SUPREME COURT OF INDIA

Salil Bali

Vs.

Union of India

(Altamas Kabir CJI., Surinder Singh Nijjar and J.Chelameswar JJ.)

17.07.2013

JUDGMENT

ALTAMAS KABIR, CJI.

1. Seven Writ Petitions and one Transferred Case have been taken up together for consideration in view of the commonality of the grounds and reliefs prayed for therein. While in Writ Petition (C) No. 14 of 2013, Saurabh Prakash Vs. Union of India, and Writ Petition (C) No. 90 of 2013, Vinay K. Sharma Vs. Union of India, a common prayer has been made for declaration of the Juvenile Justice (Care and Protection of Children) Act, 2000, as ultra vires the Constitution, in Writ Petition (C) No. 10 of 2013, Salil Bali Vs. Union of India, Writ Petition (C) No. 85 of 2013, Krishna Deo Prasad Vs. Union of India, Writ Petition (C) No. 42 of 2013, Kamal Kumar Pandey & Sukumar Vs. Union of India and Writ Petition (C) No. 182 of 2013, Hema Sahu Vs. Union of India, a common prayer has inter alia been made to strike down the provisions of Section 2(k) and (l) of the above Act, along with a prayer to bring the said Act in conformity with the provisions of the Constitution and to direct the Respondent No. 1 to take steps to make changes in the Juvenile Justice (Care and Protection of Children) Act, 2000, to bring it in line with the United Nations Standard Minimum Rules for administration of juvenile justice. In addition to the above, in Writ Petition (Crl.) No. 6 of 2013, Shilpa Arora Sharma Vs. Union of India, a prayer has inter alia been made to appoint a panel of criminal psychologists to determine through clinical methods whether the juvenile is involved in the Delhi gang rape on 16.12.2012. Yet, another relief which has been prayed for in common during the oral submissions made on behalf of the Petitioners was that in offences like rape and murder, juveniles should be tried under the normal law and not under the aforesaid Act and protection granted to persons up to the age of 18 years under the aforesaid Act may be removed and that

the investigating agency should be permitted to keep the record of the juvenile offenders to take preventive measures to enable them to detect repeat offenders and to bring them to justice. Furthermore, prayers have also been made in Writ Petition (Crl.) No. 6 of 2013 and Writ Petition (C) No. 85 of 2013, which are personal to the juvenile accused in the Delhi gang rape case of 16.12.2012, not to release him and to keep him in custody or any place of strict detention, after he was found to be a mentally abnormal psychic person and that proper and detailed investigation be conducted by the CBI to ascertain his correct age by examining his school documents and other records and to further declare that prohibition in Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000, be declared unconstitutional.

2. In most of the matters, the Writ Petitioners appeared in-person, in support of their individual cases.

3. Writ Petition (C) No.10 of 2013, filed by Shri Salil Bali, was taken up as the first matter in the bunch. The Petitioner appearing in-person urged that it was necessary for the provisions of Section 2(k), 2(l) and 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000, to be reconsidered in the light of the spurt in criminal offences being committed by persons within the range of 16 to 18 years, such as the gang rape of a young woman inside a moving vehicle on 16th December, 2012, wherein along with others, a juvenile, who had attained the age of 17½ years, was being tried separately under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

4. Mr. Bali submitted that the age of responsibility, as accepted in India, is different from what has been accepted by other countries of the world. But, Mr. Bali also pointed out that even in the criminal jurisprudence prevalent in India, the age of responsibility of understanding the consequences of one's actions had been recognized as 12 years in the Indian Penal Code. Referring to Section 82 of the Code, Mr. Bali pointed out that the same provides that nothing is an offence which is done by a child under seven years of age. Mr. Bali also referred to Section 83 of the Code, which provides that nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on a particular occasion. Mr. Bali, therefore, urged that even under the Indian Criminal Jurisprudence the age of understanding has been fixed at twelve years, which according to him, was commensurate with the thinking of other countries, such as the United States of America, Great Britain and Canada.

5. In regard to Canada, Mr. Bali referred to the Youth Criminal Justice Act, 2003, as amended from time to time, where the age of criminal responsibility has been fixed at twelve years. Referring to Section 13 of the Criminal Code of Canada, Mr. Bali submitted that the same is in pari materia with the provisions of Section 83 of the Indian Penal Code. In fact, according to the Criminal Justice Delivery System in Canada, a youth between the age of 14 to 17 years may be tried and sentenced as an adult in certain situations. Mr. Bali also pointed out that even in Canada the Youth Criminal Justice Act governs the application of criminal and correctional law to those who are twelve years old or older, but younger than 18 at the time of committing the offence, and that, although, trials were to take place in a Youth Court, for certain offences and in certain circumstances, a youth may be awarded an adult sentence.

6. Comparing the position in USA and the Juvenile Justice and Delinquency Prevention Act, 1974, he urged that while in several States, no set standards have been provided, reliance is placed on the common law age of seven in fixing the age of criminal responsibility, the lowest being six years in North Carolina. The general practice in the United States of America, however, is that even for such children, the courts are entitled to impose life sentences in respect of certain types of offences, but such life sentences without parole were not permitted for those under the age of eighteen years convicted of murder or offences involving violent crimes and weapons violations.

7. In England and Wales, children accused of crimes are generally tried under the Children and Young Persons Act, 1933, as amended by Section 16(1) of the Children and Young Persons Act, 1963. Under the said laws, the minimum age of criminal responsibility in England and Wales is ten years and those below the said age are considered to be doli incapax and, thus, incapable of having any mens rea, which is similar to the provisions of Sections 82 and 83 of Indian Penal Code.

8. Mr. Bali has also referred to the legal circumstances prevailing in other parts of the world wherein the age of criminal responsibility has been fixed between ten to sixteen years. Mr. Bali contended that there was a general worldwide concern over the rising graph of criminal activity of juveniles below the age of eighteen years, which has been accepted worldwide to be the age limit under which all persons were to be treated as children. Mr. Bali sought to make a distinction in regard to the definition of children as such in Sections 2(k) and 2(l) of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the level of maturity of the child

who is capable of understanding the consequences of his actions. He, accordingly, urged that the provisions of Sections 15 and 16 of the Act needed to be reconsidered and appropriate orders were required to be passed in regard to the level of punishment in respect of heinous offences committed by children below the age of eighteen years, such as murder, rape, dacoity, etc. Mr. Bali submitted that allowing perpetrators of such crimes to get off with a sentence of three years at the maximum, was not justified and a correctional course was required to be undertaken in that regard.

9. Mr. Saurabh Prakash, Petitioner in Writ Petition (C) No. 14 of 2013, also appeared in-person and, while endorsing the submissions made by Mr. Bali, went a step further in suggesting that in view of the provisions of Sections 15 and 16 of the Juvenile Justice (Care and Protection of Children) Act, 2000, children, as defined in the above Act, were not only taking advantage of the same, but were also being used by criminals for their own ends. The Petitioner reiterated Mr. Bali's submission that after being awarded a maximum sentence of three years, a juvenile convicted of heinous offences, was almost likely to become a monster in society and pose a great danger to others, in view of his criminal propensities. Although, in the prayers to the Writ Petition, one of the reliefs prayed for was for quashing the provisions of the entire Act, Mr. Saurabh Prakash ultimately urged that some of the provisions thereof were such as could be segregated and struck down so as to preserve the Act as a whole. The Petitioner urged that, under Article 21 of the Constitution, every citizen has a fundamental right to live in dignity and peace, without being subjected to violence by other members of society and that by shielding juveniles, who were fully capable of understanding the consequences of their actions, from the sentences, as could be awarded under the Indian Penal Code, as far as adults are concerned, the State was creating a class of citizens who were not only prone to criminal activity, but in whose cases restoration or rehabilitation was not possible. Mr. Saurabh Prakash submitted that the provisions of Sections 15 and 16 of the Juvenile Justice (Care and Protection of Children) Act, 2000, violated the rights guaranteed to a citizen under Article 21 of the Constitution and were, therefore, liable to be struck down.

10. Mr. Saurabh Prakash also submitted that the provisions of Section 19 of the Act, which provided for removal of disqualification attaching to conviction, were also illogical and were liable to be struck down. It was submitted that in order to prevent repeated offences by an individual, it was necessary to maintain the records of the inquiry conducted by the Juvenile Justice Board, in relation to juveniles so that such records would enable the authorities concerned to assess the

criminal propensity of an individual, which would call for a different approach to be taken at the time of inquiry. Mr. Saurabh Prakash urged this Court to give a direction to the effect that the Juvenile Justice Board or courts or other high public authorities would have the discretion to direct that in a particular case, the provisions of the general law would apply to a juvenile and not those of the Act.

11. Mr. Vivek Narayan Sharma, learned Advocate, appeared for the petitioner in Writ Petition (Crl.) No. 6 of 2013, filed by one Shilpa Arora Sharma, and submitted that the Juvenile Justice Board should be vested with the discretion to impose punishment beyond three years, as limited by Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000, in cases where a child, having full knowledge of the consequences of his/her actions, commits a heinous offence punishable either with life imprisonment or death. Mr. Sharma submitted that such a child did not deserve to be treated as a child and be allowed to re-mingle in society, particularly when the identity of the child is to be kept a secret under Sections 19 and 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000. Mr. Sharma submitted that in many cases children between the ages of sixteen to eighteen years were, in fact, being exploited by adults to commit heinous offences who knew full well that the punishment therefor would not exceed three years.

12. Mr. Sharma urged that without disturbing the other beneficient provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, some of the gray areas pointed out could be addressed in such a manner as would make the Juvenile Justice (Care and Protection of Children) Act, 2000, more effective and prevent the misuse thereof.

13. In Writ Petition (C) No. 85 of 2013, filed by Krishna Deo Prasad, Dr. R.R. Kishor appeared for the Petitioner and gave a detailed account of the manner in which the Juvenile Justice Delivery System had evolved. Referring to the doctrine of doli incapax, rebuttable presumption and adult responsibility, Dr. Kishor contended that even Article 1 of the UN Convention on the Rights of the Child defines a child in the following terms:

"Article 1

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."

14. Dr. Kishor contended that, as pointed out by Mr. Salil Bali, the expression "child" has been defined in various ways in different countries all over the world. Accordingly, the definition of a child in Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000, would depend on the existing laws in India defining a child. Dr. Kishor referred to the provisions of the Child Labour (Prohibition and Regulation) Act, 1986, as an example, to indicate that children up to the age of fourteen years were treated differently from children between the ages of fourteen to eighteen, for the purposes of employment in hazardous industries. Dr. Kishor re-asserted the submissions made by Mr. Bali and Mr. Saurabh Prakash, in regard to heinous crimes committed by children below the age of eighteen years, who were capable of understanding the consequences of their acts.

15. Dr. Kishor also referred to the provisions of Sections 82 and 83 of the Indian Penal Code, where the age of responsibility and comprehension has been fixed at twelve years and below. Learned counsel submitted that having regard to the above-mentioned provisions, it would have to be seriously considered as to whether the definition of a child in the Juvenile Justice (Care and Protection of Children) Act, 2000, required reconsideration. He urged that because a person under the age of 18 years was considered to be a child, despite his or her propensity to commit criminal offences, which are of a heinous and even gruesome nature, such as offences punishable under Sections 376, 307, 302, 392, 396, 397 and 398 IPC, the said provisions have been misused and exploited by criminals and people having their own scores to settle. Dr. Kishor urged that the definition of a "juvenile" or a "child" or a "juvenile in conflict with law", in Sections 2(k) and 2(l) of the Juvenile Justice (Care and Protection of Children) Act, 2000, was liable to be struck down and replaced with a more meaningful definition, which would exclude such juveniles.

16. Mr. Vikram Mahajan, learned Senior Advocate appearing for the Petitioner, Vinay K. Sharma, in Writ Petition (C) No. 90 of 2013, urged that the right given to a citizen of India under Article 21 of the Constitution is impinged upon by the Juvenile Justice (Care and Protection of Children) Act, 2000. Mr. Mahajan urged that the Juvenile Justice (Care and Protection of Children) Act, 2000, operates in violation of Articles 14 and 21 of the Constitution and that Article 13(2), which relates to post Constitution laws, prohibits the State from making a law which either takes away totally or abrogates in part a fundamental right. Referring to the United Nations Declaration on the Elimination of Violence against Women, adopted by the General Assembly on 20th December, 1993, Mr. Mahajan pointed

out that Article 1 of the Convention describes "violence against women" to mean any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women. Referring to the alleged gang rape of a 23 year old para-medical student, in a moving bus, in Delhi, on 16th December, 2012, Mr. Mahajan tried to indicate that crimes committed by juveniles had reached large and serious proportions and that there was a need to amend the law to ensure that such persons were not given the benefit of lenient punishment, as contemplated under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000. From the figures cited by him, he urged that even going by statistics, 1% of the total number of crimes committed in the country would amount to a large number and the remedy to such a problem would lie in the Probation of Offenders Act, 1958, which made the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, redundant and ultra vires Article 21 of the Constitution.

17. Ms. Shweta Kapoor appeared in Transferred Case No. 82 of 2013 in- person and questioned the vires of Sections 16(1), 19(1), 49(2) and 52(2)(a) of the Juvenile Justice (Care and Protection of Children) Act, 2000, and submitted that they were liable to be declared as ultra vires the Constitution. Referring to Section 16 of the aforesaid Act, Ms. Kapoor submitted that even in the proviso to Sub-section (1) of Section 16, Parliament had recognized the distinction between a juvenile, who had attained the age of sixteen years, but had committed an offence which was so serious in nature that it would not be in his interest or in the interest of other juveniles in a special home, to send him to such special home. Considering that none of the other measures provided under the Act was suitable or sufficient, the Government had empowered the Board to pass an order for the juvenile to be kept in such place of safety and in such manner as it thought fit. Ms. Kapoor submitted that no objection could be taken to the said provision except for the fact that in the proviso to Section 16(2), it has been added that the period of detention order would not exceed, in any case, the maximum limit of punishment, as provided under Section 15, which is three years.

18. Ms. Kapoor contended that while the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, are generally meant for the benefit of the juvenile offenders, a serious attempt would have to be made to grade the nature of offences to suit the reformation contemplated by the Act.

19. As part of her submissions, Ms. Kapoor referred to the decision of this Court in Avishek Goenka Vs. Union of India [(2012) 5 SCC 321], wherein the pasting of

black films on glass panes were banned by this Court on account of the fact that partially opaque glass panes on vehicles acted as facilitators of crime. Ms. Kapoor urged that in the opening paragraph of the judgment, it has been observed that "Alarming rise in heinous crimes like kidnapping, sexual assault on women and dacoity have impinged upon the right to life and the right to live in a safe environment which are within the contours of Article 21 of the Constitution of India". Ms. Kapoor also referred to another decision of this Court in Abuzar Hossain Vs. State of West Bengal [(2012) 10 SCC 489], which dealt with a different question regarding the provisions of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the right of an accused to raise the claim of juvenility at any stage of the proceedings and even after the final disposal of the case.

20. In conclusion, Ms. Kapoor reiterated her stand that in certain cases the definition of a juvenile in Sections 2(k) and 2(l) of the Juvenile Justice (Care and Protection of Children) Act, 2000, would have to be considered differently.

21. The next matter which engaged our attention is Writ Petition (Civil) No.90 of 2013 filed by one Vinay Kumar Sharma, praying for a declaration that the Juvenile Justice (Care and Protection of Children) Act, 2000, be declared ultra vires the Constitution and that children should also be tried along with adults under the penal laws applicable to adults.

22. Writ Petition (Civil) No.42 of 2013 has been filed by Kamal Kumar Pandey and Sukumar, Advocates, inter alia, for an appropriate writ or direction declaring the provisions of Sections 2(1), 10 and 17 of the Juvenile Justice (Care and Protection of Children) Act, 2000, to be irrational, arbitrary, without reasonable nexus and thereby ultra vires and unconstitutional, and for a Writ of Mandamus commanding the Ministry of Home Affairs and the Ministry of Law and Justice, Government of India, to take steps that the aforesaid Act operates in conformity with the Constitution. In addition, a prayer was made to declare the provisions of Sections 15 and 19 of the above Act ultra vires the Constitution.

23. The main thrust of the argument advanced by Mr. Pandey, who appeared in person, was the inter-play between International Conventions and Rules, such as the Beijing Rules, 1985, the U.N. Convention on the Rights of the Child, 1989, and the Juvenile Justice (Care and Protection of Children) Act, 2000. While admitting the salubirous and benevolent and progressive character of the legislation in dealing with children in need of care and protection and with children in conflict

with law, Mr. Pandey contended that a distinction was required to be made in respect of children with a propensity to commit heinous crimes which were a threat to a peaceful social order. Mr. Pandey reiterated the submissions made earlier that it was unconstitutional to place all juveniles, irrespective of the gravity of the offences, in one bracket. Urging that Section 2(l) of the Juvenile Justice (Care and Protection of Children) Act, 2000, ought not to have placed all children in conflict with law within the same bracket, Mr. Pandey submitted that the same is ultra vires Article 21 of the Constitution. Referring to the report of the National Crime Records Bureau (NCRB) for the years 2001 to 2011, Mr. Pandey submitted that between 2001 and 2011, the involvement of juveniles in cognizable crimes was on the rise. Mr. Pandey urged that it was a well-established medical- psychological fact that the level of understanding of a 16 year-old was at par with that of adults.

24. Mr. Pandey's next volley was directed towards Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2000, which provides for the removal of any disqualification attached to an offence of any nature. Mr. Pandey submitted that the said provisions do not take into account the fact relating to repeated offences being perpetrated by a juvenile whose records of previous offences are removed. Mr. Pandey contended that Section 19 of the Act was required to be amended to enable the concerned authorities to retain records of previous offences committed by a juvenile for the purposes of identification of a juvenile with a propensity to repeatedly commit offences of a grievous or heinous nature.

25. Mr. Pandey submitted that Parliament had exceeded its mandate by blindly adopting eighteen as the upper limit in categorising a juvenile or a child, in accordance with the Beijing Rules, 1985, and the U.N. Convention, 1989, without taking into account the socio-cultural economic conditions and the legal system for administration of criminal justice in India. Mr. Pandey urged that the Juvenile Justice (Care and Protection of Children) Act, 2000, was required to operate in conformity with the provisions of the Constitution of India.

26. Ms. Hema Sahu, the petitioner in Writ Petition (Civil) No. 182 of 2013, also appeared in person and restated the views expressed by the other petitioners that the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as the “Beijing Rules”, recognized and noted the difference in the nature of offences committed by juveniles in conflict with law. Referring to the decision of this Court in the case commonly known as the “Bombay Blasts Case”, Ms. Sahu submitted that a juvenile who was tried and

convicted along with adults under the Terrorist and Disruptive Activities Act (TADA), was denied the protection of the Juvenile Justice (Care and Protection of Children) Act, 2000, on account of the serious nature of the offence. Ms. Sahu ended on the note that paragraph 4 of the 1989 Convention did not make any reference to age.

27. Appearing for the Union of India, the Additional Solicitor General, Mr. Siddharth Luthra, strongly opposed the submissions made on behalf of the Petitioners to either declare the entire Juvenile Justice (Care and Protection of Children) Act, 2000, as ultra vires the Constitution or parts thereof, such as Sections 2(k), 2(l), 15, 16, 17, 19 and 21. After referring to the aforesaid provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, the learned ASG submitted that Parliament consciously fixed eighteen years as the upper age limit for treating persons as juveniles and children, taking into consideration the general trend of legislation, not only internationally, but within the country as well.

28. The learned ASG submitted that the Juvenile Justice (Care and Protection of Children) Act, 2000, was enacted after years of deliberation and in conformity with international standards as laid down in the U.N. Convention on the Rights of the Child, 1989, the Beijing Rules, 1985, the Havana Rules and other international instruments for securing the best interests of the child with the primary object of social reintegration of child victims and children in conflict with law, without resorting to conventional judicial proceedings which existed for adult criminals. In the course of his submissions, the learned ASG submitted a chart of the various Indian statutes and the manner in which children have been excluded from liability under the said Acts upto the age of 18 years. In most of the said enactments, a juvenile/child has been referred to a person who is below 18 years of age. The learned ASG submitted that in pursuance of international obligations, the Union of India after due deliberation had taken a conscious policy decision to fix the age of a child/juvenile at the upper limit of 18 years. The learned ASG urged that the fixing of the age when a child ceases to be a child at 18 years is a matter of policy which could not be questioned in a court of law, unless the same could be shown to have violated any of the fundamental rights, and in particular Articles 14 and 21 of the Constitution. Referring to the decision of this Court in BALCO Employees Union Vs. Union of India [(2002) 2 SCC 333], the learned ASG submitted that at paragraph 46 of the said judgment it had been observed that it is neither within the domain of the Courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy was wise or whether something better could be evolved. It was further observed that the Courts were reluctant to strike

down a policy at the behest of a Petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. The learned ASG further urged that Article 15(3) of the Constitution empowers the State to enact special provisions for women and children, which reveals that the Juvenile Justice (Care and Protection of Children) Act, 2000, was in conformity with the provisions of the Constitution.

29. The learned ASG submitted that in various judgments, this Court and the High Courts had recognised the fact that juveniles were required to be treated differently from adults so as to give such children, who for some reason had gone astray, an opportunity to realize their mistakes and to rehabilitate themselves and rebuild their lives. Special mention was made with regard to the decision of this Court in Abuzar Hossain (supra) in this regard. The learned ASG also referred to the decision of this Court in State of Tamil Nadu Vs. K. Shyam Sunder [(2011) 8 SCC 737], wherein it had been observed that merely because the law causes hardships or sometimes results in adverse consequences, it cannot be held to be ultra vires the Constitution, nor can it be struck down. The learned ASG also submitted that it was now well-settled that reasonable classification is permissible so long as such classification has a rational nexus with the object sought to be achieved. This Court has always held that the presumption is always in favour of the constitutionality of an enactment, since it has to be assumed that the legislature understands and correctly appreciates the needs of its own people and its discriminations are based on adequate grounds.

30. Referring to the Reports of the National Crime Reports Bureau, learned ASG pointed out that the percentage of increase in the number of offences committed by juveniles was almost negligible and the general public perception in such matters was entirely erroneous. In fact, the learned ASG pointed out that even the Committee appointed to review the amendments to the criminal law, headed by former CJI, J.S. Verma, in its report submitted on 23rd January, 2013, did not recommend the reduction in the age of juveniles in conflict with law and has maintained it at 18 years. The learned ASG pointed out that the issue of reduction in the age of juveniles from 18 to 16 years, as it was in the Juveniles Justice Act of 1986, was also raised in the Lok Sabha on 19th March, 2013, during the discussion on the Criminal Law (Amendment) Bill, 2013, but was rejected by the House.

31. The learned ASG submitted that the occurrence of 16th December, 2012, involving the alleged gang rape of a 23 year old girl, should not be allowed to colour the decision taken to treat all persons below the age of 18 years, as children.

32. Mr. Anant Asthana, learned Advocate appearing for HAQ : Centre for Child Rights, submitted that the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006 and 2011, is a fairly progressive legislation, largely compliant with the Constitution of India and the minimum standards contained in the Beijing Rules. Mr. Asthana contended that the reason for incidents such as the 16th December, 2012, incident, was not on account of the provisions of the aforesaid Act, but on account of failure of the administration in implementing its provisions. Learned counsel submitted that all the Writ Petitions appeared to be based on two assumptions, namely, (i) that the age of 18 years for juveniles is set arbitrarily; and (ii) that by reducing the age for the purpose of defining a child in the aforesaid Act, criminality amongst children would reduce. Mr. Asthana submitted that such an approach was flawed as it had been incorrectly submitted that the age of 18 years to treat persons as children was set arbitrarily and that it is so difficult to comprehend the causes and the environment which brings children into delinquency. Mr. Asthana submitted that the answer lies in effective and sincere implementation of the different laws aimed at improving the conditions of children in need of care and protection and providing such protection to children at risk. Mr. Asthana urged that the objective with which the Juvenile Justice (Care and Protection of Children) Act, 2000, was enacted was not aimed at delivering retributive justice, but to allow a rehabilitative, reformation-oriented approach in addressing juvenile crimes. Learned counsel submitted that the apathy of the administration towards juveniles and the manner in which they are treated would be evident from the fact that by falsifying the age of juveniles, they were treated as adults and sent to jails, instead of being produced before the Juvenile Justice Board or even before the Child Welfare Committees to be dealt with in a manner provided by the Juvenile Justice (Care and Protection of Children) Act, 2000, for the treatment of juveniles.

33. Mr. Asthana submitted that even as recently as 26th April, 2013, the Government of India has adopted a new National Policy for Children, which not only recognises that a child is any person below the age of eighteen years, but also states that the policy was to guide and inform people of laws, policies, plans and programmes affecting children. Mr. Asthana urged that all actions and initiatives of the national, State and local Governments in all sectors must respect and uphold the principles and provisions of this policy and it would neither be appropriate nor possible for the Union of India to adopt a different approach in the matter. Mr. Asthana, who appears to have made an in-depth study of the matter, submitted that on the question of making the provisions in the Juvenile Justice (Care and

Protection of Children) Act, 2000, conform to the provisions of the Constitution and to allow the children of a specific age group to be treated as adults, it would be appropriate to take note of General Comment No.10 made by the U.N. Committee on the rights of the child on 25th April, 2007, which specifically dealt with the upper age limit for juveniles and it was reiterated that where it was a case of a child being in need of care and protection or in conflict with law, every person under the age of 18 years at the time of commission of the alleged offence must be treated in accordance with the Juvenile Justice Rules. Mr. Asthana submitted that any attempt to alter the upper limit of the age of a child from 18 to 16 years would have disastrous consequences and would set back the attempts made over the years to formulate a restorative and rehabilitative approach mainly for juveniles in conflict with law.

34. In Writ Petition (Civil) No.85 of 2013, a counter affidavit has been filed on behalf of the Ministry of Women and Child Development, Government of India, in which the submissions made by the ASG, Mr. Siddharth Luthra, were duly reflected. In paragraph I of the said affidavit, it has been pointed out that the Juvenile Justice (Care and Protection of Children) Act, 2000, provides for a wide range of reformative measures under Sections 15 and 16 for children in conflict with law – from simple warning to 3 years of institutionalisation in a Special Home. In exceptional cases, provision has also been made for the juvenile to be sent to a place of safety where intensive rehabilitation measures, such as counselling, psychiatric evaluation and treatment would be undertaken.

35. In Writ Petition (C) No.10 of 2013 filed by Shri Salil Bali, an application had been made by the Prayas Juvenile Aid Centre (JAC), a Society whose Founder and General Secretary, Shri Amod Kanth, was allowed to appear and address the Court in person. Mr. Amod Kanth claimed that he was a former member of the Indian Police Service and Chairperson of the Delhi Commission for the Protection of Child Rights and was also the founder General Secretary of the aforesaid organisation, which came into existence in 1998 as a special unit associated with the Missing Persons Squad of the Crime and Railway Branch of the Delhi Police of which Shri Amod Kanth was the in-charge Deputy Commissioner of Police. Mr. Amod Kanth submitted that Prayas was created in order to identify and support the missing and found persons, including girls, street migrants, homeless, working and delinquent children who did not have any support from any organisation in the Government or in the non-governmental organisation sector.

36. Mr. Kanth repeated and reiterated the submissions made by the learned ASG and Mr. Asthana and also highlighted the problems faced by children both in conflict with law and in need of care and protection. Mr. Kanth submitted that whatever was required to be done for the rehabilitation and restoration of juveniles to a normal existence has, to a large extent, been defeated since the various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules of 2007, were not being seriously implemented. Mr. Kanth urged that after the ratification by India of the United Nations Convention on the Rights of the Child on 11th December, 1992, serious thought was given to the enactment of the Juvenile Justice (Care and Protection of Children Act), 2000, which came to replace the Juvenile Justice Act, 1986. Taking a leaf out of Mr. Asthana's book, Mr. Kanth submitted that even after thirteen years of its existence, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, still remained unimplemented in major areas, which made it impossible for the provisions of the Act to be properly coordinated. Mr. Kanth submitted that one of the more important features of juvenile law was to provide a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the Act. Submitting that the Juvenile Justice (Care and Protection of Children) Act, 2000, was based on the provisions of the Indian Constitution, the United Nations Convention on the Rights of the Child, 1989, the Beijing Rules and the United Nations Rules for the Protection of the Juveniles Deprived of their Liberty, 1990, Mr. Kanth urged that the same was in perfect harmony with the provisions of the Constitution, but did not receive the attention it ought to have received while dealing with a section of the citizens of India comprising 42% of the country's population.

37. Various measures to deal with juveniles in conflict with law have been suggested by Mr. Kanth, which requires serious thought and avoidance of knee-jerk reactions to situations which could set a dangerous trend and affect millions of children in need of care and protection. Mr. Kanth submitted that any change in the law, as it now stands, resulting in the reduction of age to define a juvenile, will not only prove to be regressive, but would also adversely affect India's image as a champion of human rights.

38. Having regard to the serious nature of the issues raised before us, we have given serious thought to the submissions advanced on behalf of the respective parties and also those advanced on behalf of certain Non- Government Organizations and have also considered the relevant extracts from the Report of

Justice J.S. Verma Committee on "Amendments to the Criminal Law" and are convinced that the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006, and the Juvenile Justice (Care and Protection of Children) Rules, 2007, are based on sound principles recognized internationally and contained in the provisions of the Indian Constitution.

39. There is little doubt that the incident, which occurred on the night of 16th December, 2012, was not only gruesome, but almost maniacal in its content, wherein one juvenile, whose role is yet to be established, was involved, but such an incident, in comparison to the vast number of crimes occurring in India, makes it an aberration rather than the Rule. If what has come out from the reports of the Crimes Record Bureau, is true, then the number of crimes committed by juveniles comes to about 2% of the country's crime rate.

40. The learned ASG along with Mr. Asthana and Mr. Kanth, took us through the history of the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the Rules subsequently framed thereunder in 2007. There is a definite thought process, which went into the enactment of the aforesaid Act. In order to appreciate the submissions made on behalf of the respective parties in regard to the enactment of the aforesaid Act and the Rules, it may be appropriate to explore the background of the laws relating to child protection in India and in the rest of the world.

41. It cannot be questioned that children are amongst the most vulnerable sections in any society. They represent almost one-third of the world's population, and unless they are provided with proper opportunities, the opportunity of making them grow into responsible citizens of tomorrow will slip out of the hands of the present generation. International community has been alive to the problem for a long time. After the aftermath of the First World War, the League of Nations issued the Geneva Declaration of the Rights of the Child in 1924. Following the gross abuse and violence of human rights during the Second World War, which caused the death of millions of people, including children, the United Nations had been formed in 1945 and on 10th December, 1948 adopted and proclaimed the Universal Declaration of Human Rights. While Articles 1 and 7 of the Declaration proclaimed that all human beings are born free and equal in dignity and rights and are equal before the law, Article 25 of the Declaration specifically provides that motherhood and childhood would be entitled to special care and assistance. The growing consciousness of the world community was further evidenced by the Declaration of the Rights of the Child, which came to be proclaimed by the United

Nations on 20th November, 1959, in the best interests of the child. This was followed by the Beijing Rules of 1985, the Riyadh Guidelines of 1990, which specially provided guidelines for the prevention of juvenile delinquency, and the Havana Rules of 14th December, 1990. The said three sets of Rules intended that social policies should be evolved and applied to prevent juvenile delinquency, to establish a Juvenile Justice System for juveniles in conflict with law, to safeguard fundamental rights and to establish methods for social re- integration of young people who had suffered incarceration in prison or other corrective institutions. One of the other principles which was sought to be reiterated and adopted was that a juvenile should be dealt with for an offence in a manner which is different from an adult. The Beijing Rules indicated that efforts should be made by member countries to establish within their own national jurisdiction, a set of laws and rules specially applicable to juvenile offenders. It was stated that the age of criminal responsibility in legal systems that recognize the concept of the age of criminal responsibility for juveniles should not be fixed at too low an age-level, keeping in mind the emotional, mental and intellectual maturity of children.

42. Four years after the adoption of the Beijing Rules, the United Nations adopted the Convention on the Rights of the Child vide the Resolution of the General Assembly No. 44/25 dated 20th November, 1989, which came into force on 2nd September, 1990. India is not only a signatory to the said Convention, but has also ratified the same on 11th December, 1992. The said Convention sowed the seeds of the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000, by the Indian Parliament.

43. India developed its own jurisprudence relating to children and the recognition of their rights. With the adoption of the Constitution on 26th November 1949, constitutional safeguards, as far as weaker sections of the society, including children, were provided for. The Constitution has guaranteed several rights to children, such as equality before the law, free and compulsory primary education to children between the age group of six to fourteen years, prohibition of trafficking and forced labour of children and prohibition of employment of children below the age of fourteen years in factories, mines or hazardous occupations. The Constitution enables the State Governments to make special provisions for children. To prevent female foeticide, the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act was enacted in 1994. One of the latest enactments by Parliament is the Protection of Children from Sexual Offences Act, 2012.

44. The Juvenile Justice (Care and Protection of Children) Act, 2000, is in tune with the provisions of the Constitution and the various Declarations and Conventions adopted by the world community represented by the United Nations. The basis of fixing of the age till when a person could be treated as a child at eighteen years in the Juvenile Justice (Care and Protection of Children) Act, 2000, was Article 1 of the Convention of the Rights of the Child, as was brought to our notice during the hearing. Of course, it has been submitted by Dr. Kishor that the description in Article 1 of the Convention was a contradiction in terms. While generally treating eighteen to be the age till which a person could be treated to be a child, it also indicates that the same was variable where national laws recognize the age of majority earlier. In this regard, one of the other considerations which weighed with the legislation in fixing the age of understanding at eighteen years is on account of the scientific data that indicates that the brain continues to develop and the growth of a child continues till he reaches at least the age of eighteen years and that it is at that point of time that he can be held fully responsible for his actions. Along with physical growth, mental growth is equally important, in assessing the maturity of a person below the age of eighteen years. In this connection, reference may be made to the chart provided by Mr. Kanth, wherein the various laws relating to children generally recognize eighteen years to be the age for reckoning a person as a juvenile/ child including criminal offences.

45. In any event, in the absence of any proper data, it would not be wise on our part to deviate from the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, which represent the collective wisdom of Parliament. It may not be out of place to mention that in the Juvenile Justice Act, 1986, male children above the age of sixteen years were considered to be adults, whereas girl children were treated as adults on attaining the age of eighteen years. In the Juvenile Justice (Care and Protection of Children) Act, 2000, a conscious decision was taken by Parliament to raise the age of male juveniles/children to eighteen years.

46. In recent years, there has been a spurt in criminal activities by adults, but not so by juveniles, as the materials produced before us show. The age limit which was raised from sixteen to eighteen years in the Juvenile Justice (Care and Protection of Children) Act, 2000, is a decision which was taken by the Government, which is strongly in favour of retaining Sections 2(k) and 2(l) in the manner in which it exists in the Statute Book.

47. One misunderstanding of the law relating to the sentencing of juveniles, needs to be corrected. The general understanding of a sentence that can be awarded to a

juvenile under Section 15(1)(g) of the Juvenile Justice (Care and Protection of Children) Act, 2000, prior to its amendment in 2006, is that after attaining the age of eighteen years, a juvenile who is found guilty of a heinous offence is allowed to go free. Section 15(1)(g), as it stood before the amendment came into effect from 22nd August, 2006, reads as follows:

> "15(1)(g) make an order directing the juvenile to be sent to a special home for a period of three years:
>
> (i) in case of juvenile, over seventeen years but less than eighteen years of age, for a period of not less than two years;
>
> (ii) in case of any other juvenile for the period until he ceases to be a juvenile:
>
> Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit."
>
> It was generally perceived that a juvenile was free to go, even if he had committed a heinous crime, when he ceased to be a juvenile.
>
> The said understanding needs to be clarified on account of the amendment which came into force with effect from 22.8.2006, as a result whereof Section 15(1)(g) now reads as follows:
>
> "Make an order directing the juvenile to be sent to a special home for a period of three years:
>
> Provided that the Board may if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded reduce the period of stay to such period as it thinks fit."
>
> The aforesaid amendment now makes it clear that even if a juvenile attains the age of eighteen years within a period of one year he would still have to undergo a sentence of three years, which could spill beyond the period of one year when he attained majority.

48. There is yet another consideration which appears to have weighed with the worldwide community, including India, to retain eighteen as the upper limit to which persons could be treated as children. In the Bill brought in Parliament for enactment of the Juvenile Justice (Care and Protection of Children) Act of 2000, it has been indicated that the same was being introduced to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to and disposition of delinquent juveniles. The essence of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the Rules framed thereunder in 2007, is restorative and not retributive, providing for rehabilitation and re- integration of children in conflict with law into mainstream society. The age of eighteen has been fixed on account of the understanding of experts in child psychology and behavioural patterns that till such an age the children in conflict with law could still be redeemed and restored to mainstream society, instead of becoming hardened criminals in future. There are, of course, exceptions where a child in the age group of sixteen to eighteen may have developed criminal propensities, which would make it virtually impossible for him/her to be re-integrated into mainstream society, but such examples are not of such proportions as to warrant any change in thinking, since it is probably better to try and re-integrate children with criminal propensities into mainstream society, rather than to allow them to develop into hardened criminals, which does not augur well for the future.

49. This being the understanding of the Government behind the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the amendments effected thereto in 2006, together with the Rules framed thereunder in 2007, and the data available with regard to the commission of heinous offences by children, within the meaning of Sections 2(k) and 2(l) of the Juvenile Justice (Care and Protection of Children) Act, 2000, we do not think that any interference is necessary with the provisions of the Statute till such time as sufficient data is available to warrant any change in the provisions of the aforesaid Act and the Rules. On the other hand, the implementation of the various enactments relating to children, would possibly yield better results.

50. The Writ Petitions and the Transferred Case are, therefore, dismissed, with the aforesaid observations. There shall, however, be no order as to costs.