Chapter – IV  Judicial Efforts towards Juvenile Justice in India

4.1. Introduction:

The essence of juvenile justice lies in the belief that children or juveniles need special treatment and considerations during their formative age and they cannot be weighed in the same balance with the adults. It also stems from the expectations that the judicial system and the judicial decision makers can make responsive contributions towards upholding child rights. Consequently, it has bestowed humongous tasks and onerous responsibilities on the courts to apply the principle of best interests of the child in determining legal questions, which may have perilous impact on the child. The principle of child rights is the fulcrum around which the decisions of juvenile justice need to be focused going beyond family laws both in private and public spheres.

As per legal dictionary definition, a child is a person and not a sub-person over whom the parent has an absolute possessory interest. A school of legal scholars has opined that children’s rights can be referred to as human rights of children with particular attention to the rights of special protection and care. The children’s rights also include their right to association with biological parents, human identity, fulfillment of their basic needs for food, access to universal state paid education, health care and coverage by criminal laws appropriate for their age. The various commentaries and interpretations of children’s rights cover a broad gamut ranging from allowing and promoting voluntary actions of children to ensuring children living free from physical, mental and emotional abuse and torture.

It is evident that the rights of children are primarily related with the principle of human rights with emphasis on anti-discrimination, need for social participation, integration and protection of adolescent age. At the same time, the human rights system has been regarded as an enabling factor for expanding the scope of rights to protection and making concrete solutions for cases of child abuses. Undoubtedly, the human rights concepts have brought in a system to provide justice to the child victims of crimes at the hand of the perpetrators and have given them the opportunities to get justice. It is a fact that the child victims are subjected to inexplicable helplessness and under those circumstances assigning human rights jurisprudence brings such victims closer to the mechanisms of protection, which has been clearly mentioned and warranted by human rights laws.
It is apparent that children’s rights and human rights are mutually linked. It can be argued that in the present times the country is increasingly witnessing serious impact of changing social environments and evolving social structure, which generally do not foster upbringing in joint family culture and thereby hindering development of social intelligence among children as it is nurtured the most when the children are constantly surrounded by kith and keen during their formative age. Under these circumstances, the guiding directions of the Hon’ble Courts are better placed and suited to adjust the national policies and the governmental actions to remain in tune with time. The judgments have helped in bringing the people, who are working in the field of child rights, closer to those working in the human rights arena. This has eventually led to articulation of better integrated approach to dealing with child rights and encouraging the development of model infrastructure for the protection and preservation of the age of juvenility.

The juvenile justice through the court of law urges us to minimise the challenges that children face at each step of a legal proceeding. However, at times it is far from reality. Sometimes the components of juvenile justice i.e. police, courts, correctional homes, legislations etc. show the lack the unity of purpose. In those cases it will not be exaggeration to say that competition is more typical that cooperation among them. In India, children’s rights are provided by numerous laws – some were specifically enacted to protect children and the remaining contained just few sections pertaining to children and providing them with essential rights. These numerous pieces of legislations provided the children with their rights in the areas of education, medicine, nutrition, protection, friendly environment, family, employment and the system of justice through court intervention. With the complexity of numerous such laws, the Indian judiciary provided a broad overview of the substantive administration of the justice to the children.

From the Seventh Five-Year Plan, the judiciary and the Supreme Court too have played an active role in upholding the rights of the child. The Supreme Court of India has developed the concept of jurisdiction under which any individual can approach the court with regard to the violation of a fundamental right. The Supreme Court has also modified traditional concepts by allowing groups of persons or organizations to intervene in cases relating to violations of fundamental rights even though they may not have been affected personally in the matter. This concept of ‘social action litigation’ in
India represents an effort to use the legal system to ensure action to realize constitutionally guaranteed rights.

The Indian judiciary has a long checkered history of fostering the right to children by developing and promoting the use and application of existing national laws in sync with international instruments, standards and norms in the prevention of crime against children and administration of justice including those related to juvenile justice. The operational work in the juvenile justice sector is not new to the Indian judiciary. It is primarily based on the provisions of the Indian Constitution and the legislations related to children. The focus has been on strengthening juvenile justice system, facilitating rehabilitation and better treatment of young people in conflict with the law as well as improving protection of child victims.

With the aim of ensuring better juvenile justice, the Indian judiciary crafted a multi-pronged strategy to give impetus from all directions. The strategy included guiding juvenile justice reform, laying emphasis on prevention, harnessing rehabilitation, improving justice delivery system, sensitizing people, creating mass awareness, developing administrative mechanisms, reviewing legislation, facilitating extra-judicial alternative measures, according non-custodial sanctions for young people in conflict with the law, developing the national plan of action for the protection of youth victims at risk or in conflict with the law, improving detention conditions for juveniles by setting up filing systems and strengthening vocational and educational training programmes among others. The successive pronouncements of the Hon’ble Courts have helped the creation of better protective environment for children in the country. It indicates that there has been a gradual improvement in the juvenile justice system in our country through increasing government commitment, reforming laws, monitoring and reporting rights violations.

As the children are increasingly becoming the victims of atrocities - whether targeted directly or as a consequence of violent attacks against their parents or coerced to act as combatants in hostilities – the courts of India have played an important role to strengthen the systems and mechanisms for implementing the existing child protection standards. The holistic observations, judicious directions and apt interventions of the Hon’ble courts have arrested the increase of juvenile delinquency and also attempted reduced the number of crime incidents against the children in the country.
In the above light some of the landmark decisions of the Hon’ble Courts which have a longstanding impact on the juvenile justice system in India are being studied in this chapter.

4.2. Judgment Study

4.2.1. (A) Principles laid down by the Hon’ble Court under Writ jurisdiction

Case No. (1): Children in jail are entitled to special treatment

*Sheela Barse v. Union of India*¹

**Case summary:**

Ms. Sheela Barse, a dedicated social worker took up the case of helpless children below age of 16 illegally detained in jails. She petitioned for the release of such young children from jails, production of information as to the existence of juvenile courts, homes and schools and for a direction that the District judges should visit jails or sub-jails within their jurisdiction to ensure children are properly looked after when in custody.

**Resolution:**

The Court held that;

i. It is the right of a public minded citizen to bring an action for the enforcement of fundamental rights of a disabled segment of the citizenry.

ii. Where the Court comes to a conclusion that the right to speedy trial of an accused has been infringed, the charge or the conviction, as the case may be, shall be quashed.

iii. The Court directed that surprise visits should be paid to the police lock-ups by a judge of the City court appointed by the Principal judge.

iv. The Court observed that children in jail are entitled to special treatment. Children are national assets and they should be treated with special care. The Court urged the setting up of remand and juvenile homes for children in jails.

The court referred to Article 39(f) of the Directive Principles under Part IV of the constitution and commented that though every state had a children’s act pursuant to Article 39(f), the statute had not been enforced in some states. Though ordinarily it was

¹ (1986) 3 SCC 596
a matter for the state government to decide as to when a particular statute should be brought into force, in the present instance the court felt that it was appropriate to direct that every state ensure that the act be administered without delay.

**Case No. (2): Prohibition on incarceration of Child in Jail with adults**

*Sanjay Suri & Anr. Vs. Delhi Administration, Delhi & Anr*

**Case summary**

The petitioners - a news editor and a trainee sub-editor - filed the writ petitions in the Supreme Court pointing out features of maladministration relating to juvenile under-trial prisoners within the Central Jail at Tihar and prayed for appropriate directions to the respondents. The court made several orders with reference to juvenile prisoners and under-trials.

This matter dealt with the incarceration of children in Tihar jail and led to erecting of a separate structure for the accommodation of juveniles – in – conflict with laws. The Supreme Court had appointed the District Judge to inquire into the conditions prevailing in the juvenile ward of Tihar jail. The inquiry revealed amongst other things that the juvenile prisoners were sexually assaulted by the adult prisoners. The Supreme Court lamented, “We are anxious to ensure that no child within the meaning of the Children’s Act is sent to jail because otherwise the whole object of the Children’s Act of protecting the child from bad influence of jail life would be defeated.”

**Resolution**

i) Those who are in-charge of jail administration in all hierarchies must adopt proper approach to deal with the prisoners and under-trials. Whatever may have been the philosophy of punishment in the past, today the prison house is to be treated as a reformatory institution and the years spent in jail should empower the prisoners to build competences for proper rehabilitation after the sentence is over. Therefore, to fulfill its true responsibilities the prison house has to provide congenial atmosphere, leadership, environment and situations for the proper rehabilitation of the prisoners. The members of the staff of the jail in all hierarchy must be made

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aware of this responsibility and that awareness must be reflected in their conduct. The judicial notice can be taken of the prevailing conditions in the jails.

ii) The work load of superintendence should be delegated in a graded way and the officers should have direct charge of such divided responsibilities. It is necessary that suitable ambience and facilities of good living should be introduced in the jail life. The jail administration particularly the administrator must take into account this aspect and make efforts to infuse a sense of humanism in the officers particularly in the ranks below them so that the prisoners while having direct contact with them can benefit by understanding and experiencing the nuances of good behavior and the right approach to life.

iii) Every magistrate or trial Judge, who is authorised to issue warrants for detention of prisoners should ensure that every warrant authorising detention must specify the age of the prisoner to be detained. Even when there is a doubt about age, judicial mind must be applied to mention the age of the person to be detained. The authorities in the jail throughout India should not accept any warrant of detention as a valid one unless the age of the detenu is shown therein. It shall be open to the jail authorities to refuse to honour a warrant if the age of the person remanded to jail custody is not indicated. It would be lawful for such officers to refer back the warrant to the issuing court for rectifying the defect before it is honoured.

iv) Due care should be taken to ensure that the juvenile delinquents are not assigned work in the same areas where the regular prisoners are made to work. Care should be taken to ensure that there is no scope of mingling of juvenile delinquents with the adult ones.

v) Steps should be taken to shift the warders at the end of every three years. This is a principle which has been accepted in the Punjab Jail Manual.

vi) The visitors’ board should draw people with good track records from cross sections of the society like people with good background, social activists, people connected with the news media, lady social workers, jurists, retired public officers from the Judiciary and also the executive. The Sessions Judge should be given an acknowledged position as a visitor and his visits should not be routine ones. Full care should be taken by him to have a real picture of the defects in the administration of the resident prisoners and under trials. Monitoring the affairs of a jail is difficult for the court. By the very fact that the Tihar jail is situated in the
capital of the country and has the advantages of getting instant wide publicity through media, the state of affairs of the jail came under full public glare and attracted huge publicity over last four years. Hence if a change has to be initiated it has to start from somewhere and Tihar Jail is most suited for that purpose being under the direct management of the Union of India.

Case No. (3): Eradication of forced prostitution:

_Vishal Jeet vs. Union of India⁴_

**Case summary:**

The petitioner filed a writ petition in this Court under Article 32 of the Constitution of India by way of public interest litigation filed against the forced prostitution of girls, devdasis and jogins; seeking directions for (i) inquiry against police officials under whose jurisdiction the malady of forced prostitution, Devdasi system and Jogin traditions were flourishing and (ii) for rehabilitation of the victims of this malady, so the apex court held that in spite of stringent and rehabilitative provisions under the various Acts, results were not as desired and, therefore, called for an evaluation of the measure adopted by the central and state governments to insure their implementation. The Court called for severe and speedy legal action against exploiters such as pimps, brokers and brothel owners. The interest of the children by preventing their sexual abuse and exploitation was directed to be protected.⁵

**Resolution:**

The malady of prostitution is not only a social but also a socio economic problem and, therefore, the measures to be taken in that regard should be more preventive rather than punitive. This cannot be 862 eradicated either by banishing, branding, scourging or inflicting severe punishment on the helpless and hapless victims most of whom are unwilling participants, and involuntary victims of compelled circumstances and who, finding no way to escape, are weeping or wailing throughout. This devastating malady can be suppressed and eradicated only if the law enforcing authorities in that regard take very severe and speedy action against all the erring persons such as pimps, brokers and brothel keepers.⁶

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⁴ 1990(2) SCR 861, 1990(3) SCC 318, 1990(1) SCALE 874, 1990(2) JT
⁵ Extracted from [http://airwebworld.com](http://airwebworld.com) last date of visit 15.09.2012
⁶ Ibid 5
In-spite of the stringent and rehabilitative provisions of law contained in Constitution of India, 1950, the Immoral Traffic (Prevention) Act, 1956, Indian Penal Code, 1860 and the Juvenile Justice Act, 1986, it cannot be said that the desired result has been achieved. It cannot be gainsaid that a remarkable degree of ignorance or callousness or culpable indifference is manifested in uprooting this cancerous growth despite the fact that the day has arrived imperiously demanding an objective multi-dimensional study and a searching investigation into the matter relating to the causes and effects of this evil and requiring the most rational measures to weed out the vices of illicit trafficking.\(^7\)

The Courts also in such cases have to always take a serious view of this matter and inflict consign punishment on proof of such offences. However, it is neither practicable and possible nor desirable to make a roving enquiry through the C.B.I. throughout the length and breadth of the country and no useful purpose will be served by issuing any such direction.\(^8\)

Apart from legal action, both the Central and the State Governments have got an obligation to safeguard the interest and welfare of the children and girls of this country.\(^9\) All the State Governments and the Governments of Union Territories should direct their concerned law enforcing authorities to take appropriate and speedy action under the existing laws in eradicating child prostitution without giving room for any complaint of remissness or culpable indifference. They should also set up separate Advisory Committees for making suggestions for eradication of prostitution, implementation of the social welfare programmes for the care, protection, treatment, development and rehabilitation of the victims, and for amendments of the existing law, or for enactment of any new law for prevention of sexual exploitation of the children. These Governments should also devise machinery for ensuring proper implementation of the suggestions of their respective committees.\(^{10}\)

\(^{7}\) Ibid 5  
\(^{8}\) Ibid 5  
\(^{9}\) Ibid 5  
\(^{10}\) Ibid 5
Case No. (4): Pendency of trials for three years or more – Effect – Quashing and released on acquittal

Sanat Kumar Sinha Vs. State of Bihar & Ors.\textsuperscript{11}

Case summary

A Public Interest Litigation petition was filed by the petitioner ventilating his grievances with regards to juvenile cases pending for a long period of time in various courts.

Resolution

It was held by the Hon’ble Court that \textldots \textldots \textldots “From the facts called out from the reports received from various courts by the efficient efforts of the counsels appearing in this case it appears that not only in some cases investigations are pending but trials are going on for a period extending upto five years and in large number of cases juveniles are still in prisons. This state of affairs indicates a pathetic indifference to all concerned. We, therefore, direct that all criminal trials pending since three years or more be quashed to the extent as far as the trials of juveniles in custody are concerned and they are directed to be acquitted. They are released forthwith from custody or detention, as the case may be. Further, in relation to trials that are pending since less than 3 years the court should act in accordance with the provisions of the Juvenile Justice Act and dispose them of, in relation to where punishment is upto seven years, in accordance with the direction of the Supreme Court in Sheela Barse’s case. In other cases, the court concerned should after giving the prosecuting agency final opportunity to procure evidence as also to the defence to lead evidence, should close the case and proceed to dispose them of in accordance with law.” The Patna High Court also instructed that orders should be passed to release juveniles on bail pending their trials. Furthermore, the High Court reminded the government and society of its duty to ensure that the juveniles being so released are not picked-up by criminals, by assuring them a proper education in boarding schools so that they grow-up in a normal environment.\textsuperscript{13}

\textsuperscript{11} 1991 (2) Crimes 241
\textsuperscript{12} Ibid 2
\textsuperscript{13} Ibid 2 page - 98
Case No. (5): Effect of inter country adoption

_Laxmikant Pandey vs. Union of India_\(^{14}\)

**Case summary:**

The writ petitioners---some of the licensed welfare agencies contemplated under the judgment of this Court in (1984) 2 SCR 795, and petitioner No. 2, the Central Voluntary Adoption Resource Agency prayed that the Indian children adopted by the alien citizens to be allowed to retain their citizenship till they attain the age of majority; that birth certificates to be issued based upon attested copies of Court’s certificate (decree), adoption deed or affidavits of the officials of the licensed agencies; that quota fixed for placement of children with Indian families be quashed; that show cause notice be issued before cancellation of registration/ licence to the registered agency; that setting up of Central Adoption Resource Agency be stayed; that to enable the agencies to maintain high standards of care for the children, expenses by about 25% be revised and annual escalation of 10% be made; and that transfer of children from Statutory homes to recognised agencies for placement be allowed.

**Resolution**

1. If the Indian citizenship is allowed to continue until the adopted child attains the age of majority, it would run counter to the need of quick assimilation and may often stand as a barrier to the requirements of the early cementing of the adopted child into the adoptive family.

2. The birth certificate of the adopted child is to be obtained on the basis of application of the society sponsoring adoption.

3. The Registered societies to entitle themselves for renewal of registration of licence should exhibit their involvement in the process of adoption and the authority should have evidence to satisfy that the agency is really involved in the activity.

4. The licensing authority should ordinarily ensure that the registered agency has proper child care facilities so that an agency which does not have such facilities may over a period of years go out of the field.

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\(^{14}\) AIR (1984) SC 469, 1984(2) SCR 795, 1984(2) SCC 244
5. The setting up of CARA is justified. Such an institution would be an organisation of primacy and would work as a useful agency in the field. Although there should be no keen competition for offering adoptions, regulated competition may perhaps keep up the system in a healthy condition. Existence of CARA in that field is, therefore, welcome.

6. The children, who can be transferred for the purposes for placement, would be those, whose parents are not known, orphans and perhaps those who are declared as abandoned children. The homes are not set up in several States and areas. Even Juvenile Boards have not been properly functioning and the recognised agencies do not have the facility of child care. In these circumstances to order transfer of children from statutory homes to recognized agencies can indeed not be accepted as a rule.

7. As and when any request is received from recognised agencies, the Juvenile Court or the Board set up under the Act may consider the feasibility of such transfer and keeping the interest of the child in view, the possibility of an adoption within a short period and the facilities available in the recognised agency as also other relevant features, make appropriate orders. A strait-jacket formula may very often be injurious to the interest of the child.

**Case No. (6): Ban on child labour and provision for welfare**

_M.C. Mehta vs. State of Tamil Nadu_\(^{15}\)

**Case summary:**

An activist lawyer filed a petition with the court claiming that the fundamental rights of children were being grossly violated in contravention of Article 24 of the Constitution of India, which provides that “no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.” The Court noted that child labour is a “big problem” in India, and examined the history of child labour laws in India, including a decision by the court in 1991 in which it gave certain directions as to how the quality of life of children employed in factories in Sivakasi could be improved.\(^{16}\)

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\(^{15}\) AIR 1991 SC 417, (1991)2 SCC 137

\(^{16}\) Extracted from [http://www.crin.org](http://www.crin.org) on 05.09.2012
Resolution:

The court ordered that employers illegally employing children must pay Rs. 20,000 into a fund known as the “Child Labour Rehabilitation-cum-Welfare Fund” to be used only for the benefit of that child. The court also ordered the government to either (a) provide employment for an adult member of every family with a child who is employed in a factory or mine or other hazardous work or, if not possible to provide an adult family member with a job, (b) contribute Rs. 5,000 to the Child Labour Rehabilitation-cum-Welfare Fund for each child employed in a factory or mine or other hazardous employment. Adults who are offered jobs in this way would also have a duty to ensure that their children entered full-time education and did not continue to work.17

Court reasoning:

Under the national Constitution and international instruments, including the Convention on the Rights of the Child, the Indian government is required to ensure that children do not engage in hazardous work. Looking to the causes of child labour, poverty is the basic reason that compels parents to employ their children, and unless alternative income is assured to families, these children will continue to work. Because the fines imposed on employers would not be enough to prevent a poor parent from having to put their child to work, the government owes these parents a duty of assistance to help remove their children from hazardous employment.18

Case No. (7): Right to protection against abuse and opportunities and facilities for children to develop in a healthy manner

*Bandhua Mukti Morcha vs. Union of India*19

Case summary:

Bandhua Mukti Morcha (BMM) a NGO filed the PIL before the Hon’ble Supreme Court against the Union of India ventilating grievances against the states apathy to resolve the pernicious bonded labour system in India in accordance with the constitutional mandate.

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17 Ibid 15
18 Ibid 15
Resolution:

The role and concern of the Indian Supreme Court has been profound in making better the lives of numerous children who are being subjected to exploitation. The Hon’ble Supreme Court in this case of had to say that, “This right to live with human dignity enshrined in Article – 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity”. The Supreme Court of India protected poor children from child labour, highlighting the State’s obligation to protect the vulnerable from such abuse.

Case No. (8): Eradication of Child prostitution and improvement of condition of the children of prostitutes

Gaurav Jain vs. Union of India

Case summary

A writ petition was filed by the petitioner before the Hon’ble Supreme Court seeking reliefs highlighting the condition of prostitutes in general and the plight of their children in particular. This is a unique case where the Hon’ble Supreme Court reopened the case and reviewed earlier decision.

Resolution:

In Gaurav Jain Vs. Union Of India (I); Supreme Court passed and ordered to setup an advisory committee to make suggestion for eradicating child prostitution and point out social aspect for the care, protection, treatment, development and rehabilitation of the young victims, children and girls prostitute, from red light area; to free them from the abuses of the prostitution; to amend the existing law or to enact a new law if so warranted; to prevent sexual exploitation of children and to take various measures for effective enforcement thereof.\(^\text{21}\)

\(^{20}\) 1997 (8) SCC 114
\(^{21}\) Ibid 5
The Court issued directions for a multi-pronged approach and mixing the children of prostitutes with other children instead of making separate provisions for them. The Supreme Court issued directions for the prevention of induction of women in various forms of prostitution. It said that women should be viewed more as victims of adverse socio-economic circumstances than offenders in our society.22

But the entire judgment was thereafter reviewed and recalled by a bench of three judges in Gaurav Jain vs. Union of India (II), Court illustrated that “The Constitutional and Human Rights to the victims of fallen trade of flesh trade need care and consideration of the society. This care calls upon to resolve that human problem with care and purposeful guidelines, lend help to ameliorate their socio economic condition, eradicate social stigma and to make available to them equal opportunities for the social order.”23

**Comment:**

In a subsequent order, the Court, while drawing attention to the human rights impact of some anti-trafficking provisions, reiterated that the “eradication of prostitution is integral to social welfare and the glory of womanhood”24. The Court stated that it was in the interests of the children of sex workers and of society that they “be segregated from their mothers and be allowed to mingle with others and become part of society”25. The Court was opposed to the establishment of separate hostels and schools for the children of sex workers. However, it was of the view that “accommodation in hostels and other reformatory homes should be adequately available to help segregate these children from their mothers living in prostitute homes as soon as they are identified”.26

The Supreme Court also observed that the capacity of a prostitute to pay for her child’s education would not relieve the child from social trauma and that it would always be against the interests of the child to permit the child to remain in her custody or in a brothel. “So, they should be rescued, cared for and rehabilitated ... the three Cs, namely, counseling, cajoling and coercion of the fallen woman to part with the child or child prostitute herself from the manager of the brothel is a more effective, efficacious and meaningful method to rescue the child prostitute or neglected juvenile”.27

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22 Ibid 5  
23 Ibid 5  
24 Gaurav Jain v. Union of India, AIR 1997 SC 3021, 3023, para. 15  
25 Ibid 23 para 1  
26 Ibid 25  
27 Ibid 23 para 20
Case No. (9): Custody - preference of mother’s right over child in case of apathy of father

Gita Hariharan vs. Reserve Bank of India

Case summary:

This petition was related to a petition for custody of the child stemming from a divorce proceeding pending in the District Court of Delhi. The husband petitioned for custody in the proceedings. The petitioner filed an application for maintenance for herself and the minor son, arguing that the father had shown total apathy towards the child and was not interested in the welfare of the child. He was only claiming the right to be the natural guardian without discharging any corresponding obligation. On these facts, the petitioner asks for a declaration that the provisions of Section – 6(a) of the Hindu Minority and Guardianship Act of 1956 along with Section – 19(b) of the Guardian Constitution and Wards Act violated Articles 14 and 15 of the Constitution if India.

Resolution:

Giving the opinion of the Court, Banerjee J asserted the predominance of the child’s welfare in all considerations. He considered the precedent of Gajre v. Pathankhan (1970 2 SCC 717) in which, although the father was alive, he was not taking any interest in the affairs of the child. In that case the mother was ruled to be the natural guardian of her minor daughter. He set out that the Hindu law and the Act held that the father is the natural guardian and after him the mother but in the above case, the Court held the opposite.

The judgment in Gajre v Pathankhan considered that:

“... a rigid insistence of strict statutory interpretation may not be conducive for the growth of the child, and welfare being the predominant criteria, it would be a plain exercise of judicial power of interpreting the law so as to be otherwise conducive to a fuller and better development and growth of the child.”

Justice Banerjee noted that the judge in Gajre v. Pathankhan allowed the mother to be the natural guardian:

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28 (1999) 2 SC 228
29 Extracted from www.equalrightstrust.org on 08.07.2012
30 Ibid 29
31 Ibid 29
“... but without expression of any opinion as regards the true and correct interpretation of the word ‘after’ or deciding the issue as to the constitutionality of the provision as contained in Section 6(a) of the Act of 1956.”

He felt strongly that a long established law should not easily be set aside; that a key point was interpretation of the word “after”; and that:

“... the word did not necessarily mean after the death of the father, on the contrary, it [means] ‘in the absence of’ be it temporary or otherwise or total apathy of the father towards the child or even inability of the father by reason of ailment or otherwise.”

He concluded that ascribing the literal meaning to the word ‘after’ cannot arise having due regard to the object of the Act and the constitutional guarantee of gender equality, since any other interpretation would render the statute void which ought to be avoided.

Subsequently, he dismissed the petition regarding the constitutionality of the Act but directed the Reserve Bank to formulate appropriate methodology in the light of his observations. He also instructed the District Court, Delhi to take account of his comments when considering custody and guardianship of the minor child.

**Case No. (10): Abolition of Foeticide and the role of Supreme Court**

*Centre for Enquiry into Health and Allied Themes (CEHAT) & others vs. Union of India & Others*

**Case summary:**

A path breaking order with regard to the implementation of the PNDT Act, is the Writ Petition (C) No. 301/ 2000. It was a Public Interest Litigation, filed under Article 32 of the Constitution of India, by Centre for Enquiry into Health and Allied Themes (CEHAT), a research organisation; Mahila Sarvagin Utkarsh Mandal (MASUM), a Non-Governmental organization and Dr. Sabu M. George, a civil society member. In this Petition it took nearly one year for various States to file their affidavits in reply/ written submissions and after hearing them, from time to time the Supreme Court has issued number of directions to the Central and State Governments, to the Central Supervisory

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32 Ibid 29  
33 Ibid 29  
34 Ibid 29  
35 Ibid 29  
36 Ibid 29  
Board and Appropriate Authorities established under the Act, for its proper implementation with all vigor and zeal.\textsuperscript{38}

\textbf{Resolution:}

The first set of directions were issued on 4.5.2001 whereby both State and Central Governments were directed to create public awareness against the practice of pre-natal sex determination and sex selection and to implement the Act in the earnest interest. Central Supervisory Board was directed to review and monitor the implementation of the Act and at the same time to examine the necessity to amend the Act in view of the emerging technology of pre conception sex selection and difficulties encountered in implementation of the Act. State Governments were directed to immediately appoint fully empowered Appropriate Authorities and Appropriate Authorities were further directed to take appropriate criminal action in case of violation of the provisions of the Act. (Para-3) Being aware of the lackadaisical manner in which the Governments were functioning, the Supreme Court did not stop merely by issuing directions but called for the compliance reports and kept the matter pending for further directions on 06.08.2001.\textsuperscript{39}

In spite of these directions by the Supreme Court as certain States did not file compliance affidavits, the matter had to be adjourned from time to time and on 19.09.2001 the Supreme Court recorded with anguish that directions were not complied with and there was a total disregard on the part of administration in implementation of the Act. The Supreme Court issued further directions for taking appropriate criminal action against the Medical Officers and the Clinics violating the provisions of the Act.\textsuperscript{40}

On 07.11.2001 in the same Writ Petition, on the suggestion of Central Government, Supreme Court ordered setting up of National Inspection and Monitoring Committee for the implementation of the Act.(Para 3) In the year 2003 in conformity with the several directions issued by the Supreme Court, the Act was amended to bring within its purview the misuse of pre-conception and pre-natal diagnostic techniques and was titled as the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act. On 31.03.2003 and 10.09.2003 after giving some further directions, for

\textsuperscript{38} Compilation and Analysis of Case-laws on Pre-conception and Pre-natal Diagnostics Techniques (Prohibition of Sex Selection) Act, 1994, Dr Shalini Phansalkar Joshi, Joint Director Maharashtra Judicial Academy, Supported by United Nations Population Fund, 2011, chapter – 1 page – 1(1)

\textsuperscript{39} Ibid page – 1(1) & 2

\textsuperscript{40} Ibid page – 1 & 2
creating public awareness and for effective implementation of the amended Act, the Supreme Court finally disposed of the Petition on 10.09.2003.41

The perusal of these directions in the form of total six orders is sufficient to reflect that the Supreme Court has to in this matter literally legislate on how the Act should be implemented. This decision hence constitutes a landmark in its impact. It exhibits the deep concern and the anguish felt by the Apex Court towards the social evil of sex selection followed by elimination of foetus if found to be female. The Supreme Court was equally concerned with the apathy on the part of Government in implementation of the law which aims at preventing such a social evil. As per Supreme Court, “it was unfortunate that for implementation of the law, which was the urgent need of the hour, NGOs had to approach the Court.” The significance given by the Supreme Court to this issue is bound to have positive effect for advancing the cause.42

As the Judgments and Orders of Supreme Court are binding on all in view of Article 141 of the Constitution of India and as the non-obedience and non-compliance with the directions issued by the Supreme Court amounts to contempt of court, it appears that only with a view to avoid facing the action of contempt of the Supreme Court, the Government and Authorities have at least made some efforts towards implementation of this Act. This decision is in that respect epoch making.43

It must be stated that but for the initiative taken by the NGOs and the constant monitoring by the Apex Court, virtually laying down the entire framework for implementation, this Act would have remained on paper only.44

All the six Orders passed in this Writ Petition are worth reading in entirety, especially the opening paras of the Supreme Court’s first order dated 04.05.2001 and last order dated 10.09.2003, highlighting the plight of female child and the inhuman practice of sex selection. The six Orders of the Supreme Court passed in Writ Petition (Civil) No. 301/2000 are given below.45
Case No. (11): Rule for the search of the Kidnapped minor girls

Hori Lal ................Appellants Vs. Commissioner of Police, Delhi & Ors..............Respondents

Date of judgement: 14/11/2002 (Item No 101 Court No 4 Section –X)

Coram: The Hon’ble Mr. Justice M.B. Shah, Hon’ble Mr. Justice Arijit Pasayat, Hon’ble Mr. Justice D.M Dharamadhikari

Case summary

Petitioner has filed a writ petition (Writ Petition (Cri.) No. 610 of 1996) before the Hon’ble Supreme Court under Article 32 of the Constitution wherein it was submitted that the respondents (State authorities, the Commissioner of Police, Delhi & Ors) be directed to search and produce before the court the missing daughter of the petitioner who was missing for over a year and a half despite of lodging of FIR at Shakarpur Police Station, Delhi -92. The petitioner was pointed out various orders passed by the Hon’ble Supreme Court since 6th January 1997, directing the Investigating Officers to take appropriate search for finding out the missing minor girl. As the girl was not traced out, the Hon’ble Supreme Court on 24th October 1997 directed the Commissioner of Police, Delhi, to depute the Senior Deputy Commissioner of Police to personally investigate into the matter, which was registered on 11.07.1995 with the Shakarpur Police Station and take all possible steps to find out the missing daughter of the Petitioner.

Thereafter, on 29th January, 1998, as it was suspected by the Petitioner that his daughter was kept by one or two persons, the Hon’ble Court issued further notice to those newly added respondents to remain present before the Hon’ble Court. Repeatedly directions were given to make further investigations. On 17th July 1998 notice was given to the learned Attorney General and the Matter was adjourned. On 25th September 1998 after Hearing the Learned Attorney General Soli J Sorabjee the Hon’ble Supreme Court granted four weeks time to furnish the guidelines so that investigating officer can be given appropriate guidelines for searching such type of missing children all over the country. On 19th February, 1999 tentative Guidelines were furnished by the Petitioner. On 13th August 1999, it was stated before the court that the Draft Guideline were prepared and they were under consideration of the concerned ministry. On 9th February, 2001 the Court adjourned the matter with a specific direction that if the proposed guidelines were not furnished to the learned Counsel for the Petitioner, the court would proceed to Hear the Matter regardless of the Guidelines. As nothing was finalized, on 3rd August 2001, the Hon’ble Court issued rule.
Resolution

For having effective search of the Kidnapped minor girls, the following steps shall be taken by the Investigation Officer in all the States:

1) Publishing of photographs of the missing persons in the Newspaper and to telecast them on Television promptly, and the action to be taken not later than one week of the Receipt of the complaint.

2) Photographs of a missing person shall be given wide publicity at all the prominent outlets of the city / town / village concerned that is at the Railway Stations, Interstate bus Stands, airport, regional passport office and through law enforcement personnel at Border checkpoints. This should be done promptly and in any case not later than one week of the receipt of the complaint. But in case of a minor / major girl such photographs shall not be published without the written consent of the parents / guardians.

3) Make inquiries in the neighborhood, the place of work / study of the missing girl from friend’s colleagues, acquaintance, relatives etc. immediately. Equally all the clues from the papers and belongings of the missing person should be promptly investigated.

4) To contact the Principal, Class teacher and Students at the missing person’s most recent school / educational institutions. If the missing girl or woman is employed somewhere, then to contact the most recent employer and her colleagues at the place of employment.

5) To conduct an inquiry into the whereabouts from the extended family of relatives, neighbors’, school teachers including school friends of the missing girl or woman.

6) Make necessary inquiries whether there have been past incidents or reports of violence in the family.

After completion of the formalities enumerated above the investigation officer/agency shall:

a) Diligently follow up to ensure that the records requested from the parents are obtained and examine them for clues.

b) Hospitals and Mortuaries to be searched immediately after receiving the complaint.
c) The reward for furnishing clues about missing person should be announced within a month of her disappearance.

d) Equally Hue and Cry notices shall be given within a month.

e) The Investigation should be made through women police officers as far as possible.

f) The concerned police commissioner or the DIG / IG of the State Police would find out the feasibility of establishing a multitask force for locating girl children women.

g) Further, in the Metropolitan cities such as Delhi, Mumbai, Kolkata and Chennai the Investigating Officer should immediately verify the red light areas and try to find out the minor girls. If any minor girl (may or may not be recently brought there) is found her permission be taken and she may be taken to the children’s home (Sec 34 of the Juvenile Justice (Care and Protection of the Children) Act 2000, and the I.O. to take appropriate steps that all medical / other facilities are provided to her.

Case No. (12): Right to Education:

Unni Krishnan vs. State of Andhra Pradesh46

Case summary

A writ petition was filed before the Hon’ble Supreme Court regarding charging capitation fees and policy of education within the state. The college management was sought enforcement of their right to business through the charging of “capitation” fees from the students seeking admission. The court expressly denied this claim and proceeded to examine the nature of the right to education - specifically within the purview of the articles of the constitution of India.

Resolution

The Hon’ble Supreme Court held that the right to basic education is implied within the ambit of the fundamental right to life enshrined in the Article – 21, when read in conjunction with the directive principle on education under Article – 41. The Court held that the parameters of the right must be understood in the context of the Directive

46 1993 (4) SCC 111, 1993(3) SCALE 248
Principles of State Policy, including Article 45 which provides that the state is to endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children under the age of 14. Article – 41 indicates that after the age of 14, the right to education is subject to the limits of economic capacity and development of the state.47

Indeed it was found that there is no fundamental right to education for a professional degree that flows from Article 21. Quoting Article 13 of the International Covenant on Economic, Social and Cultural Rights, the Court stated that the state's obligation to provide higher education requires it to take steps to the maximum of its available resources with a view to achieving progressively the full realization of the right of education by all appropriate means.48

Effect of the judgment

In response to the direction of the Hon’ble Supreme Court after nine years through the Ninety-third amendment to the Constitution, Article 21-A has been inserted by the parliament of India, which provides for the fundamental right to education for children between the ages of six and fourteen. In addition, several States in India have formulated their respective rules making the state responsible to provide primary education to its children.49

The letter and spirit of judgement of Unni Krishnan case transformed into fundamental right through subsequent pronouncement of the Hon’ble Supreme Court in Case of M.C. Mehta v State of Tamil Nadu & Ors (1996) 6 SCC 756; AIR 1997 SC 699. Hence, Article 45 of the Constitution of India had acquired the status of a fundamental right through the successive solemn pronouncement of the Supreme Court of India.

Case No. (13): Rescue and rehabilitation of children forcefully detained in circuses

**Bachpan Bachao Andolan ... Petitioner Vs. Union of India & Others ... Respondents**

Case summary

The petition (Writ Petition (C) No.51 of 2006) was filed in public interest under Article 32 of the Constitution in the wake of serious violations and abuse of children who

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47 http://www.right-to-education.org/node/678 extracted on 20.05.12
48 Ibid 47
49 Ibid 47
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.

Resolution

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 (Govt. of India and others) were 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 are to be kept under the Care of Protective Homes till they attain the age of 18 years.

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

iv. The respondents (Govt. of India and others) were directed to frame proper scheme of rehabilitation of rescued children from circuses.

4.2.1. (B) Beneficial effect of Juvenile legislation after conviction

Case No. (14): In appeal – Conviction upheld but released on the ground of juvenility

Jayendra & Anr. Vs. State of U.P. 50

Case summary:
In this appeal, a plea was raised on behalf of the appellant that he was a “child” and should have been dealt with under the provisions of the U.P. Children’s Act 1951.

Resolution:

The Supreme Court got the appellant Jayendra medically examined and on the basis of the Medical Examination Report declared him to be a child on the date of offence. Whilst disposing of the appeal, the Supreme Court upheld the conviction,

50 (1981) 4 SCC 149; 1981 SCC (Cri) 809; AIR 1982 SC 685
quashed the sentence and forthwith ordered Jayendra’s release as he had ceased to be a child on the date of the Apex Court’s judgment.

**Case No. (15): Result of appeal – the order of conviction sustained but Juvenile released**

_Bhoop Ram Vs. State of U.P._\(^{51}\)

**Case summary:**

In this case the only question before the Supreme Court was whether the accused appellant, was a juvenile on the date of commission of offence and he should have been dealt with under the provisions of the U.P. Children Act 1951. There was a conflict between the age recorded in the school leaving certificate and the age opined in the medical examination report. As per the school leaving certificate, the appellant was a juvenile on the date of offence but according to the medical examination report, the appellant had crossed the age of juvenility on the date of occurrence. The Supreme Court after considering the arguments of the counsels for the appellant and the State held that Bhoop Ram was a juvenile on the date of offence.\(^{52}\)

**Resolution:**

In the order of the Supreme Court it was said, “We are persuaded to take this view because of three factors. The first is that the appellant has produced a school certificate which carries the date June 24, 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. The second factor is that the Sessions Judge has failed to bear in mind that even the trial Judge had thought it fit to award the lesser sentence of imprisonment for life to the appellant instead of capital punishment when he delivered judgment on September 12, 1977 on the ground that the appellant was a boy of 17 years of age. The observation of the trial Judge would lend credence to the appellant’s case that he was less than 10 (sic 16) years of age on October 3, 1975 when the offences were committed. The third factor is that though the doctor has certified that the appellant appeared to be 30 years of age as on April 30, 1987, his opinion is based only on an estimate and the possibility of an error of estimate creeping into the opinion cannot be ruled out”.\(^{53}\)

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\(^{52}\) Ibid 3 page - 101

\(^{53}\) Ibid 3 page - 101
The order of conviction of the accused appellant was upheld by the Hon’ble Supreme Court, but the sentence of life imprisonment imposed upon the accused was set aside on the ground of juvenility and the appellant was immediately released.

**Case No. (15a):** In appeal – Conviction sustained but sentence quashed

*Pradeep Kumar Vs. State of U.P.*

**Case summary:**

All the three appellants viz., Pradeep Kumar, Krishan Kant and Jagdish were convicted and sentenced by the Court. On the basis of medical examination report, a horoscope and a School Leaving Certificate submitted by the appellants the Court declared the appellants as child and to have fallen within the definition of “child” under the U.P. Children’s Act 1951 on the date of occurrence. The appeal was preferred by the appellant before the Hon’ble Supreme Court for the benefit of the U.P. Children’s Act 1951.

**Resolution:**

The Hon’ble Supreme Court held that “there is no question of sending them to an approved school under the U.P. Children’s Act for detention. Accordingly, whilst sustaining the conviction of the appellants under all the charges framed against them, we quash the sentences awarded to them and direct their release forthwith.”

**Case No. (16):** In appeal – Conviction sustained but sentence set aside

*Umesh Singh & Anr. Vs. State of Bihar.*

**Case summary:**

In this case the plea of juvenility was not raised before the Trial Court or the High Court. The Apex Court declared the appellant Arvind Singh a juvenile on the basis of a “report of experts” which indicated that Arvind was “hardly 13 years old” on the date of the incident. This “report of experts” was supported by “the school certificate as well as the matriculation certificate”.

**Resolution:**

The Supreme Court whilst confirmed the conviction, but set aside the sentence imposed upon him and accordingly released juvenile Arvind Singh forthwith.
Case No. (17): In appeal – Conviction sustained but sentence quashed

_Upendra Kumar Vs. State of Bihar_ ⁵⁶

**Case summary & Resolution:**

This is another instance of case where same principle was followed by the Hon’ble Supreme Court to uphold the conviction and quashes the sentence. The court ordered, “Resultantly, the appellant is directed to be released forthwith if not required in any other case.” ("Child Protection and Juvenile Justice System for Juvenile in Conflict with Law" by Ms. Maharukh Adenwalla, published by: Childline India Foundation, December 2006, page - 107)

Case No. (18): In appeal – Conviction sustained but sentence quashed

_Satya Mohan Singh Vs. State of U.P._ ⁵⁷

**Case summary:**

The Court of Session convicted and sentenced the appellant to imprisonment for life, for having been committed an offence under sections 302, 307 IPC. The conviction and sentence was upheld by the Hon’ble High Court. There was no claim of juvenility had been raised before the Court of Session.

**Resolution:**

The Supreme Court observed that “when the question of awarding sentence was being considered, on behalf of the appellant, it was pointed out that he was fifteen years of age in December 1980 when the judgment was being delivered by the trial court. The trial court assessed the age of the appellant in December 1980 between sixteen to seventeen years. The occurrence had taken place in December 1979. Therefore, even according to the estimate of the trial court, the age of the appellant on the date of the occurrence was fifteen or sixteen. This observation of the trial court clearly shows that on the date of the occurrence, the appellant was a child within the meaning of section 2(4) of the Act.”

Under the aforesaid observation, the Hon’ble Apex Court declared the appellant a “child” below the age of 16 years and falls under the purview of the U.P. Children’s Act. Though the order of conviction was upheld by the Hon’ble Court but the sentence against the juvenile has been quashed.

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⁵⁶ (2005) 3 SCC 592; 2005 SCC (Cri) 778
⁵⁷ (2005) 11 SCC 395
4.2.1. (C): Beneficial effect of Juvenile legislation – compensation for illegal detention in prison

Case No. (19): Non availability of escort is no ground Compensation awarded

Master Rajeev Shankarlal Parmar & Anr. Vs. Officer-in-Charge, Malad Police Station & Ors.\(^58\)

Case summary:

The accused was declared as juvenile by the Sessions Court but he was not shifted to the observation home nor was his case transferred to the JJ Board. It was only the High Court’s intervention which ultimately resulted in Rajeev being shifted to the observation home three months after having been declared a juvenile by the Ld. Session Judge.

Resolution:

“Thus, there was a gap of more than three months in carrying out the order passed by the Ld. Additional Sessions judge. The order dated 7\(^{th}\) March 2003 was implemented and effected only on 13\(^{th}\) June 2003.” The excuse of the jailor for not complying with the court’s orders was the non availability of escort. Rajeev was awarded compensation of Rs.15,000/- by the High Court. The State challenged this order before the Supreme Court but to no avail.\(^59\)

Case No. (20): Order of Session Judge misplaced is no ground – Compensation awarded

Master Salim Ikramuddin Ansari & Anr. Vs. Officer -in-Charge, Borivali Police Station, Mumbai & Ors.\(^60\)

Case summary:

This is another case where the principles of Master Rajeev Shankarlal Parmar case once again reaffirmed by the Hon’ble Supreme Court. In this case despite of order of Ld. Session Judge the juvenile was not shifted to the Observation Home. The excuse of the jailor for not transferring the accused to the Observation Home was that the order of the Sessions Court declaring Salim a juvenile, though transmitted by the Registrar of Sessions Court and received by the jail, was misplaced.

\(^{58}\) CriLJ 4522 (Bom) 2003  
^59\) Ibid 3 page - 102  
\(^{60}\) 2005 CriLJ 799 (Bom)
Resolution:

Under the High Court’s order, Salim was transferred to the Observation Home on 9th July 2004, i.e., seven months after the Sessions Court order. Salim was awarded compensation of Rs.1, 00,000/- . The Bombay High Court examined the granting of bail under Section 12 of JJA 2000 and observed, “According to this section, the first petitioner can be released on bail with or without surety. Looking to the peculiar facts and circumstances, we direct the Juvenile Justice Board to release the first petitioner on his executing personal bond only.”

4.2.1. (D): Overriding effect of JJ Act

Case No. (21): The JJ Act, 2000 overrides Army Act

*Ex. Gnr. Ajit Singh Vs. UOI* 62

Case summary:

The petitioner, a minor boy, was enrolled in the army and in a court martial proceeding he was sentenced to suffer rigorous imprisonment for 7 years under the Army Act 1950.

Resolution:

The Hon’ble High Court held that the effect of the Juvenile Justice (Care and Protection of Children) Act 2000 overrides the provisions of the Army Act 1950; hence the general court martial procedure did not have any jurisdiction to adjudicate the case pertains to an offence committed by a juvenile.

4.2.1. (E): Trial jurisdiction

Case No. (22): Exclusive jurisdiction of JJ Board to trial of a Juvenile

*State of Karnataka Vs. Harshad* 63

Case summary:

The issue arises in this case before the Hon’ble High Court was whether the Sessions Court or the Fast Track Court had jurisdiction to entertain a juvenile case, after introduction of the JJ Act, 2000.

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61 Ibid 59
62 2004 CriLJ 3994 (Delhi)
63 2005 CriLJ 2357 (Karnataka)
Resolution:

The court categorically held that in view of section 6 (1) of JJA 2000, the Juvenile Justice Board “has the exclusive power of dealing with the trial of Juveniles in conflict with law and to that extent, the jurisdiction of any court including that of the Sessions Court or Fast Track Court be barred.” Furthermore, upon the submission of the Public Prosecutor that “only five Juvenile Justice Boards have been constituted to deal with the entire State”, and that each Juvenile Justice Board handles juvenile cases of a group of districts, the High Court directed “the State Government may consider the necessity of establishing one Juvenile Justice Board for each district”. 64

Case No. (23): In absence of Board the Magistrate concern has jurisdiction to deal with cases of juvenile and appeal will go before the Sessions Judge

Sant Das Vs. State of U.P. and Ors. 65

Case summary:

The petitioner juvenile was apprehended by the police in a charge of offence of murder. The plea of juvenility asserted by the petitioner before the Court of Metropolitan Magistrate first and thereafter to the Court of Session supporting with the documentary proof of birth and report of medical examination. Ld. Session judge was pleased to reject the bail application of the alleged juvenile as well as the petition claiming the juvenility. Thus the reliefs under the JJ Act, 2000 was denied by the Court of Session. On refusal the alleged juvenile preferred the writ petition under Article 226 of the Constitution of India before the Hon’ble Allahabad High Court for issuance of writ or direction in the nature of mandamus declaring the petitioner as juvenile and for issue of writ or direction of mandamus commanding the respondents to lodge the petitioner in Child Care Home as provided under Juvenile Justice (Care and Protection of Children) Act, 2000 and to pass order releasing the petitioner from jail. Admittedly there was no JJ Board within the district concern.

Resolution:

In the absence of the constitution of the Board, the applicants may move application for bail before the Magistrate having jurisdiction under Section 437, Cr.P.C. and in the case the same is rejected; they may move application under Section 439,

64 Ibid 3 page - 98
Cr.P.C. before the Court of Ld. Sessions Judge and also before the High Court. In the absence of any Board, the power of Magistrate under Cr. P. C. can be exercised and the applicant may move bail application before the Magistrate concerned under Section 437, Cr.P.C. taking plea of juvenile and in case it is rejected he may move bail application before Sessions Judge and this Court in which plea of juvenile may be raised.

4.2.1. (F): Right to bail

**Case No. (24):** Order of bail is the priority

*Vijendra Kumar Mali, etc. Vs. State of U.P.*

**Case summary:**

The prayer for bail was rejected by the subordinate Court on the ground that the offence is serious in nature. There was no challenge regarding juvenility of the wrongdoer. On refusal bail application was preferred before the Hon’ble High Court.

**Resolution:**

The Hon’ble High Court observed that; “This court in a number of judgments has categorically held that bail to the juvenile can only be refused if any one of the grounds existed. So far as the ground of gravity is concerned, it is not covered under the above provisions of the Act. If the bail application of the juvenile was to be considered under the provisions of the Code of Criminal Procedure, there would have been absolutely no necessity for the enactment of the aforesaid Act. The language of section 12 of the Act itself lays down that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, the juvenile accused shall be released.”

**Case No. (25):** Bail is right when no adverse plea that release shall expose danger to the JCL.

*Ranjit Singh Vs. State of H.P.*

**Case summary and resolution:**

A juvenile was released on bail by the High Court on the ground that “In reply, filed by the prosecution, or in the police file, there is nothing to show that juvenile, if released on bail, would be exposed to criminal or moral or physical or psychological danger nor it can be said that his release will defeat the ends of justice”.

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66 2003 CriLJ 4619 (Allahabad)
67 2005 CriLJ 972 (H.P.)
4.2.1. (G): Object of bail

Case No. (26): Order of bail to upkeep the wellbeing of JCL

Sahabuddin alias Shaboo Vs. State of U.P. 68

Case summary:

In this case the prayer for bail was refused to the juvenile apprehend. On prayer the Hon’ble High Court was pleased to release the Juvenile on bail in the custody of his father on executing a bond for his son’s good conduct. It was held by the Hon’ble Court that apprehending a juvenile’s incarceration is detrimental to the well-being of the child.

Resolution:

“It shall be futile to say that constant incarceration of a juvenile is a greater threat to him than his constructive release. There is every likelihood of his coming into contact of known criminals than his being released on bail on the father furnishing bond for his better upkeep and for maintaining good behaviour towards the society”.

4.2.1. (F): Grounds of Refusal to bail

Case No. (27): Is permissible only when release would defeat the interest of the Juvenile

Dattatray G. Sankhe Vs. State of Maharashtra & Ors. 69

Case summary:

Against refusal of bail the juvenile approached before the Hon’ble High Court for bail. By the order the juvenile was released on bail on the condition that he is to report to the Juvenile Justice Board once a week till charge-sheet is filed, and thereafter once in two weeks. The Bombay High Court whilst passing the order of bail dealt with the provisions of juvenile legislation.

Resolution:

In this case the Hon’ble High Court held that ……… “From the perusal of the said section it is clear that in case it is found that the juvenile is involved in any criminal offence, the normal rule would be to grant bail and the Board is empowered to release the juvenile on bail unless it comes to the conclusion that by releasing such a person on bail, he would come in contact with known criminals or that his life is likely to be in

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68 2002 CriLJ 4579 (Allahabad)
69 2003 AllMR (Cri) 1693 (Bombay)
danger. This particular provision is made to ensure that large number of juvenile 
delinquents who do not have a regular place of residence or a family or abode are not 
brought to the mercy of known criminals and are as a result exploited by these criminals 
for their own ends”

Case No. (28): When art of commission of offence postulate criminal tendency

_Sandeep Kumar v. State (Del)_

**Case summary:**

The FIR in this case was lodged by the mother of the victim. The unfortunate victim 
was only six years old at the time of commission of offence. The juvenile was arrested by 
the Police for an alleged offence under Section 376/201/34 of the Indian Penal Code. 
The Juvenile Justice Board declined bail to him. So did the learned court of sessions 
when approached in the revisional jurisdiction. Juvenile Justice Board in its order dated 
3.6.2004 observed that instances of sexual offences on minor girls were on the rise and 
that in this case although the accused was a juvenile the victim was also of a very tender 
age (six years). The Board took into consideration the report of the probation officer but 
ignored the advice of the probation officer on the point as to whether the petitioner 
deserves institutionalisation. The learned Additional Sessions Judge in its order found 
that if the juvenile was admitted to bail, the society will be in moral and physical danger 
as the victim was very tender in age.

**Resolution:**

The juvenile took the child to his house and committed rape showing clear 
criminal tendencies in him. The mother certainly is not concerned with the welfare of 
the child who instead of insisting that the child goes to school sends him out to work. In 
this situation if the juvenile offender is released from the observation home and sent 
back to the same socio-economic atmosphere, he will be exposed to moral and psychological dangers. Further the risk of juvenile committing such an offence in future 
is also likelihood because victims of sexual offences of such tender age are often not 
even able to bring the offence to the notice of the elders. For the interest of justice the 
prayer for bail, has been declined. The Juvenile Justice Board was directed to examine 
the remaining witnesses within a period of two months and make every endeavor to 
dispose of the matter within one month of completion of prosecution evidence.

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4.2.1. (G): Claim of juvenility – when maintainable

**Case No. (29):** Claim of Juvenility is maintainable first time before the Supreme Court

*Gopinath Ghosh Vs. State of West Bengal* ⁷¹

**Case summary:**

The appellant, Gopinath Ghosh along with Bharat Ghosh alias Sadhu and Jagannath Ghosh, were convicted and sentenced to life imprisonment under Section 302 read with Section 34 I.P.C. by the Court of Session for having committed the offence of murder in 1974. The High Court on appeal confirmed the conviction and sentence of the appellant and acquitted the two other co-accused persons. The appellant for the first time before the Supreme Court raised the plea that he was a child at the time of commission of the alleged offence and thereby falls within the meaning of the expression of ‘child’ as enshrined in the West Bengal Children Act, 1959, consequently the entire trial was vitiated.

The Hon’ble Supreme Court, by its order dated March 11, 1983 directed the Ld. Session Judge of Nadia to enquire into the matter and give a finding on the age of the appellant on the date of the occurrence. Ld. Sessions Judge, after detailed examination of the evidence of Chief Medical officer of Health, Nadia (PW1), Radiologist (PW2), Orthopedic Surgeon (PW3), another doctor Mr. R B ROY (PW4), the mother of the appellant (PW5) and the Headmaster of the school who brought records of the school, furnished his report, with a finding that the appellant was aged between 16 and 17 years at the date of occurrence. The finding of the Ld. Session Judge was not challenged by the state.

**Points of law considered by the Hon’ble Supreme Court:**

Justice to Children – As per the Constitution of India, 1950 Article 39 (f) read with Article 136, the court will not allow a technical contention of non-maintainability of appeal on the ground a new plea is taken for the first time, when the Trial is vitiated for non-observance of the provisions of a benevolent statute, the West Bengal children Act, 1959, sections 2 (d), 2 (b), 4 to 6, 22, 23, 24(2) and 26 dealing with case against juvenile delinquents.

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Resolution:

i. A combined reading of Sections 2(d), 2(h), 4 to 6, 22, 23, 24 (2) and 26 of the West Bengal Children Act, 1959 makes it clear that where a juvenile delinquent is arrested, he/she has to be produced before a juvenile court and if no juvenile court is available for the area, the Court of Sessions will have powers of a juvenile court.

ii. Such a juvenile delinquent ordinarily has to be released on bail irrespective of the nature of the offence alleged to have been committed unless it is shown that there appear reasonable grounds for believing that the release is likely to bring him under the influence of any criminal or expose him to moral danger or defeat the ends of justice.

iii. The Section – 25 of the West Bengal Children Act, 1959 forbids any criminal or a juvenile delinquent and only an inquiry can be held in accordance with the provisions of the Code of Criminal Procedure for the trial of a summons case; and (d) the bar of Section – 24 which had been given an overriding effect as it opens with the non–obstante clause takes away the power of the court to impose a sentence of imprisonment unless the case falls under the proviso.

iv. In the instant case, the entire trial of the appellant was without jurisdiction and was vitiated. The report of the Sessions Judge unquestionably established through unassailable evidences that the appellant having been 16 to 17 years of age on the date of occurrence was a juvenile delinquent and therefore the Magistrate could not have committed his case to the Court of Session. Only an inquiry could have been held against him as provided in Section 25 of the Act unless the case of the appellant falls within the proviso to Section 24 (2).

v. Ordinarily, the Supreme Court would be reluctant to entertain such a case, however, for the first time it took up such a case. In fact the court was equally reluctant to ignore, overlook or nullify the beneficial provisions of a very socially progressive statute by taking shield behind mere technicality only. In view of the underlying intendment and beneficial provisions of the Act read with clause (f) of Article 39 of the Constitution which mention that the State shall direct its policy towards ensuring that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and moral and material abandonment, it would not be proper to allow a technical contention that the plea is being raised for the first time in the court.
and thereby thwart the benefit of the provisions being extended to the appellant, if he was otherwise entitled to it.

vi. The verdict of the Supreme Court also set a practice direction for the future. Whenever a case is brought before the Magistrate and the accused appears to be aged 21 years or below, before proceeding with the trial or undertaking an inquiry, an inquiry must be made about the age of the accused on the date of occurrence. For this, if necessary the Magistrate may refer the accused to the medical board or the civil surgeon, as the case may be, for getting worthy evidence about the age of the accused. The magistrate may also call upon the accused to provide evidence about his age. Thereafter, the learned Magistrate may proceed in accordance with law.

**Case No. (30): Claim of Juvenility is maintainable for the first time before the Supreme Court**

*Ravinder Singh Gorkhi Vs. State of U.P.*

**Case summary:**

As in Gopinath Ghosh’s case, in this case also the contention of juvenility was raised for the first time before the Supreme Court. Ravinder Gorkhi claimed before the Supreme Court to be a juvenile on the date of offence, i.e., 15th May 1979, under the then prevailing law in U.P. i.e. *Children Act 1951.*

The question with regards to the age of the accused was referred to the Sessions Judge. A School Leaving Certificate was relied upon by the appellant wherein the date of birth was recorded as 1st June 1963; hence, the Sessions Judge returned a finding of juvenility. Ravinder Gorkhi was just under 16 years on the date of offence, which made him a juvenile under the U.P. Act.

**Resolution:**

The Supreme Court rejected the finding of the Sessions Judge and the appeal was dismissed. The Supreme Court observed that “The entries made in the school leaving certificate, evidently had been prepared for the purpose of the case.” The “second Copy” and not the original school leaving certificate was produced in the court. Moreover, the Headmaster who gave evidence did not produce the admission register.

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72 (2006) 5 SCC 584; 2006 CriLJ 2791 (SC)
73 Ibid 3 page - 104
74 Ibid 73
This was a case of undoing. “The original register has not been produced. The authenticity of the said register, if produced, could have been looked into.”\textsuperscript{75}

**Case No. (31):** In absence of claim the benefit of the Children Act extinguished

*State of Haryana Vs. Balwant Singh*\textsuperscript{76}

**Case summary:**

The accused was convicted and sentenced by the Court of Session. Appeal preferred before the Hon’ble Punjab & Haryana High Court. The High Court enlarged benefit of the Children Act to the accused. The finding of the Hon’ble High Court was based on the fact that the accused gave his age as 17 years at two different stages, viz., at the time of framing of charges and recording of section 313 Cr.P.C statements. It is fact that the accused never prayed for the benefit of Juvenility. The State challenged the judgement of the Punjab & Haryana High Court before the Supreme Court.

**Resolution:**

The Apex Court allowed the appeal of the State. It was held by the Hon’ble Supreme Court that, “When it is not the case of the respondent that he was a child before the trial court, it is very surprising that High Court, based merely on the entry made in the Section 313 statement mentioning the age of the respondent as 17 has concluded that the respondent was a ‘child’ within the definition of the Act [Haryana Children Act 1974] on the date of the occurrence though there was no other material for the conclusion.”

The State challenged before the Supreme Court the finding of the Punjab & Haryana High Court that Balwant Singh was a juvenile at the time of commission of the offence.

**Case No. (32):** Plea raised first time before the Supreme Court based on purported age has no merit and is rejected

*Surinder Singh Vs. State of U.P.*\textsuperscript{77}

**Case summary:**

On conclusion of trial the appellant was convicted and sentenced. Then preferred appeal before the High Court and looses the appeal. Thereafter he has preferred the

\textsuperscript{75} Ibid 73
\textsuperscript{76} 1993 (1) SCC Supp 409
\textsuperscript{77} (2003) 10 SCC 26; 2004 SCC (Cri) 717; AIR 2003 SC 3811
appeal before the Hon’ble Supreme Court. The appellant for the first time took the plea of juvenility before the Supreme Court.

**Resolution:**

The benefit of the JJ Act, 2000 was denied to the appellant by the Supreme Court. It was stated by the Supreme Court that, “The jurisdictional issue based on purported ages of the accused needs consideration first. The question relating to the age of the accused was never raised before the courts below, necessitating a decision in this regard...Further, at no point of time during trial or before the High Court this question was raised. Further, the necessity of determining the age of the accused arises when the accused raises a plea and the court entertains a doubt. Here, no claim was made by the accused that he was a child and, therefore, the question of the court entertaining a doubt does not arise...In the aforesaid background, plea based on purported age raised by the appellants has no merit and is rejected.”

4.2.1. (H): Reckoning date

**Case No. (33):** The reckoning date to hold a person juvenile is the date of offence

*Pratap Singh vs. State of Jharkhand & ANR.*

**Case summary:**

This is one of the pioneer case relates to interpretation of the JJ Act, 2000. One of the questions before the 5-Judge Bench of the Supreme Court 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.”

**Resolution:**

i) The reckoning date of a juvenile is the date of an offence and not the date of production or commencement of trial.

ii) 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.

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iii) 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 had not completed 18 years of age as on 1.4.2001.

The Supreme Court whilst holding that the reckoning date for determination of the age of the juvenile is the date of offence, observed, “It is settled law that the interpretation of the Statute of beneficial legislation must be to advance the cause of legislation to the benefit for whom it is made and not to frustrate the intendment of the legislation.”

4.2.1. (I): Duty to prove the age of juvenility

Case No. (34): It is the Court to enquire into the claim of Juvenility

_Bhola Bhagat Vs. State of Bihar_79

**Case summary:**

Bhola Bhagat for the first time after 4 years of the commission of offence claimed to be 18 years of age in his statement during his examination under Section – 313 CrPC, and other co-accused persons Chandra Sen Prasad and Mansen Prasad claimed them to be 17 years and 21 years respectively. The Hon’ble High Court did not accord him the facilities and protection of juvenile legislation viz. the Bihar Children Act 1970 on the ground that other than the statement of the accused there was no other material to support the claim of Bhola Bhagat and the other accused persons that they were juveniles on the date of occurrence of the offence. The Supreme Court opined that “If the High Court had doubts about the correctness of their age as given by the appellants and also as estimated by the trial court, it ought to have ordered an enquiry to determine their ages. It should not have brushed aside their plea without such an enquiry.”

**Resolution:**

The Supreme Court held that Bhola Bhagat and his co-accused to be juveniles and ordered, “The correctness of the estimate of age as given by the trial court was neither doubted nor questioned by the state either in the High Court or in this Court. The parties have, therefore, accepted the correctness80 of the estimate of age of the three

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79 (1997) 8 SCC 720; AIR 1998 SC 236
80 Ibid 3 page - 99
appeallants as given by the trial court. Therefore, these three appellants should not be
denied the benefit of the provisions of a socially progressive statute. In our considered
opinion, since the plea had been raised in the High Court and because the correctness of
the estimate of their age has not been assailed, it would be fair to assume that on the
date of the offence, each one of the appellants squarely fell within the definition of the
expression ‘child’. We are under these circumstances reluctant to ignore and overlook
the beneficial provisions of the Acts on the technical ground that there is no other
material to support the estimate of ages of the appellants as given by the trial court,
though the correctness of that estimate has not been put in issue before any forum.”
Whilst quashing the sentence of life imprisonment and releasing Bhola Bhagat, Chandra
Sen Prasad and Mansen Prasad, though upholding their conviction, the Apex Court
observed;
“18. Before parting with this judgment, we would like to re-emphasise that when a plea
is raised on behalf of the accused that he was a ‘child’ within the meaning of the
definition of the expression under the Act, it becomes obligatory for the Court, in case it
entertains any doubt about the age as claimed by the accused, to hold an inquiry itself
for determination of the question of age of the accused or cause an inquiry to be held
and seek a report regarding the same, if necessary by asking the parties to lead evidence
in that regard. Keeping in view the beneficial nature of the socially-oriented legislation,
it is an obligation of the Court when such a plea is raised to examine that plea with care
and it cannot fold its hands and without returning a positive finding regarding that plea,
deny the benefits of the provisions to an accused. The Court must hold an inquiry and
return a finding regarding the age one way or the other. We expect the High Courts and
the subordinate Courts to deal with such cases with more sensitivity, as otherwise the
objects of the Acts would be frustrated and the efforts of the legislature to reform the
delinquent child and reclaim him as a useful member of the society would be frustrated.
The High Courts may issue administrative directions to the subordinate Courts that
whenever such a plea is raised before them and they entertain any reasonable doubt
about the correctness of the plea, they must as a rule, conduct an inquiry by giving
opportunity to the parties to establish their respective claims and return a finding.81
regarding the age of the accused concerned and then deal with the case in the manner provided by law.”

Case No. (35): Liability of Court to determine the age of a juvenile

*Jitendra Ram v. State of Jharkhand*

**Case summary:**

The sole contention raised is that the appellant on the date of commission of the offence was a minor within the meaning of the provisions of the Bihar Children Act, 1982 (for short, ‘the Act’). The Juvenile had disclosed his age at the first opportunity, namely, when the bail petition was moved before the Patna High Court. It was further submitted that even while the appellant was examined by the learned trial judge under Section 313 of the Code of Criminal Procedure (Cr.P.C.) the age of the appellant was estimated 28 years, which suggest his age bellow the eighteenth years at the date of commission. Before the trial court, the appellant did not raise any plea that he was a juvenile. The plea of juvenility was raised while moving an application for bail for the first time; but from a perusal of the order passed by the Patna High Court dated 06.05.1986, it would appear that the ground that the appellant was a child itself was not the only one on which the order granting bail to the appellant was passed. There was no document to prove the juvenility of the alleged juvenile.

**Resolution:**

The statute has imposed a duty upon the competent authority to make an enquiry as to the age of that person who appears to be a child to him. Therefore, the Hon’ble Court directed the Ld. Session Judge to the determination of the age afresh of the appellant as on the date of the commission of the offence.

4.2.1. (J): Process of Determination of age

Case No. (36): Consideration of Estimated age is not lawful

*Raisul Vs. State of U.P.*

**Case summary:**

The Supreme Court in this case held that the age of an accused cannot be determined by the estimate of the courts and preferred to rely upon the age mentioned

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82 Ibid 3 page - 101)
84 (1976) 4 SCC 301; 1976 SCC (Cri) 613; AIR 1977 SC 1822; 1977 CrnJ 1555 (SC)
by the accused in his Section 313 CrPC statement. The accused claimed to be 18 years old in his section 313 Cr.P.C statement which was recorded almost a year after the offence. Though Raisul was not a juvenile under the U.P. Children’s Act 1951, due to his young age, the death sentence awarded to him was commuted to one of life imprisonment.85

Resolution:

The order stated, “It is true that the learned Sessions judge on looking at the appellant thought that he must not be less than 24 years of age, and the High Court also, on seeing the appellant personally, took the view that the estimate of age given by the Sessions Judge was correct, but we do not think that the learned Sessions Judge as well as the High Court were right in substituting their own estimate in regard to the age of the appellant and on the basis of such estimate, rejecting the statement as to his age made by the appellant. Appearances can often be deceptive”.

Case No. (37): Avoidance of hyper technical approach and leaning towards favouring the accused in borderline age

Rajinder Chandra vs. State of Chhattisgarh & Anr.86

Case summary:

The date of apprehension of the accused was on 27.2.1997. The claim and securing benefit of the JJ Act on the ground of the age juvenility was based on the provisions of the JJ Act, 1986. The Appeal (Crl.) No. 113 of 2002 was preferred by the de facto complainant, the father of the victim and the Hon’ble Supreme Court pronounced its judgment on 24.01.2002 when the JJ Act, 2000 was in force. The general principle of the judgment was drawn heavily from the JJ Act, 1986.

Resolution:

Court shall avoid hyper technical approach and should lean in favour of holding juvenile when two views are possible

In this case the Supreme Court was faced with the question as to how an accused on the border of 16 years was to be dealt with and held in favour of holding the accused to be a juvenile. In its judgment whilst referring to Arnit Das’ case, the Supreme Court held that “…this court has, on a review of judicial opinion, held that while dealing with

85 Ibid 3 page - 105)
question of determination of the age of the 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 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.”

**Case No. (38):** Medical examination in absence of documentary birth proof

*Sunil Rathi Vs. State of U.P.*

**Case summary:**

In this case the prime question placed before the Hon’ble Supreme Court was whether the appellant was a juvenile on the date of occurrence. The Hon’ble High Court on examination of the documentary proof held that the documents do not conclusively prove that Sunil Rathi was a juvenile at the relevant time of occurrence.

**Resolution:**

The Hon’ble Supreme Court by setting aside the order of the High Court referred the appellant be examined by the Medical Board to ascertain his age. The order stated, “We have perused the order of the High Court. The High Court came to the conclusion, after considering the certificates produced, that they did not conclusively prove that he was a juvenile. However, when this objection was raised, the petitioner was not sent for examination by the Medical Board to ascertain his age. Normally, in a case where the evidence is not clear and convincing, the report of the Medical Board is of some assistance.”

**Case No. (39):** The relaxed zone of age consideration is two years on either side

*Jaya Mala Vs. Home Secretary, Government of Jammu & Kashmir*

**Case summary & Resolution:**

In this case the Apex Court took judicial notice that the margin of error in age ascertained by radiological examination is two years on either side. The judgment is based on presumption under medical jurisprudence.

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87 Ibid 3 page - 99)  
88 (2006)9 SCC 603; (2006) 3 SCC (Cri) 351  
89 (1982) 2 SCC 538; 1982 SCC (Cri) 502; AIR 1982 SC 1297; 1982 CrI 1777 (SC)
Critics:

The two years age variation after introduction of the Act 2000 has no room of consideration. Now rule 12(3) provides statutory prescription of one year’s relaxation on the lower side to hold a person as juvenile.

4.2.1. (K): Relief for long detention in jail

Case No. (40): After releasing the juvenile on bail from jail, ordered to expedite the proceeding

*Abhay Kumar Singh Vs. State of Jharkhand*\(^{90}\)

Case summary:

The petition was filed before the Hon’ble High Court ventilating the grievance of long detention and pendency of the case against the petitioner. Despite of being a juvenile, the petitioner had spent 3 years 8 months in detention.

Resolution:

By the order of the Hon’ble Court the petitioner was ordered to be forthwith released on bail without executing any bond or furnishing surety. The Hon’ble Court was further directed that the inquiry against the petitioner Abhay Kumar Singh’s to be completed within a period of three months under the Juvenile Justice Act 1986, and if the inquiry not so completed within the period so fixed, the criminal proceedings against the juvenile should automatically be stand quashed.

\(^{90}\) 2004 CriLJ 4533 (Jharkhand)
Conclusion

The chapter attempted to capture a broad vignette of how several pronouncements of the courts have influenced the shaping of contours of the juvenile justice system in India. Mainly guided by the provisions of the Constitution of India, the courts have also taken help of the international laws in this domain. The case studies in this chapter amply demonstrate that the judiciary played an important role in the protection of the rights of children by primarily actuating two safeguard levers - one is equality & equal protection before law and the other one being special protection of youth and adolescent age. The genesis of the ‘right to child’ can be attributed to the ‘right to life’ in the Article 21 of the Indian Constitution and also several conventions and declarations of the United Nations in which India is a member country. The courts held that the right also encompassed the right to protection and the right to have access to adequate means of subsistence for a decent standard of living and development. From this perspective, the right to a healthy and wholesome protective environment emerged as a natural constituent of the ‘right to child’ and the Indian judiciary made sustained efforts to uphold it. In this context it may be mentioned that, only limited numbers of judgments of the courts have been studied in this chapter. There are thousands of pronouncements relating to juvenile justice. All the untouched cases, which have not been covered within this research, are the fertile ground for research works on juvenile justice in India.

The judicial activism to serve and secure the right of the child in compliance with the fundamental rights enshrined in the constitution of India and in sync with international juvenile justice jurisprudence as has been witnessed in the past decades is not a flash in the pan for the Indian judiciary. In fact the movement of independence of Indian judiciary coupled with several arguments made by the Indian politicians and judges about the perils of encroachment of international laws on domestic prerogatives suggest that the international laws are still considered controversial in developing fully India’s domestic juvenile justice jurisprudence. The history of development of the Indian legislations in the field of child right also show that the India courts primarily made their own decisions in this aspect and merely justified it in the lights of international laws. The pre 2000 and post 2000 juvenile justice jurisprudence in India vividly reflect how free and independent the courts have been in their decisions strictly in line with the constitutional provisions and also in tune with the broad principles of the international laws in this aspect. In recent times, the emergence of the concept of social action
litigation speaks volume of the judicial contribution in India particularly by the Supreme Court of India, in upholding the rights of the child within the framework of the Indian legal system.

The social action litigation cases presented in this chapter help us to ascertain the trend in decisions and actions being undertaken by the courts and legislature in the arena of child rights. It is obvious that constant flux of pronouncements and several initiatives by the courts in last decades have prompted a spurt of legislations on the issue of child rights.

4.3.1. The moot features and the trend in the arena of juvenile justice as emerged from the case studies in the chapter are as follows:

i. For fostering quicker integration and for removing the barriers to early cementing of the adopted child into the adoptive family, the Supreme Court has rejected the contention of not allowing the Indian citizenship to an adopted child until the child attains the age of majority. In other words, age is not a bar for according Indian citizenship to an adopted child.

ii. In a series of cases the courts have either quashed and discharged the juveniles detained in custody pending trial for long time or have released the juveniles on bail and have concurrently ordered to expedite the legal proceedings. The trend is clear that the juveniles can't be detained in custody for long time and made to bear the brunt of prolonged legal proceedings.

iii. In case of Sanjay Suri & Anr. Vs. Delhi Administration, Delhi & the Supreme Court has directed in no uncertain terms that the state authority must ensure and make arrangements, if necessary so that there shall be no scope of mingling of juvenile delinquents with the adult ones. It means that the delinquent juveniles should be separated from the adult accused or convicts in the jail and must not be exposed to the chances of being negatively influenced.

iv. The grave concern and anguish of the Supreme Court against child exploitation have been manifested in its several orders and judgments. It has directed that children should not be employed in hazardous jobs in factories manufacturing match boxes and fireworks etc. However, identifying poverty as the root cause of child labour in these industries, the court directed the government to take positive steps for the welfare and improvement in the quality of lives of such
children, imposition of employers liability to the ‘Child Labour Rehabilitation-cum-Welfare Fund’ and induction of an adult family member in such jobs.

v. In a chain of decisions the court has strongly pronounced that right to education of the child is an integral part of the right of personal liberty embodied in Article 21 read in conjunction with the directive principle of education under Article 41 of the Indian Constitution. The court held that the parameters of the right must be understood in the context of the directive principles of the state policy including Article 45, which mentions that the state is to make endeavours to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education to all children under the age of 14 years. In other word, ‘right to education’ is a constitutional obligation.

vi. In several judgments, the Supreme Court has assiduously attempted to eradicate child prostitution and ameliorate the condition of the children of the prostitutes. It has been directed by the court to make available adequate hostels and reformatory homes exclusively for the children of the prostitutes to help them to distance themselves from their mothers. The Supreme Court also observed that the capacity of a prostitute to pay for her child’s education would not relieve the child from social trauma and castigation. Hence it would be against the interests of the child to remain in her custody or in a brothel. The essence is that the children of the prostitutes whatever may be their financial capabilities, should be rescued, cared for and rehabilitated.

vii. In several cases, the court has awarded hefty compensation for the wrongful detention of the juveniles in prison. It establishes the trend that juvenile detention has to be made with utmost care and application of mind. In case of wrongful detention the court is promoting punitive compensation against the concerned authority.

viii. In a bid to make the JJ Act, 2000 more stringent and all pervasive, the court has held that the JJ Board is primarily the only authority having the exclusive jurisdiction for trial of a Juvenile. To empower it further it has been held that the JJ Act, 2000 has an overriding effect over all the laws in India including the Army Act, 1950.

ix. The Supreme Court has ordered not to undertake hyper technical approaches in determining the exact age of juveniles in borderline age cases. In several verdicts, the court has held that that it is the duty of the court to enquire into the claim of
juvenility to provide the benefits to the concerned accused and lenient view may be taken for favouring any accused juvenile having age at the borderline of 18 years.

x. The Supreme Court relaxed its zone of consideration and accepted the claim of juvenility as maintainable before the Supreme Court. The same principle has all along been followed during pre and post 2000 legislation. However, in a particular case, though the juvenile age was apparent from the record, the benefit was denied by the court as there was no claim of juvenility earlier in spite of the fact that determining the age is the responsibility of the court. Though the judgment created a conflicting interpretation of the beneficial juvenile legislation, but afterwards a pronouncement in Ravinder Singh Gorkhi’s case resolved the problem permanently. It has been held that in determining a person as juvenile the court wrongly denied to accept the estimated age and medical decision regarding age shall only be considered when documentary proof of age is not available.

xi. In interpreting the JJ Act the courts held that the order of bail is the right of the Juvenile when apprehended in connection with any offence unless the release will lead to the moral, psychological or other kinds of danger and will jeopardize the wellbeing of the child. It has been strongly held that incarceration of a juvenile is legally banned. Even detention in home is also subjected to fulfillment of several stringent requirements. As such the order of bail for juvenile is mandatory except in few cases where the release shall expose danger to the accused juvenile.

xii. The juveniles need not have to be controlled by punishments. In plethora of judgments it was considered by the Supreme Court wherein despite upholding the inference of conviction of the trial courts, the sentences were suspended in line with underlying core principle and intention of the legislature.

xiii. For welfare and benefit of a child, the apex court has emphatically given the right to custody of the child to the mother when the father is incapacitate or has shown grains of apathy to the child.

xiv. A path breaking judgment with regard to the abolition of the practices of prenatal diagnosis and foeticide has been made by the apex court. It ordered the state and central governments to create mass awareness against the practice of pre-natal sex determination and sex selection and directed them to implement the PNDT Act in the right earnest. The Central Supervisory Board was directed to review and
monitor the implementation of the Act and at the same time to examine the necessity to amend the Act in view of the emerging technology of pre-conception sex selection and difficulties encountered in implementation of the Act. The state governments were directed to immediately appoint fully empowered appropriate authorities to take immediate criminal actions in case of violation of the provisions of the Act. Being aware of the lackadaisical manner in which the governments were functioning, the Supreme Court did not stop merely by issuing directions but called for the compliance reports and kept the matter pending for report. When the state did not comply with the direction of first instance the court issued further directions for taking appropriate criminal action against the Medical Officers and the Clinics violating the provisions of the Act. Thus the Court in this case played the role of a social reformer.

xv. In Bachpan Bachao Andolan case, the apex court rescued the children in the circus company and directed the government to make proper arrangements for the rehabilitation of the children rescued from the circus company.

xvi. In a historic case the court issued rule to search the missing or kidnapped girl child. The direction issued in this case has become the guiding principle for the police or the investigating agency to search a missing person.

The case studies establish a clear pattern of the judicial actions in the arena of juvenile justice in India. It shows that the Indian judiciary has started becoming an ally of individual citizens and action groups campaigning for better juvenile justice in the country. The Indian judiciary is emerging as a collaborator and facilitator for fostering better juvenile justice in the country. Within the framework of the constitution and juvenile justice related legislations the judiciary is making efforts, sometimes through proactive approaches to ensure the joie de vivre of the children in the country. The trend is distinct that the judiciary is hell bent on treating children in special ways and providing more opportunities and facilities to the juvenile delinquents to bounce back in the mainstream of the society. The approach is not to torment the juvenile delinquents with the fear of punishments but to help them and guide them to get out of the juvenile follies quickly and to gradually transform into responsible adults in the future.
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