Supreme Court of India
Dr. Subramanian Swamy And Ors vs Raju Thr.Member Juvenile Justice ... on 28 March, 1947
Author: . .....
Bench: P Sathasivam, Ranjan Gogoi, Shiva Kirti Singh

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 695 OF 2014
(Arising Out of SLP (Crl.) No.1953 of 2013)

DR. SUBRAMANIAN SWAMY & ORS. ... APPELLANT (S)

VERSUS

RAJU THR. MEMBER JUVENILE JUSTICE BOARD & ANR. ... RESPONDENT (S)

With
W.P. (Crl.) No.204 of 2013

J U D G M E N T

RANJAN GOGOI, J.

SLP (Crl.) No.1953 of 2013

1. On 16th December, 2012 a young lady (23 years in age) and her friend were returning home after watching a movie in a multiplex located in one of the glittering malls of Delhi. They boarded a bus to undertake a part of the journey back home. While the bus was moving, 5 persons brutally assaulted the young lady, sexually and physically, and also her friend. Both of them were thrown out of the bus. The young lady succumbed to her injuries on 29.12.2012.

2. Five persons were apprehended in connection with the crime. One of them, identified for the purpose of the present case as Raju, was below 18 years of age on the date of commission of the crime. Accordingly, in compliance with the provisions of the Juvenile Justice Act, 2000 (as amended and hereinafter referred to as 'the Act') his case was referred for inquiry to the Juvenile Justice Board. The other accused were tried in a regular sessions court and have been found guilty, inter alia, of the offences under Section 376 (2)(g) and Section 302 of the Indian Penal Code, 1860 (for short "the Penal Code"). They have been sentenced to death by the learned trial court. Their appeal against the aforesaid conviction and the sentence imposed has since been dismissed and the death penalty has been confirmed by the High Court of Delhi.

3. Before the Juvenile Justice Board to whom the case of Raju was referred for inquiry, the petitioners had filed applications for their impleadment to enable them to 'prosecute' the juvenile alongside the public prosecutor. The petitioners also claimed that, on a proper interpretation of the

Act, the juvenile was not entitled to the benefits under the Act but was liable to be tried under the penal law of the land in a regular criminal court alongwith the other accused.

4. According to the petitioners, after an elaborate hearing, the Board had fixed the case on 25.01.2013 for pronouncement of order on the question of maintainability of the application filed by the petitioners and also on their prayer for impleadment. However, insofar as the interpretation of the provisions of the Act for determination of the question whether the offence(s) allegedly committed by the juvenile is to be inquired into by the Board or the juvenile is required to be tried in a regular criminal court is concerned, the Board had expressed its inability to decide the same and had directed the petitioners to seek a authoritative pronouncement on the said issue(s) from the High Court.

5. Accordingly, the petitioners had instituted a writ proceeding before the High Court of Delhi, which was registered as Writ Petition (Crl.) No. 124 of 2013, seeking the following reliefs :-

> "i. Laying down an authoritative interpretation of Sections 2(I) and 2(k) of the Act that the criterion of 18 years set out therein does not comprehend cases grave offences in general and of heinous crimes against women in particular that shakes the root of humanity in general.
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> ii. That the definition of offences under Section 2(p) of the Act be categorized as per grievousness of the crime committed and the threat of public safety and order.
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> iii. That Section 28 of the Act be interpreted in terms of its definition, i.e., alternative punishment and serious offences having minimum punishment of seven years imprisonment and above be brought outside its purview and the same should be tried by an ordinary criminal court.
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> iv. Incorporating in the Act, the International concept of age of criminal responsibility and diluting the blanket immunity provided to the juvenile offender on the basis of age.
>
> v. That the instant Act be read down in consonance with the rights of victim as protected by various fundamental rights including Article 14 and 21 of the Constitution of India." (sic) "

6. The High Court by its order dated 23.01.2013 dismissed the writ petition holding that against the order of the Juvenile Justice Board the alternative remedies available under the Act should be exhausted in the first instance and in the course thereof the question of interpretation of the provisions of the Act can well be considered.

7. On the very next day, the Board by an elaborate order dated 24.01.2013 rejected the prayer of the petitioners for impleadment in the proceeding against the delinquent and seeking participation therein. In the aforesaid circumstances, on 19.02.2013, Special Leave Petition (Crl.) No.1953 of 2013

was lodged before this Court challenging the aforesaid order of the High Court of Delhi.

8. The maintainability of the Special Leave Petition was seriously disputed by the respondent No.1 i.e. juvenile Raju as well as the Union of India. In support, it was, inter alia, contended that the administration of criminal justice in India does not envisage the role of a third party/stranger. Primarily, it is the State which is entrusted with the duty of prosecution in the discharge of which a limited role so far as the complainant/first informant of an offence is concerned and that too in specified situations, is contemplated by the provisions of the Code of Criminal Procedure. The preliminary objection of the respondents to the maintainability of the Special Leave Petition was heard at length by this Court and by order dated 22.08.2013 it was held as follows:

> "All that the petitioners seek is an authoritative pronouncement of the true purport and effect of the different provisions of the JJ Act so as to take a juvenile out of the purview of the said Act in case he had committed an offence, which, according to the petitioners, on a true interpretation of Section 2(p) of the Act, is required to be identified and distinguished to justify a separate course of action, namely, trial in a regular Court of law as a specific offence under the Penal Code and in accordance with the provisions of the Code of Criminal Procedure. The adjudication that the petitioners seek clearly has implications beyond the case of the first respondent and the proceedings in which he is or may be involved. In fact, interpretation of the relevant provisions of the JJ Act in any manner by this Court, if made, will not be confined to the first respondent alone but will have an effect on all juveniles who may come into conflict with law both in the immediate and distant future. If we are to view the issue of maintainability of the present proceeding from the aforesaid perspective reference to the case of the first respondent in the pleadings must be understood to be illustrative. If this Court is to interpret the provisions of the Act in the manner sought by the petitioners, the possible effect thereof in so far as the first Respondent is concerned will pale into insignificance in the backdrop of the far reaching consequences that such an interpretation may have on an indeterminate number of persons not presently before the Court. We are, therefore, of the view that it would be appropriate for us) hold that the special leave petition does not suffer from the vice of absence of locus on the part of the petitioners so as to render the same not maintainable in law. We, therefore, will proceed to hear the special leave petition on merits and attempt to provide an answer to the several questions raised by the petitioners before us." (sic)

9. Notice in the special leave petition was accordingly issued in response to which detailed counter affidavit has been filed on behalf of the Union as well as the respondent-juvenile Raju. In addition, Crl. Misc. Petition No.22586/2013 (by Smt. June Chaudhari, Senior Advocate), Crl. Misc. Petition No.25075/2013 (on behalf of Centre for Child and the Law, National Law School of India University and Ors.), Crl. Misc. Petition No.15792/2013 (on behalf of Prayas Juvenile Aid Centre, Tughlakabad, Institutional Area, New Delhi) and Crl. Misc. Petition No.23226/2013 (by Dr. Madhuker Sharma) for interventions have been filed, all of which have been allowed. The matter was elaborately heard on different dates by this Court in the course of which written notes and arguments as well as

documents relevant to the issues have been placed before the Court by the contesting parties. In view of the elaborate consideration on the basis of the arguments advanced and the materials placed we deem it proper to grant leave to appeal and to decide the case on merits upon full consideration of the rival contentions.

Writ Petition (Crl.) No.204 of 2013

10. This writ petition has been filed by the parents of the victim of the incident that had occurred on 16.12.2012 seeking the following reliefs :

> "(i) a Direction striking down as unconstitutional and void the Juvenile Justice (Care and Protection of Children) Act 2000 (Act No.56 of 2000) to the extent it puts a blanket ban on the power of the criminal courts to try a juvenile offender for offences committed under the Indian Penal Code, 1860; and
>
> (ii) a Direction that the Respondent No.2 be tried forthwith by the competent criminal court for the offences against the daughter of the petitioners in F.I.R. No.413/12, P.S. Vasant Vihar, New Delhi under sections 302/365/376(2)G/377/307/ 394/395/397/396/412/201/ 120B/34 IPC."

11. The issues raised being similar to those arising in Special Leave Petition (Crl.) No.1953 of 2013, both cases were heard together and are being disposed of by means of this common order.

12. We have heard Dr. Subramanian Swamy, the first appellant appearing in person and also representing the other appellants as well as Dr. Aman Hingorani, learned counsel appearing on behalf of the petitioners in W.P. (Crl.) No.204 of 2013. We have also heard Shri Sidharth Luthra, learned Additional Solicitor General, appearing for the Union of India and Shri A.J. Bhambhani, learned counsel appearing for the juvenile respondent No.1–Raju apart from the intervenors appearing in person or through their respective counsels.

13. Dr. Subramanian Swamy has, at the outset, clarified that he is neither challenging the provisions of Section 2(k) and 2(l) of the Act nor is he invoking the jurisdiction of the Court to strike down any other provision of the Act or for interference of the Court to reduce the minimum age of juveniles fixed under the Act as 18 years. What Dr. Swamy has contended is that having regard to the object behind the enactment, the Act has to be read down to understand that the true test of "juvenility" is not in the age but in the level of mental maturity of the offender. This, it is contended, would save the Act from unconstitutionality and also further its purpose. The Act is not intended to apply to serious or heinous crimes committed by a juvenile. The provisions of Sections 82 and 83 of the Indian Penal Code have been placed to contend that while a child below 7 cannot be held to be criminally liable, the criminality of those between 7 and 12 years has to be judged by the level of their mental maturity. The same principle would apply to all children beyond 12 and upto 18 years also, it is contended. This is how the two statutes i.e. Indian Penal Code and the Act has to be harmoniously understood. The provisions of Section 1(4) of the Act which makes the provisions of the Act applicable to all cases of detention, prosecution and punishment of juveniles in conflict with

law, to the exclusion of all other laws, would be unconstitutional if the Act is not read down. Specifically, Dr. Swamy contends that in that event the Act will offend Article 14 of the Constitution as all offenders below the age of 18 years irrespective of the degree/level of mental maturity and irrespective of the gravity of the crime committed would be treated at par. Such a blanket treatment of all offenders below the age of 18 committing any offence, regardless of the seriousness and depravity, is wholly impermissible under our constitutional scheme. The non-obstante provisions contained in Section 1(4) of the Act as well as the bar imposed by Section 7 on the jurisdiction of the criminal court to try juvenile offenders cannot apply to serious and heinous crime committed by juveniles who have reached the requisite degree of mental maturity, if the Act is to maintain its constitutionality. Reliance is also placed on Essa @ Anjum Abdul Razak Memon vs. State of Maharashtra[1] to contend that the purport and effect of Section 1(4) of the Act must be understood in a limited manner.

14. By referring to the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules); the Convention of the Rights of the Child, 1990 (CRC) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990(Havana Rules), Dr. Swamy has contended that the international commitments entered into by India obliges it to set up a particular framework to deal with juvenile offenders and such obligations can be more comprehensively met and effectuated by understanding the Act in the aforesaid manner. The practice in vogue in several foreign jurisdictions, particularly, in the U.K., USA and Canada for adjudicating criminal liability of young offenders has also been placed before the Court. Specifically, it is pointed out that the practice of statutory exclusion which ensures that perpetrators of certain grave offences are prosecuted as adults; 'judicial waiver', granting discretion to special juvenile courts to waive jurisdiction and transfer the juvenile's case to an ordinary court of law and also the policy of concurrent jurisdiction of both the ordinary and juvenile courts giving discretion to the prosecutor to initiate proceedings in the more suitable court are followed in such jurisdictions. Shri Swamy has also suggested that Section 28 of the Act be read together with Section 15 to enable the alternatively higher punishment under other State/Central enactments, such as the IPC to be awarded to a juvenile offender. It is argued that this would incorporate the policy of concurrent jurisdiction of both ordinary criminal courts and JJ Boards.

15. Legislative overreach in enacting the Act is the core argument advanced on behalf of the petitioners in Writ Petition (Crl.) No.204 of 2013. Dr. Aman Hingorani, learned counsel urges that the ban on jurisdiction of criminal courts by Section 7 of the Act is unconstitutional inasmuch as it virtually ousts the criminal justice system from dealing with any offence committed by a juvenile. Parliament cannot make a law to oust the judicial function of the courts or even judicial discretion in a matter which falls within the jurisdiction of the courts. Reliance in this regard is placed on the judgments of this Court in the case of Mithu Vs. State of Punjab[2] and Dadu Vs. State of Maharashtra[3]. It is argued that what the Act contemplates in place of a regular criminal trial is a non- adversarial inquiry against the juvenile where the prime focus is not on the crime committed but on the reasons that had led the juvenile to such conduct. The maximum power of 'punishment', on proof of guilt, is to send the juvenile to a special home for three years. The entire scheme under the Act being substantially different from what is provided by the Code of Criminal Procedure for investigation of offences and for trial and punishment of offenders, it is submitted that the Act

offends a core constitutional value namely, the existence of a criminal justice system. The proceedings against the juvenile Raju held by the JJ Board are, therefore, null and void and the said juvenile is liable to be tried by a competent criminal court in accordance with the procedure prescribed. In this regard, it is also submitted that the concept of double jeopardy under Article 20(3) of the Constitution and Section 300 of Penal Code will have no application inasmuch as the proceedings before the JJ Board did/does not amount to a trial. Contentions somewhat similar to what has been advanced by Dr. Swamy to explain the degree of constitutional flexibility that the Act would enjoy has also been urged by Dr. Hingorani who however goes a step forward to contend that the decision in Salil Bali vs. Union of India[4] will not be an inhibition for the Court to answer the question(s) raised as not only the issues arising in Salil Bali (supra) are different but the said decision is founded on an entirely different legal perspective.

16. Shri Anoop G. Chaudhary, learned senior counsel appearing for the intervenor Smt. June Chaudhari and Dr. Madhuker Sharma, intervenor, appearing in person have supported the case projected by Dr. Swamy and Dr. Aman Hingorani, noticed above.

17. The arguments advanced on behalf of the appellants as well as the writ petitioners are hotly contested. Shri Sidharth Luthra, learned Additional Solicitor General submits that what is contemplated by the Act is in furtherance of the country's obligations arising from a series of international conventions to which India is a signatory. The Act is an expression of legislative wisdom to treat all persons below 18 as juveniles and to have an alternate system of dealing with such juveniles who come into conflict with law. Shri Luthra has submitted that the constitutional validity of the Act has been upheld by a Coordinate Bench in Salil Bali (supra). Shri Luthra has also submitted that psychological/mental, intellectual and emotional maturity of a person below 18 years cannot be objectively determined on an individual or case to case basis and the fixation of the Minimum Age of Criminal Responsibility (MACR) under the Act is a policy decision taken to give effect to the country's international commitments. In so far as the specific contentions advanced on behalf of the writ petitioners in W.P. (Crl.) No.204 of 2013 is concerned, Shri Luthra has submitted that the Act does not provide a blanket immunity to juvenile offenders, as contended. What the Act contemplates is a different procedure to deal with such offenders. If found guilty, they are subjected to a different scheme of punishment. The learned counsel appearing on behalf of the juvenile Raju, while supporting the contentions advanced by Shri Luthra, has further submitted that the United Nations Convention on the Rights of the Child, 1990 read with the concluding Resolution of the Committee on Child Rights (constituted under the UN Convention) of the year 2000 qua India and the General Resolution of the year 2007 clearly contemplate the MACR as 18 years and mandates member States to act accordingly. Learned counsel on the strength of the elaborate academic and research work placed on record has tried to persuade the Court to take the view that :-

> (1) Countries like U.K. Canada and USA have departed from the obligations under the UN Convention and are in breach of their international commitments. The incidence of crime by juveniles in those countries is very high which is not so in India. It is submitted that, of late, a re-thinking on the issue is discernible to demonstrate which reliance is placed on some recent pronouncements of the US Supreme Court, details of which will be noticed hereinafter.

(2) That the level of mental/intellectual maturity in any given case cannot be determined with any degree of accuracy and precision and the results vary from case to case and from individual to individual. A system which provides for an option to refer a juvenile to a regular court, therefore, ought not to be accepted as no objective basis for such reference exists.

18. Shri Amod Kanth, representing Prayas Juveniles Aid Centre and learned counsel for the intervener Centre for Child and the Law, National Law School of India University and others have supported the stand taken by the learned Additional Solicitor General. Elaborate written submissions have been filed to substantiate the argument that having regard to expert/psychological/medical opinion available the MACR cannot be determined, with any acceptable degree of precision, on the basis of a case to case study for which reason the legislative wisdom inherent in the Act must be accepted and respected. Statistics of the crimes (Crime rate) committed by juvenile offenders have also been brought on record to contend that the beneficial nature of the legislation does not call for any relook, even on the touchstone of Constitutional permissibility.

19. At the very outset, two initial hurdles to the present adjudication, set up by the respondents, may be conveniently dealt with. The first is that the constitutional validity of the Act has been upheld in Salil Bali (supra) and it is not necessary to revisit the said decision even if it be by way of a reference to a larger Bench. The second is with regard to the recommendations of the Justice J.S. Verma Committee following which recommendations, the Criminal Law Amendment Act, 2013 has been enacted by the legislature fundamentally altering the jurisprudential norms so far as offences against women/sexual offences are concerned.

20. In Salil Bali (supra) the constitutional validity of the Act, particularly, Section 2(k) and 2(l) thereof was under challenge, inter alia, on the very same grounds as have now been advanced before us to contend that the Act had to be read down. In Salil Bali (supra) a coordinate Bench did not consider it necessary to answer the specific issues raised before it and had based its conclusion on the principle of judicial restraint that must be exercised while examining conscious decisions that emanate from collective legislative wisdom like the age of a juvenile. Notwithstanding the decision of this Court in Kesho Ram and Others Vs. Union of India and Others[5] holding that, “the binding effect of a decision of this Court does not depend upon whether a particular argument was considered or not, provided the point with reference to which the argument is advanced subsequently was actually decided in the earlier decision...” (para 10) the issue of res judicata was not even remotely raised before us. In the field of public law and particularly when constitutional issues or matters of high public interest are involved, the said principle would operate in a somewhat limited manner; in any case, the petitioners in the present proceeding were not parties to the decision rendered in Salil Bali (supra). Therefore, we deem it proper to proceed, not to determine the correctness of the decision in Salil Bali (supra) but to consider the arguments raised on the point of law arising. While doing so we shall certainly keep in mind the course of action that judicial discipline would require us to adopt, if need be. Though expressed in a somewhat different context we may remind ourselves of the observations of the Constitution Bench of this Court in Natural Resources Allocation, In Re, Special Reference No.1 of 2012[6] extracted below:-

> "48.2. The second limitation, a self-imposed rule of judicial discipline, was that overruling the opinion of the Court on a legal issue does not constitute sitting in appeal, but is done only in exceptional circumstances, such as when the earlier decision is per incuriam or is delivered in the absence of relevant or material facts or if it is manifestly wrong and capable of causing public mischief. For this proposition, the Court relied upon the judgment in Bengal Immunity case (AIR 1955 SC 661) wherein it was held that when Article 141 lays down that the law declared by this Court shall be binding on all courts within the territory of India, it quite obviously refers to courts other than this Court; and that the Court would normally follow past precedents save and except where it was necessary to reconsider the correctness of law laid down in that judgment. In fact, the overruling of a principle of law is not an outcome of appellate jurisdiction but a consequence of its inherent power. This inherent power can be exercised as long as a previous decree vis-à-vis a lis inter partes is not affected. It is the attempt to overturn the decision of a previous case that is problematic, which is why the Court observed that: [Cauvery (2) case (1993 Supp (1) SCC 96 (2), SCC p. 145, para 85] "85. ... Under the Constitution such appellate jurisdiction does not vest in this Court, nor can it be vested in it by the President under Article 143."

21. The issues arising and the contentions advanced therefore will have to be examined from the aforesaid limited perspective which we are inclined to do in view of the importance of the questions raised.

22. The next issue that would need a resolution at the threshold is the effect of the recommendations of the Justice J.S. Verma Committee constituted by the Government of India by Notification dated 24th December, 2012 following the very same incident of 16th December 2012 so far as the age of a juvenile is concerned. The terms of reference to the Justice J.S. Verma Committee were indeed wide and it is correct that the Committee did not recommend reduction of the age of juveniles by an amendment of the provisions of the Act. However, the basis on which the Committee had come to the above conclusion is vastly different from the issues before this Court. The recommendations of the Justice J.S. Verma Committee which included the negative covenant so far as any amendment to the JJ Act is concerned was, therefore, in a different context though we must hasten to add the views expressed would undoubtedly receive our deepest consideration while dealing with the matter in hand.

23. The stage is now appropriate to have a look at the international conventions, holding the field, to which India has been a signatory.

The UN Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules") were adopted by the General Assembly of the United Nations in 1985. Rule 2.2(a) defines a juvenile as a child or young person who, under the respective legal system, may be dealt with for an offence differently than an adult. Rule 4.1 set out below mandates Member States to refrain from fixing a minimum age of criminal responsibility that is too low, bearing in mind the facts of emotional, mental and intellectual maturity.

"4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity."

24. The Beijing Rules take into account penological objectives in addition to rehabilitation of the offender. In Rule 17.1, the guiding principles of adjudicating matters involving juveniles are enlisted:

> a) The reaction shall always be proportional to not only the circumstances and the gravity of the offence, but also to the circumstances and needs of the juvenile as well as to the needs of society;
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> b) Restrictions on personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
>
> c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
>
> d) The well-being of the juvenile shall be the guiding factor while considering his case.

It is clear that the Beijing Rules do not prohibit detention of a juvenile if he is proved to have committed a violent, serious offence, or to have repeatedly committed such serious offences though Rule 17.2 of the Beijing Rules prohibits the imposition of capital punishment of juveniles. Thus, the Rules do not advocate leniency in dealing with such offenders but only contemplate that detention be limited to the most serious cases where no other alternative is found appropriate after careful consideration.

25. The Convention on the Rights of the Child, 1990 ("CRC"), in Article 1, adopts a chronological definition of a "child", viz. less than 18 years old, unless majority under national legislation is attained earlier:

> "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." Article 37(a) of the CRC prohibits the imposition of capital punishment and life imprisonment without possibility of release on offenders below 18 years of age. The CRC further obliges State Parties to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law (Article 40(3)(a)).

26. Rule 1.2 of the Havana Rules provide that a juvenile should be deprived of his/her liberty only as a measure of the last resort limited to exceptional cases and for the minimum necessary period. Even then, detention should be in such a manner and in conditions that respect the human rights of

juveniles (Rule 12).

Rule 11(a) of the Havana Rules, 1990 define a juvenile as every person under the age of 18, and allow national laws to determine a minimum age below which such person will not be detained.

27. Under Article 43 of the CRC, constitution of a Committee for the purpose of examining the progress made by the State parties on the rights of the child is contemplated. The first meeting of the Committee under Article 44 was to be within 2 years of the coming into force of the convention so far as a particular State party, in respect of whom review of the progress is made, is concerned. Thereafter, the Committee is required to meet every 5 years. In January, 2000, the Committee considered the initial report of India submitted on 19.03.1997 and adopted certain "concluding observations" the relevant part of which are extracted hereinbelow:

> "79. The Committee is concerned over the administration of juvenile justice in India and its incompatibility with articles 37, 40 and 39 of the Convention and other relevant international standards. The Committee is also concerned at the very young age of criminal responsibility – 7 years – and the possibility of trying boys between 16 and 18 years of age as adults. Noting that the death penalty is de facto not applied to persons under 18, the Committee is very concerned that de jure, this possibility exists. The Committee is further concerned at the overcrowded and unsanitary conditions of detention of children, including detention with adults; lack of application and enforcement of existing juvenile justice legislation; lack of training for professionals, including the judiciary, lawyers and law enforcement officers, in relation to the Convention, other existing international standards and the 1986 Juvenile Justice Act; and the lack of measures and enforcement thereof to prosecute officials who violate these provisions.
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> 80. The Committee recommends that the State party review its laws in the administration of juvenile justice to ensure that they are in accordance with the Convention, especially Articles 37, 40 and 39, and other relevant international standards such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System.
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> 81. The Committee recommends that the State party abolish by law the imposition of the death penalty on persons under 18. The Committee also recommends that the State party consider raising the age of criminal responsibility and ensure that persons under 18 years are not tried as adults. In accordance with the principle of non-

discrimination contained in article 2 of the Convention, the Committee recommends article 29(h) of the 1986 Juvenile Justice Act be amended to ensure that boys under 18 years are covered by the definition of juvenile, as girls already are. The Committee recommends that the 1986 Juvenile

Justice Act be fully enforced and that the judiciary and lawyers be trained and made aware of it. The Committee further recommends that measures be taken to reduce overcrowding, to release those who cannot be given a speedy trial and to improve prison facilities as quickly as possible. The Committee recommends that the State party ensure regular, frequent and independent monitoring of institutions for juvenile offenders." It is pursuant to the aforesaid concluding observations of the Committee made in the year 2000 that the JJ Act was amended in the later part of that year by having a uniform age of 18 for both male and female juveniles.

28. It needs to be clarified that the concluding observations of the Committee under Article 45 of the UN Convention (CRC) are qua a particular State party whereas general comments of the Committee under the same Article are authoritative interpretations addressed to all State parties. The above distinction between "concluding observations" and "general comments" is highlighted to draw attention to the fact that in the meeting of the Committee held in Geneva in the year 2007 certain general observations with regard to MCAR of 18 years were made which would be applicable to State parties other than India as the law had already been amended in our country pursuant to the concluding observations made by the Committee in the year 2000 specifically qua India. The views of the Committee in respect of other member States may be usefully taken note at this stage by extracting the recommendations in the nature of general comments in paras 36, 37 and 38 of the Report:

> "36. The Committee also wishes to draw the attention of States parties to the upper age-limit for the application of the rules of juvenile justice. These special rules - in terms both of special procedural rules and of rules for diversion and special measures - should apply, starting at the MACR set in the country, for all children who, at the time of their alleged commission of an offence (or act punishable under the criminal law), have not yet reached the age of 18 years.
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> "37. The Committee wishes to remind States parties that they have recognized the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in accordance with the provisions of article 40 of CRC. This means that every person under the age of 18 years at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice.
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> "38. The Committee, therefore, recommends that those States parties which limit the applicability of their juvenile justice rules to children under the age of 16 (or lower) years, or which allow by way of exception that 16 or 17-year-old children are treated as adult criminals, change their laws with a view to achieving a non- discriminatory full application of their juvenile justice rules to all persons under the age of 18 years. The Committee notes with appreciation that some States parties allow for the application of the rules and regulations of juvenile justice to persons aged 18 and older, usually till the age of 21, either as a general rule or by way of exception." (emphasis added)

29. Both sides have laboured to assist the Court with elaborate and detailed scientific and medical literature in support of their respective stands. The scientific and medical opinion on the issue is not at variance and it cannot be. The difference lies in the respective perceptions as we will presently see. The works and opinions placed goes to show that studies of adolescent brain anatomy clearly indicate that regions of the brain that regulate such things as foresight, impulse control and résistance to peer pressure are in a developing stage upto the age of 18. These are normative phenomenon that a teenager cannot control and not a pathological illness or defect. An article by Laurence Steinberg & Laura H. Carnell titled "Should the Science of Adolescent Brain Development inform Public Policy" is relied upon. On the basis of the above it is contended that there is no answer to the question when an adolescent brain becomes an adult brain because the structural and conventional changes do not take place on a uniform time scale. It is further argued that intellectual maturity of an adolescent is different from emotional or social maturity which makes an adolescent mature for some decisions but not for others, a position also highlighted by the Act which pre-supposes the capacity of a child under 18 to consent for his adoption under Section 41(5) of the Act. On the said materials while the petitioners argue that the lack of uniformity of mental growth upto the relevant age i.e. 18 years would justify individualized decisions rather than treating adolescent as a class the opposite view advanced is that between the lower and the upper age, the age of 18 provides a good mid point of focus which may result in some amount of over-classification but that would be inevitable in any situation and a mid point reduces the chances of over-classification to the minimum. These are the varying perceptions alluded to earlier.

30. It may be advantageous to now take note of the Juvenile Justice System working in other jurisdictions.

A - CANADA In Canada, the Youth Criminal Justice Act, 2002 provides for criminal justice to young persons aged between 12 to 18 years. The Preamble expressly states that the Act was enacted pursuant to Canada's obligations under the CRC. The Preamble also declares that "Canadian society should have a youth criminal justice system that commands respect, takes into account the interests of victims, fosters responsibility and ensures accountability through meaningful consequences and effective rehabilitation and reintegration, and that reserves its most serious intervention for the most serious crimes and reduces the over-reliance on incarceration for non- violent young persons." (emphasis added) While a 'child' is a person aged less than 12 years, a 'young person' is one aged between 12 and 18 years. Section 13 establishes "youth justice courts" which have exclusive jurisdiction to try offences committed by a young person. The Act makes special provisions where a young person commits a "serious offence" (indictable offence punishable with more than 5 years' imprisonment) and "serious violent offence" (first and second degree murder, manslaughter, aggravated sexual assault, attempted murder). Custody sentences are reserved for violent and serious crimes, but cannot exceed the maximum punishment that can be awarded to adults for the same offence (Section 38(2)(a)). One sentencing option is the "Intensive Rehabilitative Custody and Supervision Order", which is reserved for serious violent offenders including for aggravated sexual assault. When the offender attains 18 years, the Court may place him in an adult correctional centre if this is in his best interest or in public interest.

Section 34 permits the Youth Justice Court to order for the mental and psychological assessment of the young person for the following reasons only:

a. Considering an application for release from or detention in custody;

b. Deciding on an application for hearing the offender on adult sentence;

c. Making or reviewing a youth sentence;

d. Considering an application relating to continuation of custody;

e. Making an order for conditional supervision;

f. Authorizing disclosure of information about a young person.

Further, assessment may be ordered only where (i) the offender has committed a serious violent crime, or (ii) the Court suspects he is suffering from a mental illness or disorder, or (iii) the offender has a criminal history with repeated findings of guilt. Thus, an assessment under Section 34 cannot be ordered for determining whether the offender lacks sufficient "maturity" to be classified as a "juvenile/young person" (and thus qualify for the benefits of the Act). This Act, like the JJ Act uses the chronological test for determining its beneficiaries. However, in cases of serious and serious violent crimes, the offender may be punished by the Youth Justice Court with equivalent years of imprisonment as in the case of an adult (Sections 38 & 39).

In its concluding remarks on Canada (dt. 05.10.2012), the Committee on Rights of the Child expressed concern that the State had taken no steps to raise the MACR and continued to try children under 18 as adults (in relation to the circumstances or gravity of the offence). Besides recommending the increase in MACR, the Committee also recommended that the State i.e. Canada to ensure that no person under 18 is tried as an adult irrespective of the circumstances or the gravity of the offence.[7] B – UNITED KINGDOM

31. Children less than 10 years of age are irrefutably considered as incapable of committing an offence. Children between 10-18 years are capable of committing offences, but are usually tried in the Youth Court, unless they have committed serious offences (such as rape or homicide) or have been charged with adults (co-defendants), in which case they are tried in the Crown Court. When jointly charged with adult co-defendants, though the charges must be framed in the Magistrate's court with the other defendants, the juvenile should be sent to the Crown Court for trial if there is a "real prospect" of him being sentenced to over 2 years' custody period.

The general policy of law in the UK is (i) juveniles under 18 years, especially under 15 years, should be tried as far as possible by the Youth Court, reserving trial in the Crown Court for serious cases, and (ii) first time offenders aged 12-14 years and all offenders under 12 years should not be detained in custody.

Sentencing: "Detention and Training Orders" may be given to an offender aged 12-17 years, the first half of which is served in custody and the second half is served in the community. These usually last between 4 months and 2 years.

"Extended" custodial sentences are given to young persons if their crime is so serious that no other alternative is suitable, or if the young person is a habitual offender, or if the Judge thinks the person is a risk to public safety. Under S.91 of the Powers of Criminal Courts (Sentencing) Act, 2000, a person below 18 years who is convicted of a serious offence, may be sentenced to a period not exceeding the maximum term of imprisonment for adults, including life. The place of detention is a young offender institution. The Sentencing Guidelines provide that a sentence exceeding 2 years in respect of youth aged 12-17 years and accused of a grave offence should be made only when such a sentence is a "realistic possibility". Instances of such offences include sexual assault. Where a person is convicted of murder, he must be sentenced to detention at Her Majesty's pleasure.

C – UNITED STATES OF AMERICA

32. The US has a relatively high rate of juvenile delinquency. In 2011, the number of juvenile delinquents was 129,456 out of a population of 250 million. Although the traditional age of majority is 18 years, nearly all States permit persons less than 18 years to be tried as adults.

For example, in California, the majority age is 18 years, but persons older than 14 years may be tried as adults if they commit serious crimes (rape, robbery, murder etc.). The state of New York pegs the age of juvenility at 16 years, and permits the prosecution of persons aged between 13-16 years as adults in case of serious crimes. In Florida, the prosecutor has discretion to decide whether to try the juvenile as such or as an adult, owing to concurrent jurisdiction of the juvenile and ordinary criminal courts.

There are three legal mechanisms that permit the juvenile to be tried as an adult in the States:

> i. Judicial Waiver: The juvenile judge has the discretion to waive jurisdiction and transfer the case to the adult criminal courts. Presently, all states except Nebraska, New York, and New Mexico, provide for judicial waiver. This discretion is entirely left to the Judge in some States, whereas others provide some criteria for its exercise. In Breed v. Jones (1975), the Court held that adjudicating a juvenile first in a juvenile court, which subsequently waived jurisdiction, followed by adjudication by an adult court, violated the Fifth Amendment protection against double jeopardy.;
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> ii. Prosecutorial Discretion : Where the prosecutor has the discretion to decide whether to try the offender in a juvenile or adult criminal court. This is most common in cases of repeat offenders;
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> iii. Statutory exclusion: Where State legislation provides that the youth be tried as an adult, based on factors such as the gravity of the offence, prior criminal record, age of the youth etc. iv. Blended Sentencing: A juvenile court may sentence a convicted

> juvenile offender to both a juvenile sentence and an adult sentence. The adult sentence is suspended on the condition that the juvenile offender successfully completes the term of the juvenile disposition and refrains from committing any new offence. For example, juvenile courts in the State of Texas may award up to 40 years' sentence to offenders.

The trial procedure and sentencing principles applicable to adults are equally applicable in case a person under 18 years is transferred to an adult criminal court. Juveniles cannot, however, be sentenced to death (Roper v. Simmons[8]) or imprisoned for life without possibility of parole (Graham v. Florida[9]).

D - BRAZIL

33. The Statute of the Child and the Adolescent, 1990, enacted in compliance with the CRC, treats persons below 18 years (but above 12 years) as adolescents. 'Councils of Guardianship', municipal tribunals comprising five locally elected members, deal with cases involving preadolescents (younger children). Juvenile Courts deal with cases involving older children. Confinement and incarceration are reserved for older youths up to the age of 21 years.

E - BANGLADESH

34. The minimum age of criminal responsibility in Bangladesh is 9 years (raised from 7 years in 2004). The Children Act, 1974 defines a child and youthful offender as one below 16 years of age. The Act provides for the establishment of Juvenile Courts with exclusive jurisdiction to try youthful offenders (Section 13, Children Act). Ordinary criminal courts may act as Juvenile Courts if the latter are not established. Procedure under the Criminal Procedure Code, 1898 is followed. Section 51 prohibits the award of death sentence, imprisonment and transportation to a youthful offender. The proviso to this section provides for situations (serious crimes or where the juvenile is so unruly or depraved) permitting the Court to sentence him to imprisonment. However, the period of imprisonment cannot exceed the period of maximum punishment for adults. It appears that life imprisonment may be awarded in these exceptional cases to juveniles.

F - AFGHANISTAN

35. The Juvenile Code sets the minimum age of criminal responsibility at 12 years. A child is defined as a person below 18 years of age. Trial of children in conflict with the law is conducted by dedicated Juvenile Courts. Juvenile offenders are prosecuted by special 'Juvenile Prosecutors'.

Sentences of death and life imprisonment cannot be awarded to juveniles. For juveniles aged between 12-16 years, 1/3rd of the maximum punishment to adults can be awarded. For juveniles aged between 16-18 years, ½ of the maximum punishment to adults can be awarded.

G - BHUTAN

36. The minimum age of criminal responsibility is 10 years. Although not expressly defined, a juvenile is understood as a person below 18 years of age. Bhutan does not possess a special legislation dealing with juvenile offenders; there are no specialized Juvenile courts either. Section 213 of the Civil and Criminal Procedure Code has certain provisions regulating the trial of a juvenile offender. Persons below 18 years can be awarded half of the adult sentence.

H - NEPAL

37. The minimum age of criminal responsibility is 10 years. A child is a person below 16 years. Youth between 16-18 years are charged and tried as adults.

38. The next significant aspect of the case that would require to be highlighted is the differences in the juvenile justice system and the criminal justice system working in India. This would have relevance to the arguments made in W.P. No.204 of 2013. It may be convenient to notice the differences by means of the narration set out hereinunder:

Pre-trial Processes Filing of FIR:

Criminal Justice System: The system swings into action upon receipt of information (oral or written) by the officer in charge of a police station with regard to the commission of a cognizable offence.

JJ System: Rule 11(11) of the JJ Rules, 2007 states that the Police are not required to file an FIR or a charge-sheet while dealing with cases of juveniles in conflict with the law. Instead, they must only record the information of the offence in the general daily diary, followed by a report containing the social background of the juvenile, circumstances of the apprehension and the alleged offence.

An FIR is necessary only if the juvenile has (i) allegedly committed a serious offence like rape or murder, or (ii) has allegedly committed the offence with an adult.

Investigation and Inquiry:

Criminal Justice System: Ss. 156 and 157, CrPC deals with the power and procedure of police to investigate cognizable offences. The police may examine witnesses and record their statements. On completion of the investigation, the police officer is required to submit a Final Report to the Magistrate u/s 173(2).

JJ System: The system contemplates the immediate production of the apprehended juvenile before the JJ Board, with little scope for police investigation. Before the first hearing, the police is only required to submit a report of the juvenile's social background, the circumstances of apprehension and the alleged offence to the Board (Rule 11(11)). In cases of a non-serious nature, or where apprehension of the juvenile is not in the interests of the child, the police are required to intimate his parents/guardian that the details of his alleged offence and his social background have been submitted to the Board (Rule 11(9)). Arrest Criminal Justice System: Arrest of accused persons is regulated under Chapter V of the CrPC. The police are empowered to arrest a person who has been

accused of a cognizable offence if the crime was committed in an officer's presence or the police officer possesses a reasonable suspicion that the crime was committed by the accused. Further, arrest may be necessary to prevent such person from committing a further crime; from causing disappearance or tampering with evidence and for proper investigation (S.41). Persons accused of a non-cognizable offence may be arrested only with a warrant from a Magistrate (S.41(2)).

JJ System: The JJ Rules provide that a juvenile in conflict with the law need not be apprehended except in serious offences entailing adult punishment of over 7 years (Rule 11(7)). As soon as a juvenile in conflict with the law is apprehended, the police must inform the designated Child/Juvenile Welfare Officer, the parents/guardian of the juvenile, and the concerned Probation Officer (for the purpose of the social background report) (S.13 & R.11(1)). The juvenile so apprehended is placed in the charge of the Welfare Officer. It is the Welfare Officer's duty to produce the juvenile before the Board within 24 hours (S. 10 & Rule 11(2)). In no case can the police send the juvenile to lock up or jail, or delay the transfer of his charge to the Welfare Officer (proviso to S.10 & R.11(3)). Bail Criminal Justice System: Chapter XXXIII of the CrPC provides for bails and bonds. Bail may be granted in cases of bailable and non-bailable offences in accordance with Ss. 436 and 437 of the CrPC. Bail in non- bailable offences may be refused if there are reasonable grounds for believing that the person is guilty of an offence punishable with death or imprisonment for life, or if he has a criminal history (S.437(1)). JJ System: A juvenile who is accused of a bailable or non-bailable offence "shall" be released on bail or placed under the care of a suitable person/institution. This is subject to three exceptions: (i) where his release would bring him into association with a known criminal, (ii) where his release would expose him to moral, physical or psychological danger, or

(iii) where his release would defeat the ends of justice. Even where bail is refused, the juvenile is to be kept in an observation home or a place of safety (and not jail).

Trial and Adjudication The trial of an accused under the criminal justice system is governed by a well laid down procedure the essence of which is clarity of the charge brought against the accused; the duty of the prosecution to prove the charge by reliable and legal evidence and the presumption of innocence of the accused. Culpability is to be determined on the touchstone of proof beyond reasonable doubt but if convicted, punishment as provided for is required to be inflicted with little or no exception. The accused is entitled to seek an exoneration from the charge(s) levelled i.e. discharge (amounting to an acquittal) mid course.

JJ System: Under S.14, whenever a juvenile charged with an offence is brought before the JJ Board, the latter must conduct an 'inquiry' under the JJ Act. A juvenile cannot be tried with an adult (S.18).

Determination of the age of the juvenile is required to be made on the basis of documentary evidence (such as birth certificate, matriculation certificate, or Medical Board examination).

The Board is expected to conclude the inquiry as soon as possible under R.13. Further, the Board is required to satisfy itself that the juvenile has not been tortured by the police or any other person and to take steps if ill-treatment has occurred. Proceedings must be conducted in the simplest manner

and a child-friendly atmosphere must be maintained (R.13(2)(b)), and the juvenile must be given a right to be heard (clause

(c)). The inquiry is not to be conducted in the spirit of adversarial proceedings, a fact that the Board is expected to keep in mind even in the examination of witnesses (R.13(3)). R.13(4) provides that the Board must try to put the juvenile at ease while examining him and recording his statement; the Board must encourage him to speak without fear not only of the circumstances of the alleged offence but also his home and social surroundings. Since the ultimate object of the Act is the rehabilitation of the juvenile, the Board is not merely concerned with the allegations of the crime but also the underlying social causes for the same in order to effectively deal with such causes.

The Board may dispense with the attendance of the juvenile during the inquiry, if thought fit (S. 47). Before the Board concludes on the juvenile's involvement, it must consider the social investigation report prepared by the Welfare Officer (R.15(2)).

The inquiry must not prolong beyond four months unless the Board extends the period for special reasons due to the circumstances of the case. In all non-serious crimes, delay of more than 6 months will terminate the trial (R.13(7)).

Sentencing: The Board is empowered to pass one of the seven dispositional orders u/s 15 of the JJ Act: advice/admonition, group counseling, community service, payment of fine, release on probation of good conduct and placing the juvenile under the care of parent or guardian or a suitable institution, or sent to a Special home for 3 years or less. Where a juvenile commits a serious offence, the Board must report the matter to the State Govt. who may keep the juvenile in a place of Safety for not more than 3 years. A juvenile cannot be sentenced to death or life imprisonment.

Post-trial Processes JJ System: No disqualification attaches to a juvenile who is found to have committed an offence. The records of his case are removed after the expiry of period of appeal or a reasonable period.

S. 40 of the JJ Act provides that the rehabilitation and social reintegration of the juvenile begins during his stay in a children's home or special home. "After-care organizations" recognized by the State Govt. conduct programmes for taking care of juveniles who have left special homes to enable them to lead honest, industrious and useful lives.

Differences between JJ System and Criminal Justice System

1. FIR and charge-sheet in respect of juvenile offenders is filed only in 'serious cases', where adult punishment exceeds 7 years.

2. A juvenile in conflict with the law is not "arrested", but "apprehended", and only in case of allegations of a serious crime.

3. Once apprehended, the police must immediately place such juvenile under the care of a Welfare Officer, whose duty is to produce the juvenile before the Board. Thus, the police do not retain pre-trial custody over the juvenile.

4. Under no circumstances is the juvenile to be detained in a jail or police lock-up, whether before, during or after the Board inquiry.

5. Grant of Bail to juveniles in conflict with the law is the Rule.

6. The JJ board conducts a child-friendly "inquiry" and not an adversarial trial. This is not to say that the nature of the inquiry is non-adversarial, since both prosecution and defence submit their cases. Instead, the nature of the proceedings acquires a child-friendly colour.

7. The emphasis of criminal trials is to record a finding on the guilt or innocence of the accused. In case of established guilt, the prime object of sentencing is to punish a guilty offender. The emphasis of juvenile 'inquiry' is to find the guilt/innocence of the juvenile and to investigate the underlying social or familial causes of the alleged crime. Thus, the aim of juvenile sentencing is to reform and rehabilitate the errant juvenile.

8. The adult criminal system does not regulate the activities of the offender once s/he has served the sentence. Since the JJ system seeks to reform and rehabilitate the juvenile, it establishes post- trial avenues for the juvenile to make an honest living.

39. Having laid bare all that is necessary for a purposive adjudication of the issues that have been raised by the rival camps we may now proceed to examine the same.

The Act, as manifestly clear from the Statement of Objects and Reasons, has been enacted to give full and complete effect to the country's international obligations arising from India being a signatory to the three separate conventions delineated hereinbefore, namely, the Beijing Rules, the UN Convention and the Havana Rules. Notwithstanding the avowed object of the Act and other such enactments to further the country's international commitments, all of such laws must necessarily have to conform to the requirements of a valid legislation judged in the context of the relevant constitutional provisions and the judicial verdicts rendered from time to time. Also, that the Act is a beneficial piece of legislation and must therefore receive its due interpretation as a legislation belonging to the said category has been laid down by a Constitution Bench of this Court in Pratap Singh vs. State of Jharkhand and Another[10]. In other words, the Act must be interpreted and understood to advance the cause of the legislation and to confer the benefits of the provisions thereof to the category of persons for whom the legislation has been made.

40. Dr. Swamy at the outset has urged that there is no attempt on his part to challenge the constitutional validity of the Act, particularly, the provisions contained in Sections 2(k) and 2(l) of the Act and what he seeks is a mere reading down of the Act. It is not very difficult to understand the reason for the argument; Dr. Swamy seeks to overcome what he perceives to be a bar to a direct challenge on account of the decision of this Court in Salil Bali (supra). But if the argument advanced

if is to be carried to the fullest extent the implication is obvious. If the Act is not to be read down, as urged, it will stand invalidated on grounds of unconstitutionality. The argument, therefore, is really the other side of the same coin which has been cast by Dr. Hingorani who is more forthright in his challenge to the validity of the Act on the twin grounds already noticed, namely, that the Act would result in over-classification if all juveniles, irrespective of the level of mental maturity, are to be grouped in one class and on the further ground that the Act replaces the criminal justice system in the country and therefore derogates a basic feature of the Constitution. If the arguments are to be understood and examined from the aforesaid perspective, the conclusion is obvious – what the Court is required to consider, apart from the incidental and side issues which would not be of much significance, is whether the Act would survive the test of constitutionality if the same is not to be read and understood in the manner urged. Of course, if the constitutionality of the Act is to become suspect, the further question, as we have already indicated, is what should be the course of action that would be open to this Coordinate Bench in view of the decision in Salil Bali (supra).

41. Dr. Swamy would urge that the relevant provisions of the Act i.e. Sections 1(4), 2(k), 2(l) and 7 must be read to mean that juveniles (children below the age of 18) who are intellectually, emotionally and mentally mature enough to understand the implications of their acts and who have committed serious crimes do not come under the purview of the Act. Such juveniles are liable to be dealt with under the penal law of the country and by the regular hierarchy of courts under the criminal justice system administered in India. This is what was intended by the legislature; a plain reading, though, shows an unintended omission which must be made up or furnished by the Court. It is further urged that if the Act is not read in the above manner the fall out would render the same in breach of Article 14 as inasmuch as in that event there would be a blanket/flat categorisation of all juveniles, regardless of their mental and intellectual maturity, committing any offence, regardless of its seriousness, in one homogenous block in spite of their striking dissimilarities. This, Dr. Swamy contends, is a classification beyond what would be permissible under Article 14 in as much as the result of such classification does not further the targeted object i.e. to confer the benefits of the Act to persons below 18 who are not criminally responsible in view of the low level of mental maturity reached or achieved. This, in substance, is also the argument of Dr. Hingorani, who, in addition, has contended that the Act replaces the criminal justice system of the country by a scheme which is not even a poor substitute. The substituted scheme does not even remotely fit with constitutional tapestry woven by certain basic features namely the existence of a criminal justice system.

42. Reading down the provisions of a statute cannot be resorted to when the meaning thereof is plain and unambiguous and the legislative intent is clear. The fundamental principle of the “reading down” doctrine can be summarized as follows. Courts must read the legislation literally in the first instance. If on such reading and understanding the vice of unconstitutionality is attracted, the courts must explore whether there has been an unintended legislative omission. If such an intendment can be reasonably implied without undertaking what, unmistakably, would be a legislative exercise, the Act may be read down to save it from unconstitutionality. The above is a fairly well established and well accepted principle of interpretation which having been reiterated by this Court time and again would obviate the necessity of any recall of the huge number of precedents available except, perhaps, the view of Sawant, J. (majority view) in Delhi Transport Corporation vs. D.T.C. Mazdoor Congress and Others[11] which succinctly sums up the position is, therefore,

extracted below.

"255. It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible — one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intentions of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the statute requires extensive additions and deletions. Not only it is no part of the court's duty to undertake such exercise, but it is beyond its jurisdiction to do so."

43. In the present case there is no difficulty in understanding the clear and unambiguous meaning of the different provisions of the Act. There is no ambiguity, muchless any uncertainty, in the language used to convey what the legislature had intended. All persons below the age of 18 are put in one class/group by the Act to provide a separate scheme of investigation, trial and punishment for offences committed by them. A class of persons is sought to be created who are treated differently. This is being done to further/effectuate the views of the international community which India has shared by being a signatory to the several conventions and treaties already referred to.

44. Classification or categorization need not be the outcome of a mathematical or arithmetical precision in the similarities of the persons included in a class and there may be differences amongst the members included within a particular class. So long as the broad features of the categorization are identifiable and distinguishable and the categorization made is reasonably connected with the object targeted, Article 14 will not forbid such a course of action. If the inclusion of all under 18 into a class called 'juveniles' is understood in the above manner, differences inter se and within the under 18 category may exist. Article 14 will, however, tolerate the said position. Precision and arithmetical accuracy will not exist in any categorization. But such precision and accuracy is not what Article 14 contemplates. The above principles have been laid down by this Court in a plethora of judgments and an illustrative reference to some may be made by recalling the decisions in Murthy Match Works and Others vs. The Asstt. Collector of Central Excise and Another[12], Roop Chand Adlakha and Others vs. Delhi Development Authority and Others[13], Kartar Singh vs. State of Punjab[14], Basheer alias N.P. Basheer vs.State of Kerala[15], B. Manmad Reddy and Others vs. Chandra Prakash Reddy and Others[16], Transport and Dock Workers Union and Others vs. Mumbai Port Trust and Another[17] .

45. If the provisions of the Act clearly indicate the legislative intent in the light of the country's international commitments and the same is in conformity with the constitutional requirements, it is not necessary for the Court to understand the legislation in any other manner. In fact, if the Act is plainly read and understood, which we must do, the resultant effect thereof is wholly consistent with Article 14. The Act, therefore, need not be read down, as suggested, to save it from the vice of unconstitutionality for such unconstitutionality does not exist.

46. That in certain foreign jurisdictions, details of which have been mentioned earlier to bring about clarity and completeness to the issues arising, the position is otherwise would hardly be of any consequence so far as our country is concerned. Contrary international opinion, thinking or practice, even if assumed, does not dictate the legislation of a sovereign nation. If the legislature has adopted the age of 18 as the dividing line between juveniles and adults and such a decision is constitutionally permissible the enquiry by the Courts must come to an end. Even otherwise there is a considerable body of world opinion that all under 18 persons ought to be treated as juveniles and separate treatment ought to be meted out to them so far as offences committed by such persons are concerned. The avowed object is to ensure their rehabilitation in society and to enable the young offenders to become useful members of the society in later years. India has accepted the above position and legislative wisdom has led to the enactment of the JJ Act in its present form. If the Act has treated all under 18 as a separate category for the purposes of differential treatment so far as the commission of offences are concerned, we do not see how the contentions advanced by the petitioners to the contrary on the strength of the thinking and practices in other jurisdictions can have any relevance.

47. In the earlier paragraphs of this report we have analyzed in detail the difference between the criminal justice system and the system for dealing with offenders under the JJ Act. The Act does not do away or obliterate the enforcement of the law insofar as juvenile offenders are concerned. The same penal law i.e. Indian Penal Code apply to all juveniles. The only difference is that a different scheme for trial and punishment is introduced by the Act in place of the regular provisions under the Code of Criminal Procedure for trial of offenders and the punishments under the Indian Penal Code. The above situation is vastly different from what was before the Court in Mithu (supra) and also in Dadu (supra). In Mithu (supra) a separate treatment of the accused found guilty of a second incident of murder during the currency of the sentence for an earlier offence of murder was held to be impermissible under Article 14. Besides the absence of any judicial discretion, whatsoever, in the matter of imposition of sentence for a second Act of murder was held to be "out of tune" with the constitutional philosophy of a fair, just and reasonable law. On the other hand in Dadu (supra), Section 32A of the NDPS Act which had ousted the jurisdiction of the Court to suspend a sentence awarded under the Act was read down to mean that the power of suspension, notwithstanding Section 32A of the NDPS Act, can still be exercised by the appellate court but subject to the conditions stipulated in Section 37 namely (i) there are reasonable grounds for believing that the accused is not guilty of such offence; and (ii) that he is not likely to commit any offence while on bail are satisfied. Nothing as sweeping and as drastic in Mithu (supra) and Dadu (supra) has been introduced by the provisions of the Act so as to enable us to share the view expressed by Dr. Hingorani that the Act sets at naught all the essential features of the criminal justice system and introduces a scheme which is abhorrent to our constitutional values. Having taken the above view,

we do not consider it necessary to enter in the consequential arena, namely, the applicability of the provisions of Article 20(3) of the Constitution and Section 300 of the Code of Criminal Procedure to the facts of the present case as on the view that we have taken no question of sending the juvenile – Raju to face a regular trial can and does arise.

48. Before parting, we would like to observe that elaborate statistics have been laid before us to show the extent of serious crimes committed by juveniles and the increase in the rate of such crimes, of late. We refuse to be tempted to enter into the said arena which is primarily for the legislature to consider. Courts must take care not to express opinions on the sufficiency or adequacy of such figures and should confine its scrutiny to the legality and not the necessity of the law to be made or continued. We would be justified to recall the observations of Justice Krishna Iyer in Murthy March Works (supra) as the present issues seem to be adequately taken care of by the same:

> "13. Right at the threshold we must warn ourselves of the limitations of judicial power in this jurisdiction. Mr Justice Stone of the Supreme Court of the United States has delineated these limitations in United States v. Butler (1936) 297 US 1 thus:
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> "The power of Courts to declare a statute unconstitutional is subject to two guiding principles of decision which ought never to be absent from judicial consciousness. One is that Courts are concerned only with the power to enact statutes, not with their wisdom. The other is that while unconstitutional exercise of power by the executive and legislative branches of the government is subject to judicial restraint, the only check upon our exercise of power is our own sense of self-restraint For the removal of unwise laws from the statute books appeal lies not to the Courts but to the ballot and to the processes of democratic Government."
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> 14. In short, unconstitutionality and not unwisdom of a legislation is the narrow area of judicial review. In the present case unconstitutionality is alleged as springing from lugging together two dissimilar categories of match manufacturers into one compartment for like treatment.
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> 15. Certain principles which bear upon classification may be mentioned here. It is true that a State may classify persons and objects for the purpose of legislation and pass laws for the purpose of obtaining revenue or other objects. Every differentiation is not a discrimination. But classification can be sustained only if it is founded on pertinent and real differences as distinguished from irrelevant and artificial ones. The constitutional standard by which the sufficiency of the differentia which form a valid basis for classification may be measured, has been repeatedly stated by the Courts. If it rests on a difference which bears a fair and just relation to the object for which it is proposed, it is constitutional. To put it differently, the means must have nexus with the ends. Even so, a large latitude is allowed to the State for classification upon a reasonable basis and what is reasonable is a question of practical details and a variety of factors which the Court will be reluctant and perhaps ill-equipped to investigate. In this imperfect world perfection even in grouping is an ambition hardly ever

accomplished. In this context, we have to remember the relationship between the legislative and judicial departments of Government in the determination of the validity of classification. Of course, in the last analysis Courts possess the power to pronounce on the constitutionality of the acts of the other branches whether a classification is based upon substantial differences or is arbitrary, fanciful and consequently illegal. At the same time, the question of classification is primarily for legislative judgment and ordinarily does not become a judicial question. A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the Judicature cannot rush in where even the Legislature warily treads. All these operational restraints on judicial power must weigh more emphatically where the subject is taxation." (Emphasis is ours)

49. On the above note we deem it appropriate to part with the cases by dismissing the appeal filed by Dr. Subramanian Swamy and Others as well as the writ petition filed by the parents of the unfortunate victim of the crime.

.....CJI.

[P. SATHASIVAM] .....J.

[RANJAN GOGOI] .....J.

[SHIVA KIRTI SINGH] NEW DELHI, MARCH 28, 2014.

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[1] (2013) 3 SCALE 1
[2] (1983) 2 SCC 277
[3] (2000) 8 SCC 437
[4] (2013) 4 SCC 705
[5] (1989) 3 SCC 151
[6] (2012) 10 SCC 1
[7] Committee on the Rights of the Child, 61st Session, 05 October 2012, CRC/C/CAN/CO/3-4, paras 85-86, p.20.
[8] 543 US 551 (2005)
[9] 560 US 48 (2010)
[10] (2005) 3 SCC 551
[11] 1991 Supp. (1) SCC 600
[12] (1974) 4 SCC 428
[13] 1989 Supp (1) SCC 116
[14] (1994) 3 SCC 569
[15] (2004) 3 SCC 609
[16] (2010) 3 SCC 314
[17] (2011) 2 SCC 575
