CHAPTER-VII

JUDICIAL CONTRIBUTION

IN MATTERS OF JUVENILE IN CONFLICT WITH LAW
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Supreme Court have significant contribution in the governance good governance whether it is environment, human rights, gender justice, education, minorities, police reforms, elections and limits on constituent powers of Parliament to amend the Constitution. This is only illustrative. Indian Judiciary has been pro-active and has scrupulously and overzealously guarded the rights fundamental for human existence. The scope of right to life has been enlarged so as to read within its compass the right to live with dignity, right to healthy environment, right to humane conditions of work, right to education, right to shelter and social security, right to know, right to adequate nutrition and clothing and so on.

This has been achieved by filling the vacuum in municipal law by applying, wherever necessary, International instruments governing human rights. The Supreme Court has, over the years, elaborated the scope of fundamental rights consistently, strenuously opposing intrusions into them by agents of the State, thereby upholding the rights and dignity of individual, in true spirit of good governance. India incorporated a number of basic human rights as guaranteed fundamental rights, motioned in Part III of the Constitution. These fundamental rights go much beyond the American Bill of Rights. They did draw upon the Universal Declaration of Human Rights issued by the United Nations in 1948 but went ahead of them by incorporating alongside, in Part IV of the Constitution, certain ‘Directive Principles of State Policy’ which are principles that would be fundamental for “good governance” of this country.

The Directive Principles have been used as fundamental principles of governance tempered by the Fundamental Rights. Article 37 time to time, adjustments have been made in the Fundamental Rights through legislative measures, executive action or judicial pronouncements so as to further the object sought to be achieved by the Directive Principles. After all, the purpose of the Fundamental Rights on the one hand and the Directive Principles on the other is common; viz., to provide for an environment that can ensure dignified growth & development of each individual as a useful human being. In order to guarantee that the role of law would inure to, and for, everyone and the promises made by the Constitution would not remain merely on paper, the Constitution makers made provisions for independence.
of the judiciary. Judiciary in India enjoys a very significant position since it has been made the guardian and custodian of the Constitution. It not only is a watchdog against violation of fundamental rights guaranteed under the Constitution and thus insulates all persons, Indians and aliens alike, against discrimination, abuse of State power, arbitrariness.

The rule of law, one of the most significant characteristics of good governance prevails because India has an independent judiciary that has been sustained, amongst others, because of support and assistance from an independent bar which has been fearless in advocating the cause of the underprivileged, the cause of deprived, the cause of such sections of society as are ignorant or unable to secure their rights owing to various handicaps, an enlightened public opinion and vibrant media that keeps all the agencies of the State on their respective toes.

The Supreme Court has played vital role in protecting the rights of under trials and prisoners. It has also shown quite a protecting attitude towards delinquent's children and on numerous occasions exhorted the defaulting states to enact a children Act. A public interest legislation against torture of children in Kanpur jail was already before it in which it had been issuing necessary directions, when Sheela Barse a journalist, filed a petition for the release of 1400 children in incarcerated illegally in jails in various states. The petitioner had pursued the matter of release of the imprisoned children with the central government at various levels for about a year but failed, despite an assurance of personal intervention by them prime minister himself. She then took recourse to the Supreme Court and filed a writ petition.

The petition filed on 10-09-1985 resulted in country wide exercise of ascertaining the number of juveniles in jails, the number of various custodial homes for children, the facilities in such homes an issuing of remedial orders. Ultimately it led to passing of the juvenile justice Act and the Supreme Court undertaking responsibility of getting the juvenile justice Act implemented and to monitor the progress in this respect. In its final order the Supreme Court pointed out that advisory boards had been constituted by all the states and were functioning properly. It did not find itself inclined to further monitor the implementation of the juvenile justice Act as suggested by the counsel and disposed of the matter on 15th march 1994. It however, gave liberty to petitioner to move the court if the petitioner had genuine

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apprehensions that the scheme approved by this court and the advisory boards constituted hereunder were not functioning in accordance with the directions given by the courts from time to time.

Numerous orders of the Supreme Court in the Sheela Barse case and the responses of the states provide a recent chronology of implementation of the infrastructure under the juvenile justice Act.

**Issues in the Sheela Barse case:**

According to the information supplied by the ministry of home affairs and ministry of social welfare, they were about 1400 children number 16 years of age in jails of eighteen states and three UTs. These ministries could not do anything in this respect since the state government had exclusive jurisdiction in this matter. The laws applicable to children at that time did not uniformly prohibit the imprisonment of juveniles in jails. Nagaland had no children Act. Some of the children Acts permitted imprisonment of juvenile delinquents in exceptional circumstances in areas where a children Act had not been enforced, the delinquent juveniles were dealt with by ordinary criminal court applying the general criminal law and were sent to imprisonment in the ordinary course along with adult offenders.

The petitioner alleged that absence of children Act in Nagaland, non-establishment of alternate custodial institutions for children and processing of delinquent juveniles by ordinary criminal court due to non-constitution of juvenile courts resulted in violation of the fundamental rights guaranteed under Art. 14 and 21 of the constitution. The petition pleaded, “In matters of life and liberty failure to act in such a manner, for any reason, which do not stand the test of Art. 14 and 21 and which are impermissible even under the various laws relating to children would be per se, arbitrary and unconstitutional. Such unconstitutional detention in jails, which are far more unconstitutional than preventive detention of antisocial need to be interfered with in al haste and the children entitled for immediate release. The argument of consequences cannot be of any avail to the delinquents states, which could not be fair and reasonable just and humane to their children delinquent or not.

The petitioner prayed to the court for an order releasing all children below 18 years of age detained in various states and to direct district judge to visit jails, and police lockups to identify and release children and to ensure follow up section after release. She requested that the respondent stare be directed-
• To file within the weeks, information on number of children in jails, nature of their offence, period of their detention, legal aid rendered, existence of juvenile courts, and number of homes and schools for housing children,

• To immediately requisition necessary building to provide places for housing children facing trials before the juvenile court and to provide the necessary infrastructure for running the homes and

• In the interim to make use of existing observation / protection homes for the purpose.

The petitioner also wanted to the court to direct the representative state legal aid boards and district legal aid committee through appointment of duty counsel to ensure protection of fundamental rights of children in such homes. Lastly she prayed that for any other order or orders as the court may deems fit and proper in the fact and circumstances of the case. However the case progressed, the response of the various states agencies to the orders of the Supreme Court pointed out that the issue in the case were not limited only to the juveniles in jails or their release or the condition of their detention either in jails or other institutions. The problem was more deep rooted in the apathy, ignorance and insensitively of the state to the needs of the children, when the juvenile justice Act was enforced.

The Supreme Court emphasized that, “about 30 corers of young boys and girls come within the purview of the Act. There can be no two opinions that these children that these of today are the citizen of tomorrow’s India and the country’s future would necessary depend upon their proper hygiene physical and mental. The problem is therefore gigantic, importance of the matter is properly perceived and response is adequate both in regard to sufficiency of action and immediately of attention, the purpose of the Act cannot be fulfilled. It is one of the paramount obligations of those who are in charge of governance of the country today to attend to the children to make them appropriate citizen of tomorrow”2.

The Supreme Court was of the opinion that implementation of the juvenile justice Act needed overseeing by the court in view of the implementation scenario and the response of various state agencies so far. In the interest of the juveniles, it

2 Supreme Court Legal Aid Committee v. Union of India, JT 1989 (1) SC 548.
undertook the responsibility of co-coordinating between the union government and the state governments and between the authorities of the state. This order of the court brought within the purview of the Sheela Barse case, various issues raised so far relating to the implementation of the children Act.

**Order in the Sheela Barse case:**

In pursuant to the filing of the petition, notice were issued to 25 respondent states, but at the issues raised by the petition concerned children of the whole country, the remaining states and union of India were impleaded as partied by the court order. In its subsequent order the Supreme Court sought information on various important aspects relating to institutionalization of juveniles and implementation of services under the juvenile justice system and made order for their improvement. In the first long order passed on 15th April, 1986 the court directed the district judges throughout the country to nominate chief judicial magistrate, judicial magistrate and other appropriate judicial officers to visits jails and sub-jails in the district and report by 10th July, 1986, on

- The number of children in jail or sub jail,
- The offences with which they were charged,
- Whether the same jails form the beginning or were transferred from another jail, if so, how many time,
- Whether they were produced before children court, and if so, how many times,
- Conditions in jails and custodial institutions,
- Whether legal aid was given,
- Whether there were any remand homes/ observation homes and juvenile courts in the district.

The court also issued the directions to the states legal Aid boards and other legal aid organization to arrange visit of two advocates to custodial institutions once every week. In its subsequent orders, the Supreme Court asked for information on certain other matters also. These included the conditions of homes under the children Act reasons for non enforcement of the children’s Act names of governmental and non-governmental homes and organization for the care of mentally and physically and mentally handicapped juveniles. In the process, the court involved many more agencies the central and state social welfare boards, high courts, ministry of social
welfare, home secretaries, All India Radio and Doordarshan for insuring submission of the required information. The deadline was also increased till issued a contempt notice on 5th May, 1988:

“We direct each of the states/Union territories to respond to the reports of the District Judges in regards to fact relevant to their states by filling appropriate affidavits on or before 15th July, 1988. If there is no response to the direction, the home secretary of the defaulting state or union secretary shall be deemed to be in the contempt of courts directions”.

The report submitted meanwhile it is indicated that mentally and physically handicapped children were lodged in various jails for safe custody. It ordered that the state government to transfer the handicapped juvenile to appropriate homes with facilities for medical treatment and other children home with medical, educational and vocational training facilities. The court deprecated keeping of children in jail even if they were kept in separate ward away from other prisoners, because there were no other institutions for children. It pointed out that, “On no account the children are kept in jail and if a state government has not got sufficient accommodation in its remand homes or observation homes, the children should be released on bail instead of being subjected to incarceration in jail”.

In view of the reports of long stay of children in jails, the Supreme Court passed further directions for expeditious inquiry and disposal of cases of children, preferably by juvenile courts manned by suitably trained magistrates. It directed that investigation in all complaints against a child charged with commission of offence punishable with imprisonment of not more than seven years must be completed within three months from the date of complaint, failing which the case must be treated as closed. If a charge sheet was filed, the case thereafter must be disposed of within the next six months at the maximum, otherwise the prosecution was liable to be quashed.

After the enforcement of the juvenile justice Act the court asked for fresh information on the juveniles in the jails, the existing of uses, juvenile court and juvenile welfare board, observation homes, children homes and special homes. Emphasizing the need of an adequate and immediate action for care and protection of juveniles, it look over the responsibility of overseeing the implementation of juvenile justice Act in view of the apathetic response in the state in this respect, in pursuance of this responsibility, it directed a committee of senior advocates to prepare a scheme for overseeing such implementation. Subsequent orders of the court related to the
acceptance by the states of the draft scheme submitted thereto. It further directed the states to frame and enforce the rules under the juvenile Justice Act, appoint an adequate number of probation officers, establish and recognize various categories of homes under juvenile Justice Act, constitute a juvenile courts and juvenile welfare boards, and setup advisory boards.

However the petition was dissatisfied with response of the states and the court, and sought withdrawal of the petition to prevent the loss of the credibility of the court and the institution of justice. One order of the court should have been enough. In this case several orders have been ignored by numerous parties to whom the orders were addressed. The court on 29th August 1988 rejected both her requests and directed that petitioner be deleted from the array of parties in the proceedings The Supreme Court Legal Aid Committee was directed to prosecute the petition together with the aid and assistance of persons and agencies as the court may permit or direct from time to time. It is interesting to note two things about the process of withdrawal of the petitioner from the proceedings.

1. One, it brings to light the kind of continuous preservance, tolerance and energy needed by a petitioner to pursue the cause of children through the courts.

2. Secondly, it established a new proposition in public interest litigation of retaining the cause even if the petitioner is unwilling to pursue it further it is in consonance with the basic rationality of public interest litigation that permitted filing of petition to fulfill a public purpose.

M.N. Venkatchaliah, J, who delivered the order of the court pointed that the rights of those who initiate public interest litigation must necessarily be subordinate to the interest of those for whose benefit the action was bought. He said that, “The prayer, if granted, would frustrate the important issues the main petition has served to highlight in the matter of the states and enforcement of the laws enacted for the protection and welfare of large number of suffering children who, on account of the traditional inertia against reform, the bureaucratic and official apathy, insensitively to lack of human consideration for the lot of the suffering children and lack of proper perceptions of values and ideology of the legislation concerning children even on the part of the law enforcing agencies, are being denied the protection of their constitutional and statutory right”.

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He considered that the petition and maltreatment of children was too serious a matter to be looked at with any compliance and a stage has now been reached where his court cannot be cosset with the expectation of compliance with its orders in these proceedings but would have to go further and exact it. Coercive action would have to be initiated if persuasion failed but, the matter of affirmative action the willing cooperation of the authorities must as far as possible, be explored. If the proceedings are allowed to be diverted at every stage into punitive proceedings for non-compliance, the main concern and purpose of the proceedings might tend to be overshadowed by its incidental ramifications.

The court refused the second prayer of the petitioner also. It prohibited the petitioner to publish the information gathered for the purposes of the case and pursuant to the directions of the court during the pendency of the case.

Implementation of the orders of court:

The orders of the court may be broadly divided into two categories. First, orders giving directions for implementing various provisions of the juvenile justice Act. The response pattern of the various agencies involved by the court in the data collection process is given in the following part of this section. The later part presents the picture of implementation of the orders relating to juveniles in jails and the juvenile justice Act.

Impact of Sheela Barse case on Juveniles:

The proceeding and orders in the Sheela Barse case had mixed implication for juvenile filing within the purview of the juvenile justice system in India. The most important and far reaching consequences of this case on juveniles were introduction and enactment of uniform legislation for the care and protection of the children of the whole country except the state Jammu and Kashmir. The minister, who moved the juvenile justice bill 1986, stated that it was being introduced pursuant to the order of the Supreme Court against imprisonment of juveniles. But the manner of implementation of this welfare legislation was not effective in large part of India.

(i) Juveniles not to be admitted in jail:

This is the landmark change made by the Sheela Barse case that, juveniles not tube admitted in jails for them separate boards and homes came into an existence.
In Sanjay Suri V. State of Delhi Administration\(^3\)

In this case a news reporter and trainee sub editor of a newspaper moved the supreme court with a petition in public interest for appropriate direction to the Delhi Administration and the authorized to the central jail at Tihar jail, pointing out features of misadministration within the jail relating to juvenile under trial prisoners. The main question that came up before the supreme court was that, whether the juvenile prisoner are being house in that part of the jail, which has said to have been reserved for them or whether they are to be found other to parts of the jail also which house adult prisoners?

When the Supreme Court was entertaining thus this writ petitions, then simultaneously it had also made an order the district judge, Delhi to visit the jail and make an inquiry as to the conditions of the juvenile prisoners residing in juvenile wards. The district judge interview of some juvenile prisoners, it regard to whom he learnt, as a result of the inquiry mad by him, that they had been subject to sexual assault by the adult by prisoners and they were also worried that through this inquiry, if their names will be disclosed then, they might be victimised, so that the adequate protection be granted to them. Court on the basis of inquiry decided to disclose their names and felt that there is no need for protection, rather they should be released forthwith also along with some other convicted juvenile prisoners.

The Supreme Court imposed the duty on the jail authorities to see that no young person was to be admitted in jail, unless the court certified that, the person was above the age prescribed for juvenile offenders. The Supreme Court issued direction that the age of detente must be specified in all warrants of detention to ensure that no juvenile is sent to prison. Thus the treatment of delinquents' juveniles is discouraged in prison.

Mohd. Dahaur V. State of Bihar\(^4\)

In this case the High Court held that, the petitioner alleged that he was juvenile below 16 years of age. The chief judicial magistrate however held no inquiry for determination of the age of accused, under section 32 of the juvenile justice Act, nor did he record any opinion about the age of petitioner.

\(^3\) (1988) Cr. L.J. 705. SC
\(^4\) 1995 (2) crimes 116 (Patna)
(ii) Position of Juvenile Justice after new legislation:

The Juvenile Justice (Care and Protection of Children) Act, 2000 has been enacted and this new legislation has been made considering provision of United Nations Convention right of the child, 1989 the convention emphasizes social reintegration of child victim. United Nation standard minimum rules for the administration of juvenile justice (Beijing Rule) and all other relevant international instruments. Juvenile justice Act, 2000 Sec. 2(k) provides that juvenile or child means a person who has not completed 18 years of the age. Before this Act, there was juvenile justice Act of 1986 in which juvenile means a boy who has not attended the age of 16 years or girl who has not attended the age of 18 years.

Charan Singh V. State of NCT of Delhi

It observed by the court that, the applicant is since on the date of incident was less than 18 years of age, he was juvenile within the meaning of sec. 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000 and the learned Additional Session judge of Delhi, while holding the appellant guilty under Sec. 302 of I.P.C. has convicted and sentence him rigorous imprisonment for life and fine Rs. 25000/- and in default of payment of fine, to undergone simple imprisonment for a further period of six months.

The high Court observed that, when crime was committed, the appellant was below the age of 18 years. Thus he was juvenile under the Juvenile Justice (Care and Protection of Children) Act, 2000. Therefore his age is not disputed and his case comes under Sec. 20 and 64 of the Act. The appellant had already undergone more than fine and half years sentence now he is 20 years old there is no question of sending him to juvenile justice board, he already conviction sustained under sec. 302 of I.P.C. therefore sentence awarded to him quashed and he is directed to be released forthwith.

Umesh Sharma Vs. State of Rajasthan

Under provision of the Rajasthan Children Act, 1970, any person below the age of 16 would be presumed to be a child and the trial of a delinquent child was to be conducted in accordance with the procedure laid down there in. Umesh Sharma was accused of having committed offence punishable under sec. 364 and 302 of the I.P.C. On being produced before the additional session judge in accordance with the law laid

6. 1982 SCR (3) 583.
down in the criminal code, Sharma claimed that he is below sixteen when the alleged offence was committed. Accordingly, he submitted that the session court did not have competence to try the matter. The session judge overruled the objection and Rajasthan High Court upheld the decision of the trial court on two grounds:

The Rajasthan Act had not been brought into force in tone (the jurisdiction where the accused had alleged committed the offence) at the time of the offence, and that it was not proved by the accused that he was below the age of sixteen on the date of occurrence.

The High court decided this matter purely on the factual grounds. The Supreme Court did not apply to the accused because he could not prove that he had not attended the age of sixteen years on the date of occurrence of the crime.

*The relevant date for applicability of the Act was held to be the date on which the offence takes place*

**Arnit Das Vs. State of Bihar**

Arnit Das was an accused of an offence punishable under section 302 of the I.P.C. When he produced before the additional chief judicial magistrate in accordance with the provisions of the criminal code, he contended that he was less than 16 years of age when the alleged offence is committed and therefore entitled to protection of the beneficial provisions of the 1986 Act.

The findings upheld by session court in appeal and the Supreme Court held that the purpose of the Act is to provide for the care, protection, treatment, development and rehabilitation of delinquent juveniles, also court held that the competent authority shall proceed to hold inquiry as to the age of that person for determining the same by reference to the date of the appearance of the person before it or by reference to the date when the person brought before it under any of the provision of the Act. It is irrelevant what was the age of the person on the date of the commission of an offence. Any other interpretation would not fit in the scheme and phraseology employed by the parliament in drafting the Act.

The Supreme Court further stated that the court should avoid taking a hyper technical approach while appreciating evidence in regards to the age of the accused.

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7 AIR 2000, SC 2264.
whereby if two views are possible the court should lean in favour of holding the accused as a juvenile especially in borderline cases.

*The crucial date for determination of juvenility is the date when the person concerned is brought in front of the competent authority. The date of the commission of offence is irrelevant.*

Pratap Singh Vs. State of Jharkhand and Anr. 8

The appellant was alleged as one of the conspirators to have caused the death of the deceased by poisoning. The learned CJM assessed the age of the appellant to be around 18 years old. A petition was filed on behalf of the appellant claiming that he was a minor on the date of occurrence, whereupon the learned CJM transmitted the case to the Juvenile Court. On examining the school leaving certificate and mark-sheet the appellant was found to be a minor on the date of offence and was further released on bail. The informant filed an appeal before the 1st Additional Sessions Judge, who disposed of the appeal holding that the Juvenile Court had erred in not taking note of the fact that the date of production before the Juvenile Court was the date relevant for deciding whether the appellant was juvenile or not for the purpose of trial and directed a fresh inquiry to assess the age of the appellant. Aggrieved thereby the appellant moved the High Court.

The High Court held that reckoning date is the date of production of the accused before the Court and not the date of the occurrence of the offence. The question that arose was 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. It clearly held that the relevant date for the applicability of the Act is the date on which the offence takes place. This being the intendment of the Act, a clear finding has to be recorded that the relevant date for applicability of the Act is the date on which the offence takes place. It is quite possible that by the time the case comes up for trial, growing in age being an involuntary factor, the child may have ceased to be a child. The Supreme Court clearly held the view that the relevant date for applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial. The appeal was disposed.

8 AIR 2005 SC2731
The reckoning date for the determination of the age of the juvenile is the date of an offence and not the date when he is produced before the authority or in the Court

Rajinder Chandra Vs. State of Chhattisgarh

The Supreme Court held that in case of doubt about the accused being a child or not on the date of offence, the benefit of doubt should be given to the accused child. It is crucial therefore that advocacy for children emphasis the importance of birth certificates that are important for so many other purposes too.

Another important question relating to children committing offences has been which legislation will apply in case of children committing serious offences. Long ago, the Supreme Court held that the juvenile courts alone would have jurisdiction to deal with cases of children committing offences punishable with death penalty or life imprisonment. Subsequently, similar questions arose in view of special legislations like the Narcotics Drugs and Psychotropic Substances (NDPS) Act or the Prevention of Terrorism Act (POTA), which provide for special courts to deal with offences under these legislations.

Madan Singh Vs.State of Rajasthan

Different high courts had taken different positions on the applicability of Juvenile Justice (Care and Protection of Children) Act, 2000 to cases where the accused is a child, the Supreme Court has clearly held that Juvenile Justice (Care and Protection of Children) Act, 2000 apply to children alleged to have committed offences under those special penal legislations too.

Children arrested for any offence must be released on bail, unless the release will bring the child into contact with known criminals, expose the child to moral danger, or the release is against the interests of justice. It is also necessary to separate the cases of children from adults, in the event that they are charged with the offence together. The child’s case is to be dealt with by the Juvenile Justice Board) which consists of a magistrate and two social workers and decides the case by majority.

10 (2000) 6 SCC 759)
Members of the JJB exercise the powers of a magistrate but are empowered to deal with all offences committed by children, including those friable only by a sessions judge.

In case the JJB finds that the child has committed an offence, it may pass any of the following orders: release after due admonition and counseling to him/her and the family; keep the child under the supervision of parents/guardian/probation officer/fit person/fit institution; impose a fine; send for community service; order group counseling; send to a special home. No child may be sent to death or imprisonment under any circumstance, or to prison in default of payment of fine or producing sureties. In case the child is above 16 years of age and commits a very serious offence, he/she may be ordered to be kept in safe custody. A child dealt with by the juvenile justice board does not suffer any disqualification attached to conviction for an offence.

Juvenile justice (care and protection) Act, 2000 establishes another body, namely the Children Welfare Committee (CWC), to deal with children in need of care and protection. Members of the Child Welfare Committee also exercise the powers of a magistrate, while all of them are non-judicial persons. The Child Welfare Committee gives the appropriate orders for care, protection and rehabilitation of children in need of care and protection. There are numerous categories of children in need of care and protection, including children without parents, or without sufficient means of livelihood or a permanent place to live, the terminally ill, victims of natural disasters, war or civil strife, etc. The Child Welfare Committee may send such children to children’s home, or place them with a fit person/institution.

**Pappu V Sonu and Anr.**  

Respondent filed a Revision Petition against the order passed by learned Additional Sessions Judge. The petition filed by respondent claiming that he was a juvenile was rejected. The respondent was facing trial during trial he moved the application for declaring him as juvenile pleading that his date of birth was 1.1.1989. In support of the claim he relied on various records as well as the statements of his father and mother. Objections were filed by the State and the informant stating that

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11 JT 2009(3) SC 372
the applicant was a major on the date of occurrence and, therefore, the application was liable to be rejected. The learned A.S.J. did not rely on the educational records and the statements of the mother as well as of the medical opinion. It was concluded that the applicant was not juvenile.

The High Court in the revision petition accepted that the school records produced by the applicant were not reliable and the statement of his mother also did not support his case. But solely on the basis of a certificate issued by the doctor it was concluded that he was below 18 years of age on the date of occurrence and the applicant was to be treated as a juvenile. It was observed that after taking the view that the educational records belied the claim of the applicant and the mother's statement was also not accepted. Merely on the basis of a certificate which does not even indicate the basis for determination of the age, the High Court should not have held the applicant was a juvenile. The school certificates produced clearly belied the claim of the applicant and the statement of the mother could not be accepted as it was based on estimation. Strangely the High Court relied upon a certificate of a doctor which did not even indicate the basis on which it was observed that the radiology age of the applicant was about 18 years.

Hence, the appeal was allowed and the conclusion of the High Court was set aside. However it was open to the applicant during the trial to establish cogent and credible evidence about his age. Bhoop Ram v. State of UP In case of conflict between documentary evidence and medic report, the documentary evidence will be considered to be correct. One cannot be considered a juvenile merely on the basis of a certificate that does not even indicate the basis of age determination.

One cannot be considered a juvenile merely on the basis of a certificate that does not even indicate the basis of age determination.

Babloo Pasi Vs. State of Jharkhand and Anr.¹²

Rajesh Mahatha, was apprehended in relation to the death of his wife. The accused was produced before the Chief Judicial Magistrate, he claimed himself to be a "juvenile" as having not attained the age of eighteen years and, therefore, entitled to the protection and privileges under the Juvenile Justice (Care and Protection) Act and was so sent to the Child Rehabilitation Centre. The Chief Judicial Magistrate directed

¹² 2009(1) JCR73(SC)
the accused to produce evidence/certificate in support of his claim, which he failed to do. Neither a birth or matriculation certificate was produced by the accused hence medical opinion was obtained.

Upon which the accused was opined to be between 17-18 years. Therefore with margin of one year, his age could also be 16 or 19 years. The name of the accused had also appeared in a voters list in 2005 suggesting his age to be 20 years. Taking all these factors into regard the accused was adjudged by the Board to be a major. The order passed by the Board was challenged by the accused in the High Court and exercising its revisional jurisdiction the High Court allowed the revision petition; quashed the order of the Board and held that at the relevant time the accused was a juvenile. The High Court was of the opinion that the Rule 22 (5) (iv) which provides for a margin of one year to the opinion of the medical board was ignored by the Board and the Session Court. The impugned order was set aside and the accused was ordered to be returned to the Juvenile Justice Board.

The Supreme Court held that in the absence of evidence to show on what material the entry in the Voters List in the name of the accused was made, a mere production of a copy of the Voters List, though a public document, was not sufficient to prove the age of the accused. Similarly, though a reference to the report of the Medical Board, showing the age of the accused as 17-18 years, has been made but there is no indication in the order whether the Board had summoned any of the members of the Medical Board and recorded their statement. It also appears that the physical appearance of the accused, has weighed with the Board in coming to the afore-noted conclusion, which again may not be a decisive factor to determine the age of a delinquent. The appeal was allowed laying down directions to re-determine the age of the accused.

In the absence of evidence to show on what material the entry in the Voters List in the name of the accused was made, a mere production of a copy of the Voters List, though a public document, was not sufficient to prove the age of the accused.
Ramdeo Chauhan v. State of Assam.\textsuperscript{13}

In this case the appellant was sentenced to death for killing four persons. The prosecution tried to establish that the petitioner was not a juvenile with four items of evidence.

- Statement of the father
- Statement of witness in whose house the petitioner worked.
- The statement of the accused, recorded by the police\textsuperscript{14}
- The statement of the accused recorded by trial court under\textsuperscript{15}

As against those materials the petitioner projected the following:

1. The school register which proved the date of birth as 1.2.1997 (if so he would have been eleven months short of the age of 16 on the relevant date).
2. Medical opinion according to which he would have been about 15 to 16 years on relevant date. Focusing on the anatomical features he subjected the petitioner to a radiological examination and obtained a report thereof. According to which on the relevant date the petitioner could have been below 16 years. In his report the doctor has detailed all the data on which he reached his conclusion.

The interdict contained in the Juvenile Justice Act, 1986 could have had impact on the question of death penalty. The Supreme Court held that the age could not be concluded with help of scattered answers. The testimony of the father and PW-4 was not relied upon. The statements recorded by the police and by the trial court were also not regarded. The school register was not proved to be maintained by a public servant and was in a tattered condition without the seal of the school thus was

\textsuperscript{13} [(2001) 5 S.C.C. 714 pp 738. 39
\textsuperscript{14} Section 161. Examination of witnesses by police.
(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.
(2) Such person shall be bound to answer truly all questions relating to such case Put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.
\textsuperscript{15} Section 235. Judgment of acquittal or conviction.
(1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.
(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360 hear the accused on the question of sentence, and then pass sentence on him according to law.
not accepted by the trial court. The court held unless the person who filled up such columns is examined for showing how he gathered the information the entries therein cannot be regarded as legal evidence. Speaking about the medical evidence it was observed that too much reliance could not be placed as it was just an opinion but it also cannot be sidelined. In the absence of all other acceptable materials it could certainly be accepted. In other words, if the age of the petitioner cannot be held to be unquestionably above 16 on the relevant date its corollary is that the lesser sentence also cannot unquestionably be foreclosed. Admitting the power of review is restricted the sentence of death was not reopened.

The Supreme Court refused to determine the age of the accused on the basis of entries in the school register or medical evidence, both of which indicated him to be a child on the date of the offence, and confirmed the death penalty for the offence of murder even though one judge expressed a doubt as to whether the boy was a child on the date of commission of offence. The governor later commuted his sentence to life imprisonment on the recommendation of the National Human Rights Commission.

Too much reliance cannot be placed upon text-books, on medical jurisprudence and toxicology while determining the age of an accused. In this vast country with varied latitudes, heights, environment, vegetation and nutrition, the height and weight cannot be expected to be uniform. Though the appellant was proved to be a juvenile on the date of occurrence he was awarded death sentence.

Mohd. Bilal Vs State of U.P. 16

Juvenile Justice (Care and Protection of Children) Act, 2000, Section 10 and 11 - Juvenile delinquent - Arrest stayed for 3 weeks in writ petition by Division Bench - Court directed that application be moved before Juvenile Justice Board - Board after hearing applicant directed him to surrender in judicial custody and only then compliance of order of Court could be made Challenge as to Order of High Court was with intention that he may not come in close proximity with other criminals Magistrate directed to release applicant Board to proceed to hold inquiry to ascertain age of applicant.

16 2006(4) Criminal Court Cases 457 (Allahabad)
Gurpreet Singh Vs. State of Punjab

The appellant along with others was convicted and sentenced for commission of murder. A plea of juvenility was raised. Submitting that on the date of commission of offence the appellant was a juvenile. The Supreme Court observed that this point was not raised either before the trial court or the High Court. But it is well settled that in such an eventuality, this Court should first consider the legality or otherwise of conviction of the accused and in case the conviction is upheld, a report should be called for from the trial court on the point as to whether the accused was juvenile on the date of occurrence and upon receipt of the report, if it is found that the accused was juvenile on such date and continues to be so, he shall be sent to juvenile home. But in case it finds that on the date of the occurrence, he was juvenile but on the date this Court is passing final order upon the report received from the trial court, he no longer continues to be juvenile, the sentence imposed against him would be liable to be set aside. A report was called for from the trial court as to whether on the date of occurrence this appellant was juvenile within the meaning of Section 2(h) of the Juvenile Justice Act, 1986 it was held that upon the receipt of the report the final order would be made.

*A plea of juvenility was raised report was called from the trial Court.*

Murari Thakur and Anr. Vs. State of Bihar

The appellants allegedly committed a murder on 26/8/1998. For which they were convicted and sentenced. During the appeal. Learned Counsel for the appellant submitted that the appellants are entitled to the benefit of the Juvenile Justice (Care and Protection of Children) Act 2000 as amended by the amendment of 2006. The Supreme held that this point cannot be raised at this stage because neither was it taken before the Trial Court nor before the High Court. Even otherwise we do not find any merit in the said contention. The question of age of the accused appellants is a question of fact on which evidence, cross-examination, etc. is required and, therefore, it cannot be allowed to be taken up at this late stage. Hence, we reject this submission of the learned Counsel for the appellant. The appeal was dismissed.

*Plea of juvenility not allowed to be raised, when not raised at the trial level.*

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17 AIR2006SC191
18 AIR2007SC1129
Pawan v State of Uttaranchal

The appellants along with two others were convicted for rape and murder of a 6 yr old girl. A plea for Juvenility was raised. For Aamir his statement recorded in trial court and his school certificate was relied upon. However the Supreme Court held that the statement is tentative observation based on physical appearance which is hardly determinative of age and the school leaving certificate does not inspire any confidence as it seems to have been issued after he had already been convicted. For A the only document produced was a school leaving certificate however it was held that the entry from the birth register had not been produced and hence wasn’t taken into consideration. Referring to the Section 7A of the Act it was contended that the claim for Juvenility could be raised at any stage even for the first time in this court. It was of the opinion that where materials prima facie suggest the accused to be juvenile an enquiry in this regard should be made.

However, in a case where plea of juvenility is found unscrupulous or the materials lack credibility or do not inspire confidence and even, prima facie, satisfaction of the court is not made out, no further exercise in this regard is necessary. If the plea of juvenility was not raised before the trial court or the High Court and is raised for the first time before this Court, the judicial conscience of the court must be satisfied by placing adequate and satisfactory material that the accused had not attained age of eighteen years on the date of commission of offence; or on basis of such material any further enquiry into juvenility would be unnecessary. In the result all the appeals failed and were dismissed.

*It was held that the plea does not inspire confidence*

Vimal Chadha Vs. Vikas Choudhary and Anr.

In this case the question was raised that, How to determine the age of a juvenile in delinquency within the meaning of the Juvenile Justice (Care and Protection of Children) Act, 2000 is in question in this appeal. Appellant’s son, Sunny was kidnapped for ransom and later on murdered. Respondent No. 1 was suspected of involvement in the said crime by the police and on basis of investigation charge-sheeted for commission of offence. Producing a School leaving certificate a plea of juvenility was raised and it was prayed that the case be transferred to a

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19 2009(3) SCALE 195
20 2008 (56) BLJR 2033
Juvenile Justice board. The IO (Investigating Officer) submitted that Vikas Choudhary was admitted to Class-I in Lawrence School of Ashok Vihar Phase-I, Delhi. The date of birth showed in the register 20.01.1985. There is no birth certificate or other document available in support of date of birth. The date of admission is 17.04.1989. The learned Sessions Judge was not satisfied therewith, a medical examination of the respondent was directed which submitted the radiological age to be between 22-25 years. That would mean that as on the date of incident, 20.01.2003 in all probability he was less than 18 years but more than 16 years of age.

It was held by the Supreme Court that, so far as the submission in regard to the applicability of the 2000 Act, is concerned, it is not in dispute that the appellant on the date of occurrence had completed sixteen years of age but the offence having been committed on 16.12.1989, the 2000 Act has no application. The judgment of the trial court was set aside accordingly. The appeal was allowed.

*The offence having been committed on 16.12.1989, the Juvenile Justice (Care and Protection of Children) Act, 2000 has no application.*

**Satbir Singh and Ors. Vs. State of Haryana**

Pritam Singh with others were put to trial for dowry-death of his wife. The Trial Court, after considering the evidence and the documents on record, convicted them and sentenced them to undergo rigorous imprisonment and fines. It was contended that the Pritam Singh was 17 years of age as on 13.6.1989 and therefore he should be entitled to the benefit of the Juvenile Justice Act, 1986. Section 2(h) defines "Juvenile" means a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. As per his own statement he (Pritam Singh) was 17 years of age as on 13.6.1989, therefore, he is not entitled to the benefit of Juvenile Justice Act, 1986. The appeal was dismissed.

*Accused 17 years of age on 13.6.1989 hence not entitled to benefit of Juvenile Justice Act, 1986*

**Ranjit Singh Vs. State of Haryana**

The only point urged in support of the appeal was that the appellant was a juvenile at the time of commission of the offence and, therefore, the provisions of the

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21 AIR2005 SC 3546
22 (2008) 9SCC 453
Juvenile Justice (Care and Protection of Children) Act, 2000 (in short "the Act") had application to the facts of this case. The appellant along with three co-accused persons faced trial for alleged commission of murder on 1.8.1993. The appellant was sentenced life imprisonment and to pay a fine of Rs. 5000/- Before the Trial Court and the High Court the present appellant took the stand that he being a juvenile in terms of the Act, the trial should be held as provided under the Act and in any event, the Juvenile Justice Act, 1986 had application.

The Trial Court and the High Court noted the submissions made by the appellant as regards his contention that he is a juvenile. Further, evidence adduced was also referred to but no definite conclusion as regards the applicability of the 1986 Act or the Act so far as the accused is concerned was recorded. The appellant, was about 17 years of age at the time of occurrence and, therefore, 1986 Act had no application to him. For bringing the applicability of 1986 Act, the accused should have been 16 years or less in age at the time of occurrence. Admittedly, the age of the accused appellant was more than 16 years at the time of occurrence.

By the Juvenile Justice Act, 2000 age has been increased to 18 years. Section 20 of the Act does not in any way help the appellant. It deals with cases where proceedings related to a period when 1986 Act was in force. What Section 20 provides is that the proceedings shall continue as if the Act is not in existence. To put it differently, even if under the definition of "juvenile" has undergone a change by fixing the age to be 18 years the proceedings shall continue on the footing that accused was a juvenile under the 1986 Act. What appellant contends is to reverse the situation i.e. take the applicable age to be 18 years. That is not legally permissible. It was held that, in regard to the applicability of the 2000 Act is concerned, it is not in dispute that the appellant on the date of occurrence had completed sixteen years of age. The offence having been committed on 16.12.1989, the 2000 Act has no application. The appeal was dismissed.

If accused was not a juvenile under the 1986 Act than he cannot take the benefit of the 2000 Act whereby age of juvenile was increased from 16 to 18 years.

Jameel Vs. State of Maharashtra

23 AIR2007 SC 971
The appellant was sentenced rigorous imprisonment for rigorous imprisonment of seven years and a fine of Rs. 5000/- for kidnapping and raping a six year old. It was submitted that although the age of the appellant on the date of the occurrence was more than sixteen years but below eighteen years, having regard to the provision of the Juvenile Justice (Care and Protection of Children) Act, 2000, it was imperative on the part of the court to follow the procedures laid down therein. In regard to the applicability of the 2000 Act, is concerned, it is not in dispute that the appellant on the date of occurrence had completed sixteen years of age. The offence having been committed on 16.12.1989, the 2000 Act has no application. In terms of the Juvenile Justice Act, 1986, 'juvenile' was defined to mean "a boy who had not attained the age of sixteen years or a girl who had attained the age of eighteen years". The appellant was above eighteen years of age on 01.04.2001. The 2000, therefore, cannot have any application whatsoever in the instant case. For the reasons aforementioned, there is no merit in this appeal which is dismissed accordingly.

"Applicability Offence having been committed on 16.12.1989, the 2000 Act has no application."

Bijender Singh Vs. State of Haryana and Anr

The issue involved in this case is whether the respondent No. 2, who was admittedly more than 16 years of age, i.e. 17 years and 8 months on 17.11.1999 when he purportedly committed offences would be given the benefits of Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the '2000 Act') and would not be governed by the Juvenile Justice Act 1986 (in short the '1986 Act'). Section 20 of the 2000 Act would be applicable when a person is below the age of 18 years as on 1.4.2001. For the purpose of attracting Section 20 of the said Act, it must be established that:

- on the date of coming into force the proceedings in which the petitioner was accused was pending, and
- on that day he was below the age of 18 years.

Provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 would be applicable to those cases initiated and pending trial/inquiry for the offences committed under 1986 Act provided that the person had not completed 18 years of

24 AIR2005SC2262
age as on 1.4.2001. In the instant case undisputedly the respondent No. 2 accused had completed 18 years of age before 1.4.2001. The appeal is disposed of accordingly.

**Accused completed 18 years of age before 1.4.2001 hence not entitled to Benefit of Juvenile Justice Act, 2000**

**Hari Ram Vs. State of Rajasthan and Anr**\(^\text{25}\).

The appellant, Hari Ram, with others was arrested on 30.11.1998. The Sessions Court after declaring him a juvenile directed him to be tried by a Juvenile justice Board. The appellant was 16 years and 13 days on the date of commission of offence, and was excluded from the scope and operation of the Juvenile Justice Act, 2000. Furthermore, the medical examination indicated that his age at the relevant time was between 16 and 17 years.

The High Court held that at the relevant time the appellant was above 16 years of age and hence could not be governed by the provisions of the juvenile Justice Act, 1986. 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 1st April, 2001, where a juvenile, who was below 18 years at the time of commission of the offence, was involved.

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 (I) of Section 2, even if the juvenile ceased to be a juvenile on or before 1st April, 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. The effect of the proviso to Section 7A introduced by the

\(^{25}\) 2009(6) SCALE 695

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Amending Act makes it clear that the claim of juvenility may be raised before any Court which shall be recognized at any stage, even after final disposal of the case.

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 (Care and Protection of Children) 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. However, as indicated hereinbefore after the decision in Pratap Singh’s case (supra), Section 2(l) 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.

Section 7A was introduced in the Juvenile Justice (Care and Protection of Children) Act, 2000 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 (Care and Protection of Children) Act, 2000. 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 thereunder, even if the juvenile had ceased to be so on or before the date of commencement of the Act.

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 inexistence even during the operation of the 1986 Act. The amendments introduced in Section 20 of the 2000 Act, whereby the Proviso and Explanation were added to Section 20, 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 Juvenile Justice (Care and Protection of Children) Act, 2000, and the provisions of the Act would apply as if the said provisions had been in force when the alleged offence was committed. The appeal was 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(l) of the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended. The matter was remitted to the Juvenile Justice Board to be disposed off.

*Notwithstanding the definition of "juvenile" under the Juvenile Justice Act, 1986 (16 years), the accused is covered by the definition of "juvenile" of the Juvenile Justice Act, 2000 (18 years).*

S. D. Pawan Vs State of U.P. 26

Juvenile Justice (Care and Protection of Children) Act, 2000 - Juvenile Justice Act, 1986, Indian Penal Code, 1860, Section 395 theft and dacoity petitioner charge sheeted for theft and dacoity of 49 sewing machines petitioner more than 16 years of age on the date of offence. Trial Court did not consider the accused as juvenile - Juvenile Justice Act, 1986 was enforced at that time. Revision on the ground that on date of alleged offence juvenile was aged 16 years and was a juvenile in conflict with Juvenile Justice (Care and Protection of Children) Act, 2000. Charge sheet could not have been placed against him. As per definition of Juvenile a person who has not completed 18 years of age is a juvenile. Held, since the revision petitioner had not completed 18 years of age on date of offence and charge sheet filed only after advent of new Act of 2000, was a juvenile and could be tried only before a Juvenile Justice Board. Different High Courts had adopted a varied range of ways to determine the age of the accused.

Shyam Narian Singh Vs State of Bihar 27

The Patna High Court determined the accused to be a juvenile on the basis of the age mentioned in his own evidence before the Magistrate as the same was not challenged by anyone. However in the case the Judge at hand refused to rely on the evidence as adduced by the accused, as the accused appeared (to the presiding judge) to be over 18 years. 28 It has to be kept in mind that a majority of children brought within the purview of the JJS usually do not have any documentary evidence of their age. In numerous cases where age determination had to proceed through documents

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26 2006(4) Criminal Court Cases 765 (Karnataka)
27 1993 Cr. L.J.772 (Pat)
adduced, major impediments were created by the discrepancy between the documents presented. The decisions were made on the basis of that document which was likely to be more reliable or authoritative.

Juvenile Justice (Care and Protection of Children) Act, 2000 - Juvenile Justice Act, 1986, Indian Penal Code, 1860, Section 395 - Theft and dacoity - Petitioner charge sheeted for theft and dacoity of 49 sewing machines - Petitioner more than 16 years of age on the date of offence - Trial Court did not consider the accused as juvenile - Juvenile Justice Act, 1986 was enforced at that time - Revision on the ground that on date of alleged offence juvenile was aged 16 years and was a juvenile in conflict with Juvenile Justice (Care and Protection of Children) Act, 2000. Charge sheet could not have been placed against him. As per definition of Juvenile a person who has not completed 18 years of age is a juvenile. Held, since the revision petitioner had not completed 18 years of age on date of offence and charge sheet filed only after advent of new Act of 2000, was a juvenile and could be tried only before a Juvenile Justice Board. Different High Courts had adopted a varied range of ways to determine the age of the accused.

Bhoop Ram Vs. State of U.P. 29

The question that arose in this case was that whether the appellant, who was convicted along with 5 others by the district and sessions judge under section-148and 302,323 and 324,all read with 149 of the Indian penal code and sentenced to imprisonment for life besides, should have been treated as a Child within S-2(4) of the U.P. Children Act,1951and sent to an approved school for detention, therein he attains the age of 18 years, instead of being sentenced to undergo imprisonment in jail?

The Supreme Court in this case mainly considered the controversy with regard to the age of the appellant whether he had completed the age of 16 years or not? The court came to the conclusion that he is below 16 years of age, on the date when the offence was committed. Therefore it held that the appellant should have been dealt under the U.P. children Act, instead of being sentenced to imprisonment, where the session judge on the various counts convicted him. The court stressed on the aspect that the trial judge had passed a lesser sentence of imprisonment for life instead of Capital punishment.

29 1989 (1) CSALE 799.
Sunita Vs. Union Territory Chandigarh

In this case the appellant (Sunita) was convicted for an offence punishable under section 302 of Indian penal Code and was sentenced for rigorous imprisonment for life also to pay affine. The appellant had been tried fir having committed the murder of open Sarla by sprinkling kerosene on her and then setting her on fire 16th December 1989, in her house, Sarla had died after making the dying declaration. The main controversy that arose in this case was with regard to the age of the appellant that, she was a juvenile and therefore, she could not have been sentenced to imprisonment for life. Since, there was a controversy with regard to her age, so as a result of which an enquiry was conducted, and it was proved that on the date incident, the appellant was aged between 15-16 year of age or in other words she was a juvenile in terms of section-29(4) of the juvenile justice Act, 1986.

Ramchandran Vs. the Inspector of police

In this case the petitioners son Venkat, aged according to him 16 years, has been detained under various acts, for committing criminal offences, according to the respondents, it has become necessary to detain him, as he was acting in a manner prejudicial to the maintenance of public order firstly, he has committed a manner on 20th May 1993, by forming an unlawful assembly along with his associates, they were all armed with deadly weapons and they have also wrongfully restrained one Mr. Sunder, who was dead. In another, he was charged with indulging in unlawful activities causing mischief and criminal intimidation to one Mr. Mustafa, he also committed this along with his accomplice, by forming an unlawful assembly on the same day. Even proceeding to his detention order he has said to have attacked one Mr.Umpathy.in a way he was said to have threatened the public.

The court in this case led emphasis on the special enactment for the juvenile offenders. It is said that, the justice system as available for adults is not considered suitable for being applied to a juvenile. There is also a need for larger involvement of informal systems and community based welfare agencies in the care, protection, treatment, development and rehabilitation of such juveniles and in this context, the proposed, legislation aims at achieving the following objectives-

30 1998, Cr. L.J.4249.
31 1993 Cr. L.J 3722 (Mad)
a. To lay down a uniform legal framework for juvenile justice in the country so as to ensure that no child any circumstances is lodged in jail or police lock-up. This is being ensured by setting up juvenile welfare boards and juvenile courts.

b. To provide for a specified approach towards the protection and treatment of juvenile delinquency in its full range in keeping with the development needs of the child found in any situation of social maladjustment.

c. To spell out the machinery and infrastructure required for the care, protection, development and rehabilitation of various categories of the children coming within the preview of the juvenile justice system. This is proposed to be achieved by establishing observation home, juvenile homes, for neglected juvenile and special homes delinquent juveniles.

d. To develop appropriate linkages and coordination between the formal system of juvenile justice and voluntarily agencies engaged in the welfare of neglected or socially maladjusted children and to specifically defined their roles and responsibility.

e. To constitute the special offences in relation to juveniles and provide for punishment thereof to bring the operation of juvenile justice system in the conformity with the UN standard minimum rule for the administration of juvenile justice.

Vide Islam Vs. State of U.P.32

In this case the petitioner, who was a child of 14 years, was charged with an offence under section 379 and 411 of IPC along with others. Here as per the impugned order of the district magistrate, the petitioner was kept in a detention for about 10 months. His detention was inconsistent with the legislative policy, which demands that, a child of 14 years of age should not be send to jail, as he may fall in the company of criminals. Here, the court said that, the preventive detention is different from punitive detention. Preventive detention does not partake in any manner, the nature of punishment. The detaining authority is accordingly, under abounded duty to consider the facts and circumstances of the case with an abundant caution and care, especially in case where the police submits proposals for the detention of a child of immature age.

32 1986 All. L.J. 46.
On the basis of these cases the court in the presence case made the following observation: Unlike in the case of an adult accused of cognizance an offence, in the case of a child accused, it is the safety of the accused, which is most important. Arrest of a juvenile is not for the purpose of putting him in a jail, but for the purpose of keeping him in such a custody, which shall ensure that he is not affected by the vices, which adult criminals carry with them. Such custody in recommended, while enquiry held into the charges as well as, as a part of the sentences after the juvenile is found guilty of having committed any offences.

Therefore, if a child is put under detention as a goonda, he is exposed to everything which, juvenile justice Act says that, he should not be exposed to. Therefore in the present case is difficult to think that his delinquency will make him a happy habitual offender and goonda in that sense. So, he is not entitled to be detained.

**Judicial Attitude towards the sentencing of juvenile:**

The judicial attitude is also towards the criminal reformation through the open prisons. The Hon’ble Supreme Court has expressed long back in 1979 in case of *Dharambir Vs State of U.P.*

That the sentence awarded life imprisonment was beyond interference. However the accused being in their early twenties, the Supreme Court directed that state government and superintendent of prison will insure that prisoners are put to meaningful employment and if permissible, to open prison, that the prisoner be kept in contact with their families and that they should be permitted to go on dowry death. Accused completing 18 years of age before coming into force of a new Act is not entitled to benefit of provision of both the Acts is not entitled to benefit of provision of both the Acts.

In IPC there is absolutely no scope for individualizing the punishment having due regard to the personality of the criminal, rather these six firms of punishment have to be added out of the offenders commenting on this unhappy aspect of our penal system Justice Krishna Iyer observed in 1973 in the case of

33 AIR 1979 SC 1995
Shivaji Vs State of Maharashtra\textsuperscript{34}

In this case it was held that, "two men in their twenties thus stand convicted of murder and have to suffer imprisonment for life because the punitive strategy of our penal code does not sufficiently reflect the modern trends in correctional treatment and personalized sentencing. When accused persons are of tender age then even in the murder case it is not desirable to send them beyond the high prison walls and forget all about their correction and eventual reformation."

Vimal Chadha Vs Vikas Choudhary and Another\textsuperscript{35}

Determination of age of a "juvenile in delinquency" must be determined as and when an application is filed. In view of the decision of the Constitution Bench in Pratap Singh v. State of Jharkhand it is no longer res Integra that the relevant date for determination is the age of the accused would be the date on which the occurrence took place. What would be the date on which offence has been committed in a given case has to be decided having regard to the fact situation obtaining therein. If an offence has been a continuing offence, then the age of the juvenile in delinquency should be determined with reference to the date on which the offence is said to have been committed by the accused.

In this chapter the landmarks cases relating to children in conflict with law with reference to justice, care and protection under Juvenile Justice (Care and Protection of Children) Act, 2000, 2000 decided by Supreme Court and High Courts. Therefore the

\textit{Determination of age of a juvenile in delinquency within the meaning of the Juvenile Justice (Care and Protection of Children) Act, 2000.}

Indian judicial system is testimony to the manner in which judiciary can contribute in good governance. Indian jurisprudence would insist upon enforcement of various rights, even of persons suspected of involvement in grave crimes. The rights thus guaranteed include right to life & liberty; right against torture or inhuman degrading treatment; right against outrages upon personal dignity; right to due process

\textsuperscript{34} AIR 1973 SC 478

\textsuperscript{35} Decided On: 27.05.2008

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& fair treatment before law; right against retrospect city of penal law; right to all judicial guarantees as are indispensable to civilized people; right to effective means of defence when charged with a crime; right against self-incrimination; right against double jeopardy; right of presumption of innocence until proved guilty according to law; right to be tried speedily, in presence, by an impartial & regularly constituted Court; right of legal aid & advice; right of freedom of speech besides right to freedom of thought, conscience & religion. The approach of judiciary in India has time and again been that while it may be appropriate that the courts show due deference and margin of appreciation to the opinion formed by the executive, any State action making inroad into the personal liberties or basic human rights of an individual must invariably be subject to judicial scrutiny which would rest on objective proof, relevant material in accordance to law and through a procedure that passes the muster of fairness and impartiality. It is indeed a matter of great satisfaction that the two other chief organs of the State in India have always respected the jurisdiction of the judiciary to subject every State action to “judicial review” and, therefore, have either abided by the decisions taken or taken requisite follow-up action in furtherance of such decisions. Judiciary has, thus, played a crucial role in development and evolution of society in general and in ensuring good governance by those holding reigns of power in particular. Perhaps, there can be no two views about the significance of the role expected of judiciary, viza-viz, the goal and good governance in a free society.

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. 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 there-from.

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 mind-set 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 (Care and Protection of Children) Act, 2000. An obligation has been cast on the court that where a plea of juvenility is raised having regard to the beneficial nature of the socially-oriented legislation, such a plea should be examined with great care. However, the same would not mean that a person who is not entitled to the said benefit would be dealt with leniently only because such a plea is raised. Each plea must be judged on its own merit.

Each case has to be considered on the basis of the materials brought on records. Until the age of a person is required to be determined in a manner laid down under a statute, different standard of proof should not be adopted. It is no doubt true that the court must strike a balance. In case of a dispute, the court may appreciate the evidence having regard to the facts and circumstances of the case. It would be a duty of the court of law to accord the benefit to a juvenile, provided he is one. To give the same benefit to a person who in fact is not a juvenile may cause injustice to the victim. The court may resort to some sort of hypothesis, as no premise is available on the basis whereof a definitive conclusion can be arrived at. Experts, believe that during medical examination even the mental psychological growth of the Juvenile in conflict with law should be taken into consideration and not only the physical age. A psychiatrist should also constitute the appointed Medical Board to help in this regard.

The Juvenile Justice Act was enacted to deal with offences allegedly committed by juveniles on a different footing from adults, with the object of rehabilitating them arguing that, even if it makes the procedure cumbersome and would add to the backlog of cases, it is justice that should be a priority and not the procedure. A person who is not entitled to the benefit of the said Act should not be dealt with leniently only because such a plea is raised. Each plea must be judged on its own merit and each case has to be considered on the basis of the materials brought on record. Better a thousand guilty go free than one innocent be executed is an age old adage in legal jurisprudence. Let the innocent not be executed but why the guilty escape? Supreme Court and High Courts plays an important role in the matter of juvenile in conflict with law with specific reference to justice, care and protection.

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