBV, Bharno (Gumla), the Department ensured an action taken report within a week after undertaking inspection of the School. The team shared the observations on the functioning of the Residential School for Tribal Boys at Baridih, which lacks basic facilities like water, toilets, flooring, bulb, brooms, soaps, etc., the Commissioner for Tribal Welfare assured immediate investigation and a compliance status report of the school within one week.

Stressing upon the need for immunization and school health programme, the team enquired about the status of malnourished children (who comprise 58 %) in the State. It was informed that there are 50 malnourished treatment centres (MTCs), each having 6 to 10 beds. The team recommended for inclusion of the mother of the child under treatment as a beneficiary of the diet during the stay of the malnourished child at the centre, so as to ensure that entire family does not get affected by malnutrition. Team also advocated for openining of AWC /mini AWC at **Khuri panchayat, Masra village, Murtangi hamlet of Parahiya tribes (PTG's), Khuri Panchayat, Khuri village, Kargawar hamlet of Parahiya tribes (PTG's), Khuri Panchayat, Ransura village, Siyarlotan hamlet of Bhuiyan people** the Social Welfare Department agreed to look into the issue .

The Department of Labour has been instructed to examine the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, propose a sanctioned position of enforcement officer, engage panchayat secretaries as inspectors and their orientation. The team came to know that the NCLP schools are operational in the 9 districts of the State and in Gumla Distt. 20 NCLP schools are functional. Also the Department is running one Child Labour Helpline which works between 10 am to 5 pm which needed to be publicized. Surprisingly the conviction rate in the State under Child Labour Act was reported to be just three. Labour Secretary was requested to instruct the Labour Officers to visit the field areas for regular inspections.

RECOMMENDATIONS:

Short-Term (IMMEDIATE) Action on the Schools visited:

(i) Rajkiva Janiati Awasiva Vidvalava. Barihid in Ranchi District needs to immediately replace the fused electric bulbs, arrangement safe electric wiring in the hostel rooms, ensure running tap water for bathing and other utilities so that children do not have to go1!4 km to river for their daily needs, and extending School Health Programme and vaccination for the children of Residential school.

(ii) The KGBV School. Bharno in Gumla District attract the attention of the administration to ensure immediate electric connection, fixing of the doors and windows of the rooms on the first floor, railing of the stairs to first floor, toilet facility in first floor, repair of toilet complex in the ground floor to avoid water stagnation, extend functioning of the generator set in evening, alternative arrangement of gas lamps/kerosene oil lamps/solar torches until the campus is connected to the electric supply.

OTHER RECOMMENDATIONS:

(i) The district administration must ensure that the mother of Gangotri, one who was rescued from a locked flat of Delhi, is linked to all such Welfare Programmes and schemes run by the State/Centre including NREGS. Also a duplicate BPL card to be issued, which was snatched by the traffickers in Delhi when she was brought to identify her daughter;

(ii) Initiate issuance of ID to the representatives of NGOs, authorizing them to conduct verification of children at the Railway Platforms, Bus Depots or in other public areas prone to the trafficking so as to facilitate coordination of children in order to avoid harassment or possible altercation with police, RPF, CISF;

(iii) Ensure that the railway authority coordinates in curbing the trafficking of children at the source point while boarding the trains;

(iv) Impart training to the Village Chowkidars to act as the 'first information officer' to report the missing children from their respective villages;

(v) Ensure that the Emergency Helpline Numbers are circulated and displayed prominently at all the major points depicting the names of persons to be contacted in case of suspect trafficking;

(vi) The Mukhiyas and Pramukhs should be oriented so as to enable them to own the responsibility of keeping movement record of villagers and vigil on the movement of suspicious persons/traffickers/middlemen.The community should be sensitized on the issue of trafficking through wall writings/ cultural activities /road shows, etc.;

(vii) Ensure that the details of identified traffickers are displayed prominently at all prominent places including the village Chaupals, police stations, bus depots, railway stations, etc.;

(viii) The CWCs should be provided with basic infrastructure and other facilities and the members are encouraged to attend the training/ refresher courses run by NIPCCD;

(ix) Government must ensure two Children Homes (one for Girls and 1 for Boys) at Ranchi with immediate effect and till it is actualized, the same may be assigned to any NGO after due verifications, as a stop gap arrangement;

(x) Need assessment for anganwadi centre at villages like Khuri panchayat, Masra village, Murtangi hamlet of Parahiya tribes (PTG's), Khuri Panchayat, Khuri village, Kargawar hamlet of Parahiya tribes (PTG's), Khuri Panchayat, Ransura village, Siyarlotan hamlet of Bhuiyan people and making them operational at the earliest;

(xi) Extend the period of stay in the malnutrition treatment centres for the children so as to ensure that there is no recurrence, and the mothers attending the children should be supported the food and other comfort required;

(xii) The State Government must consider the demand for 2 KGBVs in each Block (considering the success of the KGBVs in the area which have been extended up to class XII) and materialize the proposal for 35 KGBVs for 35 newly notified Blocks. Preference should be given to setting up of additional KGBVs in rural areas to prevent mass migration of young & adolescent girls from the villages;.

(xiii) Ensure regular updation of State Election Commission's website to enable the designated person/agency to verify the parents'/guardians' and get in touch with the Panchayat Nodal Officer for speedy identification of children rescued in various metro centres;

(xiv) State Government to consider designating a senior officer of the rank of DRC in Resident Commissioner's office in important metro centers to ensure speedy coordination and facilitate rescue & restoration process of the identified trafficked children;

(xv) Provision of short stay homes in important metro centers to enable safe stay for the children rescued, till they are repatriated;

(xvi) Based on the discussion had with the Development Commissioner, State Government must expedite constitution of SCPCR as perSection 17 of the CPCR Act, 2005 within a time period not exceeding 30 days and notify the names of Chairperson and Members,;

(xvii) To finalize the appointment the staff required for ICPS and ensure setting up of the institutions under it and grounding of DCPUs within 90 days under intimation to Ministry of Women & Child Development, G.O.I, and NCPCR;

(xviii) Activate the institutions prescribed under ICPS within next three months;

(xix) State Government to map all the Child Care Institutions (CCIs) in the State and ensure their registration NGO-run Homes U/S 34(3) of Juvenile Justice (Care & Protection of Children) Act, 2000, and also ensure a robust mechanism of monitoring and inspection and regular submission of Inspection reports to ensure protection of children against any child right violations, deprivations or subject to any kind of physical or sexual abuse;

(xx) While mapping the out-of-school children under SSA, an extra column may be inserted as "Missing Children", which is expected to be of immense help in tracking the missing / trafficked children;

(xxi) The network of NGOs to be utilized extensively and in close coordination with the District administration and State Government in advocacy and awareness programme on anti-trafficking and curb child labour;

(xxii) Training requirements of anti-human trafficking units (AHTUs) and special juvenile police units (SJPUs) be extensively taken up for sensitizing the Police officials on the issues concerning to child rights; and

(xxiii) Ensure inclusion of the child right issues and the child jurisprudence in the curriculum of Police Training Module in the Police Academy & Police Training College.

❑❑❑

Visit to Area of Civil Unrest, Inspection of School opened by Naxals in Jharkhand :

Visit Report of Dr. Yogesh Dube

Visit of NCPCR team to area of civil unrest in Palamu district and asses the situation of children in the area From 17th April 19th April, 2012.

1. Team Composition

Dr. Yogesh Dube, Member- National Commission for Protection of Child Rights (NCPCR) led a team to Palamu, Jharkhand from 17th April to 19th April, 2012. He was accompanied by Mr. Divyakar Pathak (Consultant).

2. Brief Description of the Visit

The District of palamu lies between 23 degree 50' and 24 degree 8' north latitude and between 83 degree 55' and 84 degree 30' east longitude. It contains an area of 5043.8 square Kms. The administrative head quarter is Daltonganj situated on koel river in 24 degree 3' north and 84 degree 4' east. Daltonganj has taken its name after colonel Dalton, commissioner of Chhotangapur in 1861. The distance between Daltonganj and Ranchi is 165 Km. Old Palamu District is divided in three Districts.

(1) Palamau

(2) Garhwa

(3) Latehar

The purpose of the visit was to discuss the situation of children in distress with various stakeholders including Government officials of Palamu district, NGOs working in the area for the protection of child rights, Child Welfare Committee and Juvenile Justice Board. Dr. Yogesh Dube visited the area to get the ground situation and review the situation of children in the district. The purpose was to enhanced emocracy through community participation and action and renew hope in harmonizing the society and stabilizing their lives while a child's well-being becomes the focus of all action in the area.

3. The Tour Itinerary

Sub : Visit programme of Dr. Yogesh Dube, Member, NCPCR to Jharkhand, from 17.04.2012 to 19.04.2012.Travel Itinerary

Date	Travel Plan / Activity
17.04.2012	❖ Departure from New Delhi at 01.05 p.m. (AI-809) ❖ Arrival at Ranchi Airport at 02.45 p.m. ❖ Reception, transportation * and security to be arranged by the District Collector Govt. of Jharkhand. ❖ 03.00 p.m. Departure for Palamu by Road. ❖ 07.30 p.m. Arrival at Palamu. Night stay at Palamu.

18.04.2012	❖ 09.30 a.m. Visit of Civil unrest area, ICDC centres, NCLP schools, Hospitals, NRC Centres, SC and ST girls hostels etc. ❖ 05.00 p.m. Meeting with the CWC Members and human rights organizations and other NGOs working on child right issues. ❖ 06.00 p.m. Meeting with the District Magistrate and other senior officers of WCD, Labour, ICDS, Home, Health and Education Departments.
19.04.2012	❖ 09.00 a.m. - Departure for Ranchi. ❖ 01.00 p.m. - Meeting with Governor of Jharkhand. ❖ 03.25 p.m. - Departure for Delhi by (AI -810) ❖ 05.10 p.m. - Arrival Delhi.

4. NCPCR first visit to this area and first government body to visit the School Opened by Naxals intervention, Palamu

The team led by Dr. Yogesh Dube visited the school opened due to Naxals intervention in Salathua village in Chainpur block. (Also see cover photograph) The villagers informed that this is the first time any government officials had visited the school and reviewed the situation. He interacted with the villagers and inquired about the reasons due to which the school had not been opened by the government. The villagers told that due to some minor construction problem the school had not been dedicated to public and had been closed. It is after the naxals intervention the government had opened the school. While inspecting the school premise the team didn't find major fault in the construction due to which the school could not be started. The team directed the administration to give a detail report in this regard.

5. Visit to Anganwadi Center and Primary School, Khurd village, Chainpur Block, Palam

The NCPCR team visited the Angandwadi centre and the primary school of Chainpur block in Palamu. Two buildings meant for the angandwadi centre and the primary school. At the time of visit only 22 children were present in the Anganwadi center against the total number of 40 enrollments. The attendance of the children for the last one week was not available. The growth chart and other records about children was not available, nor was menu card maintained. There was no toilet facility in the centre.

After observing the dismal condition of the Anganwadi Centre, Dr. Dube instructed the Officers of Social Welfare and ICDS to ensure the minimum standard and norms prescribed by the government..

The primary school has three teachers in position against the enrollment of total 104 children out of which 62 were present. All three teachers were present in the class, though the attendance was low. The team did a thorough checking of the attendance register of all classes. Mata Samiti is responsible for the preparation of Mid-day meal. The team also found that there were no toilets.

6. Visit to Panchayat Bhawan and Primary Health Center, Interaction with the Villagers, Salathua, Palamu

The visiting team inspected the Gram Panchayat Bhawan in Salathua village and interacted with the Panchayat members and villagers present there. The villagers complained about the poor

functioning of the aganwadi centre in the village. They told that aganwadi centre of the village is not functional since four years although the ANM working there is getting salary. Dr. Dube then visited the aganwadi centre and found that the complaint of the villagers is genuine. He directed CDPO of the block to give a detailed report in this regard and immediately took action against the erring ANMs. He inspected the aganwadi and found that no services was existing there. Villagers also told that they had complained about this issue to the official many times but it was in vain. No steps had been taken by the officials. Even the sarpanch of the village had given written complaints to the block officials. The villagers told that the other aganwadi situation is not also good. They distribute nutritious food in months.

7. Visit to Kasturba Gandhi Balika Vidyalaya, Palamu

The team visited the Kasturba Gandhi Balika Vidyalaya in Chainpur block of Palamu district. The team surprised to find that This KGBV is running in a remand home. There is no separate class room for the girls. The classes are held in the same room which is also for their accommodations. The total capacity of the school is 300. The rooms are made to kept the juvenile in conflict with law and they give the feeling of jail. The girls get cooked food. But there are no benches or table for the classroom. The books are also not available to them in proper numbers. Dr. Dube directed the education department to shift KGBV as soon as possible in a new place. The officials told that the new building is under construction and within two months it will be shifted to that building. Dr. Dube also instructed to provide books, dresses and other facilities to these girls. Proper security arrangements must be made available to these girls as this school premise is besides the district jail.

8. Visit to Malnutrition Treatment Centre in Palamu

The team made a visit to the Malnutrition Treatment Centre. It is is equipped with all the modern facilities. At the time of visit 2children were admitted in the MTC and are at different stages of recovery from malnutrition. Dr. Dube asked about the reports and case study of two children who were admitted there for last 10 days. Usually after two weeks the children get discharged once they reach to normal nutrition level. It was surprising to see that only two children were admitted there.

Being one of the backward district of the State the malnutrition cases are quite high. Still there are only two children in MTC. Dr. Dube interacted with the doctors and inquired about the less number of children in MTC. He directed the health officials to encourage people to bring more and more children to MTC.

9. Visit to Aganwadi centre and Schedule Caste Hostel in Shahpur, Palamu

NCPCR team inspected the aganwadi centre in Shahpur village. the total enrollment is 40. The situation in this aganwadi is not different from others. The administration version is that it is a model aganwadi but most of the facilities are unavailable at the centre. Dr. Dube instructed the District Social Welfare officer to take stern action against the CDPO incharge of this block. There no fans and electricity at the centre and the environment of centre is suffocating. NCPCR team directed to make arrangements of fan and electricity. The centre was running in a rented building. The sevika at the centre told that the growth chart is being stolen. The sanitation situation of the premises unhygienic. The CDPO wasn't able to explain the irregularities at the centre when asked. There were no toilets or water facilities at the aganwadi centre.

The team also visited the SC Balika Awasiya Vidyala run by social welfare department just adjacent to the aganwadi centre. Total strength of the hostel was 172. The most important lacking


was there is no boundary for the protection of the girls. The girls had to clean their utensils. The toilets and bathroom are in unhygienic condition. Dr. Dube instructed to immediately make arrangement to clean the toilets and make proper sanitation facilities at the hostel. There were male staff working in the hostel. The team asked the administration to remove these staff and make other arrangement for the security and safety of the girls in the hostel. The girls also complained about the non availability of health facilities as no doctors visit the hostel. The team directed that proper medical facilities must be provided and arrangement must be done so that fortnightly a doctor visit the hostel for medical check up.

10. Visit to Balika Tribal Hostel in Sadar Block, Palamu

This hostel is also run by social welfare department. Against the capacity of 100 inmates 150 were residing in the hostel. There are altogether 30 rooms in the hostel but 6 rooms were occupied by either keeping social welfare department materials like cycles, utensils etc, it had turned into a godown and two rooms are occupied illegally by the relatives of the watchman. There is also no proper arrangements made by the department for preparation of food for the hostel inmates. The children have to cook there food by their own although staffs have been placed for this purpose but they are absent most of the time. The girls told that there is serious shortage of water and no proper arrangements had been made till date inspite of repeated request by the inmates.

Dr. Dube instructed to immediately clear the occupied room and stern action must be taken against the warden. The team also directed to give a detailed report of the action taken. The girls also complained about not getting the scholarship on timely basis. Dr. Dube promised to take up this issue with higher officials of State Government.

1. Visit to District Hospital, Palamu

The NCPCR team led by its Member Dr. Yogesh Dube visited the District Hospital, Palamu and interacted with the senior officers over there. The visiting team find found gross m is-management in the hospital. The hospital premise was unhygienic and no sanitation facilities are available. The patients complained about the rivalry between nurses which is badly afffecting the working of the hospitals, menace of the touts, money being asked for providing necessary services at the hospital and non functional ultrasound and X-ray machines. During the discussion it was brought to the knowledge of the visiting team that the hospital lacks manpower in terms of doctors, technical as well as administrative levels. Recruitment has not been done to address the problem of inadequate staff/manpower in the hospital. The District Hospital lacks infrastructure. Dr. Dube recommended for the quick recruitment for filling up of the vacancies and felt the need for improvement of infrastructure. He strongly felt that the District Hospital should initiate nutrition rehabilitation centre as the cases of malnutrition in the District is quite rampant.


2. Meeting with JJB, CWC and NGOs in Palamu

NCPCR team had meeting with the representatives of NGOs working on child rights issues and Child Welfare Committee and Juvenile Justice Board members at the circuit House. The Commission inquired the issues related to child rights and interventions of CWC, JJB and NGOs. Dr. Yogesh Dube, Member, NCPCR thanked all the representatives of the civil society groups for flagging off the issues and concerns on child rights issues in the District. He urged them to keep on informing the Commission on issues relating to child rights violations and promised that Commission would take it to its logical conclusion for ensuring the betterment of the children in the region. He assured that the issues raised by them would be brought to the attention of the State Government.CWC members told that there is no shelter home, children home or special home in the district. Also there are no proper arrangements for regular sitting of CWC. No proper infrastructure is available and they have to work in lots of constraints. Juvenile Justice Board members told that as there is no observation home in the district so they are facing immense difficulties in sending Juvenile in conflict with law for proper care. They also told that the one observation home which had been constructed is being used as Kasturba Gandhi Balika Vidyalaya. Dr. Dube instructed CWC and JJB members to send a detailed report on the situation of child rights in the district.

3. Meeting with District Administration, Palamu

Meeting with the District Administration in the Conference Room at Circuit House in Palamu on 18.05.2012 at 18:00 Hrs.

After a day of intensive visits to anganwadi centres, primary schools, Kasturba Gandhi Balika Vidyalaya, school opened on the initiative of naxals, SC girls Hostel, ST girls hostel,

Malnutrion treatment centre, primary and community health centre and district hospital, the visiting team held a meeting with the District administration to share their observation and also to assess the situation of children in Palamu district.

The meeting with the District administration was chaired by Dr. Yogesh Dube in which Ms. Pooja Singhal, District Magistrate along with Mr. Chandrakant, Deputy Development Commissioner, Palamu were present among others. The Superintendent of Police did not turned up for the meeting and neither had he deputed any officers from his department which enables the Commission to review the working of Police Department.

The introduction and purpose of the meeting was briefed by Ms. Pooja Singhal. Initially the Social Welfare department briefed about the steps taken by them to ensure entitlements of the children in the district.

Dr. Dube stated that NCPCR is seriously concerned about the situation of children in the district. He told that after intensive visit in the district he found the situation of children not up to the satisfaction. He informed that there is no children home and observation home or shelter home in the district and Kasturba Gandhi Balika Vidyalaya is running in a remand home, which reveals that the situation of children is serious cause of concern and gross violation of child rights in the district.

The CWC and JJB is also not well oriented about its role and responsibilities. Dr. Dube instructed District Social Welfare officer undertake regular inspections to assess the situation of children in the district. He instructed the District Magistrate to develop a proper rehabilitation plan for the children when they got rescued from child labour. He told that there is serious need to improve the infrastructure of Anganwadi centres and primary schools.

As per the Government report more than 5000 children are malnourished in the district. Dr. Dube instructed for undertaking special drive to provide nutrition to these categories of children, initiate and operationalise the NRCs and also conduct a survey to find out the exact number of children in different grade of Malnutrition as per the latest WHO guideline. He also instructed to develop a proper plan to bring the malnourished children to the Malnutrition Treatment Center.

The District Labour Officer was not able to explain the status of child labour survey and implementation of CLPR Act in the district. Dr. Dube also directed to to take up the child labour survey of all the brickkilns and the quarries and mine stake actions to closed own the same immediately, if found illegal. In this he told that inter-departmental convergence must be established for quick action. Heal so instructed the Pollution Control Board official storegularly check the pollution created by the quarries, mines and brickkilns and takes necessary action if it was found that they are violating the environmental laws. The District administration should issue

guidelines in this regard to curb the pollution and illegal running of brickkilns to revenue department. Observing lack of coordination between various departments/authorities and the childline. NCPCR was highly dissatisfied with the situation of ICDS programme in the district. The Commission directed to take immediate steps to ensure the ICDS benefits must reach to each and every children. CDPOs must regularly inspect the centres and take action against theerring ANMs or workers. Dr. Dube instructed the education department to implement the RTE Act in its spirit and words. He directed to complete the drop out survey. He also directed to properly hand over the school buildings to the public so infutureno school must be opened on the Naxals interventions.

Meeting with H. E Governor of Jharkhand.

Dr. Dube on his third day of visit met H.E. Governor of Jharkhand at Raj Bhawan in Ranchi and brief edhim about the working of NCPCR, purpose of his visit and situation of childrights in the State of Jharkhand. He told H.E about the absence of shelter home, observation home and children home in many district. He also briefed him about the situation at the school opened by the intervention of naxals. He also briefed H. e about the situation of girls living in SC and ST girls hostel. Dr. Dube requested H.E to do the needful to ensure childrights in the State.

हिन्दुस्तान 20/4/12

Naxal Affected Area Palamu (Jharkhand)

...और बदल दिया सलतुआ स्कूल का माहौल

मेदिनीनगर | सतीश सुमन

स्कूल का ताला तोड़ते नक्सली

हिन्दुस्तान 20/04/12

Naxal Affected Area Palamu (Jharkhand)

पलामू दौरे के बाद राष्ट्रीय बाल अधिकार संरक्षण आयोग के सदस्य ने कहा

विभागों के बीच समन्वय नहीं

मेदिनीनगर | संवाददाता

अधिकारियों को निर्देश

प्रभात खबर 20/4/12

Naxal Affected Area Palamu (JharkHand)

जिले के 5000 बच्चे कुपोषण के शिकार

राष्ट्रीय बाल अधिकार संरक्षण आयोग की बैठक में कई सामने आयी. ड्रॉप आउट बच्चों की संख्या 6000

प्रतिनिधि ■ मोहम्मदनगर

डीसी योगेश दुबे से बात करतीं डॉ.

Palamu schools sans basic amenities: NCPCR

the pioneer

RANCHI | THURSDAY | APRIL 19, 2012

19/04/2012 प्रभात खबर-1 (राष्ट्रीय सहारा देखें)

Naxal Affected Area Palamu (JharkHand)

प्रभात खबर
पलामू

19/4/12

■ अस्पताल की कुव्यवस्था देख भड़के अधिकारी

सिस्टम दुरुस्त करें : डॉ दुबे

the pioneer

RANCHI | WEDNESDAY | APRIL 18, 2012

NCPCR team visits Naxal-hit areas of State

PNS ■ RANCHI

The National Commission for Protection of Child Rights (NCPCR) team is on a visit to Naxal-affected areas of Palamu District in the State between 17 and 19 April.

The team led by Dr Yogesh Dube, member, NCPCR and a consultant Divyakar Pathak, will be visiting the areas affected by civil unrest, RLIS centres, ashram schools, institutional care homes, nutrition centres. They will interact with Panchayats, CWC members including Government officials of the District (Women & Child Development, Labour, ICDS, Home, Health and Education Departments), regarding various child rights issues.

"We will be visiting the areas of civil unrest and probe into child rights violations," Dr Yogesh Dube said.

Naxal Affected area Palamu (Jharkhand)

दैनिक जागरण
19/4/12 - Pg-3

मेदिनीनगर जागरण

जवाबदेही तय करेगा आयोग

बाल संरक्षण आयोग ने किया स्कूल व आंगनबाड़ी केंद्रों का निरीक्षण

सदर अस्पताल में मरीजों से रूबरू होते आयोग के सदस्य।

सदर अस्पताल में नर्सों की लड़ाई की होगी जांच

हिन्दुस्तान 2/4/12

Visit of Affected Area Palamu (Jharkhand)

विभागों के बीच समन्वय नहीं

प्रभात खबर, रांची, 19/4/12/ Pg-3

आयोग को दिखी हर ओर अव्यवस्था

Visit of Affected Area Palamu (Jharkhand)

राष्ट्रीय बंगीय मेल

सदर अस्पताल की स्वास्थ्य व्यवस्था चरमरायी है : डा. योगेश

अनुसूचित जनजाति छात्रावास में शैक्षणिक वातावरण बनाने का निर्देश

प्रभात खबर, रांची, 19/4/12 Pg-11

शिक्षा व आंगनबाड़ी केंद्रों की स्थिति बदहाल : डॉ दुबे

Reccomendation

6. The Recommendations to the State Government as follows:

Child Labour (Concern Department: Department of Labour)

a) The Labour Department should carry out a fresh survey for identification of children involved as child labour in various sectors including the hazardous occupation and process, (e.g. Mines and quarries , Dhaba and restaurant and domestic help etc) and send a report to NCPCR within 3 months.

b) Furnish a report on the number of arrest and prosecution done in last 3 years in violation of Child Labour (Prohibition and Regulation) Act, 1986.

c) Constitute State level and District level task force for rescue of child labour under chairpersonship of DM. Member of CWC,SJPU and NGO would be part of the task force along with other member.

d) Training and Orientation of officials with regard to child rights issues with special focus on child labour on regular basis.

e) A detail status report of NCLP schools of the district (child-wise details from last 1 years) should be sent to NCPCR at the earliest

f) A monitoring committee must be formed at the District level in all the Districts to monitor child rights comprising the representative of civil society, media persons, local bodies representatives, Child Welfare Committee and concerned Government departments.

g) Conduct a survey of all the illegal brick kilns and quarries in the state and child labour therein. Give the report in 3 months to the commission.

h) Closure of all the illegal brick kilns, quarries and mines in the State at the earliest and furnish Action Taken Report to the Commission.

i) Give a detailed report on the number of child labour rescued from brick kilns, quarries and mines in last 3 years and number of children rehabilitated in the same period.

j) The State government shall rescue and rehabilitate all the child labourers working at restaurants, tourist places etc.

Children Home and Observation Home: (Concern Department: Department of Social Welfare)

a) The Commission during its visit to Palamu found that there is no Children Home, Observation Home, Special Home and Shelter Home in the District. So, notification must be issued to open Children Home, Observation Home, Special Home and Shelter Homes in various Districts of the State where there are no such Homes and a copy of notifications must be sent to the Commission.

b) No male staff shall be posted in any children home for girls.

c) Child Welfare Committees must be strengthened and training of the Members shall be arranged.

Department of Women and Child Development and Department of Health and Family Welfare

a) During our visit to ICDS centres of Chainpur block of Palamu District, the team found that growth chart, attendance register, etc. were missing. So all the ICDS centers must properly maintain all the records and make it available at the ICDS centers only.

b) In view of limited space, poor lighting, overcrowding, need to have own AW building as per norms. Will ensure appropriate food storage area, for utensils, clean cooking area.

c) Repair of unsafe structures in the AWC, like broken doors, which is a safety hazard.

d) Refresher training for Supervisors and CDPOs to interpret growth charts

e) Responsibility of monitoring Severely Acute Malnourished (SAM) children to be with Supervisors with the help of AWW.

f) Supervisor to visit AWC fortnightly, weigh the SAM children, children discharged from hospital after management of malnutrition, in front of her, and sign the chart.

g) Need to maintain separate register for SAM children, indicating their weight, date, action taken including referral and diet given. Children referred back to AWC also need to be detailed here.

h) All SAM children and children between 0-6 months need to be examined by PHC/CHC doctor within 15 days of identification, so that an appropriate plan of management can be formulated.

i) Doctor responsible for visiting and managing SAM children need to be designated, alongwith an alternate doctor. Both of them need to be provided with the guidelines on management and follow up of SAM and MAM. The same guidelines also need to be provided to the pediatrician responsible for managing SAM children in the Taluka/District Hospital to ensure uniformity of management.

j) Doctor should provide the treatment plan on the SAM register, and signlegibly. If are ferral to a pediatrician is required, it must be done within a week. If parents are unwilling to take the child to a pediatrician despite counseling by AWW, Supervisor, doctor, then the administration needs to seek help from Panchayat/provide transport. This must be recorded in the SAM register.

k) As there is NRC in the District, proper arrangement must be done to make it more accessible to the public.

l) Practice of prescribing protein powder instead of nutrition for catch up growth, needs to be reviewed urgently.

m) Department of Health must take full responsibility of managing children with SAM till the time they move out of SAM and they can be managed at home.

n) Infant and young child feeding IYCF training needs to be scaled up from the current levels to improve health workers capacity to advice on early initiation and exclusive breast feeding and replacement feeding.

o) Nutritional surveillance system may be developed in the state.

p) Special Action Plan shall be developed for all the Tribal Districts of the State in this regard.

q) The condition of District Civil Hospital, Palamu must be improved and proper arrangements must be done for care of children in the hospital.

r) All the vacant posts must be filled on priority basis and a special unit must be developed dedicated to children.

s) A committee under an officer of the rank of Director shall be constituted to inquire in to the mis-management at the district hospital and send a report to the Commission with in a month.

Education: (Concern Department: Department of Education)

a) The Kasturba Gandhi Balika Vidyalaya which is running in a remand homein the district of Palamu must be shifted to another building as soon as possible and a report in this regard shall be sent to the Commission within 3 month.

b) More Kasturba Gandhi Balika Vidayalaya shall be opened in the tribal dominated areas.

c) The State Government must ensure that all the schools must have working toilets separately for boys and girls. The State will give the report in this regard to the Commission within 3 months.

d) State government shall develop funds to provide sufficient staff to maintain sanitation and hygiene in the schools

e) There must be neighbourhood school facilities as per the norms of the RTE Act, 2009. The report related to all new schools constructed during last one year shall be send to the Commission.

f) Conduct survey of all the Tribal School and give a report of drop out and the admission done in last 3 years.

g) Scholarships shall be given to all the eligible students without any delay.

Police Department:

a) Constitute Special Juvenile Police Unit as required under the Section 63 of Juvenile Justice Act, 2000 a report will send to NCPCR within one month.

b) Ensure constitution of Special Juvenile Police Units (SJPUs) under the railway police through necessary directions to the Railway Division Manager. IG(GRP) shall ensure constitution of SJPU at the earliest in GRP.

c) Director General of Police (Jharkhand) shall provide the data related to number of Schools, aganwadi centres, Panchayat Bhawan and Health centres either occupied or demolished by the naxal in last 3 years. Also give details of the schools occupied by Security forces if any.

d) Training and Orientation of police officials with regard to child rights issues on regular basis.

e) Provide details of number of children orphaned or children of the naxals killed in police operations and what steps had been taken to rehabilitate their children.

f) Survey shall be conducted in all the Jails of the State and give details of number of Children languishing in the Jails.

Miscellaneous:

a) Fill all the vacant post in the department at the earliest in all the concern department dealing with children issues to remove the staff shortage.

b) District administration of Palamu shall comply on all the directions given to them in the meeting held on 18th April, 2012 and send Action Taken Report to the Commission in a month.

c) Officers sensitized about the issues related to child rights shall be posted to the districts affected by naxalism.

d) Jharkhand Pollution Control Board shall inspect all the brick kilns, quarries and mines in the state and check that they are not violating the norms prescribed by the government. A brief report must be shared with the Commission.

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CASE LAWS

Supreme Court
Case Laws

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELATE JURISDICTION

Criminal Appeal No. 651 Of 2012
(Arising out of S.L.P.(Crl.) No. 2411/2011)
Date of Decision: 13.04.2012

(BEFORE G.S. SINGHVI AND GYAN SUDHA MISHRA, JJ)

OM PRAKASH
Versus
STATE OF RAJASTHAN & ANR.

JUDGEMENT

GYAN SUDHA MISRA, J.

1. The Judgment and order dated 19.08.2010 passed by the High Court of Rajasthan at Jodhpur in SBCRR No.597 of 2009 is under challenge in this appeal at the instance of the appellant Om Prakash who is a hapless father of an innocent girl of 13 ½ years who was subjected to rape by the alleged accused-Respondent No.2 Vijay Kumar @ Bhanwroo who has been allowed to avail the benefit of protection under Juvenile Justice (Care and Protection of Children) Act 2000, although the courts below could not record a finding that he, in fact, was a juvenile since he had not attained the age of 18 years on the date of incident. Hence this Special Leave Petition in which leave has been granted after condoning the delay.

2. Thus the questions inter alia which require consideration in this appeal are:-

   (i) whether the respondent/accused herein who is alleged to have committed an offence of rape under Section 376 IPC and other allied sections along with a co-accused who already stands convicted for the offence under Section 376 IPC, can be allowed to avail the benefit of protection to a juvenile in order to refer him for trial to a juvenile court under the Juvenile Justice (Care and Protection of Children) Act, 2000 (shortly referred to as the 'Juvenile Justice Act') although the trial court and the High Court could not record a conclusive finding of fact that the respondent-accused was below the age of 18 years on the date of the incident?

   (ii) whether the principle and benefit of 'benevolent legislation' relating to Juvenile Justice Act could be applied in cases where two views regarding determination of the age of child/accused was possible and the so-called child could not be held to be a juvenile on the basis of evidence adduced?

   (iii) whether medical evidence and other attending circumstances would be of any value and assistance while determining the age of a juvenile, if the academic record certificates do not conclusively prove the age of the accused ?

   (iv) whether reliance should be placed on medical evidence if the certificates relating to academic records is deliberately with held in order to conceal the age of the accused and authenticity of the medical evidence regarding the age is under challenge?

3. Juvenile Justice Act was enacted with a laudable object of providing a separate forum or a special court for holding trial of children/juvenile by the juvenile court as it was felt that children become delinquent by force of circumstance and not by choice and hence they need to be treated with care and sensitivity while dealing and trying cases involving criminal offence. But when an accused is alleged to have committed a heinous offence like rape and murder or any other grave offence when he ceased to be a child on attaining the age of 18 years, but seeks protection of the Juvenile Justice Act under the ostensible plea of being a minor, should such an accused be allowed to be tried by a juvenile court or should he be referred to a competent court of criminal jurisdiction where the trial of other adult persons are held.

4. The questions referred to hereinbefore arise in this appeal under the facts and circumstances emerging from the materials on record which disclose that the appellant/complainant lodged a written report on 23.5.2007 at about 1.00 p.m. that his daughter Sandhya aged about 13 ½ years a student of class IX at Secondary School Ghewada was called from the school by the accused Bhanwaru @ Vijay Kumar, son of Joga Ram through her friend named Neetu on 23.2.2007 at about 1.00 p.m. in the afternoon. Neetu told Sandhya that Bhanwroo was in the Bolero vehicle near the bus stand. Sandhya left the school after taking permission from the school authorities and when she reached near the bus stand she did not find the Bolero vehicle. She therefore, made a telephonic call to Bhanwru who told her that he was standing at Tiwri Road ahead of bus stand. She then noticed the Bolero vehicle on Tiwri Road, but she did not find Neetu and when she enquired about Neetu, the accused Bhanwroo @ Vijay Kumar son of Joga Ram misguided her and told her that Neetu had got down to go to the toilet after which she was made to sit in the vehicle which was forcibly driven towards Tiwri and after a distance of 3-4 Km., a person named Subhash Bishnoi was also made to sit in the vehicle. The vehicle was then taken to a lonely place off the road where heinous physical assault of rape was committed on her by Bhanwroo @ Vijay Kumar and Subhash Bishnoi. Since the victim girl/the petitioner's daughter resisted and opposed, she was beaten as a result of which she sustained injuries on her thigh, hand and back. She was then taken towards the village Chandaliya and she was again subjected to rape. Bhanwru then received a phone call after which Bhanwru and Subhash dropped her near the village Ghewada but threatened her that in case she disclosed about this event to anyone, she will be killed. Sandhya, therefore, did not mention about this incident to anyone in the school but on reaching home, she disclosed it to her mother i.e. the appellant's/complainant's wife who in turn narrated it to the appellant when he came back to village from Jodhpur on 24.2.2007. The appellant could not take an immediate decision keeping in view the consequences of the incident and called his brother Piyush from Jodhpur and then lodged a report with the P.S. Osian on the basis of which a case was registered under Section 365, 323 and 376 IPC bearing C.R.No. 40/2007 dated 25.2.2007. In course of the investigation, the accused Bhanwru @ Vijay Kumar was arrested and in the arrest memo his name was mentioned as Vijay Kumar @ Bhanwar Lal son of Joga Ram and his age has been mentioned as 19 years. After completion of the investigation, it was found that the offences under Sections 363, 366, 323 and 376 (2) (g) IPC were made out against the accused Vijay Kumar @ Bhanwar Lal, son of Joga Ram Jat aged 19 years, Subhashson of Bagaram Bishnoi aged 20 years and against Smt. Mukesh Kanwar @ Mugli @ Neetu aged 27 years and hence charge sheet was submitted before the Judicial Magistrate, Osian. Vijay Kumar @ Bhanwar Lal and Subhash were taken in judicial custody.

5. An application thereafter was moved on behalf of the accused Vijay Kumar @ Bhanwar Lal before the Judicial Magistrate, Osian stating that he was a juvenile offender and, therefore, he may be sent to the Juvenile Court for trial.

6. Arguments were heard on the aforesaid application by the concerned learned magistrate on 29.3.2007 and the learned magistrate allowed the application by his order dated 29.3.2007, although the Public Prosecutor contested this application relying upon the police investigation and the medical report wherein the age of the accused was recorded as 19 years. In the application, the stand taken on behalf of Vijay Kumar was that in the school records, his date of birth was 30.6.1990.

7. However, contents of this application clearly reveal that no dispute was raised in the application on behalf of Vijay Kumar that the name of the accused Vijay Kumar was only Vijay Kumar and not @ Bhanwar Lal. It was also not urged that the name of accused Vijay Kumar has been wrongly mentioned in the police papers as Vijay Kumar @ Bhanwar Lal nor in course of investigation it was evaer stated that the case was wrongly registered in the name of accused Vijay Kumar @ Bhanwar Lal. Without even raising this dispute, the academic record of Vijay Kumar @ Bhanwar Lal was produced whereas according to the complainant the factual position is that the name of the accused was Bhanwar Lal which was recorded in the Government Secondary School Jeloo Gagadi (Osian) when he entered the school on 18.12.1993 and again on 22.4.1996 his name was entered in the school register wherein his date of birth was recorded as 12.12.1988

8. The complainant contested the age of the accused Vijay Kumar and it was submitted that the accused Vijay Kumar had been admitted in the 2nd Standard in some private school known as Hari Om Shiksham Sansthan in Jeloo Gagadi (Osian) with a changed name as Vijay Kumar and there the date of birth was mentioned as 30.6.1990 which was reflected in the subsequent academic records and on that basis the admission card in the name of Vijay Kumar with date of birth as 30.6.1990 was mentioned in the application for treating him as a juvenile.

9. The case then came up before the Additional Sessions Judge (Fast Tract No.I) Jodhpur as Sessions Case No. 151/2007 on 3.10.2007. Shri Joga Ram, the father of the accused moved an application under Section 49 of the Juvenile Justice (Care and Protection of Children) Act, 2000 stating that the date of birth of his son was 30.6.1990 in his school administration record and, therefore, on the date of incident i.e. 23.02.2007, he was less than 18 years. In this application form dated 3.10.2007, Joga Ram, father of the accused Vijay Kumar had himself stated at three places i.e. title, para in the beginning and in the first part describing the name of his son (accused) as Vijay Kumar @ Bhanwar Lal stating that his son was born on 30.6.1990 at his house and he was first admitted in the school named Hari Om Shikshan Sansthan, Jeloo Gagadi, Osian on 1.9.1997 in 2nd standard and his son studied in this school from 1.9.1997 to 15.7.2007 from 2nd standard and the transfer certificate dated 4.7.2007 was enclosed. The said application form had been signed by Joga Ram as father of the accused Vijay Kumar on which the signature of the headmaster along with the seal was also there. In transfer certificate the date of birth of the accused was also stated along with some other facts in order to assert that Vijay Kumar was less than 18 years of age on the date of the incident. But he had nowhere stated that he had another son named Bhanwru who had died in 1995 and whose date of birth was 12.12.1988. He attempted to establish that the accused Vijay Kumar is the younger son of Joga Ram and the elder son Bhanwru had died in the year 1995 and it was he whose date of birth was 1988. He thus asserted that Vijay Kumar in fact was born in the year 1990 and his name was not Bhanwru but only Vijay Kumar. This part of the story was set up by the father of the accused Joga Ram at a later stage when the evidence was adduced.

10. The application filed on behalf of the accused Vijay Kumar was contested by the complainant and both the parties led evidence in support of their respective plea. The specific case of the complainant was that Bhanwru Lal and Vijay Kumar in fact are one and the same person and Joga Ram has cooked up a story that he had another son named Bhanwar Lal whose date of birth was 12.12.1988 and who later expired in 1995. The complainant stated that as per the version of the father of the accused if the deceased's son Bhanwar Lal continued in the school up to 24.2.1996, the same was impossible as he is stated to have expired in 1995 itself. According to the complainant Vijay Kumar and Bhanwar Lal are the names of the same person who committed the offence of rape in the year 2007 and the defence taken by the accused was a concocted story merely to take undue advantage of the Juvenile Justice Act.

11. After taking into consideration the oral and documentary evidence, the Sessions Court categorically concluded that in this case no definite clear and conclusive view is possible keeping in view the evidence which has come on record with regard to the age of the accused and both the views are clearly established and, therefore, the view which is in favour of the accused is taken and the accused is held to be a juvenile. The accused Vijay Kumar was accordingly declared to be a juvenile and was directed to be sent to the Juvenile Justice Board for trial. This order was passed by the Additional Sessions Judge (Fast Tract No.1) Jodhpur on 16.5.2009 in Sessions Case No. 151/2007.

12. The complainant-appellant thereafter assailed the order of the Additional Sessions Judge holding the respondent Vijay Kumar as a juvenile by filing a revision petition before the High Court. The learned Judge hearing the revision observed that a lot of contradictory evidence with regard to the age and identity of Vijay Kumar @ Bhanwru has emerged and a lot of confusion has been created with regard to the date of birth of accused Vijay Kumar @ Bhanwroo. But the learned single Judge was pleased to hold that the Additional Sessions Judge had appreciated the evidence in the right perspective and he is not found to have erred in declaring respondent No.2 Vijay Kumar @ Bhanwru to be a juvenile offender. He has, therefore, rightly been referred to the Juvenile Justice Board for trial which warrants no interference. The learned single Judge consequently dismissed the revision petition against which the complainant filed this special leave petition (Crl.) No. 2411/2011 which after grant of leave has given rise to this appeal.

13. Assailing the orders of the courts below, learned counsel for the appellant has essentially advanced twofold submissions in course of the hearing. He had initially submitted that Vijay Kumar alias Bhanwar Lal, son of Joga Ram is the same person and Vijay Kumar is the changed name of Bhanwar Lal whose correct date of birth is 12.12.1988 and not 30.6.1990 as stated by Joga Ram, father of the accused. Hence, Vijay Kumar @ Bhanwar Lal was not a juvenile on the date of commission of the offence.

14. In order to substantiate this plea, learned counsel for the appellant submitted that in the application which was moved by Joga Ram, father of the accused, before the Additional Sessions Judge under Section 49 of the Juvenile Justice Act, he has nowhere mentioned that he had two sons named Vijay Kumar and Bhanwar Lal and that Bhanwar Lal had died in 1995 whose date of birth was 12.12.1988 and his other son Vijay Kumar's date of birth was 30.6.1990. In fact, he himself had mentioned his son's name as Vijay Kumar @ Bhanwru at more than one place in the application and later has planted a story that he had two sonce viz., Bhanwar Lal and Vijay Kumar, and Bhanwar Lal whose date of birth was 12.12.1988 had already died in the year 1995.

15. Learned counsel for the appellant further contended that the benefit of the principle of benevolent legislation conferred on the Juvenile Justice Act, cannot be applied in the present case as the courts below specially the court of fact which is the Additional Sessions Judge (Fast Track No.1) Jodhpur did not record a categorical finding with regard to the date of birth of the respondent accused and the aforesaid principle can be applied only to a case where the accused is clearly held to be a juvenile so as to be sent for trial by the juvenile court or to claim any other benefit by the alleged juvenile accused. Counsel for the Appellant has relied upon the evidence of NAW-3 -Medical Jurist, who conducted ossification test of the accused and opined before the court that the accused was 19 years of age and statement of NAW-1 Assistant Professor in Radiology who opined before the court on 23.11.2007 that on the basis of the x-ray films, age of the accused is above 18 years and below 20 years.

16. Learned counsel for the accused-respondent on his part contended that medical opinion could be sought only when matriculation or equivalent certificate or date of birth certificate from the school was not available and since in the present case the admission certificate of the accused from the school record is available which states the date of birth to be 30.6.1990, the school certificate ought to be allowed to prevail upon the medical opinion.

17. We are unable to appreciate and accept the aforesaid contention of learned counsel for the respondent since the age of the accused could not be proved merely on the basis of the school record as the courts below in spite of its scrutiny could not record a finding of fact that the accused, in fact, was a minor on the date of the incident. Hence, in a situation when the school record itself is not free from ambiguity and conclusively prove the minority of the accused, medical opinion cannot be allowed to be overlooked or treated to be of no consequence. In this context the statement of NAW-3 Dr. Jagdish Jugtawat, the medical jurist who conducted the ossification test of the accused and opined before the court that the accused was 19 years of age is of significance since it specifically states that the accused was not a juvenile on the date of commission of the offence. The statement of NAW-1 Dr. C.R. Agarwal, Asstt. Professor in Radiology also cannot be overlooked since he opined that on the basis of x-ray films, the age of the accused is above 18 years and below 20 years. Thus, in a circumstance where the trial court itself could not arrive at a conclusive finding regarding the age of the accused, the opinion of the medical experts based on xray and ossification test will have to be given precedence over the shaky evidence based on school records and a plea of circumstantial inference based on a story set up by the father of the accused which prima facie is a cock and bull story.

18. It is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he would be entitled for this special protection under the Juvenile Justice Act. But when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice. Hence, while the courts must be sensitive in dealing with the juvenile who is involved in cases of serious nature like sexual molestation, rape, gang rape, murder and host of other offences, the accused cannot be allowed to abuse the statutory protection by attempting to prove himself as a minor when the documentary evidence to prove his minority gives rise to a reasonable doubt about his assertion of minority. Under such circumstance, the medical evidence based on scientific investigation will have to be

given due weight and precedence over the evidence based on school administration records which give rise to hypothesis and speculation about the age of the accused. The matter however would stand on a different footing if the academic certificates ad school records are alleged to have been with held deliberately with ulterior motive and authenticity of the medical evidence is under challenge by the prosecution.

19. In the instant matter, the accused Vijay Kumar is alleged to have committed a crime which repels against moral conscience as he chose a girl of 13 and a half years to satisfy his lust by hatching a plot with the assistance of his accomplice Subhash who already stands convicted and thereafter the accused has attempted to seek protection under the plea that he committed such an act due to his innocence without understanding its implication in which his father Joga Ram is clearly assisting by attempting to rope in a story that he was a minor on the date of the incident which is not based on conclusive evidence worthy of credence but is based on a confused story as also shaky and fragile nature of evidence which hardly inspires confidence. It is hard to ignore that when the Additional Sessions Judge in spite of meticulous scrutiny of oral and documentary evidence could not arrive at a conclusive finding that he was clearly a juvenile below the age of 18 years on the date of incident, then by what logic and reasoning he should get the benefit of the theory of benevolent legislation on the foothold of Juvenile Justice Act is difficult to comprehend as it clearly results in erroneous application of this principle and thus we find sufficient force in the contention of learned counsel for the appellant that the benefit of the principle of benevolent legislation can be made applicable in favour of only those delinquents who undoubtedly have been held to be a juvenile which leaves no scope for speculation about the age of the alleged accused.

20. We therefore cannot overlook that the trial court as well as the High Court while passing the impugned order could not arrive at any finding at all as to whether the accused was a major or minor on the date of the incident and yet gave the benefit of the principle of benevolent legislation to an accused whose plea of minority that he was below the age of 18 years itself was in doubt. In such situation, the scales of justice is required to be put on an even keel by insisting for a reliable and cogent proof in support of the plea of juvenility specially when the victim was also a minor.

21. The benefit of the principle of benevolent legislation attached to Juvenile Justice Act would thus apply to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence regarding his minority as the benefit of the possibilities of two views in regard to the age of the alleged accused who is involved in grave and serious offence which he committed and gave effect to it in a well planned manner reflecting his maturity of mind rather than innocence indicating that his plea of juvenility is more in the nature of a shield to dodege or dupe the arms of law, cannot be allowed to come to his rescue. Hence if the plea of juvenility or the fact that he had not attained the age of discretion so as to understand the consequence of his heinous act is not free from ambiguity or doubt, the said plea cannot be allowed to be raised merely on doubtful school admission record and in the event it is doubtful, the medical evidence will have to be given due weightage while determining the age of the accused.

22. Adverting to the facts of this case we have noticed that the trial court in spite of the evidence led on behalf of the accused, was itself not satisfied that the accused was a juvenile as none of the school records relied upon by the respondent-accused could be held to be free from doubt so as to form a logical and legal basis for the purpose of deciding the correct date of birth of the accused indicating that the accused was a minor/juvenile on the date of the incident. This Court in several decisions including the case of Ramdeo Chauhan @ Raj Nath vs. State of

Assam, reported in (2001) 5 SCC 714dealing with a similar circumstance had observed which adds weight and strength to what we have stated which is quoted herein as follows :-

"it is clear that the petitioner neither was a child nor near about the age of being a child within the meaning of the Juvenile Justice Act or the Children Act. He is proved to be a major at the time of the commission of the offence. No doubt, much less a reasonable doubt is created in the mind of the court, for theaccused entitling him to the benefit of a lesser punishment, it is true that the accused tried tocreate a smoke screen with respect to his age. But such effort appear to have been made only to hide his real age and not to create any doubt in the mind of the court. The judicial system cannot be allowed to be taken to ransom by having resort to imaginative and concocted grounds by taking advantage of loose sentences appearing in the evidence of some of the witnesses particularly at the stage of special leave petition. The law insists on finality of judgments and is more concerned with the strengthening of the judicial system. The courts are enjoined upon to perform their duties with the object of strengthening the confidence of the common man in the institution entrusted with the administration of justice. Any effort which weakens the system and shakes the faith of the common man in the justice dispensation system has to be discouraged."

The above noted observations no doubt were recorded by the learned Judges of this Court while considering the imposition of death sentence on the accused who claimed to be a juvenile, nevertheless the views expressed therein clearly lends weight for resolving an issue where the court is not in a position to clearly draw an inference wherein an attempt is made by the accused or his guardian claiming benefit available to a juvenile which may be an effort to extract sympathy and impress upon the Court for a lenient treatment towards the so-called juvenile accused who, in fact was a major on the date of incident.

23. However, we reiterate that we may not be misunderstood so as to infer that even if an accused is clearly below the age of 18 years on the date of commission of offence, should not be granted protection or treatment available to a juvenile under the Juvenile Justice Act if a dispute regarding his age had been raised but was finally resolved on scrutiny of evidence. What is meant to be emphasized is that where the courts cannot clearly infer in spite of available evidence on record that the accused is a juvenile or the said plea appear to have been raised merely to create a mist or a smokescreen so as to hide his real age in order to shield the accused on the plea of his minority, the attempt cannot be allowed to succeed so as to subvert or dupe the cause of justice. Drawing parallel between the plea of minority and the plea of alibi, it may be worthwhile to state that it is not uncommon to come across criminal cases wherein an accused makes an effort to take shelter under the plea of alibi which has to be raised at the first instance but has to be subjected to strict proof of evidence by the court trying the offence and cannot be allowed lightly in spite of lack of evidence merely with the aid of salutary principle that an innocent man may not have to suffer injustice by recording an order of conviction in spite of his plea of alibi. Similarly, if the conduct of an accused or the method and manner of commission of the offence indicates an evil and a well planned design of the accused committing the offence which indicates more towards the matured skill of an accused than that of an innocent child, then in the absence of reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major cannot be allowed to be ignored taking shelter of the principle of benevolent legislation like the Juvenile Justice Act, subverting the course of justice as statutory protection of the Juvenile Justice Act is meant for minors who are innocent law breakers and not accused of matured mind who uses the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him. The benefit of benevolent legislation under the Juvenile Justice

Act obviously will offer protection to a genuine child accused/juvenile who does not put the court into any dilemma as to whether he is a juvenile or not by adducing evidence in support of his plea of minority but in absence of the same, reliance placed merely on shaky evidence like the school admission register which is not proved or oral evidence based on conjectures leading to further ambiguity, cannot be relied upon in preference to the medical evidence for assessing the age of the accused.

24. While considering the relevance and value of the medical evidence, the doctor's estimation of age although is not a sturdy substance for proof as it is only an opinion, such opinion based on scientific medical test like ossification and radiological examination will have to be treated as a strong evidence having corroborative value while determining the age of the alleged juvenile accused. In the case of Ramdeo Chauhan Vs. State of Assam (supra), the learned judges have added an insight for determination of this issue when it recorded as follows:-

> "Of course the doctor's estimate of age is not a sturdy substitute for proof as it is only his opinion. But such opinion of an expert cannot be sidelined in the realm where the Court gropes in the dark to find out what would possibly have been the age of a citizen for the purpose of affording him a constitutional protection. In the absence of all other acceptable material, if such opinion points to a reasonable possibility regarding the range of his age, it has certainly to be considered."

The situation, however, would be different if the academic records are alleged to have been with held deliberately to hide the age of the alleged juvenile and the authenticity of the medical evidence is under challenge at the instance of the prosecution. In that event, whether the medical evidence should be relied upon or not will obviously depend on the value of the evidence led by the contesting parties.

25. In view of the aforesaid discussion and analysis based on the prevailing facts and circumstances of the case, we are of the view that the Respondent No.2 Vijay Kumar and his father have failed to prove that Respondent No.2 was a minor at the time of commission of offence and hence could not have been granted the benefit of the Juvenile Justice Act which undoubtedly is a benevolent legislation but cannot be allowed to be availed of by an accused who has taken the plea of juvenility merely as an effort to hide his real age so as to create a doubt in the mind of the courts below who thought it appropriate to grant him the benefit of a juvenile merely by adopting the principle of benevolent legislation but missing its vital implication that although the Juvenile Justice Act by itself is a piece of benevolent legislation, the protection under the same cannot be made available to an accused who in fact is not a juvenile but seeks shelter merely by using it as a protective umbrella or statutory shield. We are under constraint to observe that this will have to be discouraged if the evidence and other materials on record fail to prove that the accused was a juvenile at the time of commission of the offence. Juvenile Justice Act which is certainly meant to treat a child accused with care and sensitivity offering him a chance to reform and settle into the mainstream of society, the same cannot be allowed to be used as a ploy to dupe the course of justice while conducting trial and treatment of heinous offences. This would clearly be treated as an effort to weaken the justice dispensation system and hence cannot be encouraged.

26. We therefore deem it just and appropriate to set aside the judgment and order passed by the High Court as also the courts below and thus allow this appeal. Consequently, the accused Vijay Kumar, S/o Joga Ram shall be sent for trial before the court of competent jurisdiction wherein the trial is pending and not to the Juvenile Court as pleaded by him. We order accordingly.

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IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

(BEFORE P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ)

Writ Petition (Criminal) No. 16 Of 2010
Date of Decision: 8.8.2011

AMIT SINGH
Versus
STATE OF MAHARASHTRA & ANR.

JUDGMENT

P. Sathasivam, J.

1) The petitioner has filed this writ petition under Article 32 of the Constitution of India praying for issuance of an appropriate writ in the nature of habeas corpus directing the respondents to release him from Central Jail, Agra forthwith as the detention is contrary to the fundamental rights guaranteed under Article 21 of the Constitution of India and the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as `the Act').

2) The facts of the case are

   (a) On 01.05.1999, at about 8.30 p.m., one Santosh Kumar (since deceased) along with his servant was returning to his house with daily earning cash from his shop. When he reached near the hospital of Dr. Desh Pandey at Ahmednagar, two unknown persons came on a Motorcycle and demanded the money bag which was in his hand but he refused to give that bag. Thereafter, the pillion rider got down from the Motorcycle and threatened to kill him if the bag is not given and taken out a revolver which was kept underneath his shirt and fired which resulted in injury on his chest. In spite of the injury, the deceased ran towards his residence which was nearer to the scene of occurrence but dashed against the window and fell down. His relatives came out and took him to the Hospital where he was declared dead at about 9.05 p.m.

   (b) A complaint was registered by the police bearing Crime Case No. I-96/1999 under Sections 307, 392, 341, 34, 506 read with 34 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC") and Sections 3, 5, 25 and 27 of the Arms Act, 1959. The Investigating Officer arrested the accused persons namely, Balu Rangnath Chintamani, Vithal Ramayya Madur, Intekhab Alam Abdul Salam Sain and Amit Singh Thakur, the petitioner herein, and Sessions Case No. 150 of 1999 was registered against the said four accused in the Sessions Court, Ahmednagar.

   (c) The Additional Sessions Judge, Ahmednagar, vide order dated 16.04.2001 held all the four accused persons to be guilty of offences punishable under Sections 396, 506, 341, 379 read with Section 120-B of IPC and sentenced each of them to suffer life imprisonment and to pay a fine of Rs.3000/- and also under Section 3 read with Section 25(1-B) and Section 5 read with Section 27 of the Arms Act, 1959 and sentenced them to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.3000/-.

(d) Against the said judgment, all the four accused filed appeals before the High Court. The High Court, by judgment dated 05.08.2005, allowed the appeals filed by A-2 and A-3 and dismissed the appeals filed by A-1 and A-4 (appellant herein).

(e) Challenging the said judgment of the High Court, the appellant filed Special Leave Petition (Crl.) No. 1114 of 2006 before this Court which was dismissed on 05.01.2007.

3) Heard Mr. Brijender Chahar, learned senior counsel for the petitioner and Mr. Shankar Chillarge, learned counsel for the State-respondent No.1 and Mr. Ameet Singh, learned counsel for respondent No.2.

4) This writ petition is filed by the petitioner praying that he was a Juvenile at the time of the alleged offence and therefore, he could be tried only by the Juvenile Justice Board (in short `the Board').

5) According to the petitioner, he had not completed 18 years of age as on the date of commission of the offence, i.e., 01.05.1999, though he had completed 18 years as on 01.04.2001 i.e. the date of implementation of the Act. According to amending Act 33/2006 in the Act, the benefit of juvenility shall be extended to the petitioner. It was further stated that he is entitled to get the benefit of the said law, which was after due consideration by this Court in the case of Hari Ram vs. State of Rajasthan and Others, (2009) 13 SCC 211 settled the position, whereby this Court gave effect to the Proviso and the Explanation to Sections 20 and 7A which were introduced by the above said Amending Act by applying the provisions of the Act with retrospective effect. Accordingly, it is prayed that the petitioner is entitled to get the benefit of the Act, even after final conviction.

6) We have already adverted to in the earlier paras regarding the petitioner's involvement in the criminal charges framed against him and the orders of conviction imposed. From the materials, it is seen that the petitioner Amit Singh s/o late Bhikamsingh Thakur was born on 10.05.1982 in Jhansi, U.P. and his date of birth is registered with the Registrar, Births and Death, Nagar Palika Parishad, Jhansi. According to the record of Nagar Palika Parishad, Jhansi, the date of birth certificate of the petitioner is recorded as 10.05.1982 bearing registration No. 1184/97 dated 04.08.1997. The petitioner has produced a copy of birth certificate (Annexure-P1) issued by the Registrar, Nagar Palika Parishad, Jhansi. A perusal of the birth certificate issued by the competent authority clearly shows that his date of birth is 10.05.1982.

7) Further information from the materials placed shows that the petitioner started his studies from St. Mark's College, Jhansi w.e.f. 12.06.1985. He left the school on 27.05.1996 and obtained a Transfer Certificate mentioning that his date of birth is recorded as 10.05.1982 in the admission register of the school. Transfer Certificate dated 14.06.1997 issued by the Principal, St. Mark's College, Jhansi has been marked as Annexure-P2. A perusal of the said Transfer Certificate clearly shows that his date of birth is 10.05.1982 and the same was duly noted by the School Authorities with the seal and signature of the Principal, St. Mark's College, Jhansi. Apart from the above materials, when the petitioner was arrayed as accused in Criminal Case No. 64 of 1997 entitled Amit Singh vs. State of M.P. he moved an application for bail being No. 935 of 1997 before the Special Judge, Murena, M.P. The learned Special Judge considered the above-mentioned High School Certificate, birth certificate, report of Civil Surgeon, report of Dental Surgeon, affidavit of his mother Shakuntala Bai and report of Radiologist. The Special Judge, relying upon the above-mentioned reports, found that the

date of birth of the petitioner is 10.05.1982 and his age was below 16 years on the date of occurrence, directed the police to produce him before the Juvenile Court for further action. Copy of the said order dated 13.08.1987 passed by the Special Judge, Murena is placed before this Court (Annexure-P3). A perusal of the order of the Special Judge, Murena also shows that considering various materials relating to the date of birth of the petitioner, he had concluded that the date of birth of the petitioner is 10.05.1982 and the alleged incident took place on 01.05.1999, on the date of the occurrence, the age of the petitioner was 16 years 11 months and 21 days. The Act came into effect from 01.04.2001 which provides that juvenile means who has not completed 18 years of age as substituted for 16 years which was the position under the old Act of 1986. According to the Act, the petitioner was juvenile at the time of commission of offence because he had not completed 18 years of age on the date of offence, and therefore, the petitioner is entitled to get the benefit of provisions under Sections 2(l), 7A, 20 and 64 of the Act.

8) The petitioner-(A-4) was convicted for the offence under Sections 307, 392, 341, 34, 506 read with Section 34 IPC and Sections 3, 5, 25 and 27 of the Arms Act and sentenced him to life imprisonment with fine of Rs.3,000/-. Though the above said conviction and sentence was confirmed by this Court, vide its impugned judgment and order dated 05.01.2007, the age of the petitioner and the benefit of the Act was not considered by this Court. No doubt, this plea and the benefit was not claimed by the petitioner earlier neither the same was raised before the trial Court nor thereafter up to this Court. We have already observed that from the materials placed, the petitioner had substantiated that he was a juvenile as per the Act and he could be tried only by the Board and hence the matter should be referred before the Board for trial. It is further seen that the proceedings were started against him on 01.05.1989 before the regular Court and during the pendency of the trial, the Act was enacted and it is his claim that inadvertently he was not advised that he is entitled to get the benefit under the Act after the enactment because he had already completed the age of 18 years as on 01.04.2001. It is relevant to point out that the applicability of the Act was clarified by Amending Act 33/2006 which provided that the benefit of juvenility shall be extended even to juvenile who had completed the age of 18 years on 01.04.2001 and the Act shall have retrospective effect.

9) The relief prayed for in this writ petition is squarely covered by the law laid down in the case of Hari Ram (supra) whereby this Court had occasion to consider the question elaborately regarding applicability of the Act. This Court considered the decision of the Constitution Bench in the case of Pratap Singh vs. State of Jharkhand & Anr., (2005) 3

SCC 551, wherein this Court formulated two points for consideration:

A. Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as juvenile offender or the date when he is produced in the Court/Competent Authority?

B. Whether the Act of 2000 will be applicable in the case a proceeding is initiated under the 1986 Act and pending when the Act of 2000 was enforced with effect from 01.04.2001?

The Constitution Bench in the above case held that the benefit of juvenility cannot be extended to the person who has completed the 18 years of age as on 01.04.2001 i.e. the date of enforcement of the Act. In the background of this judgment, the Legislature brought Amendment Act 33/2006 proviso and explanation in Section 20 to set at rest doubts that have arisen with regard to the applicability of the Act to the cases pending on 01.04.2001, where a juvenile, who was below 18 years of age at the time of commission of the offence, was

involved. The explanation to Section 20 which was added in 2006 makes it clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (l) of Section 2, even if juvenile ceased to be a juvenile on or before 01.04.2001, when the Act came into force and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. Section 20 enables the Court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Board concerned for passing sentence in accordance with the provisions of the Act.

10) After the judgment of the Constitution Bench in Pratap Singh (supra), this Court in the case of Hari Ram (supra) considered the above question of law in the light of Amendment Act 33 of 2006 in the provisions of the Act which substituted Section 2(l) to define a "juvenile in conflict with law" as a "juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of such offence". By way of Amendment Act 33/2006, Section 7A was inserted which reads as follows:-

"7A. Procedure to be followed when claim of juvenility is raised before any court.

(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect. "

It is clear from the above provision, namely, Section 7A the claim of juvenility to be raised before any court at any stage, even after final disposal of the case and sets out the procedure which the court is required to adopt, when such claim of juvenility is raised.

Apart from the aforesaid provisions of the Act as amended, and the Juvenile Justice (Care and Protection of Children) Rules, 2007, (in short `the Rules') Rule 98, in particular, has to be read along with Section 20 of the Act as amended by the Amendment Act, 2006 which provides that even after disposal of cases of juveniles in conflict with law, the State Government or the Board could, either suo motu or on an application made for the purpose, review the case of juvenile, determine the juvenility and pass an appropriate order under Section 64 of the Act for immediate release of the juvenile whose period of detention had exceeded the maximum period provided in Section 15 of the Act i.e. 3 years. All the above relevant provisions including the amended provisions of the Act and the Rules have been elaborately considered by this Court in Hari Ram (supra).

11) We have already referred to the entry relating to the date of birth of the petitioner in the Birth Certificate (Annexure-P1), entry relating to his date of birth in the Transfer Certificate (Annexure-P2), date of birth recorded in the mark sheet issued by the Council for the Indian School Certificate Examinations. In all these documents, his date of birth has been recorded as 10.05.1982 and duly certified and authenticated by the authorities concerned. In a recent decision of this Court dated 05.08.2011 in Criminal Appeal No. 1531 of 2011 arising out of SLP (Criminal) No. 3361 of 2011, Shah Nawaz vs. State of U.P. while considering similar documents, namely, certificate issued by the School Authorities and basing reliance on Rule 12 of the Rules held that all those documents are relevant and admissible in evidence. Inasmuch as the date of birth of the petitioner is 10.05.1982 and on the date of the alleged incident which took place on 01.05.1999, his age was 16 years, 11 months and 21 days i.e. below 18 years, hence on the date of the incident, the petitioner was a juvenile in terms of the Act because he had not completed 18 years of age and is entitled to get the benefit of provisions under Sections 2(l), 7A, 20 and 64 of the Act. It is also specifically asserted that the petitioner had already undergone 12 years in jail since then which is more than the maximum period for which a juvenile may be confined to a special home.

12) Under these circumstances, the petitioner is directed to be released from the custody forthwith. The writ petition is allowed.

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELATE JURISDICTION

Criminal Appeal No. 1531 of 2011
(Arising out of S.L.P. (Crl.) No.3361 of 2011)
Date of Decision: 5.08.2011

(BEFORE P. SATHASIVAM AND DR. B.S.CHAUHAN, JJ)

SHAH NAWAZ
Versus
STATE OF U.P. & & ANR.

JUDGEMENT

P. SATHASIVAM, J.

1) Leave granted.

2) This appeal is directed against the final judgment and order dated 10.12.2010 passed by the High Court of Judicature at Allahabad in Criminal Revision No. 716 of 2009 whereby the High Court dismissed the criminal revision filed by the appellant herein.

3) Brief facts:

   (a) The appellant claims to have born on 18.06.1989 in Village and Post Dadheru Kala, Police Station Charthawal, District Muzaffarnagar, U.P. He was admitted in Class I in Nehru Preparatory School, Khurd, Muzaffarnagar on 05.07.1994 and studied there till 20.05.1998. Thereafter, on 04.07.1998, he got admission in Class VI in the National High School Dadheru, Khurd-O-Kalan, Muzaffarnagar and studied there till Class X. The date of birth in the mark sheet is mentioned as 18.06.1989.

   (b) On 04.06.2007, a First Information Report (in short "the FIR") was lodged by Khatizan, wife of Nawab-the deceased, against the appellant herein and three others for the alleged occurrence which culminated into Crime Case No. 215 of 2007 at Police Station Charthawal, District Muzaffarnagar, U.P. under Sections 302 and 307 of the Indian Penal Code, 1860 (in short "the IPC").

   (c) On 12.06.2007, the mother of the appellant submitted an application before the Juvenile Justice Board (in short "the Board"), Muzaffarnagar, U.P. stating that the appellant was a minor at the time of the alleged occurrence. After examining the witnesses, the Board, vide judgment and order dated 24.01.2008, declared the appellant juvenile under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the Act").

   (d) Against the judgment of the Board, Khatizan - the wife of the deceased filed Criminal Appeal No. 11 of 2008 before the Additional Sessions Judge, Muzaffarnagar, U.P. under Section 52 of the Act. The State - respondent No.1 did not file any appeal. Vide judgment dated 13.01.2009, the Additional Sessions Judge allowed the appeal and set aside the order dated 24.01.2008 passed by the Board.

(e) Challenging the judgment dated 13.01.2009 passed by the Additional Sessions Judge, the appellant filed Criminal Revision No. 716 of 2009 before the High Court of Allahabad. The High Court, by the impugned judgment dated 10.12.2010, dismissed the criminal revision. Hence this appeal by way of special leave.

4) Heard Mr. Dinesh Kumar Garg, learned counsel for the appellant and Mr. R.K. Gupta, learned counsel for the State. Despite notice, no one has entered appearance on behalf of respondent No.2.

5) Before considering the merits of the claim of the appellant and the stand of the State, let us consider Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as `the Rules') which reads as under:-

"12. Procedure to be followed in determination of Age.

(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining -

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

6) In the light of the above procedure to be followed in determining the age of the child or juvenile, let us consider various decisions of this Court.

7) In Raju and Anr. vs. State of Haryana (2010) 3 SCC 235, this Court had admitted "mark sheet" as one of the proof in determining the age of the accused person. In that case, the appellants therein Raju and Mangli along with Anil alias Balli and Sucha Singh were sent up for trial for allegedly having committed an offence punishable under Section 302 read with Section 34 of the IPC. Accused Sucha Singh was found to be a juvenile and his case was separated for separate trial under the Act. Others were convicted under Section 302 read with Section 34 of the IPC and were sentenced to imprisonment for life and to pay a fine of Rs. 5,000/-. Apart from contending on the merits of the prosecution case, insofar as appellant No. 1, Raju, is concerned, the counsel appearing for him submitted that on the date of the incident that is on (31.03.1994), he was a juvenile and as per his mark sheet, wherein his date of birth was recorded as 1977, he was less than 17 years of age on the date of the incident. Learned counsel submitted that having regard to the recent decision of this Court in Hari Ram vs. State of Rajasthan & Anr., (2009) 13 SCC 211, appellant No. 1 must be held to have been a minor on the date of the incident and the provisions of the Act would apply in his case. Learned counsel further contended that the appellant No. 1 would have to be dealt with under the provisions of the said Act in keeping with the decision in the aforesaid case. On merits, while accepting the claim of the learned counsel for accused-appellant, this Court altered the conviction and sentence and convicted under Section 304 Part I read with Section 34 IPC instead of Section 302 read with Section 34 IPC. As far as appellant No. 1, namely, Raju was concerned, while accepting the entry relating to date of birth in the mark sheet referred his case to the Board in terms of Section 20 of the Act to be dealt under the provisions of the said Act in keeping with the provision of Section 15 thereof. It is clear from the said decision that this Court has accepted mark sheet as one of the proof for determining the age of an accused person.

8) Similarly, this Court has treated the date of birth in School Leaving Certificate as valid proof in determining the age of an accused person. In Bhoop Ram vs. State of U.P. (1989) 3 SCC 1, this Court considered whether the appellant therein is entitled lesser imprisonment than imprisonment for life and should have been treated as a "child" within the meaning of Section 2(4) of the U.P. Children Act, 1951 (1 of 1952). The following conclusion in para 7 is relevant which reads as under:-

"7.....The first is that the appellant has produced a school certificate which carries the date 24-6-1960 against the column "date of birth". There is no material before us to hold that the school certificate does not relate to the appellant or that the entries therein are not correct in their particulars...."

It is clear from the above decision that this Court relied on the entry made in the column "date of birth" in the School Leaving Certificate.

9) In Rajinder Chandra vs. State of Chhattisgarh and Anr. (2002) 2 SCC 287, this Court once again considered the entry relating to date of birth in the mark sheet and concluded as under:

"5. It is true that the age of the accused is just on the border of sixteen years and on the date of the offence and his arrest he was less than 16 years by a few months only. In Arnit Das v. State of Bihar this Court has, on a review of judicial opinion, held that while dealing with the question of determination of the age of the accused for the purpose of finding out whether he is a juvenile or not, a hypertechnical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. The law, so laid down by this Court, squarely applies to the facts of the present case."

10) In Arnit Das vs. State of Bihar, (2000) 5 SCC 488, this Court held that while dealing with a question of determination of the age of an accused, for the purpose of finding out whether he is a juvenile or not, a hyper-technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he is a juvenile and if two views may be possible on the same evidence, the court should lean in favour of holding the accused to be juvenile in borderline cases.

11) In Ravinder Singh Gorkhi vs. State of U.P. (2006) 5 SCC 584 with regard to the entries made in School Leaving Certificate, this Court has observed as under:-

"17. The school-leaving certificate was said to have been issued in the year 1998. A bare perusal of the said certificate would show that the appellant was said to have been admitted on 1-8-1967 and his name was struck off from the roll of the institution on 6-5-1972. The said school-leaving certificate was not issued in the ordinary course of business of the school. There is nothing on record to show that the said date of birth was recorded in a register maintained by the school in terms of the requirements of law as contained in Section 35 of the Evidence Act. No statement has further been made by the said Headmaster that either of the parents of the appellant who accompanied him to the school at the time of his admission therein made any statement or submitted any proof in regard thereto. The entries made in the school-leaving certificate, evidently had been repared for the purpose of the case. All the necessary columns were filled up including the character of the appellant. It was not the case of the said Headmaster that before he had made entries in the register, age was verified. If any register in regular course of business was maintained in the school, there was no reason as to why the same had not been produced."

12) In Pradeep Kumar vs. State of U.P. 1995 Supp (4) SCC 419, this Court considered the commission of offence by persons below 16 years of age. The question before a three-Judge

Bench was whether each of the appellants in those appeals was a child within the meaning of Section 2(4) of the U.P. Children Act, 1951 and as such on conviction under Section 302 read with Section 34 IPC should have been sent to an approved school for detention till the age of 18 years. At the time of granting special leave, appellant, by name, Jagdish produced High School Certificate, according to which he was about 15 years of age at the time of occurrence. Appellant - Krishan Kant produced horoscope which showed that he was 13 years of age at the time of occurrence. So far as appellant - Pradeep was concerned, a medical report was called for by this Court which disclosed that his date of birth as 07.01.1959 was acceptable on the basis of various tests conducted by the medical authorities. In the above factual scenario/details, this Court concluded as under:-

> "3. It is thus proved to the satisfaction of this Court that on the date of occurrence, the appellants had not completed 16 years of age and as such they should have been dealt with under the U.P. Children Act instead of being sentenced to imprisonment on conviction under Section 302/34 of the Act"

After saying so and after finding that the appellants were aged more than 30 years, this Court directed not to send them to an approved school under the U.P. Children Act for detention, while sustaining the conviction of the appellants under all the charges framed against them, quashed the sentences awarded to them and ordered their release forthwith.

13) The applicability of the Act and the Rules in respect of "Juvenile" and "Juvenile in conflict with law" have been elaborately considered by this Court in Hari Ram (supra). After analyzing the Scheme of the Act and various Rules including Rule 12 and earlier decisions of this Court laid down various principles to be followed. After applying those principles and finding that the appellant therein was 16 years of age on the date of the commission of the alleged offence and had not been completed 18 years of age, remitted the matter to the Board for disposal in accordance with law. Discussion on merits:

14) In the light of the above principles, now let us consider the claim of the appellant. According to him, on 18.06.1989, he was born in Village and Post Dadheru Kala, Police Station Charthawal, District Muzaffarnagar, U.P. On 05.07.1994, he was admitted in Class I in Nehru Preparatory School, Khurd, Muzaffarnagar. The appellant left the said school on 20.05.1998. On 04.07.1998, he was admitted in Class VI in the National High School Dadheru, Khurd-O-Kalan, Muzaffarnagar, U.P. On 21.05.2004, he left the said school, namely, National High School as he failed in High School. From Class VI till Class X the appellant remained and studied continuously in the aforesaid school. The date of birth in the mark sheet is mentioned as 18.06.1989. The alleged occurrence took place on 04.06.2007. The FIR was lodged on 04.06.2007 which culminated into Crime Case No. 215 of 2007 at Police Station Charthawal, District Muzaffarnagar, U.P. under Sections 302 and 307 of the IPC. On 12.06.2007, the mother of the appellant submitted an application before the Board at Muzaffarnagar stating that the appellant was a minor at the time of alleged occurrence. The appellant was provided a School Leaving Certificate dated 11.07.2007 from Nehru Preparatory School, Khurd, Muzaffarnagar. The mother of the appellant made a statement dated 26.07.2007 regarding the age of her son. She was cross-examined at length. On 16.10.2007, the statement of clerk of Nehru Preparatory School was recorded by the Board. The said clerk brought the entire records maintained by the School. The said clerk was also cross-examined at length.

15) The Board, vide judgment and order dated 24.01.2008, declared the appellant juvenile under the Act. Against the judgment of the Board, the complainant Smt. Khatizan, wife of deceased

Nawab filed Criminal Appeal No. 11 of 2008 under Section 52 of the Act before the learned Additional Sessions Judge, Muzaffarnagar. It is relevant to point out that the State, who is the prosecuting agency did not file any appeal. The Additional Sessions Judge, Muzaffarnagar recorded the statement of Guljar Hussain, Principal of Nehru Preparatory School, Dadheru, Khurd-O-Kalan, Muzaffarnagar on 07.08.2008. By order dated 13.01.2009, the Additional Sessions Judge allowed the said appeal filed by the complainant and set aside the order dated 24.01.2008 passed by the Board.

16) Aggrieved by the order of the Additional Sessions Judge, the appellant filed Criminal Revision No. 716 of 2009 before the High Court. The High Court dismissed the said Revision mainly on the ground that in the absence of any matriculation or equivalent certificate and considering the language used in Rule 12 with reference to only "Certificate" and not "mark sheet", dismissed the Revision petition.

17) We have already referred to the decision of this Court about the entry relating to the date of birth made in the mark sheet of High School examination. The appellant has produced mark sheet of High School examination issued by the school authority, namely, National High School, Dadheru, Khurd-O-Kalan, Muzaffarnagar. A perusal of the above said certificate makes reference to appellant's Roll No., his name, Date of Birth, name of the school, details regarding various subjects, maximum marks, marks obtained and ultimate result in the examination. The certificate contained signature of the Clerk Salim Ahmed, who prepared the same, the signature of the examiner and signature and seal of the Head Master. It is dated 21.05.2004.

18) Another document relied on by the appellant is School Leaving Certificate dated 11.07.2007 issued by Nehru Preparatory School, Khurd, Muzaffarnagar wherein it noted the registration no., name of the school, student's name, date of birth (18.06.1989) written in words also, Father's name, occupation, caste, residential address, date of admission in school, date of leaving of school. The certificate contained the signature and seal of the Head Master and the same is dated 11.07.2007.

19) The documents furnished above clearly show that the date of birth of the appellant had been noted as 18.06.1989. Rule 12 of the Rules categorically envisages that the medical opinion from the medical board should be sought only when the matriculation certificate or school certificate or any birth certificate issued by a corporation or by any Panchayat or municipality is not available. We are of the view that though the Board has correctly accepted the entry relating to the date of birth in the mark sheet and school certificate, the Additional Sessions Judge and the High Court committed a grave error in determining the age of the appellant ignoring the date of birth mentioned in those documents which is illegal, erroneous and contrary to the Rules.

20) We are satisfied that the entry relating to date of birth entered in the mark sheet is one of the valid proof of evidence for determination of age of an accused person. The School Leaving Certificate is also a valid proof in determining the age of the accused person. Further, the date of birth mentioned in the High School mark sheet produced by the appellant has duly been corroborated by the School Leaving Certificate of the appellant of Class X and has also been proved by the statement of the clerk of Nehru High School, Dadheru, Khurd-O-Kalan and recorded by the Board. The date of birth of the appellant has also been recorded as 18.06.1989 in School Leaving Certificate issued by the Principal of Nehru Preparatory School, Dadheru, Khurd-O-Kalan, Muzaffarnagar as well as the said date of birth mentioned in the school register of the said school at S. No. 1382 which have been proved by the statement of

the Principal of that school recorded before the Board. Apart from the clerk and the Principal of the school, the mother of the appellant has categorically stated on oath that the appellant was born on 18.06.1989 and his date of birth in his academic records from preparatory to Class X is the same, namely, 18.06.1989, hence her statement corroborated his academic records which clearly depose his date of birth as 18.06.1989. Accordingly, the appellant was a juvenile on the date of occurrence that is 04.06.2007 as alleged in the FIR dated 04.06.2007.

21) We are also satisfied that Rule 12 of the Rules which was brought in pursuance of the Act describes four categories of evidence which have been provided in which preference has been given to school certificate over the medical report.

22) In the light of the above discussion, we hold that from the acceptable records, the date of birth of the appellant is 18.06.1989, the Additional Sessions Judge and the High Court committed an error in taking contrary view. While upholding the decision of the Board, we set aside the orders of the Additional Sessions Judge dated 13.01.2009 and the High Court dated 10.12.2010. Accordingly, the appellant is declared to be a juvenile on the date of commission of offence and may be proceeded in accordance with law. The appeal is allowed.

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IN THE SUPREME COURT OF INDIA

Civil Original Jurisdiction
Writ Petition (C) No.51 Of 2006

(BEFORE DR. DALVEER BHANDARI AND A. K. PATNAIK, JJ)

BACHPAN BACHAO ANDOLAN
Versus
UNION OF INDIA & OTHERS

JUDGMENT

Dalveer Bhandari, J.

1. This petition has been filed in public interest under Article 32 of the Constitution in the wake of serious violations and abuse of children who are forcefully detained in circuses, in many instances, without any access to their families under extreme inhuman conditions. There are instances of sexual abuse on a daily basis, physical abuse as well as emotional abuse. The children are deprived of basic human needs of food and water.

2. It is stated in the petition that the petitioner has filed this petition following a series of incidents where the petitioner came in contact with many children who were trafficked into performing in circuses. The petitioner found that circus is one of the ancient forms of indigenous entertainment in the world, with humans having a major role to play. However, the activities that are undertaken in these circuses deprive the artists especially children of their basic fundamental rights. Most of them are trafficked from some poverty-stricken areas of Nepal as well as from backward districts of India. The outside world has no meaning for them. There is no life beyond the circus campus. Once they enter into the circuses, they are confined to the circus arena, with no freedom of mobility and choice. They are entrapped into the world of circuses for the rest of their lives, leading a vagrant tunnelled existence away from the hub of society, which is tiresome, claustrophobic and dependent on vicissitudes.

3. It is submitted that the petitioner is engaged in a social movement for the emancipation of children in exploitative labour, bondage and servitude. Bachpan Bachao Andolan has been able to liberate thousands of children with the help of the judiciary and the executive as well as through persuasion, social mobilization and education.

4 It is submitted that for the first time the petitioner came to know about the plight of children in Indian circuses way back in 1996. At that time, the petitioner had rescued 18 girls from a circus performing in Vidisha District of Madhya Pradesh. This was possible after a complaint made by a 12 year old girl, who managed to escape from the circus premises. Her complaint was that she and several other Nepalese girls had been trafficked and forced to stay and perform in the circus where they were being sexually abused and were kept in most inhuman conditions.

5. Following this incident, an organised attempt was made by the petitioner to understand and learn more about the problem of child labour in Indian Circuses and how to eradicate the same. This began in July 2002 with the initiation of a research on the problem of child labour in Indian circuses. The findings in the abovementioned research were compiled in a report termed "Eliminating Child Labour from Indian Circuses".

6. Once all the above facts and figures were established, the petitioner decided to implement a multi-pronged strategy to eradicate the practice of employing children in Indian circuses. Simultaneously, preparations were made to put across the problem in front of circus owners to make them aware of the moral and legal questions pertaining to the use of children in circuses. The petitioner initiated a dialogue with all the major circus owners and appealed to them to stop trafficking, bondage, Child labour and other violations of child rights. The Indian Circus Federation (for short `I.C.F.') responded positively but ironically this body has a very thin representation from the circus industry with approximately less than 10% of the big circuses and probably less than 20% of all the circuses were members of this Federation.

7. It is submitted that the petitioner convened a meeting with the circus owners on the 18th and 19th August, 2003 where a few owners under the umbrella of I.C.F. agreed to make a declaration that there shall be no further use of children in the circuses in India and a full list of the children employed by them will be provided to the petitioner and that they would voluntarily phase out all the children from their circuses in a time bound manner. It was also decided that the petitioner and its partner Non-Governmental Organizations (for short, NGOs) in Nepal will help in repatriation and rehabilitation of liberated children.

8. The petitioner submitted that since the I.C.F. does not have enough influence even on its own members, the agreement did not get implemented. However, the petitioner kept on receiving information and complaints from several parents through the NGOs working in Nepal. The petitioner sent the staff of his organization to cross-check and reconfirm the facts in Bhairawa, Hetauda in Nepal and Siliguri in India and found that organized crime of trafficking of children for Indian circuses, particularly from Nepal is rampant. In February and March, 2004, the petitioner received complaints from many Nepalese parents whose children have been trapped in circuses for more than 10 years and had never been allowed to meet them on one pretext or the other even after repeated requests to the circus owners. Majority of the complaints were for the children in the Great Indian circus (a non-federation circus) which was found to be located in Palakkad, Kerala. In June, 2004, the petitioner came to know through credible NGOs and individuals working in Hetauda, Nepal that the daughters of 11 parents were trapped into Great Roman Circus in India. The petitioner has since then conducted several studies and interviews with various people who are engaged in circus.

9. The petitioner further found that life of these children begins at dawn with training instructors' shouting abuses, merciless beatings and two biscuits and a cup of tea. After 3 to 5 shows and of lot of pervert comments of the crowds, the young girls are allowed to go back to their tents around midnight. Even then, life might have something else in store, depending upon the nature and mood swings of the circus owners and managers. If any child complains about the inadequate amount of food or the leaking tent in the rain or if a child is scared on the rope while performing the trapeze, he/she is scolded and maltreated by the managers or employers and sometimes even caned on one pretext or the other.

10. There are no labour or any welfare laws, which protect the rights of these children. Children are frequently physically, emotionally and sexually abused in these places. The most appalling aspect is that there is no direct legislation, which is vested with powers to deal with the problems of the children who are trafficked into these circuses. The Police, Labour Department or any other State Agency is not prepared to deal with the issue of trafficking of girls from Nepal holding them in bondage and unlawful confinement. There is perpetual sexual harassment, violation of the Juvenile Justice Act and all International treaties and Conventions related to Human Rights and Child Rights where India is a signatory.

11. The petitioner submitted that this Court in the case of N.R. Nair & Others v. Union of India & Others (2001) 6 SCC 84 upheld the rights of animals who are being made to perform in these circuses after understanding their plight. The situation of children in circuses is no different if not worse.

12. The petitioner has made various attempts to regulate and improve the conditions of children in circuses including engaging the circus owners association. However, none of them have derived good results. It is categorically submitted that the petitioner does not want the circuses to be completely banned or prohibited but there is a strong need to regulate this as any other industry including ensuring safety and other welfare measures of all those who are working in circuses, particularly the children. Almost all the circuses employ at least 50 persons and therefore a large number of labour laws should be applied.

13. The petitioner seeks application of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and also suggests that intra-state trafficking of young children, their bondage and forcible confinements, regular sexual harassment and abuses should be made cognizable offences under the Indian Penal Code as well as under section 31 of the Juvenile Justice Act. Children Welfare Committees under the Juvenile Justice (Care and Protection of Children) Act, 2000 should be empowered to award compensation to all those victims rescued from the circuses with a time bound rehabilitation packages and the State Government to create a fund of the same.

14. Mostly, these children are sold to the circus owners either by the agents or their relatives or sometimes the poor parents are lured into the web by promising high salaries, luxurious life etc. However, some exceptional circuses were also found (only 4) that treated their employees marginally better and allowed them to avail the privilege of limited movement outside the circus campus for limited time, but child labour was prevalent in these circuses as well and artists were not given minimum wages.

15. The petitioner has complained about living and working conditions of the children and has enumerated the following broad categories which are setout as under:

    i.) **Insufficient Space -** In almost all the circuses visited by the research team, the living conditions were quite similar, but nonetheless deplorable. There are separate sleeping arrangements for males and females, with the Company Girls segregated from the rest of the circus troupe by a boundary. There are also separate tents for the families working in the circuses. Usually 5 to10 and sometimes even more people are crammed into a single tent, thus most of the child artists complain of insufficient space and lack of personal space and privacy.

    ii) **Meals** - Most of the circuses provide two meals-lunch and dinner to the artists and tea also two times from the canteen run by the management. The quantity and quality of the food is variable, depending on the management. Most often, the food is inadequate to satisfy the appetite of young growing children.

    iii) **Sleep Timings** - Sleep timings are also very erratic, depending upon the nature of the work being performed by the child artists, though on a general trend most go to bed at midnight after the last show is over, to be woken up at dawn for practise.

iv) **Poor Sanitation** - There are no proper toilets and bathrooms. Make-shift toilets are created on the circus ground near the tents and all the company girls have to share it and the stench around them is unbearable. In general, condition of sanitation in circuses is most pathetic. It also precipitates unhygienic conditions that could lead to diseases. Invariably all the artists voiced their dissatisfaction on the issue of sanitation and hygiene.

v) **No Health Care Personnel** - Another important issue concerning the artists is the lack of any health care personnel to look into their day-to-day health care needs as well as the accidents that are so common in the circuses. The manger or the keeper usually provides medication for common ailments such as fever, cold etc. and looks into the first-aid needs of the artists. For a serious medical condition or an accident during training or performance, the trainer or the manager usually accompanies the patient to the nearest medical help. The management bears the charges of the treatment during that time, but later deducts it from the salary of the incumbent. However, some managements do bear the medical bill of the artists if a mishap occurs during the performance or training. Overall, it can be said that the living conditions inside the premises of the circus arena are squalid and deplorable, with no facilities and basic amenities being provided to the circus artists, not even proper sanitation.

vi) **High Risk Factor** - Nature of the activities in circuses is such that the risk factor for the artists is very high as accidents and mishaps during practise sessions and shows are common phenomenon. On top of that, there are no health care personnel employed by the circuses to look into the health care needs of the artists, even at the time of emergency. It was found that the lives of the children was endangered due to the risk factor involved in the circuses, especially those who were involved in items like ring of death, well of death, sword items, rope dance etc. They constituted 10% of the total number of children. Rest 60% fell in the medium risk category while 30% were not involved in any risky items. Moreover, some circuses either fail to or are ignorant about taking the necessary precautions, which further heightens the risk involved. In fact, the research team witnessed an accident while visiting one of the circuses.

vii) **Remuneration** - Besides paying meagre salaries to the children, the management of some circuses holds back the salaries of the children saying that they would be paid only to their parents when they visit them, which rarely happens. Salary accounts are often manipulated and the loss due to accidents or mishaps is not compensated.

viii) **Bound by Contract** - The child artists are brought to the circuses to be contracted for 3 to 10 years and once the contract is signed/agreed upon by the parents or guardians of the children, these young ignorant children are bound and indebted to the circus management and are unable to break away from the circus, even if they are discontented with their lives in the circus.

ix) **Daily Routine hindering their All-round Development** - In the circus, their daily routine starts with practising even before the sunrise (rigorous training session initially) mostly accompanied with verbal and physical abuse and harsh physical punishments at times, for the slightest error or no error at all. From

afternoon onwards until midnight, they are on the stage, performing and enthralling the audience with their vivacity and wit. They cannot share their agony and grievances or raise their voice against the torturous life they are forced to lead. For them, there is no education, no play, no recreation and their life is confined to the circuses without any exposure to the outside world. All this prohibits them from knowing the other opportunities available, as they are aware of and are exposed to just one aspect of life, that is the aspect they see in the circuses they work in. Due to the cruel and inhuman attitude of the management in some circuses, which imposes restrictions on the children for meeting their folks, and also due to the traveling nature of the troupe, most of the children end up losing contact with their parents, especially those across the border or residing at far off places even within the country. And those fortunate few, who get a chance to meet their parents, do so once or twice a year, either when their parents visit or when they are allowed to go home. Consequently, they are exposed to a world which hinders their psychological, spiritual and socio-economic development, with no knowledge of their rights, duties and scope for a better future and thus, are left with no other option but to continue working in the circuses for the rest of their lives. Instability in life, due to the circus's nomadic existence, makes it difficult for them to pursue formal education, resulting in a large number of illiterate children and adults in circuses.

16. The employment of the children in circus involves many legal complications and in that respect major complications are as under:

    1. Deprivation of the children from getting educated thereby violates their fundamental right for education enshrined under Article 21A of the Constitution.

    2. Deprivation of the child from playing and expression of thoughts and feelings, thereby violating the fundamental right to freedom of expression.

    3. Competency to enter into contract for working in circus.

    4. Violation of statutory provisions of law like Employment of Children's Act, 1938, The Children (Placing of Labour) Act, 1933, The Child Labour (Prohibition and Regulation) Act, 1986, Minimum Wages Act, 1976, The Prevention of Immoral Traffic Act, Equal Remuneration Act, 1976 and Rules made thereunder and the Bonded Labour System (abolition) Act, 1976 read with rules made their under, the Factories Act, 1948, Motor Transport Workers Act, 1961 etc.

    5. Existing labour laws and legitimacy of contracts of employment for children.

    6. The legitimacy of contracts of employment for children and working conditions.

17. The petitioner has given innumerable instances in the petition of abuse of children in the circuses. All those instances demonstrate under what horrible and inhumane conditions the children have to perform in the circuses.

18. The experiences of the petitioner are only a scratch on the surface and there are many children who are being trafficked regularly into circuses. While it is not the case of the petitioner that circuses should be completely banned and prohibited, there is a strong need to regulate this as any other industry including ensuring safety gears and other measures as are done in other countries.

19. The petitioner has filed the petition with the following prayers:

    1. Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents to frame appropriate guidelines for the persons engaged in circuses;

    2. Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to conduct simultaneous raids in all the circuses by CBI to liberate the children and to check the gross violation of all fundamental rights of the children;

    3. Issue a writ of mandamus or any other appropriate writ order or direction to appoint special forces in the borders to ensure action and to check on the cross border trafficking;

    4. Issue a writ of mandamus or any other writ order or direction applying the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and make intra-state trafficking of young children, their bondage and forcible confinements, regular sexual harassments and abuses cognizable offences under the Indian Penal Code as well as under section 31 of the Juvenile Justice Act.

    5. Issue a writ of mandamus or any other appropriate writ order or direction to empower child welfare committee under the Juvenile Justice (Care and Protection of Children) Act, 2000 to award compensation may be awarded to all those victims rescued from the circuses with a time bound rehabilitation package and the State Government to create a fund for the same;

    6. Issue a writ of mandamus or any other appropriate writ order or direction to lay out a clear set of guidelines prohibiting the employment/engagement of children up to the age of 18 years in any form in the circuses.

20. This court issued notices to the Union of India and other States and Union Territories. Replies have been filed on behalf of various States and the Union Territories.

21. Shri Gopal Subramanium, the learned Solicitor General appearing for the Union of India has filed written submissions with the heading "The Indian Child : India's Eternal Hope and Future".

22. Learned Solicitor General has broadened the scope of this petition and has tried to deal with the problem of children trafficking. He submitted that:

    1. Trafficking in human beings is not a new phenomenon. Women, children and men have been captured, bought and sold in market places for centuries. Human trafficking is one of the most lucrative criminal activities. Estimates of the United Nations state that 1 to 4 million people are trafficked worldwide each year. Trafficking in women and children is an operation which is worth more than $ 10 billion annually. The NHRC Committee on Missing Children has the following statistics to offer:-

        a. 12.6 million (Governmental sources) to 100 million (unofficial sources) stated to be child labour;

        b. 44,000 children are reported missing annually, of which 11,000 get traced;

c. About 200 girls and women enter prostitution daily, of which 20% are below 15 years of age.

2. International conventions exist to punish and suppress trafficking especially women and children. (Refer: UN Protocol to Prevent, Suppress and Punish Trafficking in Persons also referred as the PALERMO Protocol on Trafficking). Trafficking is now defined as an organized crime and a crime against humanity. The convention being an international convention is limited to cross border trafficking but does not address trafficking within the country. The definition of trafficking is significant:-

" ..... The recruitment, transportation, transfer, harboring or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation....".

3. Exploitation shall include at a minimum, the exploitation of the prostitutes of others or other forms of sexual exploitation, forced labour or service, slavery or practices similar to slavery, servitude or the removal of organs.

4. It is submitted that children under 18 years of age cannot give valid consent. It is further submitted that any recruitment, transportation, transfer, harbouring or receipt of children for the purpose of exploitation is a form of trafficking regardless of the means used. Three significant elements constitute trafficking:-

   a. The action involving recruitment and transportation;

   b. The means employed such as force, coercion, fraud or deception including abuse of power and bribes; and

   c. The purpose being exploitation including prostitution.

5. Internationally, there is a working definition of child trafficking. The working definition is clear because it incorporates the above three elements. In June 2001, India has adopted the PALERMO Protocol to evolve its working definition of child trafficking.

6. The forms and purposes of child trafficking may be:-

   a. Bonded labour;

   b. Domestic work;

   c. Agricultural labour;

   d. Employment in construction activity;

   e. Carpet industry;

   f. Garment industry

   g. Fish/Shrimp Export;

   h. Other sites of work in the formal and informal economy.

7. Trafficking can also be for illegal activities such as:-

   a. Begging;

   b. Organ trade;

   c. Drug peddling and smuggling;

8. Trafficking can be for sexual exploitation, i.e.

   a. Forced prostitution;

   b. Socially and religiously sanctified forms of prostitution;

   c. Sex tourism;

   d. Pornography;

9. Child trafficking can be to aid entertainment in sports:-

   a. Circus/dance troupes;

   b. Camel jockeying;

10. Trafficking can be for and through marriage. Trafficking can be for and through adoption. It is submitted that intervention is possible in cases of child trafficking only if fundamental principles are kept in mind. The fundamental principles are the following:-

    a. The child has to perform to the best of his ability. The growth of a child to its potential fulfillment is the fundamental guarantee of civilization;

    b. Empathy for troubled children by adopting non-discriminatory and attitudes free of bias;

    c. Children must be protected in terms of well-being under all circumstances;

    d. Right to freedom from all forms of exploitation is a fundamental right;

    e. Confidentiality of the child in respect of the child's privacy must be maintained;

    f. Trafficking is an organized crime which could have multiple partners including syndicates.

11. Intervention must be a joint initiative of government and non-governmental organizations which can be, in some cases, potential partners. An effective intervention must in all circumstances lead to effective and enduring protection of children from exploitation, abuse and violence.

23. According to the Solicitor General it is the bounden duty of the police to discharge its obligation. He submitted that the following guidelines should be mandated:

    i. Care must be taken to ensure the confidentiality of the child and due protection must be given to her/him as a witness;

    ii. The detailed interview of the victim should be done preferably by crisis intervention centres/members of the Child Welfare Committee under the Juvenile Justice Act. There should be adequate breaks and intervals during the interview with a child victim;

iii. If the police employ a child friendly approach to the entire investigation, the possibility of getting all relevant information gets higher. This can be done by having a supportive environment for the child at the police station wherein attention is paid to his needs. This can be done at the police station itself or at any other place co-managed by police any NGO/CBO. Support persons for the child should be contacted and in their absence, any civil society group working with/for children or members of CWC (whoever the child feels comfortable with) could be asked to the present;

iv. Due care must be maintained to attend the issues like interpreters, translators, record maintaining personnel, audio-video recording possibilities etc.;

v. As far as possible, the same investigation officer must follow up the case from investigation stage to the trial stage;

vi. There should be provision of good and water as well as toilet facilities for the child in the police station and the hospital;

vii. No child should be kept in a Police Station;

viii. Where a special juvenile police unit or a police officer has been designated to deal with crimes against children and crimes committed by children, cases relating to children must be reported by such officer to the Juvenile Justice Board or the child welfare committee or the child line or an NGO as the case may be.

24. It is submitted that Articles 23, 39, 14 and 21 of the Constitution of India guarantee every child to be freed from exploitation of any form. Article 23 prohibits traffic in human beings, `beggar' and other forms of forced labour.

25. Force, assault, confinement can be dealt with under sections 319 to 329 for simple and grievous hurt, sections 339 to 346 for wrongful restraint and wrongful confinement; sections 350 to 351 for criminal force and criminal assault; section 370 for import, export, removal, disposing/accepting, receiving, detaining of any person as a slave; section 361 to 363 kidnapping and abduction; section 365 for kidnapping, abduction for wrongful confinement; section 367 for kidnapping, abduction for slavery or to subject a person to grievous injury; sections 41, 416, 420 for fraud, cheating by personation; sections 465, 466, 468 and 471 for forgery and using forged documents as genuine; section 503 and 506 for criminal intimidation. It is submitted that a direction must be issued to the Commissioner of Police, Delhi and the State Governments and Union Territories that their police force are required to be sensitized to the above provisions while dealing with safety and freedom of children.

26. The Juvenile Justice (Care and Protection of Children) Act, 2000 was amended in 2006 by Act 33 of 2006. It is a special legislation for children and defines children as `a person upto the age of 18 years'. The Juvenile Justice Act is build upon a model which addresses both children who need care and those who are in conflict with law.

27. According to the learned Solicitor General, the Goa Children's Act, 2003 must be viewed as a model legislation. He submitted that not only does it define child trafficking but also seeks to provide punishment for abuse and assault of children through child trafficking for different purposes such as labour, sale of body parts, organs, adoption, sexual offences of pedophilia, child prostitution, child pornography and child sex tourism. All state authorities such as airport authorities, border police, railway police, traffic police, hotel owners are made responsible under the law for protection of children and for reporting offences against

children. It is submitted that until a suitable legislation is enacted, directions of a preventive nature may be issued against the police authorities in all States to protect the rights of children.

28. Learned Solicitor General submitted that there is blatant violation of Child Labour (Prohibition and Regulation) Act, 1986, Children Pledging of Labour Act, 1933, the Bonded Labour System Abolition Act, 1976, the Factories Act, 1948, the Plantation Labour Act, 1951, the Mines Act, 1952, the Merchant Shipping Act, 1958, the Apprentices Act, 1961, the Motor Transport Workers Act, 1961, the Bidi and Cigar Workers (Conditions of Employment) Act, 1966, the West Bengal Shops and Establishment Act, 1963.

29. Learned Solicitor General submitted that each State Government must constitute committees for the purpose of preventing child labour. It is submitted that there should be an apex committee constituted by each State Government with the following:

    (a) The Chief Secretary of the State;

    (b) Secretary incharge of Child and Women Development;

    (c) Director of Health and Family Welfare;

    (d) Commissioner of Police of the State;

    (e) Two Psychiatrists to be nominated by the Indian Psychiatric Society.

30. The State Government with the assistance of the said committee by a transparent process will constitute committees for each district consisting of health workers, police personnel, factory inspectors and people from the civil society/NGO. The committee will be able to inspect and determine whether there is forced employment of children.

31. All dhabas/restaurants must be prohibited from employing children. It is necessary that this stipulation which already exists must be effectively enforced.

32. Learned Solicitor General submitted that in the Ministry of Family Welfare and Child Development, a division needs to be created to deal with issues arising out of dissemination of publications which are harmful to young persons, publishing pornographic material in electronic form as well as the enforcement of section 293 of the Penal Code. It is submitted that a further research study must be undertaken on the efficacy of the provisions of the Young Persons Harmful Publications Act, 1956, Section 67 of the Information Technology Act, 2000 and Section 293 of the Penal Code.

33. The Transplantation of Human Organ Act, 1994 makes removal of human organs without authority and commercial dealing in human organs criminally liable.

34. In a brilliant study undertaken by the Government of Indian in coordination with UNICEF, areas relating to trafficking have been acknowledged. It is submitted that the central government acknowledges the increasing prevalence of trafficking for the purpose of commercial sexual exploitation of children. In a study (Rescue and Rehabilitation of Child Victims Trafficked for Commercial Sexual Exploitation, a Report by UNICEF.) published by the Department of women and child development, Ministry of Human Resource Development, Govt. of India, the objectives were:-

    a) To obtain a better understanding of rescue and rehabilitation processes;

b) To gain a more complete understanding of the involvement of the state, the judiciary, law enforcement agencies, and NGOs engaged in rescue and rehabilitation;

c) To make recommendations on the need for developing guidelines for rescue and rehabilitation. These guidelines should represent a common denominator of nationally agreed standards in this area as well as take regional variations into account.

The following statistics are alarming:-

i) There are an estimated two million children, aged between 5 and 15, forced into CSE around the world;

ii) Girls between the ages of 10 and 14 years are most vulnerable;

iii) 15% of commercial sexual workers in India are believed to be below 15 years old and 25% are estimated to be between the ages of 15 and 18;

iv) 500000 children worldwide are forced into this profession every year.

35. It is submitted that the report dealt with cross border trafficking in the following way:-

> "Research on cross-border trafficking has indicated that 5000-7000 young Nepali girls were trafficked into India annually. This research also highlighted the fact that in the last decade, the average age of the trafficked girl has steadily fallen from 14 to 16 years to 10 to 14 years. These findings are supported by studies conducted by Human Rights Watch - Asia in 1995, which stated that the average age of Nepali girls trafficked into India dropped from 14 to 16 years in the 1980s to 10 to 14 years in 1991 despite the introduction of laws designed to combat trafficking of minors. Ghosh's study estimated that Nepali children constitute 20 percent (40,000) of the approximately 2,00,000 Nepalese commercial sexual workers in India. Young girls are trafficked from economically depressed neighbourhoods in Nepal and Bangladesh to the major prostitution centres in Delhi, Mumbai and Calcutta. Social workers have reported encountering children as young as nine in Kamathipura, a red light area in Mumbai."

36. The promise of marriage, employment is often used for luring young children into sexual trade. The report also talks about the trafficking of children in urban brothels and the regional variations. The report describes how trafficking is undertaken.

37. Trafficking in women and children has become an increasingly lucrative business especially since the risk of being prosecuted is vey low. Women and children do not usually come to the brothels on their own will, but are brought through highly systematic, organized and illegal trafficking networks run by experienced individuals who buy, transport and sell children into prostitution. Traffickers tend to work in groups and children being trafficked often change hands to ensure that neither the trafficker nor the child gets caught during transit. Different groups of traffickers include gang members, police, pimps and even politicians, all working as a nexus. Trafficking networks are well organized and have linkages both within the country and in the neighbouring countries. Most traffickers are men. The role of women in this business is restricted to recruitment at the brothels.

38. The typical profile of a trafficker is a man in his twenties or thirties or a woman in her thirties or forties who have travelled the route to the city several times and know the hotels to stay in and the brokers to contact. They frequently work in groups of two or more. Male and female traffickers are sometimes referred to as dalals and dalalis (commission agents) respectively and are either employed by a brothel owner directly or operate independently. Often collusion of family members forms an integral part of trafficking with uncles, cousins and stepfathers acting as trafficking agents. In March, 1994 Human Rights Watch Asia interviewed several trafficked victims of whom six were trafficked into India from Nepal with the help of close family friends or relatives. In each case, the victim complained of deception.

39. The Suppression of Immoral Trafficking Act was enacted after the Geneva Convention on Immoral Trafficking of Women and Children was signed by India in 1956. In order to have data on the success of rehabilitation strategies, delivery points in rehabilitation strategy would have to be strengthened as would be seen in the later parts of this report. It is submitted that a trafficker never blows the gaff. It is done in silence and quiet. It becomes necessary to involve police authorities by means of acute sensitization to a realm of illegality. Therefore, there has to be a special initiative taken by police with reference to children.

40. The Central Government has evolved the national plan of action to combat trafficking and commercial sexual exploitation of women and children in 1998.

41. It is submitted that there has now been a very careful realization that the plan for rescue and rehabilitation must be through a conceptual map. The said map gives a very good indication of the initiatives and possibly its positive and negative outcomes.

42. Learned Solicitor General submitted that a trafficked child can be brought before the Magistrate under two circumstances:

a) when the raid/search or removal takes place by a police action under section 15 of the ITPA or when the Magistrate herself/himself passes rescue orders;

b) the trafficked child can also be brought before the Magistrate as an accused under section 8A and 8B of the ITPA.

The following directions are necessary:-

a. Every Magistrate before whom a child is brought must be conscious of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000;

b. He must find out whether the child is below the age of 18 years;

c. If it is so, he cannot be accused of an offence under section 7 or 8 of ITPA;

d. The child will then have to be protected under Juvenile Justice Authority;

e. The Magistrate has a responsibility to ascertain and confirm that the person produced before her or him is a child by accurate medical examination;

f. The definition of a child in section 2K means a juvenile or a child as a person who has not completed 18 years of age;

g. Once the age test is passed under section 17(2) establishes that the child is a child/minor less than 18 years of age, the Magistrate/Sessions Judge while framing charges must also take into account whether any offences have been committed under sections 342, 366, 366A, 366B, 367, 368, 370, 371, 372, 373, 375 and if so, he or she must also frame charges additionally;

h. The child should be considered as a child in the protection of the Child Welfare Act.

i. The child should be handed over to the Child Welfare Committee to take care of the child. The performance of the Child Welfare Committees must be reviewed by the High Court with a committee of not less than three Hon'ble Judges and two psychiatrists;

j. A child must not be charged with any offence under the ITPA or IPC;

k. A minor trafficked victim must be classified as a child in need of care and protection. Further, the Magistrate must also order for intermediate custody of minor under section 17(3) of the ITPA, 1956;

l. There should not be any joint proceedings of a juvenile and a person who is not a juvenile on account of section 18 of the Juvenile Justice (Care and Protection) Act, 2002;

m. It is necessary that Courts must be directed that the same lawyer must not represent the trafficker as well as the trafficked minor;

n. Evidence of child should be taken in camera. Courts must protect the dignity of children. The children's best interest should be the priority.

43. Learned Solicitor General submitted that Child Welfare Committees are empowered committees under section 31(1) of the Juvenile Justice Act. However, the standards employed by the Child Welfare Committees are not the same across the country. In order to set up uniform standards, the direction relating to review of Child Welfare Committees must be re-examined. All Superintendents of Jail must report upon a review within 15 days from today whether any person who is a child is in custody of the jail, if so, the said person must be produced immediately before the Magistrate empowered to try offences under the Juvenile Justice (Care and protection) Act, 2000. The said Magistrate must set out a report in relation to the circumstances under which such a child has been lodged in jail to the Chief Justice of the concerned High Court. Thereafter the High Court may forward a report to this Court for passing of appropriate orders in relation to the welfare of the child.

44. Learned Solicitor General submitted that the power of rehabilitation is necessary. The said power has been conferred under section 33(3) of the Juvenile Justice (Care and Protection) Act, 2000. The said provision provides that:-

> "..... After the completion of the enquiry if the Committee is of the opinion that the said child has no family or ostensible support, it may allow the child to remain in the children's home or shelter home till suitable rehabilitation is found for him or till he attains the age of 18 years....".

45. It is further submitted that rehabilitation will be the measure of success of the Juvenile Justice (Care and Protection) Act, 2000. Reintegration into society by means of confident and assertive occupations leading to a sense of self-worth will have to be devised. This requires innovative strategies and not any high flown claims to social development.

46. The Juvenile Welfare Board will have no competence to deal with cases of children who are in prostitution or have been trafficked. Such children are to be considered as children in need of care and protection. However, in states where the Child Welfare committees have not been constituted, these matters should be referred to the Juvenile Welfare Board. It is submitted

that the book on Trafficking in Women and Children in India edited by Shanker Sen along with P.M. Nair, IPS is a useful document. In a report called "Abolition of Child Labour in India" submitted by the NCPCR to the planning commission, certain useful perspectives are to be found.

47. It is submitted that India is home to 19% of world's children. More than one-third of the country's population around 440 million is below 18 years. India's children are India's future. They are the harbingers of growth, potential fulfillment, change, dynamism, innovation, creativity. It is necessary that for a healthy future, we must protect, educate and develop the child population so that their citizenry is productive. Resources must be invested in children proportionate to their huge population.

48. As far as the total expenditure on children in 2005-2006 is concerned, it was 3.86% and in 2006-2007 it was increased to 4.91%. It is highly inadequate looking to the population of children.

49. In a report submitted by the Ministry of Women and Child Development, 40% of India's children have been declared to be vulnerable or experiencing difficult circumstances. They are entitled to special protection under Articles 14, 15, 16, 17, 21, 23 and 24 of the Constitution. The concerns of child and the paradigm of child rights have been addressed suitably in various international conventions and standards on child protection including the UN Convention on the Rights of the Child (UNCRC), 1989, the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), 1985, the UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990, the Hague Convention on Inter Country Adoption, 1993. India has ratified the UN Convention on the Rights of the Child in 1992. The Convention inter alia prescribes standards to be adhered by all state parties in securing the best interest of the child.

50. Learned Solicitor General submitted that the millennium development goals cannot be secured unless child protection is an integral part of programmes, strategies and plans for their achievement. The newly constituted Ministry of Women and Child Development has rightly remarked that child protection is an essential part of the country's strategy to place `Development of the child at the Centre of the 11th Plan'. The National Plan of Action for Children articulates a rights agenda for the development of children.

51. Learned Solicitor General further submitted that the existing child protection mechanisms have to be first noticed. The delivery points however need to be strengthened. To review the delivery of these programmes, there must be nodal agencies. Points of responsibility have to be identified and strengthened. The programme for juvenile justice is to enable children in need of care and protection and those in conflict with law to be secured. The central governments provide financial assistance to the state governments/UT administrations for establishment and maintenance of various homes, salary of staff, food, and clothing for children in need of care and protection of juveniles in conflict with law. Financial assistance is based on proposals submitted by States on a 50:50 cost sharing basis.

52. It is submitted by the learned Solicitor General that in order to give effect to the programme for juvenile justice, it is necessary that nodal points have to be identified. The child welfare committee is one such body, but it is necessary that the working of the child welfare committee must be overseen by either the Executive Chairman of the Legal Services Authority or by the High Court itself. It is also necessary that the financial assistance being provided for children in need and care must result in tangible results to the children whose future is sought to be rehabilitated. For that purpose, it is appropriate that a Court monitored

mechanism is established. For every juvenile home, a District Judge or a Judge nominated by the Chief Justice of the High Court should be a visitor. There must be periodic internal reports which are given to the High Court and just as in case of prisons, juvenile homes must be monitored by courts and their living conditions must also be carefully examined.

53. It is also submitted by the learned Solicitor General that the point of responsibility for overseeing the conditions in the juvenile home must also be shared by the District Magistrate of each district. It is necessary that there should be dual reporting - one to the Judicial Section of the High Court; and the other to the District Magistracy and onwards to the State Government. Each State Government must open a Juvenile Justice Cell which will receive periodic reports of juvenile homes, the number of children, the status of children, the manner of rehabilitation and the current status. The State Government must also ensure that therapeutic help as well as psychiatric assistance wherever necessary is offered to the juveniles on a top priority basis. District Collectors must submit their reports to the Secretary of the Department concerned who in turn must report to the Chief Secretary. The Chief Secretary must be constructively responsible for the administration of the programme for juvenile justice and also must supervise the monetary spending and the manner in which the money spent has been duly accounted. Thus a certification programme for spending monies based on central schemes must be introduced. This certification must be by an independent authority that will ensure that the monies allocated have in fact been spent for the benefit and welfare of the children. If the home is situated within a panchayat area, then the chairman of the panchayat or the zila parishad must be also made responsible for certifying that all the monies which were intended for the home in terms of grants or subventions have been duly utilised.

54. It is further submitted by the learned Solicitor General that the Integrated Child Protection Programme for Street Children is also a scheme by which NGOs are supposed to run 24 hour shelters and to provide food, clothing, shelter, non-formal education, recreation, counseling, guidance and referral services for children. Considering the vulnerability of the children, all NGOs must be directed to be registered with the concerned Collector. There must be a database of every NGO including details of all the functionaries of the NGO with full particulars including their addresses. In order to enable the enrolment in schools of street children, vocational training, occupational placement and to mobilize preventive health services including reduction of drug and substance abuse, a nodal point is necessary. The nodal point must be either a Sub Divisional Magistrate/Executive Magistrate whose work will be countersigned by a subordinate Judge appointed by the District Judge of the District. Similarly, database must be maintained in relation to the children, their parentage, present status and the present condition of their educational qualifications and whether they are capable of vocational training. It is important that occupational therapists must be able to assess on the basis of modern IQ and aptitude tests about the way in which such children can be taken forward to mainstream living by offering vocational guidance. Offering children under difficult circumstances, relevant support is an obligation and should not be a matter of charity fortuitousness in terms of magnanimous dispensation.

55. Learned Solicitor General also gave suggestions as under:

Child-line services are provided for children in distress:

These should be catalogued and there should be a central registry which will provide information about the status of the child-line services at the local level. It should be the District Magistrate who must be responsible for the effect running of the child-line service. All

District Magistrates in the country must post on the website their child-line service number and must give effective publicity to the services available and invite members of civil society to report any child in distress at numbers.

Shishu Griha to promote in-country adoption:

Details of the working of the said scheme need to be collected and a database must be maintained in respect of orphans/ abandoned / destitute infants or children upto 6 years. The adoptive parents must be obliged to give reports to the District Judge who will in turn examine whether the adoptive parents have taken care of the child failing which adequate court-monitored measures may be necessary.

Schemes for working children in need of care and protection:

This scheme is very important. Children who are engaged as domestic labour, working at roadside dhabas and mechanic shops have to be rescued and a bridge education has to be provided including vocational training. This must be undertaken again by identifiable points of responsibility. It is necessary that an Executive Magistrate must be allocated a certain area to be covered where children are rescued. This should be undertaken by a District Magistrate dividing his district in suitable divisions where such Executive Magistrates can rescue working children. They need to be rehabilitated. It is important that rescue will be effective only when there is scope for rehabilitation. It should not happen that in the name of rehabilitation children are put in detention homes or remand homes. That would be an act of cruelty.

56. Learned Solicitor General further gave suggestions including Pilot Project to combat the trafficking of women and children for commercial sexual exploitation as under:

Pilot Project to combat the trafficking of women and children for commercial sexual exploitation:

This is a source and destination area for providing care and protection to trafficked and sexually abused women and children. Components of the scheme include networking with law enforcement agencies, rescue operation, temporary shelter for the victims, repatriation to hometown and legal services, etc.

Central Adoption Resource Agency (CARA):

It is an autonomous body under the Ministry of Women and Child Development to promote in-country adoption and regulate inter-country adoption. CARA also helps both Indian and foreign agencies involved in adoption of Indian children to function within a regulated framework, so that such children are adopted legally through recognised agencies and no exploitation takes place.

National Child Labour Project (NCLP) for rehabilitation of child labourers:

Under the Scheme, project societies at the district level are fully funded for opening up of Special Schools/Rehabilitation centers provide non-formal education, vocational training, supplementary nutrition, stipends, etc. to children withdrawn from employment.

57. The Ministry of Women and Child Development has actually in an outstanding report identified the shortcomings and gaps in existing child protection institutions. The reasons for limitations in effective implementation of programmes have been properly identified. The reasons are as follows:

Lack of Prevention:

Policies, programmes and structures to prevent children from falling into difficult circumstances are mostly lacking. This pertains both to policies to strengthen and empower poor and vulnerable families to cope with economic and social hardship and challenges and thus be able to take care of their children, as well as to efforts to raise awareness of all India's people on child rights and child protection situation.

Poor planning and coordination:

i) Poor implementation of existing laws and legislations;

ii) Lack of linkages with essential lateral services for children, for example, education, health, police, judiciary, services for the disabled etc;

iii) No mapping has been done of the children in need of care and protection or of the services available for them at the district, city and state levels;

iv) Lack of coordination and convergence of programmes/services;

v) Weak supervision, monitoring and evaluation of the juvenile justice system.

Services are negligible relative to the needs:

i) Most of the children in need of care and protection, as well as their families do not get any support and services;

ii) Resources for child protection are meagre and their utilization is extremely uneven across India;

iii) Inadequate outreach and funding of existing programmes results in marginal coverage even of children in extremely difficult situations;

iv) Ongoing large scale rural urban migration creates an enormous variety and number of problems related to social dislocation, severe lack of shelter and rampant poverty, most of which are not addressed at all;

v) Lack of services addressing the issues like child marriage, female foeticide, discrimination against the girl child, etc;

vi) Little interventions for children affected by HIV/AIDs, drug abuse, militancy, disasters (both manmade and natural), abused and exploited children and children of vulnerable groups like commercial sex workers, prisoners, migrant population and other socially vulnerable groups, etc;

vii) Little interventions for children with special needs, particularly mentally challenged children.

Poor infrastructure

i) Structures mandated by legislation are often inadequate;

ii) Lack of institutional infrastructure to deal with child protection;

iii) Inadequate number of CWCs and JJBs.

iv) Existing CWCs and JJBs not provided with requisite facilities for their efficient functioning, resulting in delayed enquiries and disposal of cases.

Inadequate human resources

i) Inappropriate appointments to key child protection services leading to inefficient and non-responsive services;

ii) Lack of training and capacity building of personnel working in the child protection system;

iii) Inadequate sensitization and capacity building of allied systems including police, judiciary, health care professions, etc;

iv) Lack of proactive involvement of the voluntary sectors in child protection service delivery by the State UT Administrations;

v) Large number of vacancies in existing child protection institutions.

Serious service gaps

i) Improper use of institution in contravention to government guidelines;

ii) Lack of support services to families at risk making children vulnerable;

iii) Overbearing focus on institutional (residential care) with non-institutional (i.e. non-residential) services neglected;

iv) Inter-state and Intra-state transfer of children especially for their restoration to families no provided for in the existing schemes;

v) Lack of standards of care (accommodation, sanitation, leisure, food etc.) in all institutions due to lower funding;

vi) Lack of supervision and commitment to implement and monitor standards of care in institutions;

vii) Most 24-hour shelters do not provide all the basic facilities required, especially availability of shelter, food and mainstream education;

viii) Not all programmes address issues of drug abuse, HIV/AIDS and sexual abuse related vulnerabilities of children;

ix) None of the existing schemes address the needs of child beggars or children used for begging;

x) Minimal use of non-institutional care options like adoption, foster care and sponsorship to children without home and family ties;

xi) No mechanism for child protection at community level or involvement of communities and local bodies in programmes and services;

xii) Serious services and infrastructure gaps leading to few adoptions;

xiii) Cumbersome and time consuming adoption services;

xiv) Lack of rehabilitation services for old children not adopted through regular adoption processes;

xv) Aftercare and rehabilitation programme for children above 18 years are not available in all states, and where they do exist they are run as any other institution under the JJ Act, 2000.

57. It is further submitted by the learned Solicitor General that the above needs to be addressed by interventional orders of this Court in the exercise of its extraordinary jurisdiction under the Constitution. Points of implementation must be identified.

58. Learned Solicitor General further submitted that each State Government must identify an officer who is responsible for implementation of schemes in relation to children. There must be a parallel linkage between a point of contact of the Collectorate/Executive Administration with a point in Legal Aid i.e. the Executive Chairman of the State Legal Services Authority and a point in the NGO Sector/Civil Society. Similarly, points must be identified in each Zila Parishad and Panchayat Samiti and Gram Panchayats. In fact, the Presiding Officers of the gram Nyayalayas may also be encouraged to identify children who are vulnerable and who need protection. The Integrated Child Protection Scheme is presently in place. It seeks to institutionalize essential services and strengthen structures; it seeks to enhance capacities at all levels; it seeks to create database and knowledge base for child protection services; it needs to strengthen child protection at family and community level. The guiding principles are neatly formulated in this scheme. These must be implemented.

The adoption programme will be governed by the following guiding principles:

i. Best interest of the child is paramount;

ii. Institutionalization (e.g. placement into residential care) of the child should be for the shortest possible period of time;

iii. All attempts should be made to find a suitable Indian family within the district, state or country;

iv. The child shall be offered for inter-country adoption only after all possibilities for national adoption, or other forms of family based placement alternatives such as placement with relatives (kinship care), sponsorship and foster care arrangements have been exhausted;

v. All institutions should disclose details about children in their care and make sure that those free for adoption are filed and recorded with the State Adoption Resource Agency (SARA) and CARA, with all supporting documentation of authorization of such adoption from CWC;

vi. Inter-state coordination to match the list of Prospective Adoption Parents (PAPs) with that of available children should be done by SARAs;

vii. No birth mother/parent(s) should be forced/coerced to give up their child for monetary or any other consideration;

viii. Adoption process from the beginning to end shall be completed in the shortest possible time;

ix. Monitoring, regulating and promoting the concept and practice of ethical adoptions in the country should be ensured;

x. Agencies involved in the adoption process should perform their duties in a transparent manner, following rules of good governance and adhering to the professional and ethical code of conduct. Those agencies shall be reporting to and will be subject to rigorous auditing and supervision by responsible State bodies.

59. The most outstanding feature of this scheme which needs to be implemented on a full-time and firm basis is the government civil society partnership. This will involve active involvement of the voluntary sector, research and training institutions, law college students, advocacy groups and the corporate sector. It should be the duty of the Health Secretary of each state government including under the chairmanship of the Health Secretary, Government of India to have a blueprint for implementing the Government - Civil Society initiative. It is necessary that there must be a 6-monthly strategy plan which must be prepared by the state government and also by the central government in this regard.

60. The ICPS programmes are now brought under one umbrella and are as follows:

a) Care, support and rehabilitation services through child-line;

b) Open shelters for children in need in urban/semi-urban areas;

c) Family based non-institutional care through sponsorship, foster care, adoption and aftercare.

61. It is necessary that poor families must be discouraged from placing their children into institutional care as a poverty coping measure. Institutionalized children have to be re-integrated into families. The following portion of the sponsorship scheme is relevant:-

> "3.1 It is submitted that this can be monitored by a representative of the Comptroller and Auditor General/Accountant General of each State as well as the Health Secretary incharge of Child Development in each State."

62. The scheme shall provide support for foster care through the Sponsorship and Foster Care Fund available with the District Child Protection Society. The Child Welfare Committee either by itself or with the help of SAA, shall identify suitable cases and order placement of the child in foster-care. Once the Child Welfare Committee orders the placement of the child in foster care, a copy of the order shall be marked to the DCPS for release of funds and to SAA for follow up and monitoring. The SAA shall periodically report about the progress of the child of the Child Welfare committee and DCPS.

63. In view of the directions suggested, the Child Welfare Committee must directly come under the supervision of the District Judge/Judge of the High Court, it is submitted that the above implementation must also be overseen by a Court-monitored mechanism.

64. There must be an annual report by CARA. The said report must be scrutinized by a Secretary incharge of family and social welfare. On 9th September, 2009, an office memorandum was issued by the Ministry of Home Affairs.

65. The provisions of the Right of Children to Free and Compulsory Education Act, 2009 are material. By virtue of Section 3 of the Act, every child of the age of 6-14 years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education. The Central Government has notified the Act in the Gazette on 27th August, 2009 and the Act has been brought into force with effect from 1st April, 2010. It may also be noted that Chapter 6 of the Act has special provisions for protection of the right of children. The National Commission for Protection of Child Rights has already been constituted. The said Commission now receives a statutory status by virtue of this Act. In view of the performance of the present National Commission for Protection of Child Rights, which has taken pioneering efforts, it is expected that on a close interface between the National Commission

for Protection of Child Rights, the State Governments and the Ministry of Women and Child Development, positive outcomes should actually be worked out.

66. It is, therefore, necessary that a coordinated effort must be made by the three agencies, namely, the Commission, the Ministry and the State Governments. Learned Solicitor General submitted that the recommendations be implemented by the concerned agencies. In the State/Union Territory, the responsibility must be vast either on the Chief Secretary or a Secretary Incharge of Children, Women and Family Welfare. It would be open to the State Government in appropriate cases to nominate a special officer for the said purpose not lower than the rank of a Secretary to the State Government. Each State must issue a circular effectively indicating how the recommendations will be implemented. We accept the submissions of the learned Solicitor General and direct that the said circular shall be issued within 4 weeks from today and a compliance report be filed by the Chief Secretary of each State to this Court.

67. From the above comprehensive submissions made by the learned Solicitor General it is abundantly clear that the Government of India is fully aware about the problems of children working in various places particularly in circuses. It may be pertinent to mention that the right of children to free and compulsory education has been made a fundamental right under Article 21A of the Constitution Now every child of the age of 6 to 14 years has right to have free education in neighbourhood school till elementary education.

68. We have carefully mentioned comprehensive submissions and suggestions given by the learned Solicitor General and others. We plan to deal with the problem of children's exploitation systematically. In this order we are limiting our directions regarding children working in the Indian Circuses. Consequently, we direct:

(i) In order to implement the fundamental right of the children under Article 21A it is imperative that the Central Government must issue suitable notifications prohibiting the employment of children in circuses within two months from today.

(ii) The respondents are directed to conduct simultaneous raids in all the circuses to liberate the children and check the violation of fundamental rights of the children. The rescued children be kept in the Care and Protective Homes till they attain the age of 18 years.

(iii) The respondents are also directed to talk to the parents of the children and in case they are willing to take their children back to their homes, they may be directed to do so after proper verification.

(iv) The respondents are directed to frame proper scheme of rehabilitation of rescued children from circuses.

(v) We direct the Secretary of Ministry of Human Resources Development, Department of Women and Child Development to file a comprehensive affidavit of compliance within ten weeks.

69. This petition is directed to be listed for further directions on 19th July, 2011.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Criminal Appeal No. 1430 OF 2007
Date of Decision : 15.3.2011

(BEFORE MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ)

COMMR.OF POLICE AND ORS
Versus
SANDEEP KUMAR

O R D E R

1. Heard learned counsel for the parties.This Appeal has been filed against the impugned judgment of the High Court of Delhi dated 31.07.2006. The facts have been given in the impugned judgment and hence we are not repeating the same here, except wherever necessary.

2. The respondent herein-Sandeep Kumar applied for the post of Head Constable (Ministerial) in 1999. In the application form it was printed

> "12(a) Have you ever been arrested, prosecuted kept under detention or bound down/fined, convicted by a court of law for any offence debarred/disqualified by any Public Service Commission from appearing at its examination/selection or debarred from any Examination, rusticated by any university or any other education authority/Institution."

Against that column the respondent wrote : 'No'.

3. It is alleged that this is a false statement made by the respondent because he and some of his family members were involved in a criminal case being FIR 362 under Section 325/34 IPC. This case was admittedly compromised on 18.01.1998 and the respondent and his family members were acquitted on 18.01.1998.

4. In response to the advertisement issued in January 1999 for filing up of certain posts of Head Constables (Ministerial), the respondent applied on 24.02.1999 but did not mention in his application form that he was involved in the aforesaid criminal case. The respondent qualified in all the tests for selection to the post of temporary Head Constable (Ministerial). On 03.04.2001 he filled the attestation form wherein for the first time he disclosed that he had been involved in a criminal case with his tenant which, later on, had been compromised in 1998 and he had been acquitted.

5. On 02.08.2001 a show cause notice was issued to him asking the respondent to show cause why his candidature for the post should not be cancelled because he had concealed the fact of his involvement in the aforesaid criminal case and had made a wrong statement in his application form. The respondent submitted his reply on 17.08.2001 and an additional reply but the authorities were not satisfied with the same and on 29.05.2003 cancelled his candidature.

6. The respondent filed a petition before the Central Administrative Tribunal which was dismissed on 13.02.2004. Against that order the respondent filed a writ petition which has been allowed by the Delhi High Court and hence this appeal.

7. The learned counsel for the appellants has submitted that the respondent should have disclosed the fact of his involvement in the criminal case even if he had later been acquitted. Hence, it was submitted that his candidature was rightly cancelled.

8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

9. In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life. The modern approach should be to reform a person instead of branding him as a criminal all his life.

10. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book 'Due Process of Law'. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. Then came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed :-

> "I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It was necessary for the judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.
>
> But now what is to be done? The law has been vindicated by the sentences which the judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and the singers - more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong - very wrong - in going to the extreme they did. But, that having

been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed." [Vide : Morris Vs. Crown Office, (1970) 2 Q.B. 114]

In our opinion, we should display the same wisdom as displayed by Lord Denning.

11. As already observed above, youth often commit indiscretions, which are often condoned.

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Section 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter. For the reasons above given, this Appeal has no force and it is dismissed. No costs.

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 573 OF 2005

LAKHAN LAL
Versus
STATE OF BIHAR

WITH

CRIMINAL APPEAL NO.138 OF 2011 ARISING OUT OF SPECIAL LEAVE PETITION(CRL) NO.4724 OF 2004
WITH
CRIMINAL MISCELLANEOUS PETITION NO. 1049 OF 2011

PAPPU LAL @ MANOJ KUMAR SRIVASTAVA
Versus
STAE OF BIHAR

JUDGMENT

B. SUDERSHAN REDDY, J.

1. Criminal Miscellaneous Petition in Special Leave Petition (Crl.) No. 4724 of 2004 has been taken up and allowed. The Special Leave Petition shall stand restored to the file. Leave granted.

2. These appeals are directed against the common judgment and order dated 27th April, 2004 of the High Court of Judicature at Patna in Criminal Appeal Nos. 649 of 1987 and 14 of 1988 whereby the High Court dismissed the Criminal Appeals filed by the appellants, confirmed their conviction for the offence punishable under Section 302 read with Section 34 of I.P.C. for committing murder of one Surender Choudhary and accordingly sentenced them to undergo life imprisonment.

3. When the matter came up for hearing, Shri K.V. Vishwanathan, learned senior counsel appearing for the appellant Lakhan Lal, submitted that since at the time of commission of the said offence, the appellant had not completed 18 years of age, he was a `juvenile' within the meaning of Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the 2000 Act") and therefore, the order of sentence passed against the appellant for the offence committed by him under Section 302 read with Section 34, IPC is to be set aside.

4. We find that the conviction of the appellants is based upon the evidence of Malti Devi (PW1), wife, Sumitra Devi (PW2), mother and Lakhan Choudhary (informant) (PW3), father of the deceased Surender Choudhary who were all eyewitnesses to the incident and there is absolutely no reason to disbelieve their evidence. Dr. R.P. Jaiswal (PW5) who conducted the postmortem examination over the dead body of Surender Choudhary found ante mortem injuries on his person and according to him, the cause of death was shock and hemorrhage as a result of the injuries caused by sharp cutting penetrating substance such as churra (dagger). Those injuries were attributed to have been caused by the appellants Pappu Lal who was

armed with a churra and Lakhan Lal who was armed with a country made pistol. These facts need not detain us any further since the conviction of the appellants for the offence punishable under Section 302 read with Section 34, IPC is not in issue.

5. Sofaras Pappu Lal @ Manoj Kumar Srivastava, the appellant in SLP (crl) No. 4724 of 2004 is concerned, the special leave petition preferred by him was dismissed by this Court on 8th April, 2005 with the following order:

> "It is admitted that neither The Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) nor the Juvenile Justice Act, 1986 nor the Bihar Childrens Act would apply as on the date of the occurrence the appellant was 16 years and 10 months old. On merits we see no reason to interfere. Accordingly, the petition shall stand dismissed".

5. In fact, on the date of occurrence, that is to say 9.5.1985,the appellant was aged about 16 years and 5 months as thesame is evident from the certificate dated 6.8.1983 of the Bihar School Education Board wherein the date of birth ofPappu Lal is recorded as 9.12.1968. This certificate is madeavailable for the perusal of the court.

6. The appellant Pappu Lal, relying on the judgment of this Court in Dharambir Vs. State (NCT of Delhi) & Anr. [1] filed an application to recall the order dated 8th April, 2005 passed by this Court dismissing his Special Leave Petition and to restore the special leave petition to its original number. The application is ordered accordingly and that is how we have taken up both the appeals for hearing.

7. There is no dispute whatsoever before us as it is fairly conceded by the learned counsel Shri Manish Kumar, appearing for Shri Gopal Singh, learned counsel for the State of Bihar that both the appellants were minors as on the date of incident i.e., 9th May, 1985. The appellant Lakhan Lal was aged about 16 years 10 months and the other appellant Pappu Lal was aged about 16 years 5 months as on the date of occurrence of the crime. Thus the claim made by the appellants that they were `juveniles' as on the date of occurrence of the crime remains free from any controversy.

8. The question that arises for our consideration is whether or not the appellants who were admittedly not `juvenile' within the meaning of the Juvenile Justice Act, 1986 (for short "the 1986 Act") when the offences were committed but had not completed 18 years of age on that date are entitled for the benefit and protection under the provisions of the 2000 Act? Whether they are entitled to be declared as `juvenile' in relation to the offences committed by them?

9. The issue with regard to the date, relevant for determining the applicability of either of the two Acts is no longer res integra. A Constitution Bench of this Court in Pratap Singh Vs. State of Jharkhand & Anr. [2] in its authoritative pronouncement held that the relevant date for determining the age of a person who claims to be a juvenile/child would be the date on which the offence has been committed and not the date when he is produced before the authority or in the Court.

10. The Act that was in operation as on the date of the incident was Bihar Children's Act. The Act of 1986 came into operation on 3rd December, 1986. The said Act which defines a `juvenile' as

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1. (2010) 5 SCC 344 : (2010) 2 SCC (Cri) 1274
2. (2005) 3 SCC 551 : 2005 SCC (Cri) 742

"a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years" [Section 2(h)].

10. Section 63 of the 1986 Act provides "Repeal and savings" that, if immediately before the date on which the Act comes into force in any State, there is in force in that State, any law corresponding to the Act, that law shall stand repealed on the said date. The said provision further states that any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; and the legal proceedings in respect of any such right, privilege, obligation will continue as if the 1986 Act had not been passed.

11. The fact remains neither in the decision of the Sessions Court dated 9.12.1987 which noted that the appellants were aged about 20 years which could imply that they were under the age of 18 at the time of commission of the offence, nor in the High Court judgment as to the plea of `juvenile' has been discussed.

12. The 2000 Act came into force w.e.f. 1st April, 2001. It is

> "an act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation and for matters connected therewith or incidental thereto."

It will be useful to have a look at the Statement of Objects and Reasons:

"1. A review of the working of the Juvenile Act, 1986 (53 of 1986) would indicate that much greater attention is required to be given to children in conflict with law or those in need of care and protection. The justice system as available for adults is not considered suitable for being applied to a juvenile or the child or any one on their behalf including the police, voluntary organizations, social workers, or parents and guardians, throughout the country. There is also an urgent need for creating adequate infrastructure necessary for the implementation of the proposed legislation with a larger involvement of informal systems specially the family, the voluntary organizations and the community.

2. In this context, the following further proposals have been made--

(i) to lay down the basic principles for administering justice to a juvenile or the child in the Bill;

(ii) to make the juvenile system meant for a juvenile or the child more appreciative of the developmental needs in comparison to criminal justice system as applicable to adults;

(iii) to bring the juvenile law in conformity with the United Convention on the Rights of the Child;

(iv) to prescribe a uniform age of eighteen years for both boys and girls;

(v) to ensure speedy disposal of cases by the authorities envisaged under this Bill regarding juvenile or the child within a time limit of four months;

(vi) to spell out the role of the State as a facilitator rather than doer by involving voluntary organizations and local bodies in the implementation of the proposed legislation;

(vii) to create special juvenile police units with a humane approach through sensitization and training of police personnel;

(viii) to enable increased accessibility to a juvenile or the child by establishing Juvenile Justice Boards and Child Welfare Committees and Homes in each district or group of districts;

(ix) to minimize the stigma and in keeping with the developmental needs of the juvenile or the child, to separate the Bill into two parts--one for juveniles in conflict with law and the other for the juvenile or the child in need of care and protection;

(x) to provide for effective provisions and various alternatives for rehabilitation and social reintegration such as adoption, foster care, sponsorship and aftercare of abandoned, destitute, neglected and delinquent juvenile and child.

3. The Bill seeks to repeal and re-enact the Juvenile Justice Act, 1986 with a view to achieving the above objects."

13. Section 2(k) of the 2000 Act provides that `juvenile' or `child' means a person who has not completed eighteenth year of age and Section 2(l) says that `juvenile in conflict with law' means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.

14. In Pratap Singh (supra), the Constitution Bench taking into consideration the provisions of Sections 3 and 20 and the relevant definitions of `juvenile' in Section 2(k) of the 2000 Act, held that the 2000 Act would be applicable in a pending proceeding in any Court/Authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person concerned has not completed 18 years of age as on 1.4.2001. It is further held

> "....even where an inquiry has been initiated and the juvenile ceases to be a juvenile i.e. crosses the age of 18 years, the inquiry must be continued and orders made in respect of such person as if such person had continued to be a juvenile".

15. In the present case, when the inquiry has been initiated against the appellants herein, they were admittedly `juvenile' even under the provisions of 1986 Act but this issue has been ignored by the trial Court and as well as the appellate Court. There is no dispute whatsoever that both the appellants have crossed the age of 18 years, yet both the appellants, for the purposes of hearing of this appeal continued as if they were to be `juvenile'.

In Dharambir (supra) this Court took the view:

"It is plain from the language of the Explanation to Section 20 that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, etc., the determination of juvenility of a juvenile has to be in terms of Clause (l) of Section 2, even if the juvenile ceases to be a juvenile on or before 1st April, 2001, when the Act of 2000 came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed".

It is further held:

"It is, thus, manifest from a conjoint reading of Sections 2(k), 2(l), 7A, 20 and 49 of the Act of 2000, read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 that all persons who were below the age of eighteen years on the date of commission of the offence even prior to 1st April, 2001 would be treated as juveniles even if the claim of juvenility is raised after they have attained the age of eighteen years on or before the date of the commencement of the Act of 2000 and were undergoing sentences upon being convicted. In the view we have taken, we are fortified by the dictum of this Court in a recent decision in Hari Ram v. State of Rajasthan and Anr. (2009) 13 SCC 211".

16. Thus this is the complete answer for the determination of the issues that have arisen for our consideration.

17. The fact remains that the issue as to whether the appellants were juvenile did not come up for consideration for whatever reason, before the Courts below. The question is whether the same could be considered by this Court at this stage of the proceedings. A somewhat similar situation had arisen in Umesh Singh & Anr. Vs. State of Bihar (2000) 6 SCC (Cri) 1026 wherein this Court relying upon the earlier decisions in Bhola Bhagat Vs. State of Bihar (1997) 8 SCC 720, Gopinath Ghosh Vs. State of W.B. 1984 Supp SCC 228 and Bhoop Ram Vs. State of U.P. (1989) 3 SCC 1 while sustaining the conviction of the appellant therein under all the charges, held that the sentences awarded to them need to be set aside. It was also a case where the appellant therein was aged below 18 years and was a child for the purposes of the Bihar Children Act, 1970 on the date of the occurrence. The relevant paragraph reads as under:

"So far as Arvind Singh, appellant in Crl.A.No.659/99, is concerned, his case stands on a different footing. On the evidence on record, the learned counsel for the appellant, was not in a position to point out any infirmity in the conviction recorded by the trial court as affirmed by the appellate court. The only contention put forward before the court is that the appellant is born on 1.1.67 while the date of the incident is 14.12.1980 and on that date he was hardly 13 years old. We called for report of experts being placed before the court as to the age of the appellant, Arvind Singh. The report made to the court clearly indicates that on the date of the incident he may be 13 years old. This fact is also supported by the school certificate as well as matriculation certificate produced before this court which indicate that his date of birth is 1.1.67. On this basis, the contention put forward before the court is that although the appellant is aged below 18 years and is a child for the purpose of the Bihar Children Act, 1970 on the date of the occurrence, his trial having been conducted along with other accused who are not children is not in accordance with law. However, this contention had not been raised either before the trial court or before the High Court. In such circumstances, this Court in Bhola Bhagat vs. State of Bihar, 1997(8) SCC 720, following the earlier decisions in Gopinath Ghosh vs. State of West Bengal, 1984 Supp.SCC 228 and Bhoop Ram vs. State of U.P. 1989(3) SCC 1 and Pradeep Kumar vs. State of U.P., 1995 Supp(4) SCC 419, while sustaining the conviction of the appellant under all the charges, held that the sentences awarded to them need to be set aside. In view of the exhaustive discussion of the law on the matter in Bhola Bhagat case [supra], we are obviated of the duty to examine the same but following the same, with respect, we pass similar orders in the present case. Conviction of the appellant, Arvind Singh, is confirmed but the sentence imposed upon him stand set aside. He is, therefore, set at liberty, if not required in any other case".

18. The next question for our consideration is as to what order and sentence is to be passed against the appellants for the offences committed by them under Section 302 read with Section 34 of the IPC? Both the appellants have crossed the age of 40 years as at present and therefore it will not be conducive to the environment in the special home and at any rate, they have undergone an actual period of sentence of more than three years the maximum period provided under Section 15 of the 2000 Act. In the circumstances, while sustaining the conviction of the appellants for the offences punishable under Section 302 read with Section 34 of the IPC, the sentences awarded to them are set aside. They are accordingly directed to be released forthwith. This view of ours to set aside the sentence is supported by the decision of this Court in Dharambir (supra).

19. The appellants are directed to be released forthwith if not required in any other case. The appeals are partly allowed accordingly.

20. We place on record our appreciation for the invaluable and dispassionate assistance rendered by Shri Manish Kumar, Advocate, appearing for Shri Gopal Singh, learned counsel for the State of Bihar.

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 30 Of 2011
[Arising Out Of Slp (Criminal) No.808 Of 2010]
Date of Decision : 7.1.2011

(BEFORE AFTAB ALAM AND R. M. LODHA, JJ.)

DAYA NAND
Versus
STATE OF HARYANA

JUDGMENT

Aftab Alam, J.

1. Leave granted.

2. The appellant stands convicted under section 376 read with section 511 of the Penal Code and sentenced to rigorous imprisonment for five years and a fine of Rs.2000/- with the direction that in default of payment of fine he would undergo rigorous imprisonment for a further period of two months.

3. According to the prosecution case, on February 2, 1998, at about 10.00 A.M., the prosecutrix had gone out to the fields for relieving herself. There she was accosted by the appellant. Seeing him take off his pants, the prosecutrix tried to run away but the appellant caught hold of her and pulled her down to the ground. The prosecutrix freed herself by biting on the appellant's hand and ran towards her house. The appellant chased her and again caught hold of her. He pulled her down and grabbed her breasts and attempted to commit rape on her. She resisted him and in their struggle some mustard crops grown in the field were also damaged. On alarm raised by the prosecutrix, her mother and uncle came to the spot and on seeing them, the appellant ran away threatening the prosecutrix that he would kill her in case she went to the police.

4. In support of its case, the prosecution examined the mother of the prosecutrix as PW.1, the prosecutrix herself as PW.2 and two policemen connected with the investigation and a photographer who had taken pictures of the place of occurrence. The Additional Sessions Judge, Narnaul, trying the offence, on a consideration of the evidence adduced before him, found and held that the charge against the appellant was fully proved and by judgment and order dated February 13/15, 1999, passed in Sessions Case No.39 of 6.10.1998, Sessions Trial No.1 of 1.2.1999 convicted and sentenced him, as noted above.

5. Against the judgment and order passed by the trial court, the appellant preferred an appeal (Criminal Appeal No.174-SB of 1999) before the High Court of Punjab and Haryana at Chandigarh. The High Court dismissed the appeal by judgment and order dated October 15, 2009, maintaining the conviction and sentence awarded to the appellant.

6. So far as the question of the appellant's guilt is concerned, that seems to be amply established by the evidence adduced by the prosecution and there is no need to go into any further detail in that regard. What needs to be considered in this appeal is the appellant's plea based on juvenility.

7. From the judgment of the High Court coming under appeal, it appears that the plea of the appellant's juvenility was raised at an early stage of the proceedings and the Principal Magistrate, Juvenile Justice Court, Narnaul, by his order dated March 20, 1998 had found that the appellant was a juvenile. Against the order of the Principal Magistrate, the State went in appeal and the learned Sessions Judge, Narnaul, reversed the findings of the Principal Magistrate, Juvenile Justice Court, observing that the date of birth of the appellant as recorded in the Deaths and Births Register maintained by the Registrar was August 14, 1981 and reckoned on that basis, he was not a juvenile on February 2, 1998, the date of the occurrence. As a consequence, the appellant was tried not before a Juvenile Court, but before the Additional Sessions Judge, Narnaul.

8. The plea of juvenility was again raised in appeal, but the High Court rejected it referring to the finding of the Sessions Judge on the matter and observing as follows:-

> "Learned counsel for the appellant argued that the appellant was a juvenile at the time of occurrence and should have been tried by the Principal Magistrate, Juvenile Justice Court, Narnaul. However, after going through the records of the case, I do not find any merit in this argument. In his order dated 20.3.1998, the Principal Magistrate, Juvenile Justice Court, Narnaul, had held that the appellant was a juvenile. Against the order dated 20.3.1998, the State had gone in appeal and the learned Sessions Judge Narnaul, reversed the findings of the Principal Magistrate, Juvenile Justice Court, Narnaul by observing that the date of birth of the appellant was 14.8.1981 as mentioned in the Deaths and Births Register so maintained by the Registrar. Thus, on 2.2.1998, i.e. the date of occurrence, the appellant was not a juvenile."

9. From the above it is evident that on the date of occurrence the age of the appellant was 16 years 5 months and 19 days.

10. In the Juvenile Justice Act, 1986, a `juvenile' was defined under section 2(h) to mean a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. On the basis of the finding of the Sessions Judge that on the date of occurrence, the appellant was over 16 years of age, he did not come within the definition of `juvenile' under the 1986 Act.

11. The Juvenile Justice Act, 1986 was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000 that came into force on April 1, 2001. The 2000 Act defined `juvenile or child' in section 2(k) to mean a person who has not completed eighteenth years of age. Section 69 of the 2000 Act, repealed the Juvenile Justice Act, 1986. The 2000 Act, in section 20 also contained a provision in regard to cases that were pending when it came into force and in which the accused at the time of commission of offence was below 18 years of age but above sixteen years of age (and hence, not a juvenile under the 1986 Act) and consequently who was being tried not before a juvenile court but a regular court. Section 20 (prior to its amendment in 2006) provided as follows:

> "20. Special provision in respect of pending cases. - Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to

the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence."

12. The above quoted provision came up for consideration before a Constitution Bench of this Court in Pratap Singh vs. State of Jharkhand and Anr., (2005) 3 SCC 551. In Pratap Singh, this Court held that section 20 of the 2000 Act would apply only to cases in which the accused was below 18 years of age on April 1, 2001, the date on which the 2000 Act came into force but it would have no application in case the accused had crossed the age of 18 years on the date of coming into force of the 2000 Act.

13. Applying the ratio of the Constitution Bench decision, the appellant would not be entitled to the protections and benefits of the provisions of the 2000 Act, since he was over 18 years of age on April 1, 2001, when the 2000 Act came into force. But the matter did not stop at that stage.After this Court's decision in Pratap Singh (and presumably as a result of that decision) a number of amendments of a very basic nature were introduced in the 2000 Act w.e.f. August 22, 2006 by Act 33 of 2006. Some of the provisions incorporated in the 2000 Act by the 2006 amendment insofar as relevant for the present are reproduced below:

"1(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under any such law.

2(1) "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence;

7(A) Procedure to be followed when claim of juvenility is raised before any court - (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a Court shall be deemed to have no effect.

20. Special provision in respect of pending cases. - Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and

instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

[Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation. - In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (1) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.]

64. Juvenile in conflict with law undergoing sentence at commencement of this Act. - In any area in which this Act is brought into force, the State Government shall direct that a juvenile in conflict with law who is undergoing any sentence of imprisonment at the commencement of this Act, shall, in lieu of undergoing such sentence, be sent to a special home or be kept in fit institution in such manner as the State Government thinks fit for the remainder of the period of the sentence; and the provisions of this Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective care under sub-section (2)of section 16 of this Act:

Provided that the State Government or as the case may be the Board, may, for any dequate and special reason to be recorded in writing, review the case of a juvenile in conflict with law undergoing sentence of imprisonment, who has ceased to be so on or before the commencement of this Act, and pass appropriate order in the interest of such juvenile.

Explanation. - In all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment at any stage on the date of commencement of this Act, his case ncluding the issue of juvenility, shall be deemed to be decided in terms of clause (1) of Section 2 and other provisions contained in this Act and the rules made thereunder, irrespective of the fact that he ceases to be a juvenile on or before such date and accordingly he shall be sent to the special home or a fit institution, as the case may be, for the remainder of the period of the sentence but such sentence shall not in any case exceed the maximum period provided in section 15 of this Act."

14. The effect of the amendments in the 2000 Act were considered by this Court in Hari Ram v. State of Rajasthan and Another reported in (2009) 13 SCC 211. In Hari Ram this Court held that the Constitution Bench decision in Pratap Singh's case was no longer relevant since it was rendered under the unamended Act. In Hari Ram this Court held and observed as follows:

> "59. The law as now crystallised on a conjoint reading of Sections 2(k), 2(1), 7-A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even

prior to 1-4-2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted.

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67. Section 7A of the Juvenile Justice Act, 2000, made provision for the claim of juvenility to be raised before any Court at any stage, as has been done in this case, and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed there under, even if the juvenile had ceased to be so on or before the date of commencement of the Act.

68. Accordingly, a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act.

69. The said position was re-emphasised by virtue of the amendments introduced in Section 20 of the 2000 Act, whereby the Proviso and Explanation were added to Section 20, which made it even more explicit that in all pending cases, including trial, revision, appeal and any other criminal proceedings in respect of a juvenile in conflict with law, the determination of juvenility of such a juvenile would be in terms of Clause (l) of

Section 2 of the 2000 Act, and the provisions of the Act would apply as if the said provisions had been in force when the alleged offence was committed.

70. In the instant case, there is no controversy that the appellant was about sixteen years of age on the date of commission of the alleged offence and had not completed eighteen years of age. In view of Sections 2(k), 2(l) and 7A read with Section 20 of the said Act, the provisions thereof would apply to the appellant's case and on the date of the alleged incident it has to be held that he was a juvenile."

15. Later on, the decision in Hari Ram (supra) was followed by this Court in Dharambir v. State (NCT of Delhi) and Another, (2010) 5 SCC 344 and also in Mohan Mali & Another v. State of M.P., AIR 2010 SC 1790.

16. In view of the Juvenile Justice Act as it stands after the amendments introduced into it and following the decision in Hari Ram and the later decisions the appellant can not be kept in prison to undergo the sentence imposed by the Additional Sessions Judge and affirmed by the High Court. The sentence imposed against the appellant is set aside and he is directed to be released from prison. He is further directed to be produced before the Juvenile Justice Board, Narnaul, for passing appropriate orders inaccordance with the provisions of the Juvenile Justice Act.

17. The appeal is, thus, disposed of with the aforesaid observations and directions.

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IN THE SUPREME COURT OF INDIA

SLP (Crl.) No. 8628 of 2009
Date of Decision: 11.08.2010

(BEFORE ALTAMAS KABIR AND DR. M.K. SHARMA, JJ.)

VIKAS CHAUDHARY
Versus
STATE OF NCT OF DELHI & ANR

JUDGEMENT

ALTAMAS KABIR, J.

1. Certain issues of legal importance, which call for examination, have surfaced in this otherwise sordid tale.

2. On 18th January, 2003, one Shri Vimal Chadha, resident of C-2/46, Ashok Vihar, Phase II, Delhi, filed a Missing Persons Report with the Ashok Vihar Police Station, Delhi, stating that his son, Parakh Chadha, had left home and had not returned. The next day he lodged F.I.R. No.34/03 at the Ashok Vihar Police Station which was initially registered under Section 364A of the Indian Penal Code on the allegation that a call had been received from an unknown caller demanding Rs.35 lakhs as ransom for the release of his son. The body of Parakh Chadha, who was between the age of 17 and 20 years, was recovered on the same day. Accordingly, on 4th May, 2003 Sections 302/201/120-B, read with Section 34 I.P.C., were added in the First Information Report.

3. It may, however, be noted that, although, the body of the victim was recovered on 19th January, 2003, the fact that the body was that of the victim Parakh Chadha was not known to the complainant or his father. The complainant and his father continued to receive ransom calls for the release of his son even, thereafter, on 20th January, 2003, 1st February, 2003, 10th March, 2003 and 11th March, 2003. In fact, the said phone calls made to the complainant were also intercepted by the police and the same were also recorded by the complainant. Subsequently, the voice of the callers was identified by the Central Forensic Science Laboratory Reports as being those of the Petitioner, Vikas Choudhary, and the co-accused, Vikas Sidhu.

   On 4th May, 2003, the Petitioner was arrested and on a personal search being conducted, a seizure memo of the recoveries made from his house was prepared and the disclosure statement made by him was recorded. From the seizure memo it is seen that the wrist watch worn by the deceased Parakh Chadha was recovered from the Petitioner while the gold chain which had been worn by the deceased was recovered from the co-accused Vikas Sidhu. It appears from the disclosure statement made by the different accused that after killing the victim his body was thrown in a drain and was set on fire after sprinkling petrol thereupon. It is on 9th May, 2003, after the accused had been arrested that they disclosed the place where the victim's body had been burnt and from where some burnt clothing and shoes of the deceased had been recovered and kept in Malkhana of P.S. Kotwali City, Ghaziabad. The complainant identified the clothes and shoes to be that of his son and subsequently also identified the gold chain and the wrist watch which had been worn by his son on the day of his disappearance and had been recovered from the possession of the Petitioner and the co-accused, Vikas Sidhu, as belonging to his son.

4. On completion of investigation, a charge-sheet was filed against the Petitioner and Vikas Sidhu under Sections 364A/302/201/34/120-B, while the names of Joginder, Yogesh Rawat and Anil Pratap were mentioned in Column 3 of the charge-sheet as accused.

5. Recording of evidence of the prosecution witnesses was commenced on 3rd May, 2005, and on 31st May, 2005, for the first time, the Petitioner herein moved an application before the learned Single Judge for transfer of his case to the Juvenile Justice Board on the ground that he was a juvenile at the time of commission of the offence. A matriculation certificate produced on behalf of the Petitioner showed his date of birth to be 20th December, 1985.

6. The aforesaid application filed by the Petitioner was dismissed by the Additional Sessions Judge on 24th August, 2005, on the ground that the Ossification Test conducted on the Petitioner showed that he was about 19 years and 5 months of age when the offence was committed.

7. The Petitioner thereupon filed Criminal Revision P. No.751 of 2005 before the Delhi High Court, which, by its order dated 31st August, 2006, remanded the matter to the Additional Sessions Judge to consider the matter afresh. Upon remand, the learned Sessions Judge by his order dated 20th January, 2007, held that the Petitioner was not a juvenile on the date of the offence. The Court took note of the fact that neither any birth certificate nor any other certificate was produced on behalf of the Petitioner in support of the date of birth which appeared from the School Leaving Certificate.

8. Aggrieved by the judgment of the Court of Sessions, the Petitioner once again moved the Delhi High Court in Criminal Revision (P) No.156/07, which was allowed by the Delhi High Court on 11th September, 2007. The Delhi High Court directed the trial of the Petitioner to be separated from the case of the other accused. On 18th September, 2007, the trial of the Petitioner was separated and he was directed to appear before the Juvenile Justice Board on 10th October, 2007, when he was granted bail by the said Board. The trial against the other accused continued before the learned Additional Sessions Judge and only 4 witnesses could be examined since on 2nd November, 2007, this Court granted stay of the trial court proceedings. By judgment and order dated 27th May, 2008, passed in Criminal Appeal No.966/08, this Court set aside the order of the High Court dated 11th September, 2007, allowing the revisional application and remanded the matter to the trial court for fresh consideration in the light of Section 472 of the Code of Criminal Procedure (`Cr.P.C.' for short), which provides for continuing offences and in case of a continuing offence, a fresh period of limitation begins to run at every moment of time during which the offence continues. While remanding the matter to the trial court, this Court observed in paragraph 14 of its judgment as follows:

> "14. It may be true that the prosecution proceeded on the basis that the entire offence had taken place on 18.1.2003. We have, however, been taken through the charge-sheet, from a perusal whereof it appears that the appellant had been getting calls for payment of ransom despite the fact that the deceased had, in the meanwhile, been killed. It is one thing to say that a missing report has been filed on a particular date but it is another thing to say that in a case of this nature when the actual offence(s) had taken place would remain uncertain. Giving calls for payment of ransom is an offence. In case of murder coupled with abduction in a given case it may be considered to be a continuous offence."

9. The learned Additional Sessions Judge, by his order dated 29th July, 2008, was of the view that the proper authority to consider the matter on remand, was the Court of Sessions and not the Juvenile Justice Board and consequently, it ordered for the production of the Petitioner before it. On 6th October, 2008, the Petitioner, who was on bail, surrendered before the Additional Sessions Judge and was taken into custody and is in custody since then. By its judgment dated 2nd January, 2009, the Additional Sessions Judge held that the offence of murder coupled with abduction could be considered to be a continuing offence and in such circumstances, the dates when the ransom calls were made were significant. It was held that the last date on which the ransom call had been made, namely, 11th March, 2003, would have to be taken as the relevant date from which the age of the petitioner was to be counted to determine as to whether he was a minor within the meaning of the Juvenile Justice (Care and Protection of Children) Act, 2000, hereinafter referred to as "the Juvenile Justice Act".

10. Aggrieved by the aforesaid order of the learned Additional Sessions Judge, the Petitioner filed Criminal Revision P. No.61 of 2009 before the Delhi High Court along with an application for grant of bail under section 439 Cr.P.C. The High Court, by its judgment dated 13th March, 2009, dismissed the Revision Petition and the accompanying applications upon holding that the making of ransom calls on 19th January, 2003, 10th March, 2003 and 11th March, 2003, even after the murder of the victim, clearly constitutes an offence under Section 364A. It also held that if there was any error in framing of the charges, the same could be cured under Section 464 Cr.P.C. The trial Court, therefore, amended the charges on 16th April, 2009. The 4 witnesses who had been examined earlier in the absence of the Petitioner, were recalled on 5th May, 2009, and their statements were recorded in the presence of the Petitioner accused.

11. The instant Special Leave Petition has been filed against the said judgment and order dated 13th March, 2009 of the Delhi High Court in Crl.R.P.No. 61/09.

12. The main thrust of the arguments advanced on behalf of the Petitioner was that no case had been made out against the Petitioner on the basis of Missing Report made by the complainant on 18th January, 2003. A point of equal importance was also urged by Mr. K.B. Sinha, learned Senior Advocate, appearing for the Petitioner, to the effect that a ransom call could not have been made in respect of a dead person. He urged that a ransom call could certainly follow after an abduction, but once the victim of the abduction had been eliminated, the very question of an offence under Section 364A I.P.C. relating to ransom calls was no longer maintainable and at best, the offence could be said to have been committed under Section 364 I.P.C. On reference to the various definitions of the expression "demand of ransom", a further submission was made that in all cases the expression had been used in respect of a living person since the object of the ransom was release of the abducted person after payment of such ransom. Reliance was placed on the decision of this Court in State of Bihar vs. Deokaran Nenshi & Anr. [AIR 1973 SC 908], in support of the contention that once the very object of an offence under Section 364A I.P.C. ceased to exist, it could not be contended that an offence under Section 364A continued to survive. In the said decision, it was observed that continuing offence is distinguishable from an offence which is committed once and for all. It is one of those offences which arise out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, an offence is committed. Accordingly, the offence as contemplated under Section 364A I.P.C. came to an end upon the death of the victim and could not be said to be a continuing offence. It was urged that in view of the amendments effected to the definition of

"juvenile" in Section 2(k) of the Juvenile Justice Act, which has been clearly considered and explained in Hari Ram vs. State of Uttar Pradesh [(2009) 13 SCC 211], the petitioner was entitled to the benefit of Sections 12 and 15 thereof.

13. On behalf of the State it was submitted by Mr. Mohan Jain, learned Additional Solicitor General, that what would be the date of an offence in a given case has to be decided in regard to the fact situation thereof. He urged that Section 472 Cr.P.C. contemplates a continuing offence and a fresh period of limitation is to run at every moment of time during which the offence continues and, although, an argument had been advanced that the entire offence had been committed on 18th January, 2003, there is no escape from the fact that it has also been established on evidence that the father of the deceased continued to receive calls for payment of ransom, despite the fact that the victim had been killed in the meantime. Mr. Jain urged that not only was the offence extremely grave, but it was further compounded by the conduct of the accused, in continuing to make ransom calls even after he was alleged to have killed the victim.

14. Mr. Jain submitted that this is one of those rare cases where the offence initially committed must be held to be continuing on account of the nature of the offence and the manner in which it was committed. The learned Additional Solicitor General urged that no interference was, therefore, called for with the judgment of the High Court and the Special Leave Petition was liable to be dismissed.

15. Mr. Sushil Kumar, learned Senior Advocate, appearing for the complainant Mr. Vimal Chadha, submitted that the courts below had rightly held that the making of ransom calls after the death of the victim has to be treated as a part of the same transaction, since one was consequentially dependent on the other. He submitted that once ransom calls were made even after the death of the victim, the offence became a continuous offence and the age of the petitioner would have to be computed from the date on which part of the offence was committed. Accordingly, while the Petitioner was found to have participated in the abduction of the deceased, which resulted in the ransom calls and the death of the victim was very much a part of the initial abduction and was, therefore, a continuing offence which attracted the provisions of Section 472 Cr.P.C, which would have to be read with the principal offence allegedly committed under Section 364A I.P.C.

16. The question which, therefore, calls for an answer is whether the High Court was right in holding that the making of ransom calls, even after the death of the victim was a continuing offence so as to attract the provisions of Section 364A I.P.C.

17. There is little doubt that the main object of the offence committed by the accused was to extort money from the parents of the deceased victim by way of ransom even after the death of the victim, as will be evident from the subsequent phone calls made right upto 11th March, 2003, asking for ransom. The offence under Section 364A did not come to an end only on account of the death of the victim since ransom calls had been made even though the victim had been killed. It is no doubt true that if the initial date of abduction, namely, 18th January, 2003, is taken to be the date on which the offence under Section 364A had been committed, as an isolated event, the Petitioner would have been a minor within the meaning of the Juvenile Justice Act, 2000.

However, if 11th March, 2003, being the date on which the last ransom call was made, is taken as the date on which the aforesaid offence was committed, then the Petitioner would have ceased to be a minor and the above-mentioned Act would not apply to him.

18. Section 472 Cr.P.C., supports the submissions made both by Mr. Mohan Jain, learned Additional Solicitor General and Mr. Sushil Kumar. We are unable to accept Mr. Sinha's submission that the offence under Section 364A I.P.C. stood abrogated upon the death of the victim. On the other hand, the continuation of ransom calls being made, even after the death of the victim, converts the offence into a continuing offence within the meaning of Section 472 Cr.P.C. The provisions of Section 364A I.P.C. which are extracted hereinbelow, will make the position clear :

"364A. Kidnapping for ransom, etc.- Whoever kidnaps or abducts any person or keeps a person in detention of the such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organiza- tion or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

19. Section 364A I.P.C. states that apart from keeping a person in detention after kidnapping or abducting him or threatening to cause death or hurt to such person or by his conduct giving rise to a reasonable apprehension that such person may be put to death or hurt, and also that if the person involved in the kidnapping or abduction, actually causes hurt or death to such person for a ransom, he shall be punishable with death or imprisonment for life and shall also be liable to fine.

20. Section 364A, therefore, contemplates even the death of the abducted person for the purpose of demanding ransom. Section 472 Cr.P.C., which defines continuing offence, reads as follows:

"472. Continuing offence.-In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues."

21. If Section 364A I.P.C. and Section 472 Cr.P.C. are to be read together, it has to be held that even after the death of the victim every time a ransom call was made a fresh period of limitation commenced. Accordingly, it would be the date on which the last ransom call was made, i.e., 11th March, 2003, which has to be taken to be the date of commission of the offence and, accordingly, the Juvenile Justice Act was no longer applicable to the Petitioner, who had attained the age of 18 years by then.

22. We, therefore, see no reason to interfere with the order of the High Court impugned in this Special Leave Petition, which is accordingly dismissed.

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CASE LAWS

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELATE JURISDICTION

Crl. MP No. 6426 of 2010
in Criminal Appeal No. 1305 of 2009
Date of Decision: 28.4.2010

(BEFORE ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.)

MOHAN MALI & ANR.
Versus
STATE OF M.P

JUDGEMENT

ALTAMAS KABIR, J

1. This Appeal, which arises out of Special Leave Petition (Crl.) No.6276 of 2007, is directed against the judgment and order of the Indore Bench of the Madhya Pradesh High Court in Criminal Appeal No.898 of 1997, challenging the judgment and order of conviction passed by the Addl. Sessions Judge, Dhar, in Sessions Trial No.366 of 1994. By virtue of the said judgment, the Appellants, along with two other co-accused, were convicted under Sections 302/34, 326/34 and 324/34 of Indian Penal Code and sentenced to life imprisonment along with fine of Rs.5,000/- for the offence under Section 302/34 IPC, three years' rigorous imprisonment along with fine of Rs.500/- for the offence under Section 326/34 IPC and one year's rigorous imprisonment along with fine of Rs.500/- for the offence under Section 324/34 IPC along with further sentence in default of payment of fine. It may be mentioned that the Special Leave Petition filed by one of the other co-accused, Bhagwan, being S.L.P.(Crl.) No.540 of 2008, was rejected on 16th April, 2008, when notice was issued on S.L.P.(Crl.) No.6276 of 2007.

2. On 17th July, 2009, when the Special Leave Petition came up for admission, leave was granted and the hearing of the appeal was expedited. However, the Appellants' prayer for bail was rejected at that stage. When the matter was being heard for grant of leave, a plea of juvenility was made on behalf of Appellant No.2, Dhanna Lal, and this Court observed that in the event Dhanna Lal was able to provide proof of his claim that he was a juvenile on the date of the incident, he would be at liberty to apply afresh for grant of bail with such supporting evidence. Pursuant thereto, a fresh bail application was filed on behalf of Dhanna Lal on 27th January, 2010, annexing a copy of the Birth Certificate of Dhanna Lal issued by the Chief Registrar (Birth and Death), Municipal Corporation, Dhar, under Section 12 of the Birth and Death Registration Act, 1969, maintained by the Corporation. From the said certificate it appears that Dhanna Lal's date of birth was recorded as 12th November, 1976 and was registered on 17th November, 1976, making it a document which was contemporaneous with his birth. Upon due verification, it was confirmed on behalf of the State of Madhya Pradesh that the Appellant No.2, Dhanna Lal, was a juvenile on the date of commission of the offence. Appearing for the State, Mr. Pramod Swarup, Senior Advocate, very fairly submitted that Dhanna Lal was, therefore, entitled to the benefit of Section 7A read with Section 64 of the Juvenile Justice (Care and Protection of Children) Act, 2000, hereinafter referred to as `the 2000 Act'.

3. Mr. S.K. Dubey, learned senior counsel appearing for the Appellants, submitted that the Appellant No.2, Dhanna Lal, although a minor, within the meaning of the 2000 Act, had not only been tried along with other co-accused, who were not juveniles, in violation of Section 18 of the 2000 Act, but had also undergone 9 years of imprisonment, despite a maximum sentence of three years which could have been imposed on him under Section 15 of the 2000 Act.

4. Among other questions, this question also fell for determination of this Court in the case of Hari Ram vs. State of Rajasthan & Anr. [(2009) 13 SCC 211]. This Court while considering the various provisions of the 2000 Act, as amended in 2006, and, in particular, Section 7A which was introduced in the parent Act by the amending Act of 2006, held that Section 7A would have to be read in tandem with Section 20 of the 2000 Act and Rule 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, hereinafter referred to as `the 2007 Rules', which deal with disposed of cases of juveniles in conflict with law. Since all the three provisions are of relevance to this Appeal, the same are being separately dealt with hereinbelow.

5. Section 7A of the 2000 Act, which provides the procedure to be followed when claim of juvenility is raised before any Court, reads as follows :-

"7A. Procedure to be followed when claim of juvenility is raised before any court.- (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim 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 claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under Sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect."

What is of relevance is the fact that Section 7A of the 2000 Act allows a claim of juvenility to be raised before any Court at any stage even after final disposal of the case and speaks of the procedure which the Court is required to adopt when such claim of juvenility is raised.

6. Section 20 of the 2000 Act specially provides for the procedure to be followed in pending cases and reads as follows :-

> "20. Special provision in respect of pending cases.- Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence.

[Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation.- In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of Clause (1) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.]"

What is to be noticed in the aforesaid Section is that it makes provision for continuance of trials which had been commenced prior to the coming into operation of the 2000 Act. While providing that the trial could continue before the Court, if it was found that the juvenile had committed an offence, the Court would be required to record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Juvenile Justice Board, which could then pass orders in respect of that juvenile in accordance with the provisions of the 2000 Act.

7. Section 64 of the 2000 Act deals with a situation where a juvenile in conflict with law is already undergoing sentence at the commencement of the Act, and the same reads as follows:-

"64. Juvenile in conflict with law undergoing sentence at commencement of this Act.-In any area in which this Act is brought into force, the State Government shall direct that a juvenile in conflict with law who is undergoing any sentence of imprisonment at the commencement of this Act, shall, in lieu of undergoing such sentence, be sent to a special home or be kept in fit institution in such manner as the State Government thinks fit for the remainder of the period of the sentence; and the provisions of this Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective care under sub-section (2) of section 16 of this Act."

The said provision has to be read along with Sections 7A and 20 of the 2000 Act, together with Rule 98 of the 2007 Rules, which deals with disposed of cases of juveniles in conflict with law, and provides as follows:

"98. Disposed of cases of juveniles in conflict with law. - The State Government or as the case may be the Board may, either suo motu or on an application made for the purpose, review the case of a person or a juvenile in conflict with law, determine his juvenility in terms of the provisions contained in the Act and Rule 12 of these rules and pass an appropriate order in the interest of the juvenile in conflict with law under Section 64 of the Act, for the immediate release of the juvenile in conflict with law whose period of detention or imprisonment has exceeded the maximum period provided in Section 15 of the said Act."

8. In the facts of this case, we are faced with a situation where the juvenile, Dhanna Lal, had already been tried along with adults and had been convicted under Sections 302/34, 326/34 and 324/34 IPC and was sentenced to life imprisonment, out of which he has already undergone about 9 years of the sentence. Rule 98 of the 2007 Rules, in our view, squarely applies to Appellant No.2 Dhanna Lal's case. His case is to be considered not only for grant of bail, but also for release in terms of the said Rule, since he has completed more than the maximum period of sentence as provided under Section 15 of the 2000 Act.

9. The legal position has been clearly explained in Hari Ram's case (supra) and does not, therefore, require any further elucidation in this case.

10. Having regard to the fact that the Appellant No.2, Dhanna Lal, was a minor on the date of commission of the offence, and has already undergone more than the maximum sentence provided under Section 15 of the 2000 Act, by applying the provisions of Rule 98 of the 2007 Rules read with Sections 15 and 64 of the 2000 Act, we allow the appeal as far as he is concerned and direct that he be released forthwith. The bail application filed on his behalf is also disposed of, accordingly.

11. Let the appeal, as far as the other accused, Mohan Mali, is concerned, be listed for hearing separately.

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IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 281 of 2010
Date of Decision: 10.02.2010

(BEFORE ALTAMAS KABIR AND SWANTANTER KUMAR, JJ.)

RAJU & ANR.
Versus
STATE OF HARYANA

JUDGEMENT

ALTAMAS KABIR, J.

1. Leave granted.

2. The Appellants herein, Raju and Mangli, along with Anil alias Balli and Sucha Singh, were sent up for trial for allegedly having committed an offence punishable under Section 302 read with Section 34 Indian Penal Code. Accused Sucha Singh was found to be a juvenile and his case was separated for separate trial under the Juvenile Justice Act, 1986.

   The Appellants herein were convicted under Section 302 read with Section 34 IPC and were sentenced to imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for a further period of three years. Anil alias Balli was convicted under Section 302 and was sentenced to imprisonment for life and topay a fine of Rs.5,000/-, in default to undergo further rigorous imprisonment for three years. He was also convicted under Section 25 of the Arms Act and was sentenced to undergo rigorous imprisonment for one year. The sentences, as far as Anil alias Balli is concerned, were directed to run concurrently.

3. Of the three accused, Accused Nos.1 and 2, Raju and Mangli, have challenged their conviction under Section 302 read with Section 34 IPC.

4. Appearing on their behalf, Mr. Rishi Malhotra, learned Advocate, submitted that the role attributed to the Appellants in the alleged incident did not attract the provisions of Section 302 Indian Penal Code, hereinafter referred to as "IPC", since there is nothing on record to either prove or indicate that they had any common intention to commit the murder. Mr. Malhtora submitted that the allegation against the accused persons is that the deceased, Ishwar, the brother of the complainant, Chandu Lal (PW.5), was returning to his house on 31st March, 1994, at about 10.30 p.m. after seeing a motion picture. When he reached near the gate of Government Livestock Farm, Hissar, the Appellants herein, along with Anil alias Balli and Sucha Singh, attacked him with fists and blows. In order to save himself, Ishwar started running towards his house, but he was chased and surrounded by the accused persons near the house of one Om Prakash. According to the complainant, he was present near the house of Om Prakash when the occurrence took place. He has stated that he witnessed the incident as indicated hereinabove and that at the time of the incident Anil alias Balli and Sucha Singh were armed with knives while the Appellants herein were empty-handed. In the First Information Report lodged by him, he has stated that after chasing and catching Ishwar, the Appellants herein, Raju and Mangli caught hold of Ishwar while Anil alias Balli inflicted a knife blow on the left anterior side of the victim's chest. Ishwar fell down on the ground and then

accused Sucha Singh inflicted another knife blow on the right posterior side of his waist. On an alarm being raised by Chandu Lal, the accused persons ran away from the spot. An attempt was made to save Ishwar by taking him to hospital, but he died on the way.

5. Thereafter, the body of the victim was sent for post-mortem examination which was conducted by Dr. (Mrs.) K.K. Nawal, Senior Medical Officer, General Hospital, Hissar (PW.8) along with Dr. Pawan Jain, on 1st April, 1994, at 9.30 A.M. The post-mortem examination revealed the injuries as mentioned by PW.8 and in the opinion of the doctor, the cause of death was shock and haemorrhage, as a result of the multiple injuries, which were ante-mortem in nature and sufficient to cause death in the due course of time.

6. Mr. Malhotra submitted that from the aforesaid evidence, it would be evident that there was no prior meeting of minds between the Appellants herein and Anil alias Balli and Sucha Singh, to kill Ishwar. Mr. Malhotra submitted that there is nothing on record to indicate that the Appellants herein had any knowledge that Anil alias Balli and Sucha Singh were carrying knives for commission of the murder. He urged that the only intention in chasing the deceased and holding him was to teach him a lesson following the altercation that had taken place between the deceased and the accused persons just prior to the incident, where the deceased was stabbed. Mr. Malhotra submitted that the altercation as well as the subsequent incident was the result of an earlier incident which had taken place on 31st March, 1994, in connection with the `Bana' ceremony being conducted in connection with the marriage of the son of one Parwati. At the said ceremony, the women folk were singing songs near the Government Livestock Farm, Hissar, where deceased Ishwar came in a drunken condition and misbehaved with them. Mr. Malhotra submitted that the entire incident was triggered off on account of the said incident, where the deceased misbehaved with the ladies who were involved in marriage festivities which ultimately led to the altercation and stabbing of the deceased by the Accused Nos.3 and 4. Mr. Malhotra submitted that there was no prior motive or common intention to commit the murder of the deceased and the Appellants had, therefore, been wrongly roped in in respect of an offence under Section 302 with the aid of Section 34 IPC.

7. As far as the Appellant No.1, Raju, is concerned, Mr. Malhotra submitted that on the date of the incident (31.3.1994), he was a juvenile and as per his mark-sheet, wherein his date of birth was recorded as 1977, he was less than 17 years of age on the date of the incident. Mr. Malhotra submitted that having regard to the recent decision of this Court in the case of Hari Ram vs. State of Rajasthan & Anr. [(2009) 6 SCALE 695], the Appellant No.1 must be held to have been a minor on the date of the incident and the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, would apply in his case. Mr. Malhotra, therefore, contended that the Appellant No.1 would have to be dealt with under the provisions of the said Act in keeping with the decision in the aforesaid case.

8. Appearing for the State of Haryana, Mr. Kamal Mohan Gupta, learned counsel, did not seriously dispute the submissions made by Mr. Malhotra as far as the Appellant No.1, Raju, was concerned having satisfied himself regarding the juvenility of the said Appellant upon due inquiry. However, as far as the second appellant, Mangli, is concerned, Mr. Gupta submitted that he had been rightly convicted under Section 302 with the aid of Section 34 IPC. Mr. Gupta submitted that the role attributed to the Appellant No.2 was not as innocent as had been attempted to be made out by Mr. Malhotra. On the other hand, there was a background of the incident involving the misbehaviour of the said Appellant with the women folk at the marriage ceremony of the son of Parwati which triggered the incident. It was submitted that

the subsequent incident culminating in Ishwar's death was not an isolated incident but a fall out of the earlier incident. He also urged that the common motive to kill the victim would also be evident by the fact that after Ishwar was initially assaulted and tried to run away, he was chased by all the four accused, including the Appellant No.2, who along with the Appellant No.1, held him while Anil @ Balli caused stab injuries with the knife, which ultimately resulted in his death. Mr. Gupta submitted that the conviction of the Appellant No.2 did not warrant any interference and the appeal as far as he was concerned, was liable to be dismissed.

9. We have carefully considered the submissions made on behalf of the respective parties and the evidence adduced on behalf of the prosecution and have arrived at the conclusion that the conviction of both the Appellants under Section 302 IPC with the aid of Section 34 is not warranted. As has been pointed out, the ultimate assault on Ishwar causing his death was the culmination of an incident which had occurred earlier during the marriage ceremony of the son of Parwati where the women folk, who were participating in the festivities, were teased by the deceased in an inebriated state. The resultant fall-out was the immediate response to the said incident with the intention of preserving the honour and dignity of the said women. It is on account of the said incident that subsequently the accused persons assaulted Ishwar and when he tried to run away, they chased him and on being caught, he was fatally injured by Anil @ Balli and Sucha Singh with knives. Although, it has been urged that the Appellants herein had knowledge that both Anil and Sucha Singh were carrying knives, the same is not borne out from the evidence and their role in the incident in chasing the victim and, thereafter, holding him, was more likely to teach him a lesson as was sought to be projected as his defence. In the absence of any common intention, the conviction of the Appellants under Section 302 with the aid of Section 34 cannot be sustained. It is no doubt true that the evidence of PW.5 the complainant and PW.7 another eye-witness was corroborated by the injuries on the body of the victim, but that by itself would not establish common intention as far as the appellants in the present appeal are concerned. The learned counsel appearing for the appellant has placed strong reliance upon the judgment of this Court in the case of V. Sreedharan vs. State of Kerala reported in 1992 Supp (3) SCC 21, where the Court on the facts of the case took the view that the incident arising out of a quarrel at home and ending on the road was a continuous sequence, injury being a result of provocation and that prosecution under Section 304 Part I and not Section 302 IPC, was attracted. Even in that case the present deceased had kicked the food on an auspicious day giving provocation and after the deceased ran for some time, the fatal injuries were caused on his person. Somewhat similar are the facts here, as the cause of conflict arose from the conduct of the deceased in the marriage party which ultimately as a sequence of events resulted in fatal injuries on the person of the deceased. The role attributed to them would, in our view, attract the provisions of Section 304 Part I IPC and not Section 302 read with Section 34 IPC. The appeal as far as the appellants' conviction under Section 302 read with Section 34 IPC must, therefore, succeed and their conviction must be altered to one under Section 304 Part I read with Section 34 IPC.

10. The appeal is, therefore, allowed to the extent that the conviction of both the Appellants under Section 302 read with Section 34 IPC is set aside and they are convicted instead under Section 304 Part I read with Section 34 IPC. The Appellant No.2 is sentenced to two years' rigorous imprisonment and fine of Rs.500/-. In default of payment of such fine, the Appellant No.2 shall undergo rigorous imprisonment for a further period of 15 days. The Appellant No.2 shall be entitled to set off in respect of the period of imprisonment already undergone in terms of Section 428 Cr.P.C.

11. As far as the Appellant No.1 is concerned, let his case be referred to the concerned Juvenile Justice Board in terms of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000, to be dealt with under the provisions ofthe said Act in keeping with the provision of Section 15 thereof and having particular regard to the period of detention already undergone by him during the course of the investigation and trial. The Registry is directed to take immediate steps for transmission of the records to the concerned Juvenile Justice Board, as far as the Appellant No.1 is concerned.

12. The Appeal is disposed of accordingly.

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CASE LAWS

IN THE SUPREME COURT OF INDIA

Criminal Misc. Petition No. 474 Of 2009
in Criminal Appeal No. 1173 of 2009
Date of Decision: 26.08.2009

(BEFORE ALTAMAS KABIR AND B.S.CHAUHAN, JJ)

RAMBIR SINGH AND OTHERS
Versus
STATE OF UTTAR PRADESH

ORDER

1. This petition has been filed on behalf of the six accused who had been convicted by the learned Special Judge (the EC Act), Aligarh, on 12-6-1991, in Sessions Trial No. 159 of 1990. When the matter was taken up for consideration, it was submitted on behalf of Appellant 4, Bhojraj, s/o Rambir Singh, that he was a juvenile on the date of commission of the alleged offence on 23-11-1989.

2. It is true that the question of juvenility of Appellant 4 had not been taken either before the trial court or before the High Court. However, having regard to the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the amendments effected thereto in 2006, by the introduction of Section 7-A, and the framing of the Juvenile Justice (Care and Protection of Children) Rules, 2007, having particular regard to Rule 12, it is now settled that such a question of juvenility can be raised at any time before any court and even after conviction.

3. This question came up for consideration in Hari Ram v. State of Rajasthan1 wherein the aforesaid provisions were explained and interpreted.

4. Having regard to the above, the case of Appellant 4 will have to be treated separately from the other appellants.

5. In the school certificate of the Higher School Examination conducted in the year 1989, it appears that the date of birth of the appellant is shown as 15-12-1972, which would make the age of the appellant less than 18 years on the date of the alleged incident. Since in this case Appellant 4 has already been convicted and sentenced to life imprisonment, his case will be covered by the provisions of sub-section (2) of Section 7-A of the aforesaid Act.

6. Sub-section (2) provides that:

   "7-A. (2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order and the sentence if any, passed by a court shall be deemed to have no effect."

7. Having regard to the above, let the case of Appellant 4 be transmitted to the Juvenile Justice Board, Aligarh, for passing appropriate orders in terms of Section 15 of the Act, read with Rule 98 of the aforesaid Rules, within two months from the date of receipt of a copy of this order. The Registry is directed to communicate this order to the court concerned.

8. The appeal as far as Appellant 4 is concerned, is accordingly, allowed to the aforesaid extent. The criminal miscellaneous petition is also allowed and disposed of. Let the appeal, as far as the other appellants are concerned, be listed for hearing in the usual course.

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IN THE SUPREME COURT OF INDIA

Criminal Appeal No. 907 Of 2009
Date of Decision: 05.05.2009

(BEFORE ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.)

HARI RAM
Versus
STATE OF RAJASTHAN AND ANOTHER

JUDGEMENT

ALTAMAS KABIR, J.

1. Leave granted. This appeal raises certain questions which are fundamental to the understanding and implementation of the objects for which the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the Juvenile Justice Act, 2000") was enacted.

2. The said law which was enacted to deal with offences committed by juveniles, in a manner which was meant to be different from the law applicable to adults, is yet to be fully appreciated by those who have been entrusted with the responsibility of enforcing the same, possibly on account of their inability to adapt to a system which, while having the trappings of the general criminal law, is, however, different therefrom.

3. The very scheme of the aforesaid Act is rehabilitatory in nature and not adversarial which the courts are generally used to. The implementation of the said law, therefore, requires a complete change in the mindset of those who are vested with the authority of enforcing the same, without which it will be almost impossible to achieve the objects of the Juvenile Justice Act, 2000.

4. The appellant, Hari Ram, was arrested along with several others on 30-11-1998, for the alleged commission of the offences under Sections 148, 302, 149, Section 325 read with Section 149 and Sections 323/149 of the Penal Code, 1860. After the case was committed for trial, the Additional Sessions Judge, Didwana, by his order dated 3-4-2000, in Sessions Case No. 54 of 1999 determined the age of the accused to be below 16 years on the date of commission of the offence and after declaring him to be a juvenile, directed that he be tried by the Juvenile Justice Board, Ajmer, Rajasthan.

5. This appeal has been filed against the common order dated 7-12-2005, passed by the Jodhpur Bench of the Rajasthan High Court in Cri. Revision Petition No. 165 of 2000, filed by Respondent 2 herein and in Crl. Revision Petition No. 199 of 2005 filed by the appellant, also being aggrieved by the said common order. While Crl. Revision No. 199 filed by the appellant herein challenging the framing of charges was dismissed, Crl. Revision No. 165 filed by the State of Rajasthan was allowed holding that the appellant was not a juvenile and the provisions of the Juvenile Justice Act, 2000, were not, therefore, applicable to him.

6. According to the appellant's father, the appellant's date of birth is Kartik Sudi 1, Samvat Year 2039, which is equivalent to 17-10-1982, whereas the offence was alleged to have been committed on 30-10-1998, which mathematically indicates that at the time of commission of the offence, the appellant had completed 16 years and 13 days and was, therefore, excluded

from the scope and operation of the Juvenile Justice Act, 2000. Furthermore, the medical examination conducted in respect of the appellant by a Medical Board indicated that his age at the relevant time was between 16 and 17 years.

7. After considering the various decisions of this Court indicating the manner in which the age of a juvenile is to be determined, the High Court observed that the inescapable conclusion which could be arrived at is that on the date of the incident, the accused-appellant herein was above 16 years of age and was, therefore, not governed by the provisions of the Juvenile Justice Act, 1986 (hereinafter referred to as "the 1986 Act"). It is the said order of the High Court which has been impugned in this appeal.

8. Appearing for the appellant, Mr Sushil Kumar Jain, learned advocate, submitted that the High Court had acted in a highly technical manner in holding that the appellant was not a juvenile and had in the process defeated the very object of the Juvenile Justice Act, 2000, which is aimed at rehabilitating juvenile offenders in order to bring them back to mainstream society and to give them an opportunity to rehabilitate themselves as useful citizens of the future. In fact, the definition of "juvenile" in the 1986 Act was altered in the Juvenile Justice Act, 2000, to include persons who had not completed 18 years of age. In other words, the age until which a male child in conflict with law would be treated as a juvenile was raised from 16 years to 18 years.

9. Mr Jain submitted that the learned Single Judge of the High Court appears to have misconstrued the decisions cited before him in Santenu Mitra v. State of W.B.1 and Umesh Chandra v. State of Rajasthan2, wherein the admissibility of certain records, including school records maintained by private institutions, under Section 35 of the Evidence Act, 1872 was under consideration.

10. On the other hand, Mr Jain referred to an earlier decision of this Court in Mohd. Ikram Hussain v. State ofU.P.3 where certain copies from the school registers were looked into and it was held that the same amounted to evidence under the Evidence Act as the entries in the school registers were made long before the same were used by way of evidence. This Court observed that the said entries were reliable as they had been made ante litem a motam.

11. Mr Jain also referred to certain observations made in Umesh Chandra case2 while interpreting Section 35 of the Evidence Act to the effect that there is no legal requirement that a public or other official book should be kept only by a public officer and all that is required is that it should be regularly kept in discharge of official duties.

12. In support of his submissions, Mr Jain lastly referred to the decision of this Court in Rajinder Chandra v. State of Chhattisgarh4, wherein in para 5 this Court observed as follows: (SCC pp. 289-90, para 5)

> "5. It is true that the age of the accused is just on the border of sixteen years and on the date of the offence and his arrest he was less than 16 years by a few months only. In Arnit Das v. State of Bihar5 this Court has, on a review of judicial opinion, held that while dealing with the question of determination of the age of the accused for the purpose of finding out whether he is juvenile or not, a hypertechnical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the court should lean in ° favour of holding the accused to be a juvenile in borderline cases. The law, so laid down by this Court, squarely applies to the facts of the present case."

Mr Jain emphasised that the present case was also a similar case in which the record, according to the date of birth indicated by his father and another witness, Narain Ram, shows that he was just 13 days older than the cut-off limit of 16 years provided in Section 2(h) of the 1986 Act.

13. Mr Jain submitted that since the incident is alleged to have taken place as far back as on 30-10-1998 and more than 10 years have elapsed since then and the definition of "juvenile" had since been amended to include children who had not yet attained the age of 18 years, the High Court should not have taken such a hypertechnical view and should not have interfered with the order of the Additional Sessions Judge, Didwana, declaring the appellant to be a juvenile.

14. On behalf of the respondents, it was submitted that even on the basis of the age as disclosed by the appellant's father, the appellant was over 16 years of age on the date of commission of the offence and could not, £ therefore, be treated to be a juvenile as defined in the 1986 Act.

15. It was submitted that the documents, which were produced in support of the appellant's claim to be a minor, show him to have crossed the age of 16 years on the date of commission of the offence and the High Court had merely corrected the error of the Additional Sessions Judge, Didwana, in calculation of the appellant's age. According to the respondents, the order of the High Court impugned in the present appeal did not call for any interference and the appeal was liable to be dismissed.

16. As indicated in the very beginning of this judgment, the Juvenile Justice Act, 2000, was enacted to deal with offences allegedly committed by juveniles on a different footing from adults, with the object of rehabilitating them. The need to treat children differently from adults in relation to commission of offences had been under the consideration of the Central Government ever since India achieved independence. With such object in mind, Parliament enacted the Juvenile Justice Act, 1986, in order to achieve the constitutional goals contemplated in Articles 15(3), 39(e) & (f), 45 and 47 of the Constitution imposing on the State a responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected.

17. Subsequently, in keeping with certain international conventions and in particular the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, commonly known as the Beijing Rules, the legislature enacted the Juvenile Justice (Care and Protection of Children) Act, 2000 to attain the following objects:

    (i) to lay down the basic principles for administering justice to a juvenile or a child;

    (ii) to make the juvenile system meant for a juvenile or a child more appreciative of the developmental needs in comparison to criminal justice system as applicable to adults;

    (iii) to bring the juvenile law in conformity with the United Nations Convention on the Rights of the Child;

    (iv) to prescribe a uniform age of eighteen years for both boys and girls;

    (v) to ensure speedy disposal of cases by the authorities envisaged under this Bill regarding juvenile or a child within a time-limit of four months;

    (vi) to spell out the role of the State as a facilitator rather than doer by involving voluntary organisations and local bodies in the implementation of the proposed legislation;

(vii) to create special juvenile police units with a humane approach through sensitisation and training of police personnel;

(viii) to enable increased accessibility to a juvenile or a child by establishing Juvenile Justice Boards and Child Welfare Committees and Homes in each district or group of districts;

(ix) to minimise the stigma and in keeping with the developmental needs of the juvenile or the child, to separate the Bill into two parts one for juveniles in conflict with law and the other for the juvenile or the child in need of care and protection;

(x) to provide for effective provisions and various alternatives for rehabilitation and social reintegration such as adoption, foster care, sponsorship and aftercare of abandoned, destitute, neglected and delinquent juvenile and child." The said Act ultimately came into force on 1-4-2001.

18. Section 2(k) of the said Act defines a juvenile or child as a person who has not completed eighteen years of age.

19. A broad distinction has however, been made between juveniles in general and juveniles who are alleged to have committed offences. Section 2(1) defines "a juvenile in conflict with law" as a juvenile who is alleged to have committed an offence. Determination of age, therefore, assumes great importance in matters brought before the Juvenile Justice Boards. In fact, Chapter II of the Juvenile Justice Act, 2000, deals exclusively with juveniles in conflict with law and provides a complete code in regard to juveniles who are alleged to have committed offences which are otherwise punishable under the general law of crimes.

20. Section 4 of the Juvenile Justice Act, 2000, provides for constitution of Juvenile Justice Boards for every district in a State to exercise and discharge the duties conferred or imposed on such Boards in relation to juveniles in conflict with law. Section 18 of the Act prohibits joint proceedings and trial of a juvenile and a person who is not a juvenile and the punishment that can be awarded to a juvenile is enumerated in Section 15.

21. Since the application of the Juvenile Justice Act, 2000, to a person brought before the Juvenile Justice Board (hereinafter referred to as "the Board") depends on whether such person is a juvenile or not within the meaning of Section 2(k) thereof, the determination of age assumes special importance and the said responsibility has been cast on the said Board.

22. Subsequently, after the decision of a Constitution Bench of this Court in Pratap Singh v. State of Jharkhand6, the legislature amended the provisions of the Act by the Amendment Act, 2006, by substituting Section 2(1) to define a "juvenile in conflict with law" as a "juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence" (emphasis supplied) and to include Section 7-A which reads as follows:

> "7-A. Procedure to be followed when claim of juvenility is raised before any court.(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an enquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim 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 claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect."(emphasis supplied)

23. Section 7-A makes provision for a claim of juvenility to be raised before any court at any stage, even after final disposal of a case and sets out the procedure which the court is required to adopt, when such claim of juvenility is raised. It provides for an inquiry, taking of evidence as may be necessary (but not affidavit) so as to determine the age of a person and to record a finding whether the person in question is a juvenile or not.

24. The aforesaid provisions were, however, confined to courts, and proved inadequate as far as the Boards were concerned.

25. Subsequently, in the Juvenile Justice (Care and Protection of Children) Rules, 2007, which is a comprehensive guide as to how the provisions of the Juvenile Justice Act, 2000, are to be implemented, Rule 12 was introduced providing the procedure to be followed by the courts, the Boards and the Child Welfare Committees for the purpose of determination of age in every case concerning a child or juvenile or a juvenile in conflict with law.

26. Since the aforesaid provisions are interconnected and lay down the procedures for determination of age, the said Rule is reproduced hereinbelow:

"12. Procedure to be followed in determination of age. (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case

may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

27. Sub-rules (4) and (5) of Rule 12 are of special significance in that they provide that once the age of a juvenile or child in conflict with law is found to be less than 18 years on the date of offence on the basis of any proof specified in sub-rule (3) the court or the Board or as the case may be the Child Welfare Committee appointed under Chapter IV of the Act, has to pass a written order stating the age of the juvenile or stating the status of the juvenile, and no further inquiry is to be conducted by the court or Board after examining and obtaining any other documentary proof referred to in sub-rule (3) of Rule 12. Rule 12, therefore, indicates the procedure to be followed to give effect to the provisions of Section 7-A when a claim of juvenility is raised.

28. One of the problems which has frequently arisen after the enactment of the Juvenile Justice Act, 2000, is with regard to the application of the definition of "juvenile" under Sections 2(k) and (/) in respect of offences alleged to have been committed prior to 1-4-2001 when the Juvenile Justice Act, 2000 came into force, since under the 1986 Act, the upper age-limit for male children to be considered as juveniles was 16 years.

29. The question which has been frequently raised is, whether a male person who was above 16 years on the date of commission of the offence prior to 1-4-2001, would be entitled to be considered as a juvenile for the said offence if he had not completed the age of 18 years on the said date. In other words, could a person who was not a juvenile within the meaning of the 1986 Act when the offence was committed, but had not completed 18 years, be governed by the provisions of the Juvenile Justice Act, 2000, and be declared as a juvenile in relation to the offence alleged to have been committed by him?

30. The said question, which is identical to the question raised in these proceedings, was considered in Arnit Das v. State of Bihar5 wherein, in the light of the definition of "juvenile" under the 1986 Act, which was then subsisting, this Court came to a finding that the

procedures prescribed by the 1986 Act were to be adopted only when the competent authority found the person brought before it or appearing before it to be under 16 years of age, if a boy, and under 18 years of age, if a girl, on the date of being so brought or such appearance first before the competent authority.

31. This Court in Arnit Das5 also came to a finding that the date of commission of the offence is irrelevant for finding out whether the person is a juvenile within the meaning of clause (h) of Section 2 of the 1986 Act.

32. In Arnit Das5 this Court sought to distinguish the earlier decisions in Santenu Mitra case1, Bhola Bhagat v. Stale of Bihar7 and Krishna Bhagwari v. State of Bihar8, which was a Full Bench decision. It also overruled the decision of the Calcutta High Court in Dilip Saha v. State ofW.B.9, where the Calcutta High Court, while interpreting the provisions of the West Bengal Children's Act, 1959, which is a pari materia enactment, took the view that the age of the accused at the time of commission of the offence is the relevant age for attracting the provisions of the said Act and not his age at the time of trial.

33. The question which fell for decision in Arnit Das case5, once again fell for the consideration of this Court in Pratap Singh case6, where the decision of this Court in Umesh Chandra case2, which expressed a view which was contrary to that expressed in Arnit Das case5, was brought to the notice of the Court, which referred the matter to the Constitution Bench to settle the divergence of views. In fact, the Constitution Bench formulated two points for decision, namely:

(a) Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as juvenile offender or the date when he is produced in the court/competent authority?

(b) Whether the Act of 2000 will be applicable in a case where a proceeding is initiated under the 1986 Act and was pending when the Act of 2000 was enforced with effect from 1-4-2001?

34. While considering the first question, the Constitution Bench in Pratap Singh6 had occasion to consider the decision of the three-Judge Bench in Umesh Chandra case2, wherein it was held that the relevant date for applicability of the Act so far as the age of the accused, who claims to be a child, is concerned, is the date of occurrence and not the date of trial. Consequently, the decision in Amit Das case5 was overruled and the view taken in Umesh Chandra case2 was declared to be the correct law.

35. On the second point, after considering the provisions of Sections 3 and 20 of the Juvenile Justice Act, 2000, along with the definition of ' “juvenile” in Section 2(k) of the Juvenile Justice Act, 2000, as contrasted with the definition of a male juvenile in Section 2(h) of the 1986 Act, the majority view in Pratap Singh case6 was that the 2000 Act would be applicable to a proceeding in any court/authority initiated under the 1986 Act which is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 1-4-2001. In other words, a male offender, ' who was being proceeded with in any court/authority initiated under the 1986 Act and had not completed the age of 18 years on 1-4-2001, would be governed by the provisions of the Juvenile Justice Act, 2000.

36. In his concurring judgment, S.B. Sinha, J. while considering the provisions of Section 20 of the Juvenile Justice Act, 2000, observed that for the purpose of attracting Section 20 it had to be established that (/) on the date of coming into force the proceedings in which the petitioner was accused was pending; and (if) on that day he was below the age of 18 years. The

unanimous view of the Constitution Bench in Pratap Singh case6 was that the provisions of the Juvenile Justice Act, 2000, have prospective effect and not retrospective effect, except to cover cases where though the male offender was above 16 years of age at the time of commission of the offence, he was below 18 years of age as on 1-4-2001. Consequently, the said Act would cover earlier cases only where a person had not completed the age of 18 years on the date of its commencement and not otherwise.

37. The said decision in Pratap Singh case6 led to the substitution of Section 2(1) and the introduction of Section 7-A of the Act and the (subsequent introduction of Rule 12 in the Juvenile Justice Rules, 2007, and the amendment of Section 20 of the Act. Read with Sections 2(k), 2(1), 7-A and Rule 12, Section 20 of the Juvenile Justice Act, 2000, as amended in 2006, is probably the section most relevant in setting at rest the question raised in this appeal, as it deals with cases which were pending on 1-4-2001, when the Juvenile Justice Act, 2000, came into force.

38. The same is, accordingly, reproduced hereinbelow:

"20. Special provision in respect of pending cases.Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation.In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (f) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed."

The proviso and the Explanation to Section 20 were added by Amendment Act 33 of 2006, to set at rest any doubts that may have arisen with regard to the applicability of the Juvenile Justice Act, 2000, to cases pending on 1-4-2001, where a juvenile, who was below 18 years at the time of commission of the offence, was involved.

39. The Explanation which was added in 2006, makes it very clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (f) of Section 2, even if the juvenile ceased to be a juvenile on or before 1-4-2001, when the Juvenile Justice Act, 2000, came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. In fact, Section 20 enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Juvenile Justice Act, 2000.

40. At this point it may be noted that the decision of the Constitution Bench in Pratap Singh case6 was rendered at a point of time when the amendments to Sections 2(1) and 20 and the introduction of Section 7-A had not yet been effected, nor was Rule 12 of the 2007 Rules available.

41. Several decisions on the applicability of the 2000 Act to children who were above 16 but below 18 years on the date of commission of the offence have been rendered after the Juvenile Justice Act, 2000, came into force and several others were rendered after the amendments were introduced in the said Act by Amendment Act 33 of 2006 and the introduction of the 2007 Rules.

42. The decisions rendered by this Court and the High Courts prior to 1-4-2001, when the Juvenile Justice Act, 2000, came into force and thereafter can, therefore, be divided into two groups. The decisions in Pratap Singh case6 and Munney v. State of U.P.10 fall into the first category, whereas the decisions in Jameel v. State of Maharashtra11, Vimal Chadha v. Vikas Choudhary12, Babloo Pasi v. State of Jharkhand13 and Ranjit Singh v. State of Haryana14 fall into the second category.

43. Although the Constitution Bench decisions in Pratap Singh case6 and Munney case10 are not really relevant since they have been rendered prior to 22-8-2006, when Amendment Act 33 of 2006 came into force, they assume a modicum of significance since they have been referred to and relied upon even after the amending Act and the 2007 Rules came into force on 22-8-2006 and 26-10-2007, respectively.

44. Of the decisions rendered after the amendments effected in 2006 to the Juvenile Justice Act, 2000, the first decision of note is that of Jameel case11 rendered on 16-1-2007 wherein the amendments to the Act effected by Amendment Act 33 of 2006, which came into effect on 22-8-2006, were not even noticed.

45. The next decision rendered on 27-5-2008 is in Vimal Chadha case12, wherein, although the amendment of the Act and the introduction of the Juvenile Justice Rules, 2007, were brought to the notice of the Court, the same were not considered and the decision was rendered in the light of the decision rendered in Pratap Singh case6 and other cases decided prior to 1-4-2001.

46. The next decision rendered on the same point on 11-9-2008 was the decision in Ranjit Singh case14 wherein also the amendments to Sections 2(1) and 20 and the introduction of Section 7-A in the Juvenile Justice Act, 2000, and the introduction of the 2007 Rules had not been considered and the decision passed sub silentio.

47. Similar was the situation in Babloo Pasi case13 decided on 3-10-2008 which basically dealt with Section 49 of the Juvenile Justice Act, 2000 and Rule 22 of the Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003, which is pari materia with Rule 12 of the 2007 Rules. While deciding the said case, the Hon'ble Judges did not also have occasion to consider the amendments effected to the Juvenile Justice Act, 2000, by the Amendment Act 33 of 2006 which had just come into force on 22-8-2006.

48. None of the aforesaid decisions are of much assistance in deciding the question with regard to the applicability of the definition of "juvenile" in Sections 2(k) and 2(1) of the Juvenile Justice Act, 2000, as amended in 2006, whereby the provisions of the said Act were extended to cover juveniles who had not completed 18 years of age on or before the coming into force of the Juvenile Justice Act, 2000 on 1-4-2001. (emphasis supplied)

49. The effect of the proviso to Section 7-A introduced by the amending Act makes it clear that the claim of juvenility may be raised before any court which shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in the Act and the Rules made thereunder which includes the definition of "juvenile" in Sections 2(k) and 2(1) of the Act even if the juvenile had ceased to be so on or before the date of commencement of the Act. (emphasis supplied)

50. The said intention of the legislature was reinforced by the amendment effected by the said amending Act to Section 20 by introduction of the proviso and the Explanation thereto, wherein also it has been clearly indicated that in any pending case in any court the determination of juvenility of such a juvenile has to be in terms of Section 2(1) even if the juvenile ceases to be so "on or before the date of commencement of this Act" and it was also indicated that the provisions of the Act would apply as if the said provisions had been in force for all purposes and at all material times when the alleged offence was committed. (emphasis supplied)

51. Apart from the aforesaid provisions of the 2000 Act, as amended, and the Juvenile Justice Rules, 2007, Rule 98 thereof has to be read in tandem with Section 20 of the Juvenile Justice Act, 2000, as amended by the Amendment Act, 2006, which provides that even in disposed of cases of juveniles in conflict with law, the State Government or the Board could, either suo moru or on an application made for the purpose, review the case of a juvenile, determine the juvenility and pass an appropriate order under Section 64 of the Act for the immediate release of the juvenile whose period of detention had exceeded the maximum period provided in Section 15 of the Act i.e. 3 years.

52. In addition to the above, Section 49 of the Juvenile Justice Act, 2000 is also of relevance and is reproduced hereinbelow:

"49. Presumption and determination of age.(1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.

(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority 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."

53. Sub-section (1) of Section 49 vests the competent authority with the power to make due inquiry as to the age of a person brought before it and for the said purpose to take such evidence as may be necessary (but not an affidavit) and shall record a finding as to whether the person is a juvenile or a child or not, stating his age as nearly as may be.

54. Sub-section (2) of Section 49 is of equal importance as it provides that no order of a competent authority would be deemed to have become invalid merely on account of any subsequent proof that the person, in respect of whom an order is made, is not a juvenile or a child, and the age recorded by the competent authority to be the age of the person brought before it, would, for the purpose of the Act, be deemed to be the true age of a child or a juvenile in conflict with law.

55. Sub-rule (3) of Rule 12 indicates that the age determination inquiry by the court or Board, by seeking evidence, is to be derived from:

(i) the matriculation or equivalent certificates, if available, and in the absence of the same;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

56. Clause (b) of Rule 12(3) provides that only in the absence of any such document, would a medical opinion be sought for from a duly constituted Medical Board, which would declare the age of the juvenile or the child. In case exact assessment of the age cannot be done, the court or the Board or as the case may be, the Child Welfare Committee, for reasons to be recorded by it, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on the lower side within a margin of one year.

57. As will, therefore, be clear from the provisions of the Juvenile Justice Act, 2000, as amended by the Amendment Act, 2006 and the Juvenile Justice Rules, 2007, the scheme of the Act is to give children, who have, for some reason or the other, gone astray, to realise their mistakes, rehabilitate themselves and rebuild their lives and become useful citizens of society, instead of degenerating into hardened criminals.

58. Of the two main questions decided in Pratap Singh case6, one point is now well established that the juvenility of a person in conflict with law has to be reckoned from the date of the incident and not from the date on which cognizance was taken by the Magistrate. The effect of the other part of the decision was, however, neutralised by virtue of the amendments to the Juvenile Justice Act, 2000, by Act 33 of 2006, whereunder the provisions of the Act were also made applicable to juveniles who had not completed eighteen years of age on the date of commission of the offence.

59. The law as now crystallised on a conjoint reading of Sections 2(k), 2(f), 7-A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1-4-2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted.

60. The instant case is covered by the amended provisions of Sections 2(k), 2(0, 7-A and 20 of the Juvenile Justice Act, 2000. However, inasmuch as, the appellant was found to have completed the age of 16 years and 13 days on the date of alleged occurrence, the High Court was of the view that the provisions of the Juvenile Justice Act, 1986, would not apply to the appellant's case. Of course, the High Court, while deciding the matter, did not have the benefit of either the amendment of the Act or the introduction of the Juvenile Justice Rules, 2007.

61. Even otherwise, the matter was covered by the decision of this Court in Rajinder Chandra case4, wherein this Court, inter alia, held that when a claim of juvenility is raised and on the evidence available two views are possible, the court should lean in favour of holding the offender to be a juvenile in borderline cases.

62. In any event, the statutory provisions have been altered since then and we are now required to consider the question of the claim of the appellant that his date of birth was Kartik Sudi 1, Samvat Year 2039, though no basis has been provided for the fixation of the said date itself in

the light of the amended provisions. Often, parents of children, who come from rural backgrounds, are not aware of the actual date of birth of a child, but relate the same to some event which may have taken place simultaneously. In such a situation, the Board and the courts will have to take recourse to the procedure laid down in Rule 12, but such an exercise is not required to be undertaken in the present case since even according to the determination of the appellant's age by the High Court the appellant was below eighteen years of age when the offence was alleged to have been committed.

63. Having regard to the views expressed hereinabove, we are unable to sustain the impugned order of the High Court in holding that the provisions of the Juvenile Justice Act, 1986, would not be applicable to the appellant's case since he was allegedly 13 days above the age prescribed.

64. In the instant case, the appellant was arrested on 30-11-1998 when the 1986 Act was in force and under clause (h) of Section 2 a juvenile was described to mean a child who had not attained the age of sixteen years or a girl who had not attained the age of eighteen years. It is with the enactment of the Juvenile Justice Act, 2000, that in Section 2(k) a juvenile or child was defined to mean a child who had not completed eighteen years of age which was given prospective prospect (sic effect).

65. However, as indicated hereinbefore after the decision in Pratap Singh case6, Section 2(1) was amended to define “a juvenile in conflict with law” to mean a juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such offence.

66. Section 7-A was introduced in the 2000 Act and Section 20 thereof was amended whereas Rule 12 was included in the Juvenile Justice Rules, 2007, which gave retrospective effect to the provisions of the Juvenile Justice Act, 2000.

67. Section 7-A of the Juvenile Justice Act, 2000, made provision for the claim of juvenility to be raised before any court at any stage, as has been done in this case, and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the juvenile had ceased to be so on or before the date of commencement of the Act.

68. Accordingly, a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act.

69. The said position was re-emphasised by virtue of the amendments introduced in Section 20 of the 2000 Act, whereby the proviso and Explanation were added to Section 20, which made it even more explicit that in all pending cases, including trial, revision, appeal and any other criminal proceedings in respect of a juvenile in conflict with law, the determination of juvenility of such a juvenile would be in terms of clause (/) of Section 2 of the 2000 Act, and the provisions of the Act would apply as if the said provisions had been in force when the alleged offence was committed.

70*. In the instant case, there is no controversy that the appellant was about sixteen years of age on the date of commission of the alleged offence and had not completed eighteen years of age. In view of Sections 2(k), 2(1) and 7-A read with Section 20 of the said Act, the provisions thereof would apply to the appellant's case and on the date of the alleged incident it has to be held that he was a juvenile.

71. The appeal has, therefore, to be allowed on the ground that notwithstanding the definition of "juvenile" under the Juvenile Justice Act, 1986, the appellant is covered by the definition of "juvenile" in Section 2(k) and the definition of "juvenile in conflict with law" in Section 2(1) of the Juvenile Justice Act, 2000, as amended.

72**. We, therefore, allow the appeal and set aside the order passed by the High Court and in keeping with the provisions of Sections 2(&), 2(/),7-A and 20 of the Juvenile Justice Act, 2000 and Rules 12 and 98 of the Juvenile Justice Rules, 2007, hold that since the appellant was below 18 years of age at the time of commission of the offence the provisions of the said Act would apply in his case in full force.

73. The matter is accordingly remitted to the Juvenile Justice Board, Ajmer, for disposal in accordance with law, within three months from the date of receipt of a copy of this order, having regard to the fact that the offence is alleged to have been committed more than ten years ago. If, however, the appellant has been in detention for a period which is more than the maximum period for which a juvenile may be confined to a special home, the Board shall release the appellant from custody forthwith.

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High Court
Case Laws

THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) No. 8889 OF 2011
Date of Decision: 11.05.2012

(BEFORE : A. K. SIKRI AND RAJIV SAHI ENDLAW, JJ)

COURT ON ITS OWN MOTION
Vs.
DEPT. OF WOMEN AND CHILD DEVELOPMENT & ORS.

JUDGEMENT

A.K. SIKRI, ACTING CHIEF JUSTICE:

1. In this letter petition, a very serious issue touching upon he rights of juvenile delinquent is raised. It is pointed out that many times when the accused persons are arrested by the Police and even when they happen to be children, they are lodged in Tihar Jail and subjected to the hardship of Adult Criminal Justice System. This may happen due to sheer negligence, omission or even deliberately. In support of this plea, it is mentioned that under Right to Information Act, 2005, information was received by the applicant from Central Jail No.7 which discloses that during the period October, 2010 to August, 2011, 114 persons were shifted from Tihar Jail to Observation Homes after they were found to be juveniles. It is thus stated that without proper care being taken by the Police Authorities at the time of arrest to find out whether the concerned person is a juvenile or adult, they are lodged in the jails. It is further mentioned that generally from appearance of the persons arrested, it can be made out that he is a child but in many cases inspite of the family of the persons arrested producing the birth certificate etc. to show that the person arrested is a child, still these evidences are ignored by the police and only when enquiry is conducted determining the age and it is ultimately found that the accused person is a child, is he shifted to Observation Homes. In the process, such children are subjected to the hardship of Adult Criminal Justice System in the first instance which would have been easily avoided if proper care is taken at the time of arrest of such persons.

2. Notice was issued to the Government of NCT of Delhi, Commissioner of Delhi Police as well as Director General of Tihar Jail. Mr. Asthana, Advocate has also been appearing on various dates of hearing which have taken place thereafter. Application was also filed by International Bridges of Justice (India) Trust (for short 'IBJ') for impleadment as it wanted to intervene in the matter and support the cause. Additionally, Ms. Anu Narula, advocate who has been espousing such causes also sought permission to intervene in the matter. They were accordingly allowed to do so. When the matter was taken up on 8.2.2012, application filed by IBJ was listed in which it was pointed out that on the visit of their representatives to Central Jail No.7 of Tihar Jail, some young offenders, who were shown as between the age of 18 to 21 years, were found to be juveniles. Following order was passed in that application:

"CM 1796/2012 (for directions)

In this application filed by International Bridges of Justice (India) Trust, it is submitted that while interacting with some young offenders in Central Jail No.7 which is specially meant for young offenders between the age of 18 to 21 years, it was discovered that about 17 of the prisoners were stated to be below 18

years of age. This was the claim of those prisoners who wanted to support the claim either by way of birth certificate or some other proof. The averments in this application disclose that in respect of these 17 persons, no proper enquiry is made either by the police while apprehending them or by the Magistrate while remitting them to remand or even by the Jail authorities while admitting these persons. The names of these persons are mentioned in the list annexed with the application. In respect of one person, namely, Birbal, it is stated that even the ossification test was done as per which it is turned out that he was less than 18 years of age and he has now been released and sent to the Observation Room. In the aforesaid circumstances, we direct the Superintendent Jail to conduct immediately an enquiry into the age of other persons mentioned in the annexure. In those cases where there is a proof in the form of school certificate/date of birth certificate from the municipal record etc., that should be acted upon immediately. In those cases where there is no documentary proof of age, ossification test of such persons be conducted and matter reported on the next date of hearing."

3. National Commission for Protection of Child Rights (NCPCR) was also requested, by the order passed on that date, to conduct an enquiry in respect of the persons of these categories lodged in all the jail complexes of Tihar Jail. NCPCR conducted the enquiry along with Delhi Legal Services Authority (DLSA). When the matter came up on 21.3.2012, this Court was informed that the members of NCPCR and DLSA along with certain volunteers had visited Jail Nos. 6 and 7 in Tihar Jail complex and found various irregularities and illegalities committed in treating adolescent undertrials/prisoners, namely, (a) adolescent undertrials/ prisoners are kept mostly in Jail No.7 though some are housed in Jail No.6 as well where woman prisoners are also lodged; (b) after interacting and making enquiries in respect of 278 prisoners/ undertrials, the team found that more than 100 appeared to be juveniles, i.e. less than 18 years of age at the time of commission of offence. The ages of some of these prisoners were as low as 15-16 years.

4. It is of utmost importance to take note of the fact that a separate adjudicating and treatment mechanism has been established for persons below 18 years of age who have committed an offence. A child is a part of the society in which he lives. Due to his immaturity, he is easily motivated by what he sees around him. It is his environment and social context that provokes his actions. It is because of this immaturity that they are not supposed to be treated as adult offenders.

5. The main reason for this inference is the fact that a young person is believed to be less blameworthy than adult, as he is prone to act in haste due to lack of judgment, easily influenced by others.

"From the inception, youth justice system has preceded from the assumption that the children and young people, by dint of their relative immaturity, are less able to control their impulses, less able to understand the seriousness of the offences and less able to foresee the consequences of their actions."

(Youth Justice in England and Wales, John Pitts in the New Politics of Crime and Punishment, edited by Roger Mathews, Willian Publishing, Pg.71).

6. Along with the aforesaid, what needs to be kept in mind is the main object and purpose of the JJ Act. The focus of this legislation is on the juvenile□s reformation and rehabilitation so that

he also may have an opportunity to enjoy as other children. In Pratap Singh v. State of Jharkhand (2005) 3 SCC 551, the Supreme Court elaborating on the objects and purpose of the JJ Act, made the following observations:

> "…The said Act is not only a beneficent legislation, but also a remedial one. The Act aims at grant of care, protection and rehabilitation of a juvenile vis-à-vis the adult criminals. Having regard to Rule 4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, it must also be borne in mind that the moral and psychological components of criminal responsibility were also one of the factors in defining ajuvenile. The first objective, therefore, is the promotion of the well-being of the juvenile and the second objective to bring about the principle of proportionality whereby and whereunder the proportionality of the reaction to the circumstances of both the offender and the offence including the victim should be safeguarded…"

7. There can be no denial of the fact that lodging juveniles along with hardened adult criminals can have drastic implications on the physical and mental well being of a juvenile offender. Trying minor in adult courts and sentencing them in adult prison is totally against the object and purpose of the JJ Act. Even for hardened career criminals, jail can be a dangerous place, but for youth it can be especially dangerous as they are often vulnerable to prison victimization because of their size and age.

8. It cannot be overlooked that youth offenders often have psychological or social issues that need to be addressed as part of the rehabilitative process. Adult facilities/prison often lack the staff to address the needs of young incarcerated persons. In effect, what will happen is that if the youth is sent to an adult prison, then it is more likely for him to re-offend and escalate into violent behaviour than their peers who go to juvenile system, where rehabilitative services are far more extensive. Juveniles confined within an adult prison may not have social services they need but with constant access to criminal minds, there are more chances of them becoming a recidivist.

9. Taking stock of the aforementioned observations, it can be said without any doubt that the basis of the separate justice system for juveniles is that the adolescents are different from adults, less responsible for their transgressions and more amenable to rehabilitation.

10. Personal liberty of a person is one of the oldest concepts to be purported by national courts. As long ago as in 1215, the English magna carta provided that, "No free man shall be taken or imprisoned…. but….. by law of the land."

11. Today, the concept of personal liberty has received a far more expansive interpretation. The notion that is accepted today is that liberty encompasses these rights and privileges which have long been recognized as being essential to the orderly pursuit of happiness by a free man and not merely freedom from bodily restraint. There can be no cavil in saying that lodging juveniles in adult prisons amounts to deprivation of their personal liberty on multiple aspects.

12. In this backdrop, lodging of juveniles in the prison clearly amounts to violation of their fundamental rights guaranteed under Article 21 of the Constitution of India; contrary to the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the JJ Act) apart from adverse psychological impact on these children. Obviously such a position is because of the reason that at the time of arrest of such persons,

there is no proper age verification and had that been so, juveniles would not have been subjected to hardship of Adult Criminal Justice System. Therefore, keeping in view the aforesaid, this Court felt imminent directions were required to obviate the recurrence of such cases and also for proper verification of those lodged in Jail who appeared to be minors. The Court thus gave various directions in its order dated 21.3.2012 and since these are to form part of the final directions as well, we quote the said order in its entirety:

"1. We are informed, that the teams comprising of the members of National Commission for Protection of Child Rights (NCPCR) & Delhi Legal Services Authority (DLSA) along with certain volunteers had visited Jail No.6 & 7 in Tihar Jail Complex; that adolescent under trials/prisoners are kept mostly in Jail No.7 though some are housed in Jail No.6 also where women prisoners are also lodged; these teams interacted and made enquiries in respect of 278 prisoners/under trials; after verification, these teams prime facie found more than 100 of the aforesaid 278 prisoners to be juveniles i.e. who were less than 18 years of age at the time of commission of offence. Ages of some of such prisoners were as low as 15-16 years.

2. This startling revelation clearly demonstrates that neither proper inquiry is being conducted by the Police at the time of arresting or by the Magistrates when such prisoners are produced before these Magistrates. Once it is found that such prisoners were juveniles, sending them to jail even for a day amounts to denial of their fundamental right and right to liberty.

3. We have also been shown the order dated 16th March, 2012 titled State v. Rahul in FIR No.269/2011 passed by the Juvenile Justice Board-1, Sewa Kutir Complex, Kingsway Camp, Delhi-110009 presided over by Ms. Anuradha Shukla Bhardwaj, Principal Magistrate. This order pertains to a child who was in the year 2009 declared a juvenile, 15 years of age by JJB itself. However when he was again arrested in the year 2011, inspite of aforesaid declaration/proof that he was a juvenile even in the year 2011, he was produced before the Magistrate and was sent to jail. Even though at the time of his arrest the police officer who arrested had suspicion about his age and therefore he was taken to a hospital for examination of his age, but he could not get the report from the hospital about his age and in these circumstances the police officer produced that juvenile before the ordinary criminal court presided over by the Metropolitan Magistrate. This is inspite of the clear mandate of law that even in case of a suspicion the arrested prisoner is to be produced before the JJB. By the time his age was ascertained and the Magistrate ordered him to be sent to JJB, the said juvenile named Rahul had spent 1 month and 17 days in jail which could have been avoided with little precaution.

4. We intend to lay down comprehensive guidelines and policy and would like to issue directions to the various authorities as to how to deal with such cases. For this purpose the petitioner Mr. Asthana as well as the interveners namely International Bridges of Justice (India) Trust as well as Ms. Anu Narula, Advocate have already stated that they would be working on this aspect and would submit draft guidelines which should be followed while dealing with such matters. While that exercise is going on, certain immediate directions are required to be passed in this matter. We accordingly direct:-

(i) Those inmates in jail about whom investigations were made by the teams of NCPCR /DLSA etc. and who are suspected to be juvenile as per initial investigations, shall be kept by the Supdt., Tihar Jail separately, insulated and segregated from all other prisoners. They shall be produced in batches before the JJB. Further enquiry into the matter to conclusively determine their age shall be conducted by the JJB. Those who are ultimately found to be juvenile shall be shifted from the jail to observation home by the JJB.

(ii) Ms. Anu Narula, Advocate has also annexed, with her application, list of 19 such prisoners who according to her may be juveniles though their ages are shown as above 18; some of those may be in the list of the prisoners investigated by NCPCR /DLSA. Enquiry into their ages shall also be conducted in a similar manner.

(iii) Teams of NCPCR /DLSA in a similar manner as aforesaid, shall visit Tihar Jail. Those who appear to be juvenile, procedure for ascertainment of their ages shall also be followed in a similar manner as aforesaid by producing them before the JJB. These teams, shall document the cases and forward the list to jail authorities as well as JJB.

(iv) The investigating officers, while making arrest shall reflect the age of the prisoner arrested in the Arrest Memo. It would be the duty of the Police Officer to ascertain the said age by making inquiry from the prisoner arrested if such prisoner is in possession of any age proof etc. In other cases if prisoner, from appearance, appears to be juvenile and the police officer has belief that the prisoner is a juvenile, he shall be produced before the JJB instead of criminal court.

(v) The police authorities shall introduce "Age Memo" on the line of "Arrest Memo" which was evolved by the Supreme Court in the case of D.K. Basu v. State of West Bengal 1996(9) SCALE 298. A concrete and well thought scheme in this behalf needs to be evolved by Special Juvenile Police Unit to address the concern. We direct Special Juvenile Police Unit to evolve such a scheme and place before us on the next date of hearing.

(vi) As and when a young person is apprehended/arrested and he is produced before the Magistrate, it will be the duty of the Magistrate also to order ascertainment of age of such a person. The Magistrate shall, in all such cases, undertake this exercise wherefrom the young person from his/her looks appears to be below 18 years of age and also in all those cases where in the arrest memo age is stated to be 18-21 years. A preliminary enquiry in this behalf shall be undertaken of all these young persons whose age is stated to be up to 21 years on the lines of judgment of the Supreme Court in Gopinath v. State of West Bengal AIR 1984 SC 237.

5. In order dated 16th March, 2012 passed by the JJB in Rahul's case the JJB has made certain suggestions though at the same time it is stated that it is not competent to give any directions. After going through these suggestions, we are of the opinion that these suggestions are necessary to be followed and therefore we give hereunder following directions based on those suggestions.

In conducting the inquiry the:-

- I.O. shall ask the person if he has been a part of formal schooling at any point of time and if the child answers in affirmative the I.O. should verify the record of such school at the earliest.
- If the parents of the person are available, this inquiry should be made from them. The I.O. should ask the parents if they have got the date of birth of the child registered with the MCD or gram pradhan etc. as provided under law and taken the answers/documents on record.
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The inquiry conducted in each case shall be recorded in writing and shall form a part on investigation report in each case where a child claims his age up to 21 years irrespective of whether he is found a juvenile or an adult.

- Special Juvenile Police Unit shall set up a mechanism in place for necessary coordination and assistance to police officer who may require such information.
- An advisory/circular/Standing Order, as may be appropriate, be prepared by the Special Juvenile Police Unit for the assistance of police officer/IOs/JWOs for the purpose of assistance on matters related to age inquiry. Such advisory/Circular/Standing Order shall also include the procedure which needs to be followed by the IOs in cases of transfer of cases from adult courts to JJB and vice versa.
- In each case, where a public officer arrests a person as adult and later on such person turns out to be a juvenile, DCP concerned shall undertake an inquiry to satisfy him/her that a deliberate lapse was not committed.

6. In so far as Magistrates are concerned, in order to undertake their job properly in the manner suggested above, we are of the opinion that there should be a special course/training programme conducted by the Delhi Judicial Academy for these Magistrates. The programme shall be devised by the Delhi Judicial Academy in consultation with DLSA and the Delhi Judicial Academy shall start orientation programme on these lines within one month from today in batches. 7. In our order dated 8th February, 2012 we had taken note of the submission of learned counsel appearing for International Bridges of Justice (India) Trust to the fact that it had discovered that about 17 of the prisoners were stated to be below 18

years of age. The learned counsel for the Jail Authorities had taken time to verify those cases. The learned counsel for the Jail Authorities today submits that three prisoners were found to be juvenile who have since been sent to observation room; six have already been released on bail and in respect of 8 remaining prisoners, report is awaited. She shall submit the report before the next date. 8. List for further proceedings on 2nd May, 2012."

13. Thereafter, the matter was taken up on 2.5.2012 and some more directions/ clarifications were issued which are as under:

"8. Some immediate directions/clarifications are required, which we proceed to pass today itself as follows:

(i) In our order dated 21.3.2012, we have given certain directions. Direction No. (vi) was to the effect that in those cases where a young person is apprehended/arrested and as per the arrest memo, his age is stated to be between 18 ? 21 years, a preliminary enquiry in this behalf shall be undertaken by the concerned Magistrate on the lines of the judgment of the Supreme Court in Gopinath v. State of West Bengal AIR 1984 SC 237. We are informed that instead of holding preliminary enquiry in the manner suggested in the aforesaid judgment, the Magistrates have started sending files of these cases to Juvenile Justice Board. This is clearly impermissible. Juvenile Justice Board gets jurisdiction in those cases where the age of a person is less than 18 years. Therefore, the Magistrates shall not send those files to Juvenile Justice Board and are reminded that it is the Magistrates before whom such cases come up, have to hold preliminary enquiry themselves.

(ii) The file of the cases so sent to JJB shall be sent back to the concerned Magistrates.

(iii) Attention of the Magistrate is also drawn to Section 7 of the Juvenile Justice (Care and Protection of the Children) Act, 2000 as well as Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2009 in this behalf.

(iv) In the report which the NCPCR is proposing to file, it is pointed out that there are about 392 inmates lodged in Jail No.7 and Jail No.11, who are perceived to be juveniles. The names of these persons are given in Annexure „A (colly). Copy is already handed over to the learned counsel for Delhi Police. It is also pointed out that in addition, there are certain girls/boys lodged in Jail No. 2 and 6 who are convicts, who appear to be less than 21 years of age even today. All these persons shall be segregated from others and lodged in separate wards as they are perceived to be juveniles as on today. (v) The Jail Superintendent shall also file the report in terms of directions contained in para 7 of the order dated 21.03.2012. List the matter on the date already fixed above."

14. The aforesaid directions issued and steps taken by the NCPCR and others have yielded remarkable results. Many undertrials and convicts lodged in jail have turned out to be juveniles at the time of commission of the alleged crime and, therefore, they have been released and/or now dealt with in accordance with the JJ Act. Such persons in whose case enquiry is to be conducted and are to be produced before the Juvenile Justice Board, are

coming before the Juvenile Justice Board in great numbers. We are, however, informed that at the time of their production, some of them go unrepresented. We direct that all such persons/children will be provided with and will be represented by the Legal Aid counsel. It would be applied even in those cases where they may be having their private counsel but the counsel is not available. NALSA guidelines in this behalf will be followed. Juvenile Justice Board will also undertake necessary exercise of getting the requisite Form „B filled and there would not be any laxity in this behalf.

15. We would also like to note, with utmost contentment, the immediate step taken by Delhi Judicial Academy in consultation with DLSA in organizing the training programs for the Metropolitan Magistrates. There are approximately 200 Metropolitan Magistrates who are to be imparted this training. The Judicial Academy has already prepared schedule as per which training is to be imparted in four batches on 21st April, 2012, 19th May, 2012, 21st July, 2012 and 18th August, 2012. First batch has already been given training on 21st April, 2012.

16. We place on record that NCPCR prepared its report to eliminate incarceration of children in jail. We also place on record our appreciation for the joint efforts of Mr.Asthana, Advocate, Ms. Anu Narula, Advocate and Mr. Ajay Verma, advocate (who appeared for IBJ), and Ms. Shobhna Takiar, Advocate along with the representatives of Delhi Police in preparing, collating and presenting to the Court valuable suggestions in consolidated form. In this venture, DLSA and Ms. Minna Kabir, Member (NCPCR) deserves special mention.

17. Today, we have heard all the counsels and aforementioned persons with reference to these guidelines submitted by them. We are of the opinion that specific and detailed directions need to be issued to all the appropriate authorities for compliance so as to prevent the incarceration of children in conflict with law, in the jails or their subjection to the Adult Criminal Justice System. In addition to the directions given by this Court on earlier occasions, which have already been extracted above, following guidelines and directions are issued which are to be kept in mind for taking suitable measures in this behalf:

A. For Commissioner of Police

(i) Commissioner of Police shall issue a Standing Order clarifying the roles and responsibilities of police officers, Investigation Officers, Inquiry by DCPs in case of lapse, Juvenile or Child Welfare Officers, SHOs and DCPs in view of the provisions of JJ Act and Rules made there under, Judgment of Hon ble Delhi High Court in W.P. (C) 8889 of 2011 dated 21.03.2012 and any subsequent order/ Judgment as may be passed and to revise and modify such Standing Order in case of any change in law.

(ii) Commissioner of Police on receipt of half yearly report suggested in Para C-3 from Nodal Head of SJPU shall pass necessary directions to give effect to the recommendations and to address the concerns as may be raised in such reports. An Action Taken report of the same shall also be forwarded to the Juvenile Justice Committee of Hon ble Delhi High Court.

B. For Deputy Commissioners of Police, In-charge of Districts concerned:

(i) In case any person approaches the DCP with a complaint that Police is not taking notice of juvenility of any offender and is refusing to take on record the documents being provided to suggest juvenility and instead treating a child as adult, it shall be the duty of DCP concerned to do an immediate inquiry into such complaint. Such inquiry shall be

THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) No. 8889 OF 2011
Date of Decision: 11.05.2012

(BEFORE : A. K. SIKRI AND RAJIV SAHI ENDLAW, JJ)

COURT ON ITS OWN MOTION
Vs.
DEPT. OF WOMEN AND CHILD DEVELOPMENT & ORS.

JUDGEMENT

A.K. SIKRI, ACTING CHIEF JUSTICE:

1. In this letter petition, a very serious issue touching upon he rights of juvenile delinquent is raised. It is pointed out that many times when the accused persons are arrested by the Police and even when they happen to be children, they are lodged in Tihar Jail and subjected to the hardship of Adult Criminal Justice System. This may happen due to sheer negligence, omission or even deliberately. In support of this plea, it is mentioned that under Right to Information Act, 2005, information was received by the applicant from Central Jail No.7 which discloses that during the period October, 2010 to August, 2011, 114 persons were shifted from Tihar Jail to Observation Homes after they were found to be juveniles. It is thus stated that without proper care being taken by the Police Authorities at the time of arrest to find out whether the concerned person is a juvenile or adult, they are lodged in the jails. It is further mentioned that generally from appearance of the persons arrested, it can be made out that he is a child but in many cases inspite of the family of the persons arrested producing the birth certificate etc. to show that the person arrested is a child, still these evidences are ignored by the police and only when enquiry is conducted determining the age and it is ultimately found that the accused person is a child, is he shifted to Observation Homes. In the process, such children are subjected to the hardship of Adult Criminal Justice System in the first instance which would have been easily avoided if proper care is taken at the time of arrest of such persons.

2. Notice was issued to the Government of NCT of Delhi, Commissioner of Delhi Police as well as Director General of Tihar Jail. Mr. Asthana, Advocate has also been appearing on various dates of hearing which have taken place thereafter. Application was also filed by International Bridges of Justice (India) Trust (for short 'IBJ') for impleadment as it wanted to intervene in the matter and support the cause. Additionally, Ms. Anu Narula, advocate who has been espousing such causes also sought permission to intervene in the matter. They were accordingly allowed to do so. When the matter was taken up on 8.2.2012, application filed by IBJ was listed in which it was pointed out that on the visit of their representatives to Central Jail No.7 of Tihar Jail, some young offenders, who were shown as between the age of 18 to 21 years, were found to be juveniles. Following order was passed in that application:

"CM 1796/2012 (for directions)

In this application filed by International Bridges of Justice (India) Trust, it is submitted that while interacting with some young offenders in Central Jail No.7 which is specially meant for young offenders between the age of 18 to 21 years, it was discovered that about 17 of the prisoners were stated to be below 18

years of age. This was the claim of those prisoners who wanted to support the claim either by way of birth certificate or some other proof. The averments in this application disclose that in respect of these 17 persons, no proper enquiry is made either by the police while apprehending them or by the Magistrate while remitting them to remand or even by the Jail authorities while admitting these persons. The names of these persons are mentioned in the list annexed with the application. In respect of one person, namely, Birbal, it is stated that even the ossification test was done as per which it is turned out that he was less than 18 years of age and he has now been released and sent to the Observation Room. In the aforesaid circumstances, we direct the Superintendent Jail to conduct immediately an enquiry into the age of other persons mentioned in the annexure. In those cases where there is a proof in the form of school certificate/date of birth certificate from the municipal record etc., that should be acted upon immediately. In those cases where there is no documentary proof of age, ossification test of such persons be conducted and matter reported on the next date of hearing."

3. National Commission for Protection of Child Rights (NCPCR) was also requested, by the order passed on that date, to conduct an enquiry in respect of the persons of these categories lodged in all the jail complexes of Tihar Jail. NCPCR conducted the enquiry along with Delhi Legal Services Authority (DLSA). When the matter came up on 21.3.2012, this Court was informed that the members of NCPCR and DLSA along with certain volunteers had visited Jail Nos. 6 and 7 in Tihar Jail complex and found various irregularities and illegalities committed in treating adolescent undertrials/prisoners, namely, (a) adolescent undertrials/ prisoners are kept mostly in Jail No.7 though some are housed in Jail No.6 as well where woman prisoners are also lodged; (b) after interacting and making enquiries in respect of 278 prisoners/ undertrials, the team found that more than 100 appeared to be juveniles, i.e. less than 18 years of age at the time of commission of offence. The ages of some of these prisoners were as low as 15-16 years.

4. It is of utmost importance to take note of the fact that a separate adjudicating and treatment mechanism has been established for persons below 18 years of age who have committed an offence. A child is a part of the society in which he lives. Due to his immaturity, he is easily motivated by what he sees around him. It is his environment and social context that provokes his actions. It is because of this immaturity that they are not supposed to be treated as adult offenders.

5. The main reason for this inference is the fact that a young person is believed to be less blameworthy than adult, as he is prone to act in haste due to lack of judgment, easily influenced by others.

"From the inception, youth justice system has preceded from the assumption that the children and young people, by dint of their relative immaturity, are less able to control their impulses, less able to understand the seriousness of the offences and less able to foresee the consequences of their actions."

(Youth Justice in England and Wales, John Pitts in the New Politics of Crime and Punishment, edited by Roger Mathews, Willian Publishing, Pg.71).

6. Along with the aforesaid, what needs to be kept in mind is the main object and purpose of the JJ Act. The focus of this legislation is on the juvenile□s reformation and rehabilitation so that

he also may have an opportunity to enjoy as other children. In Pratap Singh v. State of Jharkhand (2005) 3 SCC 551, the Supreme Court elaborating on the objects and purpose of the JJ Act, made the following observations:

> "…The said Act is not only a beneficent legislation, but also a remedial one. The Act aims at grant of care, protection and rehabilitation of a juvenile vis-à-vis the adult criminals. Having regard to Rule 4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, it must also be borne in mind that the moral and psychological components of criminal responsibility were also one of the factors in defining ajuvenile. The first objective, therefore, is the promotion of the well-being of the juvenile and the second objective to bring about the principle of proportionality whereby and whereunder the proportionality of the reaction to the circumstances of both the offender and the offence including the victim should be safeguarded…"

7. There can be no denial of the fact that lodging juveniles along with hardened adult criminals can have drastic implications on the physical and mental well being of a juvenile offender. Trying minor in adult courts and sentencing them in adult prison is totally against the object and purpose of the JJ Act. Even for hardened career criminals, jail can be a dangerous place, but for youth it can be especially dangerous as they are often vulnerable to prison victimization because of their size and age.

8. It cannot be overlooked that youth offenders often have psychological or social issues that need to be addressed as part of the rehabilitative process. Adult facilities/prison often lack the staff to address the needs of young incarcerated persons. In effect, what will happen is that if the youth is sent to an adult prison, then it is more likely for him to re-offend and escalate into violent behaviour than their peers who go to juvenile system, where rehabilitative services are far more extensive. Juveniles confined within an adult prison may not have social services they need but with constant access to criminal minds, there are more chances of them becoming a recidivist.

9. Taking stock of the aforementioned observations, it can be said without any doubt that the basis of the separate justice system for juveniles is that the adolescents are different from adults, less responsible for their transgressions and more amenable to rehabilitation.

10. Personal liberty of a person is one of the oldest concepts to be purported by national courts. As long ago as in 1215, the English magna carta provided that, "No free man shall be taken or imprisoned…. but….. by law of the land."

11. Today, the concept of personal liberty has received a far more expansive interpretation. The notion that is accepted today is that liberty encompasses these rights and privileges which have long been recognized as being essential to the orderly pursuit of happiness by a free man and not merely freedom from bodily restraint. There can be no cavil in saying that lodging juveniles in adult prisons amounts to deprivation of their personal liberty on multiple aspects.

12. In this backdrop, lodging of juveniles in the prison clearly amounts to violation of their fundamental rights guaranteed under Article 21 of the Constitution of India; contrary to the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the JJ Act) apart from adverse psychological impact on these children. Obviously such a position is because of the reason that at the time of arrest of such persons,

there is no proper age verification and had that been so, juveniles would not have been subjected to hardship of Adult Criminal Justice System. Therefore, keeping in view the aforesaid, this Court felt imminent directions were required to obviate the recurrence of such cases and also for proper verification of those lodged in Jail who appeared to be minors. The Court thus gave various directions in its order dated 21.3.2012 and since these are to form part of the final directions as well, we quote the said order in its entirety:

"1. We are informed, that the teams comprising of the members of National Commission for Protection of Child Rights (NCPCR) & Delhi Legal Services Authority (DLSA) along with certain volunteers had visited Jail No.6 & 7 in Tihar Jail Complex; that adolescent under trials/prisoners are kept mostly in Jail No.7 though some are housed in Jail No.6 also where women prisoners are also lodged; these teams interacted and made enquiries in respect of 278 prisoners/under trials; after verification, these teams prime facie found more than 100 of the aforesaid 278 prisoners to be juveniles i.e. who were less than 18 years of age at the time of commission of offence. Ages of some of such prisoners were as low as 15-16 years.

2. This startling revelation clearly demonstrates that neither proper inquiry is being conducted by the Police at the time of arresting or by the Magistrates when such prisoners are produced before these Magistrates. Once it is found that such prisoners were juveniles, sending them to jail even for a day amounts to denial of their fundamental right and right to liberty.

3. We have also been shown the order dated 16th March, 2012 titled State v. Rahul in FIR No.269/2011 passed by the Juvenile Justice Board-1, Sewa Kutir Complex, Kingsway Camp, Delhi-110009 presided over by Ms. Anuradha Shukla Bhardwaj, Principal Magistrate. This order pertains to a child who was in the year 2009 declared a juvenile, 15 years of age by JJB itself. However when he was again arrested in the year 2011, inspite of aforesaid declaration/proof that he was a juvenile even in the year 2011, he was produced before the Magistrate and was sent to jail. Even though at the time of his arrest the police officer who arrested had suspicion about his age and therefore he was taken to a hospital for examination of his age, but he could not get the report from the hospital about his age and in these circumstances the police officer produced that juvenile before the ordinary criminal court presided over by the Metropolitan Magistrate. This is inspite of the clear mandate of law that even in case of a suspicion the arrested prisoner is to be produced before the JJB. By the time his age was ascertained and the Magistrate ordered him to be sent to JJB, the said juvenile named Rahul had spent 1 month and 17 days in jail which could have been avoided with little precaution.

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(iii) Attention of the Magistrate is also drawn to Section 7 of the Juvenile Justice (Care and Protection of the Children) Act, 2000 as well as Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2009 in this behalf.

(iv) In the report which the NCPCR is proposing to file, it is pointed out that there are about 392 inmates lodged in Jail No.7 and Jail No.11, who are perceived to be juveniles. The names of these persons are given in Annexure „A (colly). Copy is already handed over to the learned counsel for Delhi Police. It is also pointed out that in addition, there are certain girls/boys lodged in Jail No. 2 and 6 who are convicts, who appear to be less than 21 years of age even today. All these persons shall be segregated from others and lodged in separate wards as they are perceived to be juveniles as on today. (v) The Jail Superintendent shall also file the report in terms of directions contained in para 7 of the order dated 21.03.2012. List the matter on the date already fixed above."

14. The aforesaid directions issued and steps taken by the NCPCR and others have yielded remarkable results. Many undertrials and convicts lodged in jail have turned out to be juveniles at the time of commission of the alleged crime and, therefore, they have been released and/or now dealt with in accordance with the JJ Act. Such persons in whose case enquiry is to be conducted and are to be produced before the Juvenile Justice Board, are

coming before the Juvenile Justice Board in great numbers. We are, however, informed that at the time of their production, some of them go unrepresented. We direct that all such persons/children will be provided with and will be represented by the Legal Aid counsel. It would be applied even in those cases where they may be having their private counsel but the counsel is not available. NALSA guidelines in this behalf will be followed. Juvenile Justice Board will also undertake necessary exercise of getting the requisite Form „B filled and there would not be any laxity in this behalf.

15. We would also like to note, with utmost contentment, the immediate step taken by Delhi Judicial Academy in consultation with DLSA in organizing the training programs for the Metropolitan Magistrates. There are approximately 200 Metropolitan Magistrates who are to be imparted this training. The Judicial Academy has already prepared schedule as per which training is to be imparted in four batches on 21st April, 2012, 19th May, 2012, 21st July, 2012 and 18th August, 2012. First batch has already been given training on 21st April, 2012.

16. We place on record that NCPCR prepared its report to eliminate incarceration of children in jail. We also place on record our appreciation for the joint efforts of Mr.Asthana, Advocate, Ms. Anu Narula, Advocate and Mr. Ajay Verma, advocate (who appeared for IBJ), and Ms. Shobhna Takiar, Advocate along with the representatives of Delhi Police in preparing, collating and presenting to the Court valuable suggestions in consolidated form. In this venture, DLSA and Ms. Minna Kabir, Member (NCPCR) deserves special mention.

17. Today, we have heard all the counsels and aforementioned persons with reference to these guidelines submitted by them. We are of the opinion that specific and detailed directions need to be issued to all the appropriate authorities for compliance so as to prevent the incarceration of children in conflict with law, in the jails or their subjection to the Adult Criminal Justice System. In addition to the directions given by this Court on earlier occasions, which have already been extracted above, following guidelines and directions are issued which are to be kept in mind for taking suitable measures in this behalf:

A. For Commissioner of Police

(i) Commissioner of Police shall issue a Standing Order clarifying the roles and responsibilities of police officers, Investigation Officers, Inquiry by DCPs in case of lapse, Juvenile or Child Welfare Officers, SHOs and DCPs in view of the provisions of JJ Act and Rules made there under, Judgment of Hon ble Delhi High Court in W.P. (C) 8889 of 2011 dated 21.03.2012 and any subsequent order/ Judgment as may be passed and to revise and modify such Standing Order in case of any change in law.

(ii) Commissioner of Police on receipt of half yearly report suggested in Para C-3 from Nodal Head of SJPU shall pass necessary directions to give effect to the recommendations and to address the concerns as may be raised in such reports. An Action Taken report of the same shall also be forwarded to the Juvenile Justice Committee of Hon ble Delhi High Court.

B. For Deputy Commissioners of Police, In-charge of Districts concerned:

(i) In case any person approaches the DCP with a complaint that Police is not taking notice of juvenility of any offender and is refusing to take on record the documents being provided to suggest juvenility and instead treating a child as adult, it shall be the duty of DCP concerned to do an immediate inquiry into such complaint. Such inquiry shall be

completed within 24 hours of having received such complaint and if the complaint turns out to have merit and truth, DCP concerned shall make orders to the concerned police officers to immediately take corrective steps and shall also initiate disciplinary action against erring police official.

(ii) In cases where any action is taken against an erring police officer, a quarterly report of the same containing the nature and reasons of such lapse and details of action taken shall be furnished by the DCP concerned to the concerned JJB having jurisdiction over that district along with a copy to the Nodal Head of Special Juvenile Police Unit for their record and intimation.

(iii) DCPs shall, during the regular monthly meeting with all the SHOs & Inspector-Investigations, shall brief them about their responsibilities, any new judgment or order from JJBs and Courts, any practice direction etc. and shall ensure that their subordinate police officers don't show children as adults, take all necessary steps to verify the age of accused persons and are in overall compliance with the provisions of JJ Act & Rules.

(iv) DCPs shall also ensure that all the police stations under their jurisdiction put in place the required setup and required notice boards etc, as has been specified in the Standing Order No. ops. 12, Act & the Rules or any other circulars in this regard.

(v) On being intimated by the JJBs about any lapse having been committed on age investigation, DCP concerned shall institute an inquiry and take such action as may be required or appropriate. An action taken report shall be submitted to the JJB by the DCP concerned within a month from the receipt of such intimation.

C. For Nodal Head/ In-Charge of Special Juvenile Police Unit.

(i) Nodal Head of Special Juvenile Police Unit shall cause quarterly (once in three months) inspection of all the police stations through an official not below the rank of ACP in order to check that all the police stations have put in place the required setup and all the obligations required.

(ii) A report shall be prepared by such ACPs of such visits documenting the best practices or shortcoming noticed at the police stations and shall be submitted to the Nodal Head of SJPU within 10 days of such visit.

(iii) Nodal Head of SJPU shall make a report on half yearly basis and shall submit it to the Commissioner of Police with recommendations. A copy shall also be submitted to Juvenile Justice Committee of Hon'ble Delhi High Court.

(iv) District Level units of SJPU shall on a regular basis monitor the functioning of police stations of that district vis a vis implementation of JJ Act and Rules and direction of this Hon'ble Court and shall provide necessary guidance and trainings to the police.

D. For the Officer In Charge of the Police Station:

(i) It shall be the duty of the Officer Incharge of the Police Station to ensure that police officers of his or her police station have taken all measures to ensure that proper inquiry or investigation on the point of age has been carried out and that all the required formalities, procedure have been carried out and required documents have been prepared in this regard.

(ii) Officer In Charge shall also ensure that a notice board , prominently visible , in Hindi, Urdu and English language informing that persons below the age of 18 years are governed under the provisions of JJ act and cannot be kept in police lock up and jails and are not to be taken to the Adult Criminal Courts. Such notice Board shall also contain the names and contact details of Juvenile Welfare Officers, Probation Officers and Legal Aid Lawyers of DSLSA.

E. For the Investigating Officer or any other police officer acting under the instruction of Investigation Officer:

(i) Every Police officer at the time of arresting/apprehending young offenders shall be under obligation to inform the alleged offender about his right to be dealt with under the provisions of Juvenile Justice Act if he is below 18 years of age and a proper counselling shall be done on the point of age.

(ii) IO or any other police officer affecting the arrest/ apprehension shall also prepare the Age Memo. A copy of such Age Memo shall also be delivered to the alleged offender and his parents/ guardians/ or relative who have been intimated about his arrest.

(iii) At the time of forwarding the copy of FIR to the Ilaka Magistrate within 24 hours, IO shall be under duty to file the preliminary age memo along with the FIR in case arrest /apprehension is made before forwarding the FIR.

(iv) On completion of age inquiry, which shall be done, preferably within one week of arrest/apprehension, the completed age memo be filed before the court concerned.

(v) At the time of first production of an offender who is between 18 to 21 years of age as per the initial inquiry of the IO as above, before the Court, IO or the Police officer responsible for producing the offender before the Court, shall produce alleged offender, along with a copy of the FIR and age memo before the Secretary of respective District Legal Services Authority, irrespective of whether the alleged offender is being represented by a legal aid lawyer or not.

(vi) If the alleged offender claims to be a juvenile and age documents to support such claim are not readily available and it is not possible for IO to obtain such documents within 24 hours of arrest, accused shall be produced before Juvenile Justice Board.

(vii) At the time of first production of offender before Court or JJB, it shall be the duty of IO to ensure that parents or relatives of such offender are duly informed about (1) date, (2) time and (3) particulars of the court of such production and a copy of such intimation shall be produced before the Court at the time of first production.

F. For the Juvenile Welfare Officers (JWOs) :

(i) It shall be the duty of the Juvenile or Child Welfare Officer to obtain the copy of age declaration done by JJB or CWC and to forward such copy to the Special Juvenile Police Unit for entry into the record and to obtain a certificate that such entry has been done with SJPU and a copy of such certificate shall be deposited to the JJB or CWC concerned.

(ii) It shall be the duty of the Juvenile Welfare Officer to ensure that any offender at the Police station who might be a juvenile is not treated as adult and if he notices any such incident, he shall immediately report to the Officer in Charge of the Police Station concerned with an intimation to District SJPU.

(iii) In case, Any police officer is approached by any person alleging that some one who is a juvenile and has been treated as an adult by any officer of that Police Station, it shall be the duty of such police officer to record the statement of such complainant and then to register a DD Entry to this effect immediately and take up the issue with the Juvenile Welfare Officer or Investigation Officer concerned or the Officer In Charge concerned and cause corrective steps to be taken by such police officer. JWO shall furnish a copy of such DD Entry to the aggrieved person/ complainant. A report about such complaint, copy of DD entry, details of action taken or proposed to be taken shall be forwarded to the District SJPU with in 24 hours of receiving such complaint.

G. For Tihar & Rohini Jails:

(i) "Visitors' Boards" prescribed in Rule 12 and 13 of the Delhi Prison (Visitors of Prisons) Rules, 1988, shall specifically mention in their reports the status of young offender found in the jails and also recommend follow up action to be taken up by the Jail Authorities.

(ii) The Jail Authorities will not get the medical examination test done at the first instance on its own. Such cases will be immediately intimated to the DSLSA with complete details such as FIR No, Court name, next date of hearing and other required details to enable DSLSA to take appropriate follow up action.

(iii) Such persons who appear to be juveniles as per JJ Act, 2000 shall be segregated immediately from the other prisoners. If Jail authorities are of the view that any person brought in the Jail may be a probable juvenile, it should send a letter addressed to the Court Concerned within 24 working hours, requesting for an age inquiry to be conducted. Copy of such letter shall also be attached with the Warrant of the prisoner. It should be the prerogative and responsibility of the Court concerned to initiate an age inquiry as per law and make a decision accordingly. Jail authorities cam maximum bring the fact of possible juvenility to the notice of Courts by way of a proper communication.

(iv) Every Jail shall display at a prominent place in all the wards, canteen and visitors' area in Hindi, English and Urdu languages noticeboards informing inmates that persons who age was below 18 years at the time of commission of offense are not supposed to be in Jail and are entitled to kept in children Homes and be treated under the Provisions of Juvenile Justice Act and be dealt with by the Juvenile Justice Board which make efforts for reformation and rehabilitation. Such Notification shall also inform the procedure to be adopted and the persons to be contacted within jail in case if they want to claim juvenility. Jail Authorities as well as Legal Aid Authorities shall be under duty to provide effective and speedy legal aid to every inmate who wants to put a claim of juvenility in the Court.

(v) Jail authorities / Superintendent shall make available the details of each inmate, as maintained by them, to the panel visitors of NCPCR, which shall include but not be limited to name, address, age on record, previous history of institutionalization in jails , medical reports.

H. For Juvenile Justice Boards:

(i) JJB shall conduct the proper age inquiry of each child brought before it as per the procedure laid down in Rule 12 of the Delhi Juvenile Justice (Care & Protection of Children) Rules 2009.

(ii) On every occasion, when the case of a juvenile is transferred from the adult court to the JJB and the juvenile is transferred from jail to the concerned Observation Home, the JJB shall interact with the juvenile and record his/her version on how he came to be treated as an adult. If from the statement of the juvenile and after appropriate inquiry from IO, it appears that the juvenile was wrongly shown as an adult by the IO, then the JJB shall intimate the concerned DCP. This intimation shall be done in all those cases which are received from the JJB by way of transfer from the adult court, and shall be done even in all those cases in which the declaration of juvenility has been done by the Adult Court.

(iii) JJBs shall determine the age of a person by way recording the evidence brought forth by the Juvenile and the prosecution/ complainant and the parties shall be given an opportunity to examine, cross examine or re-examine witnesses of their choice.

(iv) In case of medical age examination, the parties shall be given copies of the medical age examination report immediately by the JJBs. The parties shall have the right to file objection thereto, including the right to cross-examine before final age determination is done.

(v) While declaring the age, the order of age declaration shall also state the age as nearly as possible as on the date of commission of the offence.

(vi) Before commencing the age inquiry, a notice thereof shall be served upon the complainant by the JJB or the Court Concerned, which shall also accord opportunity to the complainant of being heard on the issue including producing evidence; however the age inquiry will be concluded within the stipulated time limit of one month.

(vii) It shall be the duty of Board to ensure that every juvenile in whose respect age inquiry is being conducted is being represented by a Counsel and in those cases, where there is no lawyer present before the Board at the time of hearing of case; Board shall provide a Legal Aid Lawyer.

(viii) JJB shall give copy of age declaration to JWO to get it recorded with Nodal Officer of SJPU. A certified copy of the age declaration shall be mandatorily given to the juvenile or his/ parents on the same day along with a copy to the concerned Juvenile or Child Welfare Officer.

I. For National Commission for Protection of Child Rights (NCPCR):

(i) NCPCR shall constitute a panel of at least ten (10) persons to make visits to various jails in Delhi in order to find out if there are any persons lodged in such jails who should have been the beneficiaries of the JJ Act. Members of such panel may visit various jails as per the schedule drawn in consultation with/ intimation to the Jail Authorities.

(ii) Reports of such visits along with the list of probable juveniles shall be forwarded to the Member Secretary of Delhi State Legal Services Authority, Jail Authorities and the JJBs concerned for further action. NCPCR shall devise a Performa which shall be used by

such visitors and shall be supplied to all such visitors on the panel. Such filled up proformas will be used to compile a report.

(iii) Such persons shall be only those persons who are in a position to and are willing to visit various Jails in Delhi at least once a month but it may conduct such visits more frequently if required.

(iv) NCPCR shall make arrangements to pay for a reasonable honorarium and incidental expenses on travel etc. to the members of this panel whose services would be obtained by NCPCR from time to time.

(v) NCPCR shall provide training and orientation to all the members of the panel on JJ Act, method of Age inquiry, jail rules & discipline, and method of filling up the proforma etc.

(vi) Such panel may be revised as and when required by NCPCR.

J. For Legal Aid Lawyers & Delhi Legal Services Authority:

(i) Legal Aid Lawyers from Delhi State Legal Services Authority who are authorised to be the jail visiting lawyers shall visit Jails on their schedule as may be prescribed and shall intimate the details of inmates who may be juveniles to the Secretaries of the respective District Legal Services Authorities for further appropriate action.

(ii) Legal Aid Lawyers shall be entitled to make visit to the Mulahiza ward(New admission ward) of the adolescent and female jails and be allowed to freely interact with the inmates and shall not wait for inmates to approach them in the legal aid room.

(iii) Superintendent of each jail shall intimate to the DSLSA on a fortnightly basis about the names, case details, court and date of next hearing of those inmates who may be juveniles.

(iv) Whenever any offender of 18 to 21 years age is produced at the office of the Secretary of concerned District Legal Services Authority, the secretary him/her self and in his/her absence the Front Office Lawyer will interact with the alleged offender to ascertain the facts as are relevant for determination of age such as date of birth, name of first attended school, names, number and date of birth of siblings etc.) while explaining the purpose of seeking such information and shall move applications where necessary and irrespective of the alleged offender being represented by private counsel to request the Court to conduct an age inquiry.

K. For the Courts concerned:

(i) Whenever an alleged offender is produced before a court, not being the JJB or CWC, it shall on the very first date of production question the offender about his/her age and shall inform such offender about the benefits of the JJ Act. If the offender claims or appears to be 18-21 years, it shall direct the IO to produce the alleged offender at the Office of the Secretary of District Legal Services Authority. The Court shall by way of an inquiry under Rule 12 of the Delhi JJ Rules 2009 satisfy itself that the offender is not a juvenile.

(ii) If the court concerned is of the view that the offender produced before it may be a juvenile, it shall order for immediate transfer to Observation Home and production of such offender before the JJB concerned, and shall direct the Alhmed to send the case file to JJB immediately.

(iii) If a claim of juvenility under Section 7A of the JJ Act is raised before any court at any point of time, the Court shall conduct an age inquiry as per the Rule 12 of the Delhi JJ Rules 2009 and if a person is established to be a juvenile, shall order for same day transfer to Observation Home (if offender is below 18 years as on the date of such order) and to the Place of Safety (if person has turned adult on the date of such order) and shall direct the Alhmed to send the case file complete in all respect including documents relating to Bail etc. to the JJB Concerned.

(iv) If there is an adult co-accused also, the copy of the judicial file shall be prepared by such Court and shall be forwarded to the JJB Concerned.

L. For the Government Hospitals and Medical Boards:

(i) All Government Hospitals shall constitute Medical Boards to carry out medical age examinations and shall give report not later than 15 days of request being made in this regard.

(ii) All the members of medical Board (Physiologist, Dental Examiner and Radiologist/ Forensic expert)shall give their individual reports based on their respective examinations and the same shall be mentioned in the report , based on which the Chairperson shall give the final opinion on the age within a margin of one year.

M. Guidelines for Legal Services in Juvenile Justice Institutions:

(i) When a child is produced before Board by Police, Board should call the legal aid lawyer in front of it, should introduce juvenile / parents to the lawyer , juvenile and his/her family/parents should be made to understand that it is their right to have legal aid lawyer and that they need not pay any fees to anyone for this.

(ii) JJB should give time to legal aid lawyer to interact with juvenile and his/her parents before conducting hearing.

(iii) Juvenile Justice Board should mention in its order that legal aid lawyer has been assigned and name and presence of legal aid lawyers should be mentioned in the order.

(iv) Board should make sure that a child and his parents are given sufficient time to be familiar with legal aid counsel and get time to discuss about the case before hearing is done.

(v) Juvenile Justice Board should make sure that not a single juvenile□s case goes without having a legal aid counsel.

(vi) Juvenile Justice Board should issue a certificate of attendance to legal aid lawyers at the end of month and should also verify their work done reports.

(vii) In case of any lapse or misdeed on the part of legal aid lawyers, Board should intimate the State Legal Services Authority and should take corrective step.

(viii) Juvenile Justice Board and the legal Aid lawyers should work in a spirit of understanding, solidarity and coordination. It can bring a sea-change.

(ix) Legal Aid Lawyer should develop good understanding of Juvenile Justice Law and of juvenile delinquency by reading and participating in workshops/ trainings on Juvenile Justice.

(x) Legal Aid Lawyer should maintain a diary at center in which dates of cases are regularly entered.

(xi) If a legal aid lawyer goes on leave or is not able to attend Board on any given day, he/she should ensure that cases are attended by fellow legal aid lawyer in his/her absence and that case is not neglected.

(xii) Legal Aid lawyer should not take legal aid work as a matter of charity and should deliver the best.

(xiii) Legal Aid Lawyer should raise issues/ concerns/ problems in monthly meeting with State Legal Services Authority.

(xiv) Legal Aid Lawyer should maintain file of each case and should make daily entry of proceeding.

(xv) Legal Aid lawyer should not wait for JJB to call him/her for taking up a case. There should be effort to take up cases on his/her own by way of approaching families who come to JJB.

(xvi) Legal Aid Lawyer should inspire faith and confidence in children/ their families who cases they take up and should make all possible efforts to get them all possible help.

(xvii) Legal Aid lawyer should abide by the terms and conditions of empanelment on legal Aid Panel.

(xviii) Legal Aid lawyer should tender his/her monthly work done report to JJB within one week of each month for verification and should submit it to concerned authority with attendance certificate for processing payments.

(xix) Legal Aid Lawyer must inform the client about the next date of hearing and should give his/her phone number to the client so that they could make call at the time of any need.

18. In addition, we deem it imperative to issue the following direction for strict compliance by all concerned:

(1) As per the Provision of Jail Manual, each jail shall have a welfare officer in addition to other officers. But in Delhi Jails, number of welfare officers is inadequate where certain posts are lying vacant. There are only 5 Welfare Officers for 11 Jails. Jails Administration may kindly be directed to appoint required number of WOS.

(2) **Accountability:** Granting compensation to the victims in respect of wrong done has become a matter of norm. However, it is necessary to ensure that compensation should not become a tool for the State to brush wrongs, committed by their officers, under the carpet. It is necessary to hold them personally accountable, as more often than not, the incarceration of the child in adult prison is the fault of arresting officer, who fails to fulfill his duty in ensuring that the accused in not a juvenile.

(3) **Training and Sensitization of Magistrates/ Judicial Officers, Legal Aid Lawyers, Jail Visiting Lawyers and other lawyers etc.:** these are the three agencies that come in contact with the Juveniles in conflict with law, thus the need to ensure that a child in conflict with law should be treated as a child and not an offender, is primarily on them. Therefore, it is necessary that all the Officers

are trained in respect of the provisions of the Juvenile Justice Act, and this can be done with a collaborative effort of the Civil Society Organizations and the State Agencies. A specific direction may kindly be given for trainings to be organized by DSLSA, Bar Associations for training and sensitizing Legal Aid Lawyers, Jail Visiting Lawyers and all other lawyers as well. Intervener IBJ would like to impart such trainings.

19. The present task for identifying the persons stated to be between 18 to 21 years of age and determination of their actual age will go on and the process in respect thereof, as outlined in the aforesaid orders as also as per the guidelines and directions spelled out hereinbefore, shall be followed. On the implementation of the aforesaid directions and guidelines, a report shall be submitted to this Court every six months by the police authorities with copies to NCPCR and DLSA. 20. Writ petition is disposed of in the aforesaid terms.

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Revision No. 786 Of 2010
Date of Decision: 14.06.2011

GOVIND @ GOVIND TURI
Versus
STATE OF JHARKHAND.

ORDER

JAYA ROY, J.

Heard the learned counsel for the petitioner and the counsel for the State.

2. The petitioner has filed this application for setting aside the order 23.6.2010 passed by the learned Sessions Judge, Bokaro in Cr. Appeal No.35 of 2010 affirming the order dated 22.3.2010 passed by the learned Chief Judicial Magistrate, Bokaro in G.R. No. 118 of 2010 arising out of Harla P.S. Case No.8 of 2010 whereby the prayer for declaring the petitioner as juvenile has been rejected.

3. The counsel for the petitioner submits that the date of birth of the petitioner is 18.12.1993 and as alleged, the date of occurrence is 21.1.2010 and as such, he was juvenile on the alleged date of occurrence and on the basis of this, the petitioner has filed a petition with a prayer to send his case record to Juvenile Justice Board.

4. The counsel for the petitioner further submits that the mother of the petitioner has filed an affidavit that according to the Horoscope, the date of birth of the petitioner is 18.12.1993. On the basis of this affidavit, the court below referred the matter to the Medical Board for determination of the age of the petitioner. The Medical Board has submitted its report on 22.3.2010 in which it has been stated that the age of the petitioner has been assessed between 18-19 years. The court below, on the basis of this report, declared the petitioner as major and rejected his petition for declaring him as juvenile. It is further contended that the alleged occurrence took place in January, 2010 and the Medical Board has examined the petitioner and submitted its report in March, 2010. According to the provisions of Rule 2007, the benefit must be given to the juvenile and the lower side of his age to be considered. Therefore, if it is taken as 18 years and taking one year margin, definitely the petitioner was juvenile at the time of alleged occurrence.

5. The counsel for the State has submitted that it is a case of kidnapping of two minor girls and the age of this petitioner has been assessed by the Medical Board between 18-19 years. Even if the lower end of his age is taken into consideration, the petitioner was major at the time of alleged occurrence. To support his contention, he has cited a decision of the Apex Court reported in 2008 (2) Eastern Criminal Cases11(SC) (Jyoti Prakash Rai Versus State of Bihar.

6. Admittedly, the alleged date of occurrence is January, 2010 and the age of the petitioner was assessed by the Medical Board in March, 2010 is between 18-19 years. The Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003, provides sub-Rule (5) of Rule 22 also lays down the procedure to be followed by a Board in holding inquiries and the determination of age which reads as follows :

5. In every case concerning a juvenile or a child, the Board shall either obtain, (i) a birth certificate given by a corporation or a Municipal Authority; or (ii) a date of birth Certificate from the School first attended; of (iii) Matriculation or equivalent Certificates, if available; and (iv) in the absence of (i) to (iii) above, the medical opinion by a duly constituted Medical Board subject to a margin of one year in deserving cases for the reasons to be recorded by such Medical Board, (regarding his age and, when passing orders in such case shall, after taking into considerations such evidence as may be available or the medical opinion, as the case may be record a finding in respect of his age."

7. Considering the admitted facts, and considering the rules in this regard, if the lower side of the age of the petitioner, as come in the Medical Board's report, is taken it would be 18 years in March, 2010 and as the alleged occurrence is of January, 2010. Definitely there is some doubt whether the petitioner has completed his 18 years of age in January, 2010 or thereafter. As there is some doubt, therefore, benefit of doubt should go in favour of the petitioner.

8. Considering all these aspects, I find merit in this revision application. Accordingly, the impugned order dated 23.6.2010 is set aside and I declare the petitioner as juvenile as there is some doubt whether even according to the Medical Board's report he had completed 18 years of age on the date of alleged occurrence. The case is remitted back to the court below for passing an appropriate order for referring the case of the petitioner to the Juvenile Justice Board.

9. Accordingly, this revision application is allowed.

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 1096 Of 2009
Date of Decision: 9.5.2011

DEEPAK KUMAR SINGH
Versus
STATE OF JHARKHAND

ORDER

D. K. SINHA, J.

1. This Criminal Revision has been preferred by the petitioner Deepak Kumar Singh under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 against the judgment dated 23.11.2009 passed by Sri O.K. Verma, Sessions Judge, Palamau at Daltonganj in Cr. Appeal No. 62 of 2009 by which the prayer of the petitioner for declaring him juvenile, rejected by the Juvenile Justice Board, Palamau at Daltonganj in connection with Sadar (Town) P.S. Case No. 159 of 2006 corresponding to G.R. No. 629 of 2006 was affirmed and the appeal was dismissed. The petitioner was in custody for the alleged offence under Sections 3027 201 of the Indian Penal Code.

2. The prosecution story in short was that the village chowkidar in his statement before the police on 4.5.2006 narrated that a dead body of an unknown person was found thrown by putting inside a gunny bag. The neck and limbs of the deceased was tightly tied with nylon ropes to which Sadar (Town) P.S. Case No. 159 of 2006 was registered for the alleged offence under Sections 302/201 of the Indian Penal Code against unknown accused. During course of investigation the name of the deceased was transpired to be Santosh Agarwal who was earlier abducted by the culprits for ransom. The police got some) clues about involvement of the petitioner Deepak Kumar Singh in commission of the alleged offence and accordingly, he was arrested, and he confessed his guilt that he abducted the deceased in association with Mantoo Singh. He had given a detailed description as to how both of them hatched a plan to abduct Santosh Agarwal and they demanded ransom from his family for securing his release. From the very beginning the petitioner had taken the plea of his juvenility before the CJM. In pursuance of such plea, the case record of the petitioner was separated and it was referred to the Juvenile Justice Board, Ranchi for determination of his age. An enquiry was conducted under Section 49 of the said Act and the Board after considering all the materials collected during course of enquiry held that the petitioner was not a juvenile at the relevant time and date of the alleged occurrence. During course of such enquiry the petitioner was referred to the Civil Surgeon-cum Chief Medical Officer, Ranchi for determination of his age and the Medical Board duly constituted determined the age of the petitioner about 20-21 years.

3. The petitioner then preferred Criminal, Appeal No. 86 of 2007 under Section 52 of the said Act before the Sessions Judge, Palamau at Daltonganj which was allowed and the matter was remitted back again to the J.J. Board. Ranchi for re-determination of age of the petitioner. In compliance thereof the J.J. Board called for the relevant documents from the Civil Surgeon-cum-Chief Medical Officer, Ranchi by which the age of the petitioner was determined between 20 and 21 years. On receipt and upon consideration of the said report, the J. J. Board, Ranchi, directed appearance of any member of the Medical Board with original documents

regarding the assessment of the age of the petitioner for its proof, but in the meantime an independent Juvenile Justice Board was constituted at Daltonganj, where the record of the petitioner was transferred. The Juvenile Justice Board, Daltonganj thought it proper to get the age of the petitioner determined by directing the Civil Surgeon. Palamau. Accordingly a Medical Board was constituted for the re-determination of the age of the petitioner and the Board determined the age of the petitioner about 1920 years by the report dated 14.5.2009. During course of enquiry one of the members of the Medical Board Dr. V.K. Singh was examined as E.W. 3. The J.J. Board, Daltonganj finally held the petitioner not a Juvenile against which Cr. Appeal 62 of 2009 was preferred before the Sessions Judge, Pal am au at Daltonganj under Section 52 of the Juvenile Justice (Care and Protection of Children) Act, 2000 wherein while deciding the appeal it was .observed that the Juvenile Justice Board. Daltonganj quite correctly assessed and determined the age of the appellant on the basis of. and by detailed discussion and appreciation of medical opinion rendered by the Medical Boards both at Ranchi and Daltonganj, and rightly held that the appellant was above 18 years of age on the alleged date of occurrence in the year 2006 and the appeal was dismissed.

4. Mr. A.K. Kashyap, the learned Sr. Counsel submitted that the learned J.J. Board, Ranchi did not accept the entry made in the school leaving certificate of the petitioner to be genuine which was proved by E.W. 1 during course of enquiry who was a competent witness being the Headmaster Incharge of the Gandhi Praveshika Vidhyalaya, Krishna Ashram Sikariya, Jahanabad, wherein date of birth of the petitioner was recorded as 15.8.1993 and this fact was corroborated by the father of the petitioner as E.W. 2 during course of enquiry for determination of the age. The J.J. Board, Pal am au at Daltonganj however, ignoring the evidence of two material enquiry witness relied upon the report of the Medical Board, Ranchi wherein age of the petitioner was determined to be 20-21 years though it could not be substantiated by the evidence of any member of the Board. The Second Medical Board was constituted at Daltonganj pursuant to the direction of the newly constituted J.J. Board in Palamau at Daltonganj which assessed and determined the age of the petitioner as about 19-20 years on 14.5.2009. The occurrence as alleged took place between 3.5.2006 to 4.5.2006 and the age of the petitioner was determined to be about 19-20 years by the Medical Board, Daltonganj on 14.5.2009. Therefore, the learned Sr. Counsel Mr. A.K. Kashyap submitted that the petitioner was definitely under 18 years of age, a juvenile, on the alleged date of occurrence and this fact was ignored while recording the impugned judgment by the Sessions Judge, Daltonganj in Cr. Appeal No. 62 of 2009 by dismissing the appeal.

5. Advancing his argument Mr. Kashyap further submitted that the Headmaster Incharge of the concerned school, where the petitioner last read, was produced and examined as E.W. 1 who proved the school leaving certificate and the admission register wherein the date of birth was recorded as 15.8.1993 as such the petitioner was below 18 years on the alleged date of occurrence on 4.5.2006. E.W. 3 also being the member of the Medical Board, Daltongang, testified that the age of the petitioner was determined between 19-20 years on 14.5.2009 by the Medical Board, therefore, he was below 18 years as on 3/4.5.2006 i.e. the alleged date of occurrence.

6. The learned counsel asserted on the point of law that Rule 22(5)(iv) of the Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003 vests jurisdiction to the Juvenile Justice Board to obtain the medical opinion with regard to determination of age in absence of required proof of age as per sub-clauses-I, II, III of clause (5) of Rule 22, by the duly constituted Medical Board, subject to margin of one year, in deserving cases but of course for

the reasons to be recorded. In the instant case the petitioner could be able to bring the original transfer certificate on the record and thereby he satisfied the requirement of Rule 22(5) (11) of the Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003 and therefore, assessment and determination of the age by constituting Medical Board was not required.

7. Heard the learned A.P.P. on behalf of the O.P. State.

8. Having regard to the facts and circumstances of the case, argument advanced on behalf of the parties, provision of law as laid down under Rule 22(5) Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003 provides procedure for determination of age of a juvenile in conflict with law as hereunder:-

In every case concerning a juvenile or a child, the Board shall either obtain

(i) a birth certificate given by a corporation or a municipal authority; or

(ii) a date of birth certificate from the school first attended;

(iii) matriculation or equivalent certificate, if available; and

(iv) In the absence of (i) to (iii) above, the medical opinion by a duly constituted Medical Board, subject to a margin of one year, in deserving cases for the reasons to be recorded by such Medical Board, when (regarding his age and, passing orders in such case, shall after taking into consideration such evidence as may be available or the medical opinion, as the case may be record a finding in respect of his age).

9. The rules as such provides that for determination of age of a juvenile, the Juvenile Justice Board, has to first rely upon the birth certificate issued by the Corporation or Municipal authority or a date of birth certificate from the school first attended, matriculation or equivalent certificate and in absence of the aforesaid certificate/certificates, the medical opinion of a duly constituted Medical Board may be called for subject to a margin of one year.

10. I find from the arguments and the materials on the record that the J.J. Board, Palamau at Daltonganj directed for constitution of Medical Board at Daltonganj for determination of the age when the petitioner herein failed to satisfy the requirement of Rule 22(5)(1)(11)(111) of the Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003 specially by not producing any birth certificate issued by the Corporation or Municipality, a birth certificate from the school first attended by him or a matriculation or equivalent certificate. In the report dated 15.2.2008 his age was determined by the Medical Board at Ranchi between 20-21 years based on dental and radiological finding of the Medical Board but such report could not be proved though its veracity was not challenge a by the petitioner. The report formed the opinion of the body of experts and was relevant.

11. On the transfer of the record from J.J. Board, Ranchi to the J.J. Board, Palamau at Daltonganj on' its creation, again a report was called for from Medical Board, Daltonganj which determined the age of the petitioner between 19-20 years by its report dated 14.5.2009. During such enquiry EW-3 Dr. V.K, Singh a member of the Medical Board, Palamau at Daltonganj was examined and he proved the report and affirmed the age of the petitioner within group of 19-20 years on determination.

12. Now there were two medical reports of two different Medical Boards duly constituted with variation in the age of the petitioner after assessment and determination by the body of experts. In the first medical report dated 15.2,2008 the age of the petitioner was determined

to be 20/21 years whereas in the second report submitted by the Medical Board, Palamau at Daltonganj dated 14.5.2009 his age was determined to be 19/20 years both based upon dental and radiological findings.

13. 1 find from the order of the Juvenile Justice Board, Pal am au at Daltonganj dated 12.6.2009 in G.R. No. 628 of 2006 and the judgment recorded by the Sessions Judge, Pal am au at Daltonganj on 23.11.2009 that both the courts in succession presented comparative discussions on two different medical reports and determined the age of the petitioner to be above 18 (eighteen) years as on the alleged date of occurrence on 4.5.2006 by giving conscious consideration and logically relying upon the reports submitted by the Medical Boards of two different places.

14. The Civil Surgeon. Ranchi when called upon, had given a detailed report with regard to assessment and determination of the age of the petitioner Deepak Kumar Singh by the Medical Board, Ranchi as hereunder.-

Dentition 28 + 1 (erupting)

Total-29 Radiological:-

(i) X-ray of wrist and hand shows pisiferous ossified, heads of metacarpals fused lower ends of radius and ulna fused.

(ii) X-ray of pelvis shows crest of ilium fused, ischial tuberosity not fused. The age on the basis of above finding is about 20-21 (twenty-twenty one) years.

The Medical Board, Palamau Daltonganj had given the following grounds while determining the age of the petitioner :-

Teeth-29

Secondary Sex character appeared

(i) X-ray shows lower radial epiphysis fused. Lower ulna epiphysis fused. Upper radial epiphysis fused. Crest fused.

In the opinion of the Board the age of Deepak Kumar Singh was about 19-20 years.

15. The learned Sessions Judge in the appeal meticulously dealt with the finding of the J.J. Board, Palamau at Daltonganj that lower and upper radial epiphysis fused, lower ulna epiphysis fused and right iliac crest epiphysis fused which usually gets completed within the age group of 19-20 years and that the Medical Board, Ranchi was of the opinion on the basis of such finding that the petitioner was about 20/21 years even while it could have been more than the assessed age, but in no case could be less than the assessed one. The J.J. Board relied upon Modi's book of Medical Jurisprudence and Toxicology wherein it was described that such developments in males were complete within the age group of 19 to 20 years but at the same time the report of the Medical Board, Daltonganj dated 15.2.2008 reflected on the radiological test that wrist and hands of the petitioner showed pisiferous ossified, heads of metacarpals fused, lower ends of radius and ulna fused and pelvis showing iliac crest also fused on the basis whereof the age of the petitioner was determined to be 19/20 years. It was held by the Juvenile Justice board and affirmed by the appellate Court that since all the characters and osteological changes which were necessarily to be present between the age of 19-20 years had already been found by the Medical Board, Ranchi at the time of examination of the petitioner at the first instance which were corroborated by physical appearance

between 21, 22 years with the application of deviation to plus-minus two years on the upper side, it was held that the petitioner was not a juvenile, certainly above 18 years of age on the alleged date of occurrence and the Juvenile Justice Board, Palamau at Daltonganj also held him' above 18 years by his appearance, as such, evaluation of the J.J. Board is corroborative in nature.

16. The learned Sr, Counsel Mr. A.K. Kashyap failed to show any reasonable ground so as to call for interference in the concurrent findings of the J.J. Board, Palamau at Daltonganj as well as the finding of the Sessions Judge, Palamau at Daltonganj in Cr. Appeal No. 62 of 2009. I find and observe that J.J. Board, Daltonganj as well the Sessions Judge, Palamau, Daltonganj have metiulously and technically dealt with and have come to the logical findings based upon the contentions of the Modi's Medical Jurisprudence and toxicology an authority for reference, and I do not find any illegality or irregularity caused so as to call for interference in the judgment delivered in Criminal Appeal. There being no merit, this Criminal Revision is dismissed affirming that the petitioner Deepak Kumar Singh was not a juvenile under 18 years of age as on 4.5.2006 i.e. the date of alleged occurrence.

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. M. P. No. 299 of 2011
(Arising out of S.L.P.(Crl.) No. 2411/2011)
Date of Decision: 02.05.2011

ANAND KUMAR VERMA
Versus
STATE OF JHARKHAND.

JUDGEMENT

D. K. SINHA, J.

The petitioner has invoked the inherent jurisdiction of this Court under Section 482 Code of Criminal Procedure for quashment of the order dated 01.12.2010 passed by the C.J.M, Koderma in Koderma (Telaiya) P.S. Case No. 127 of 2010, corresponding to G.R.No.206 of 2010 by which he refused to pass any order on the petition of the petitioner dated 18.11.2010 stating the reason that by his earlier order dated 10.08.2010 he had already refused the claim of the petitioner to declare him juvenile.

1. The Sessions Judge, Koderma also while entertaining the Criminal Appeal preferred under Section 52 of the Juvenile Justice (Care and Protection of Children) Act, 2000 held that the order dated 10.08.2010 passed by the C.J.M., Koderma could not be held to be an order recorded by a competent authority in terms of Section 2(g) of the Juvenile Justice (Care and Protection of Children) Act, 2000. The petitioner requested that his case may be referred to the Juvenile Justice Board, Koderma for determination of his age and declaring him juvenile. The informant Anil Kumar in his written report dated 29.03.2010 presented before Tilaiya Police stated that he used to reside in his father-in-law's house at Kalali Road, Tilaiya having his grocery shop near the G.T. Complex. He had been in his shop at about 10.00 a.m. on 28.03.2010. As he had to go out for an extreme urgent work for that he had taken his brother-in-law Tarun Kumar to the shop. At about 11 O' clock, the renter of his father-in-law's house took away certain articles from his grocery shop accompaning his brother-inlaw, Tarun on assurance that he would return the articles to his shop if not liked through Tarun by retaining the other articles. Tarun accompanied the renter. As the informant had to go out for his work, he left the place by closing his shop and making over the keys of the shop to the neighbourting shopkeeper with the instruction to make over the keys to Tarun on his return. When the informant returned back at about 7 p.m., he found his shop closed. He then went to his home where he could gather that Tarun had proceeded at about 3.45 p.m. saying that he was going to his friend Jitendra but he did never return back. On 29.03.2010 in the morning he received a call on his cell phone informing by unknown that his son was in his custody and extended threat that his son would be killed if the ransom would not be given to him. This message was given on the cell phone of Tarun Kumar and he had reason to2 believe that his brother-in-law Tarun was kidnapped by unknown culprit for ransom.

2. During course of investigation Jitendra Kumar was apprehended, who confessed his guilt stating that he had killed Tarun Kumar after gaging his mouth and had thrown his dead body in the well for the reason that Tarun Kumar had been teasing his sister since long. He also confessed the complicity of the petitioner Anand Kumar Verma that he had taken advice from

the petitioner as to whether Tarun Kumar should be killed or not and the petitioner advised him to eliminate Tarun. After investigation, charge-sheet was submitted under Section 302/201 and 120B of the Indian Penal Code against the petitionerAnand Kumar Verma and other four accused namely Jitendra Kumar, Nishant Raizy Tigga, Vishal Choudhary, Anand Kumar Verma and Sanjay Kumar Das, accordingly, cognizance of the offence was taken against them.

3. Learned Counsel Mr. Deepak Kumar submitted that an application was filed on behalf of the petitioner on 22.04.2010 before the C.J.M., Koderma for declaring him juvenile on the fact that the date of birth of the petitioner was 5.08.1993 and in support thereof he had filed his School Leaving Certificate in proof of his age. It was stated that on the alleged date of occurrence his age was 16 years 7 months 24 days. The parents of the petitioner were also examined before the C.J.M., Koderma where the father of the petitioner had specifically deposed corroborating the date of birth of his son being on 05.08.1993 and this fact was supported in the evidence of the mother of the petitioner, who clearly stated that the age of her son was 16 years. In spite of having such material on the record, the petitioner was referred before the Medical Board for the determination of his age and the age of the other accused persons wherein the Medical Boad determined the age of the petitioner to be about 19 years on 11.06.2010. Relying upon the report of the Medical Board the C.J.M. by his order dated 10.08.2010 rejected the prayer of the petitioner by holding that the age of the petitioner was more than 18 years on the date of alleged occurrence and in that manner the C.J.M. had conducted the enquiry himself under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 which was appealable under Section 52 of the Act. The learned Sessions Judge , Koderma while dealing with the Criminal Appeal No. 25 of 2010 filed under Section 52 of the Juvenile Justice (Care and Protection of Children) Act, 2000 against the order of the C.J.M. dated 10.08.2010 observed that the provisions of Section 52 of the Act3 should be agitated by an aggrieved juvenile in conflict with law as against the order recorded by competent authority under this Act but in the case of the petitioner-appellant since he was not declared juvenile under Section 2(g) of the Act, the order passed by the C.J.M., Koderma cannot be held to be an order of a competent authority under the Act and therefore, it was held by the learned Sessions Judge that the appeal under Section 52 of the Juvenile Justice (Care and Protection of Children) Act, 2000 was not maintainable in his Court and recorded the dismissal of appeal. I find from the fact stated above that when the competent court of Juvenile Justice Board was available in the district of Headquarter Koderma, without referring the matter of the petitioner for determination of the age of the petitioner- Anand Kumar Verma, the learned C.J.M. himself made an enquiry under Section 7A of the Act and found the petitioner not a juvenile, ignoring the settled principle of Rule 22(5) of Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003 wherein a guideline was given to the Juvenile Justice Board or to any other authority or an enquiry conducted under Section 7A of the Act. I find that the Rule 22 could not be followed in letters and spirit by the learned C.J.M. and that the learned Sessions Judge , Koderma also erroneously held, in the facts and circumstances , that the appeal preferred under Section 52 of the Act was not maintainable.

4. It is relevant to mention that after the appeal was dismissed , the petitioner had again filed a petition before the C.J.M. for remitting his case record by spliting up from the original record to the Juvenile Justice Board, Koderma for determination of the age but the same was also rejected only on the ground that he had already rejected the prayer of the petitioner on 22.04.2010 by determining him to be a major . There was no need to pass any further order on

subsequent petition of the petitioner dated 18.12.2010 and accordingly by the order dated 01.12.2010 the petition of the petitioner dated 18.11.2010 was also disposed of by the C.J.M.

5. Having regard to the facts and circumstances of the case, I find that the learned C.J.M. , Koderma though conducted enquiry presumed to be under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 but without following the provisions of Rule 22 of the Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003 and held the petitioner to be major, about 19 years of his age on the alleged date of occurrence, solely relying upon the medical evidence. The learned Sessions Judge, Koderma erred by not appreciating that what the recourse was open to the petitioner against the order passsed under Section 7A of the Act or that the aggrieved was entitled to prefer an appeal under Section 52 of the Act before the Court of Sessions but the same was held to be not maintainable and the appeal was dismissed.

6. In the facts and circumstances, the order impugned passed by the Sessions Judge in Criminal Appeal No. 25 of 2010 on 03.10.2010 as also the order of the C.J.M. dated 01.12.2010 in Koderma P.S. Case No. 127 of 2010, corresponding to G.R.No.206 of 2010 are set aside. The split up record of the petitioner Anand Kumar Verma is directed to be sent to the Juvenile Justice Board, Koderma for the determination of the age according to Rule 22 and to proceed in accordance with law .

7. With this observation, this petition is allowed.

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IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 651 Of 2012
Date of Decision: 25.04.2011

(BEFORE R. K. MERATHIA, J)

M/S. MEINHARDT SINGAPORE PVT. LTD. (INDIA BRANCH)
Versus
STATE OF JHARKHAND & ANR.

ORDER

R. K. MERATHIA, J.

1. In this writ petition, petitioner has prayed for payment of its admitted dues.

2. It is submitted by Mr. M. S. Mittal, learned senior counsel appearing for the petitioner that petitioner was awarded work pursuant to a tender in two parts. The first part was related to drawing and designing and the second part was with regard to construction of Sewerage and Drainage System in Ranchi. The first part was completed and the Ranchi Municipal Corporation ('RMC' for short) gave a satisfactory work completion certificate and returned the performance bank guarantee to the petitioner, and thereafter RMC has been writing to the State Government for payment of the bills, but the same are withheld from 17.1.2008 and 31.5.2008 when the final bills were raised. He further submitted that after about two years of completion of work by the petitioner, a P.I.L. being W.P.(P.I.L.) No. 735 of 2010 was filed by some unknown person, set up by the unsuccessful bidders/and the persons who wanted to harass the petitioner, and on the basis of an innocuous order passed on 13.9.2010, a vigilance inquiry got started only to harass the petitioner, and on the ground of pendency of such inquiry the payment has been withheld. He lastly submitted that the respondents be directed to pay the dues with compensatory interest.

3. On the other hand, Mr. Anil Kumar Sinha, learned -2- Advocate General appearing for respondent no. 1 State submitted that in view of the arbitration clause contained in Clause 15 of the agreement, this writ petition is not maintainable. He further submitted that petitioner should make a representation and the admitted dues, if any will be paid to him and for the balance claim, if any the petitioner can invoke Clause 15 of the agreement. He further submitted that in view of Section 5 of the Arbitration Act, this Court may not exercise writ jurisdiction. He further submitted that in view of Section 65 of the Indian Contract Act petitioner can claim compensation.

4. Learned counsel appearing for the respondent no. 2 RMC submitted that the Corporation has been asking the State Government for payment of the admitted dues, but the Government has not sanctioned the amount. He further submitted that the petitioner can invoke Clause 15 of the agreement.

5. The records of this case were called for by this Court. According to the RMC the admitted dues are payable to the petitioner The respondents State could not show what type of dispute or controversy is involved in such payment. It was submitted by learned Advocate General that the work was given to the petitioner after relaxing some provisions, though in such circumstances fresh tender should have been invited. But, on going through the records,

especially the notes of the Chief Minister dated 26.3.2011 at page 32, of the file, it appears that the matter was considered including the following opinion of the then Advocate General.

> "I further find that three audit reports of meinhardt for the last three years had been submitted by the said company and therefore, there was even no technical infirmity or flaw in considering the offer of the said company. As mentioned above, the cabinet has approved the allotment of work to said Meinhardt twice ..... Thus, in my opinion, Meinhardt should be approached to expedite the work."

It has been inter-alia noted that now steps are to be taken by the Urban Development Department, and not by the Vigilance Cell, as suggested by the Chief Secretary; and that the scheme approved by the Cabinet should be implemented; and that the work of Sewerage and Drainage system in Ranchi Town should be done in phased manner, without delay, as decided by the Department.

6. Thus, the State respondents have not been able to-3- show the nature of dispute or controversy for which the petitioner should be asked to file representation and/or invoke Clause 15. It further appears that the RMC had given work completion certificate and had released the performance bank guarantee to the petitioner. In the circumstances, specially in view of the aforesaid decision of the Chief Minister, there is no reason why the respondents should withhold the admitted amount of the petitioner. In the facts and circumstances of the case, the claim is not time barred also. Accordingly, the respondents are jointly directed to see that the admitted amount is paid to the petitioner within a period of six weeks from today, failing which it will also carry simple interest at the rate of 10% per annum, after expiry of such period, till the date of payment, which shall be recoverable from the erring officers/persons. However, if the said amount is paid to the petitioner within the said time, petitioner will not be entitled to claim any further amount on account of interest/damages.

It may be noted that on the apprehension of learned Advocate General, Mr. Mittal agreed that the parties will be subject to the jurisdiction of the Courts in Jharkhand as indicated in the agreement.

Let the original records be returned to Mr. M. S. Akhtar, appearing for the State.

With these observations and directions, this writ petition stands disposed of.

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IN THE HIGH COURT OF JHARKHAND

Cr. Revision No. 504 Of 2009

(BEFORE JAYA ROY, JJ)

KASHIM MIAN
Versus
STATE OF JHARKHAND

JUDGEMENT

JAYA ROY, J.

1. Heard the learned counsel for the petitioner, the learned counsel for the Opposite Party No. 2 and the learned counsel for the State.

2. Petitioner has filed the instant revision application against the judgment' dated 30.5.2009 passed by the Sessions Judge, Dumka in Criminal Misc. Appeal No. 71 of 2009 whereby the opposite party no. 2 has been declared as juvenile.

3. The prosecution case, in brief, is that on 12.4.2008/13.4.2008 at about 1 A.M. the informant-Kashim Mian who is the petitioner in this case, was sleeping in his house alongwith other family members. His daughter Hina Khatoon was sleeping with her grand maternal mother Osra Bibi in the verandah. At about 1 A.M. when Osra Bibi woke up, she found that Hina Khatoon was not sleeping in the said verandah. Then she informed the informant and the informant started for searching his daughter. At about 5 A.M. one Durga Dasi informed the informant that his daughter is lying naked near roadside field. Thereafter, the informant rushed towards that place and found his daughter in nude and injured position and blood was oozing from her head. Thereafter, the informant with the help of the co-villagers took his daughter to Mohalpahari for her treatment but as her condition was serious, she was referred to Vardwan Hospital for her medical treatment. After sometime, the daughter of the informant expired. Accordingly, the informant lodged the case against unknown under Sections 376, 302/201 of the I.P.C.

4. After completion of investigation the police has submitted charge-sheet against the accused persons including the opposite party no. 2 namely Ranjeet Goswami @ Rajeev Ranjan Goswaml

5. The opposite party no. 2 surrendered before the court below on 13.6.2008 and filed an application on 17.6.2008 raising plea of juvenility stating that as his date of birth is 10.5.1991, he is juvenile

6. The Chief Judicial Magistrate, Dumka directed the Principal Magistrate, Juvenile Justice Board, Dumka to get the age of the opposite party no. 2 to be assessed according to the provision of the Juvenile Justice (Care and Protection of Children) Act, 2000. Thereafter, the case of the opposite party no. 2 regarding the assessment of his age, was referred to the Medical Board and the Medical Board assessed the age of the opposite party no. 2 as 20 years. Accordingly, the Principal Magistrate, Juvenile Justice Board Dumka rejected the application filed by the opposite party no. 2 for declaring him as juvenile by its order dated 27.3.2009.

7. Against the aforesaid order dated 27.3.2009, the opposite party no. 2 filed an appeal under

Section 52 of the Juvenile Justice (Care and Protection of Children) Act, 2000 which was registered as Criminal Misc. Appeal No. 71 of 2009. After considering the case of the opposite party no. 2, the appellate court allowed his aforesaid appeal and declared him as juvenile and recalled the sessions case from the Court of Addl. Sessions Judge, 5th (F.T.C.), Dumka and remit the same to the J.J. Board through C.J.M., Dumka by its order dated 30.5.2009.

8. Learned counsel for the petitioner (informant) submits that the Juvenile Justice Board referred the matter to the Medical Board for the assessment of the age of the opposite party no. 2. The Medical Board was constituted by three doctors namely Dr. A.N. Soren, Dr. C.P. Sinha and Dr. A.K. Singh under the chairmanship of Civil Surgeon, C.M.O., Dumka who examined the opposite party no. 2 and ultimately, after examining and also after considering the x-ray findings, the said Medical Board is of the opinion that the age of the opposite party no. 2 is about 20 years.

9. It is further contended that the Medical Board has assessed the age of the opposite party no. 2 about 20 years as on 18.2.2009 whereas the date of occurrence is 12.4.2008, therefore, the appellate court is wholly erred in declaring the opposite party no. 2 as juvenile.

10. learned counsel for the petitioner has further contended that the birth certificate filed by the opposite party no. 2 shows that the same was issued by the Panchayat Sewak and when the said Panchayat Sewak was summoned to prove the said birth certificate as per provision, 'le in his deposition has failed to prove that he had issued the said birth certificate as per provision. Furthermore, the school leaving certificate of the opposite party no. 2 was issued from Primary School, Binagaria on 10.4.2004 was also produced which shows the date of birth of the opposite party no. 2 is 10.5.1991 and date of admission on 20.2.1997 and leaving the said school on 10.4.2004 in Class VI. The other documents which is the relevant extract copy of the school admission register by Exhibit-A/1, shows the name of opposite party No. 2 as Rajiv Ranjan Goswami is in SI. no. 19 and his date of birth is 10.4.1990. Though it is contended by the learned counsel for the opposite party no. 2 that both are two different persons but the trial court disbelieved the said documents and referred the matter to the Medical Board. The Medical Board opined the age of the opposite party no. 2 as 20 years on 18.2.2009 and the date of alleged occurrence is 12.4.2008. Thus, it is very clear that the opposite party no. 2 was not juvenile on the date of the alleged occurrence.

11. Learned counsel for the opposite party no. 2 submits that the appellate court after considering the certificates filed by the opposite party no. 2 regarding his date of birth and also considering the opinion of the Medical Board, has rightly declared the opposite party no. 2 as juvenile. He has further submitted that it is a well settled law that the medical opinion about the age must varies about two years on either side. Therefore, if the opposite party no. 2 is 20 years on 18.2.2009 and the date of occurrence is on 12.4.2008, the age of the appellant ought to be about 17 years on the alleged date of occurrence.

12. Rule 22(5) of the Jharkhand Juvenile Justice (Care & Protection of Children) Rules, 2003 clearly laid down as to how the age of a person could be determined who claims juvenility which are as follows:-

"22(5) In every case concerning a juvenile or a child, the Board shall either obtain:-

(i) a birth certificate given by a corporation or a municipal authority; or

(ii) a date of birth certificate from the school first attended;

(iii matriculation or equivalent certificates, if available; and .

(iv) in the absence of (i) to (Hi) above, the medical opinion by a duly constituted Medical Board, subject to a margin of one year, in deserving cases for the reasons to be recorded by such Medical Board, when (regarding his age and, passing orders in such case shall, after taking into consideration such evidence as may be available or the medical opinion, as the case may be record a finding in respect of his age)."

13. As the aforesaid act clearly speaks to give the benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, therefore, there is no question to consider the opposite party no. 2 as juvenile on the date of the alleged occurrence. According to the report of the Medical Board, the age of the opposite party no. 2 is 20 years on 18.2.2009. Therefore, even his age after giving the benefit of one year in lower side, his age was more than 18 years.

14. The trial court after elaborate discussion, disbelieved the documents so filed by the Opposite Party No. 2 and referred the matter to the Medical Board for determination of his age. But, the appellate court has neither given his clear findings nor relied upon the said documents, practically, his judgment is based on the report of the Medical Board and after scrutinizing the said report, declared the opposite party no. 2 as juvenile.

15. In the above facts and circumstances of the case, I do not think that it is necessary to consider the genuineness of the documents at this stage when those are discarded by the Principal Magistrate, J.J. Board earlier and the appellate court has not given any clear finding on this issue.

16. Considering the submissions made by both the parties and perusing the impugned judgment and as discussed above regarding the procedure laid down in Rule 22 of Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003, I find patent error in the assessment and determination of age of the petitioner made by the appellate court.

17. Accordingly, I allow this revision application and set aside the order dated 30.5.2009 passed by the Sessions Judge, Dumka in Cr. Misc. Appeal No. 71 of 2009 and confirm the order dated 27th March, 2009 passed by the Principal Magistrate, J.J. Board in connection with G.R. Case No. 577 of 2008, Enquiry No. 79 of 2009, Shikaripara P.S. Case No. 33 of 2008.

18. Office is directed to send back the lower court record immediately to the court concerned.

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"Children are most vulnerable section of the Society and are also citizens of tomorrow. They are hardly in a position to raise their voices in protest against injustice, but, if the same is brought to the notice of the functionaries of Juvenile Justice (Care & Protection of Children) Act, 2000, they must act with alacrity and not shirk their responsibility in dealing with problem"

Justice Altamas Kabir

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