SECTION - II

INTEGRATED CHILD PROTECTION SCHEMES

MEMORANDUM OF UNDERSTANDING

1. THIS MEMORANDUM OF UNDERSTANDING (MOU) is made on this 1st day of February, 2011 between the President of India, acting through Ms. Preeti Madan, Joint Secretary, Ministry of Women and Child Development, Government of India (hereinafter called "THE FIRST PARTY" which expression shall unless repugnant to the context or meaning thereof, include its successor in interest and permitted assigns) of the one part and the Governor of the State of Jharkhand through Shri Rajeev Arun Ekka, Secretary, Department of Social Welfare, Women & Child Development, Government of Jharkhand (hereinafter called "THE SECOND PARTY" which expression shall unless repugnant to the context or meaning thereof, includes its successor in Interest and permitted assigns) of the other part.

2. WHEREAS, it has been the concern of the FIRST PARTY that the Constitution of India recognizes the vulnerable position of children and their Right to Protection, WHEREAS, the FIRST PARTY is committed to ensure a safe and secure environment for all children for their all round and healthy development, and WHEREAS in pursuance of the aforementioned commitments the FIRST PARTY has launched a centrally sponsored scheme called 'Integrated Child Protection Scheme (ICPS)'.

3. THE PARTIES HEREBY AGREE AS FOLLOWS:

   3.1 On behalf of the FIRST PARTY, the Joint Secretary of the Ministry of Women and Child Development will be the Nodal Officer and on behalf of SECOND PARTY, the Secretary to the State Government of Jharkhand, dealing with child protection/welfare matters will be the Nodal Officer, for effective implementation & monitoring of CPS.

   3.2 THE FIRST PARTY wilt provide funds for the implementation of ICPS to the SECOND PARTY in accordance with the cost sharing ratio laid down in para 3.9 of this MOU.

   3.3 The FIRST PARTY will set up a Central Project Support Unit (CPSU) et Delhi and will provide 100% financial support to the State Government in setting up of the State Project Support Units (SPSUs) in ins State signing this MOD. The CPSU and SPSU will function as "Mission Directorates* headed by Mission Directors.

   3.4 The SECOND PARTY will be primarily responsible for the effective implementation and monitoring the schemes in the State.

   3.5 The SECOND PARTY will assess the requirements of child protection services in the State under ICPS and accordingly make timely budgetary provisions in the State Budget The SECOND PARTY will, at the time of making a request for release of installment, furnish a 'Utilization Certificate" of the total amount, i.e., Central and State share, of the previous Installment in prescribed format and will certify its "State Matching Share" In line with the provisions laid down In para 3.9 of this MOU.

   3.6 The SECOND PARTY will implement the existing projects/institutions under the scheme that have been brought under ICPS namely (i) Integrated Programme for Street Children; (I) A Programme for Juvenile Justice; and (Hi) Scheme of Assistance to Homes for Children (Shishu Greh) to Promote In-country Adoption as per the ICPS norms.

   3.7.1 The SECOND PARTY will develop an Implementation Schedule so as to ensure mat the following structures are set up within a period of three months from the date of signing of this MOU:

      (a) State Child Protection Society;

      (b) State Adoption Resource Agency;

(c) Juvenile Justice Boards In each district;

(d) Child Welfare Committees In each district; and

(e) Special Juvenile Police Units in each district and designate a Child Welfare Officer in each police station.

3.7.2 And the fallowing structures are set up within a period of six months from the date of signing of this MOU:

(a) District Child Protection Society in each district;

(b) Specialized Adoption Agency in each district;

(c) Adoption Coordinating Agency.

3.8 The SECOND PARTY will establish and maintain all institutions either by itself or in association with voluntary organisations as per the provisions law down under the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006.

3.9 The FIRST PARTY and the SECOND PARTY will jointly share the expenditure for various components as laid down in the scheme document in the following ratios:

(a) 100 per cent funding by the FIRST PARTY to all structural mechanisms and services under the Government of India like Child Protection Division in National Institution of Public Cooperation & its Regional Centres, Central Adoption Resource Agency, Childline Service, Central Project Support Unit and State Project Support Unit;

(b) 90:10 for all components for ail the States of the North East and Jammu & Kashmir;

(c) 90:10 for all components with NGO participation;

(d) 75:25 for all components in the States except the North East and Jammu & Kashmir, Juvenile Justice Boards (JJBs), Child Welfare Committees (CWCs) and NGO run projects;

(e) 35:65 for the JJBs and CWCs for States other than North East and Jammu & Kashmir.

3.10 The Central share of funds under ICPS will be released to the State Government/ UT Administration and through them to the State Child Protection Society, In two installments every year.

3.11 The SECOND PARTY will transfer both, their share of funds and the share of the FIRST PARTY, to the Bank Account of the State Child Protection Society. The State Child Promotion Society will, in turn, release funds to the District Child Protection Societies and voluntary organizations as laid down in ICPS.

3.12 Any unutilized funds released to the SECOND PARTY will be returned to the FIRST PARTY.

3.13 All disagreements/difference of opinions/disputes regarding the interpretation of the provisions of this MOU shall be resolved by mutual consultation by the signatories.

3.14 Through the MOU, both parties affirm their commitment to the children of India and agree to Implement and carry out all the activities under ICPS,

4. Signed at New Delhi on this 1st day of February, 2011.

For and on behalf of the Governor State Government of Jharkhand	For and on behalf of the President of India
Sd/- **(Shri Rajeev Arun Ekka) Secretary, Department of Social Welfare, Women & Child Development, Government of Jharkhand**	**Sd/-** **(Ms. Preeti Madan) Joint Secretary, Ministry of Women and Child Development, Government of India**

❑❑❑

MOST IMMEDIATE

सुधीर कुमार
SUDHIR KUMAR
अपर सचिव
Additional Secretary
Tel. : 011-23386227
Fax : 011-23381800
E-mail : sudhirkumar55@nic.in

सत्यमेव जयते

D.O.No. 1-4/2011-CW.II

भारत सरकार
महिला एवं बाल विकास मंत्रालय
शास्त्री भवन, नई दिल्ली – 110001
Government of India
Ministry of Women & Child Development
Shastri Bhawan, New Delhi-110001
Website : http://www.wcd.nic.in

dated the 12th April, 2012

Dear

Kindly refer to d.o. letter of even number dated 14th March, 2012 from Secretary, Ministry of Women & Child Development regarding registration of Child Care Institutions (CCIs) under the Juvenile Justice (Care and Protection of Children) Act, 2000. Recently, a few incidences of abuse of children in Homes, which are already registered by the State Governments, have been brought to our notice. On further enquiry, it is learnt that Inspection Committees, as provided under Section 35 of JJ Act, have either not been formed in such States or the frequency of their inspections is not adequate. The Model Rules under the Act prescribe quarterly inspection by the Committee.

2. I would like to bring to your notice the various provisions regarding monitoring of Home under the JJ Act and Rules which, inter-alia, include quarterly inspections by the Inspection Committees, duly appointed by a Selection Committee under Rule 91 of the Model Rules; monthly meetings of Management Committees constituted under Rules 55 of Model Rules; constitution of Children Committees under rule 56 and quarterly inspections by Members of Child Welfare Committees (CWCs). I am enclosing extracts of such provisions under the Act and Central Model Rules for ready reference.

3. May I request you that, in the interest of well being of the children in the Homes, these structures and processes are immediately put in place and concerned officials sensitised to their responsibilities so that proper monitoring and feedback is ensured in the Homes in your State

With regards.

Yours sincerely,

(Sudhir Kumar)

Encl. as above.

Chief Secretaries/Administrators of States/UTs except J&K

By Speed Post
with enc.
13/4/12.

Provisions in JJ Act for Monitoring of Homes

(a) Section 34 (3) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act) provides for **mandatory registration of all Child Care Institution** (CCI) housing children in need of cars and protection with the intent of enforcing minimum standards of care for the services provided for children in these Homes.

(b) **Section 35** of the JJ Act provides appointment of the **inspection committees** by the State Governments for the State, a district and city, as the case may be, for the Children's Homes. The Committee is required to have representatives from the State Government, Child Welfare Committee, voluntary organisations as well as medical experts and social workers.

Rules 60 provides for constitution of inspection committee on recommendation of selection committee under Rule 91. The Inspection Committee (not less than 3 members together) **is required to visit every institution once in 3 months**, either with **prior Intimation or on surprise visit** it is to oversee the conditions in the Homes and appropriateness of the processes for safety, well-being, standards of care for children and also look out for cases of child rights violation.

Reports are to be submitted to state governments and DCPU.

So far inspection committees have been constituted by 15 State/UTs, namely, Andaman & Nicobar Islands, Arunachal Pradesh, Bihar, Chandigarh, Chhatisgarh, Oelhi, Goa, Haryana, Karnataka. Kerala, Madhya Pradesh, Mizoram, Nagaland, Punjab and Sikkim.

(c) **Section 36** of the JJ Act provides for Social Audit under the Act for monitoring and evaluation of institutions. Rule 68 provides for annual monitoring and evaluation by Central or State Government of the Implementation of the Act, including, interalia, functioning of institutions. Social Audit is to be done with support and involvement of organisations working in this field of mental health, child care and protection NIPCCD, ICCW, CIF, SSWBs, Schools of Social Work and Schools of Law.

(d) **Chapter VI** of the Model Rules framed under the JJ Act provides **minimum standards of care** to be maintained in the Homes including physical infrastructure; staff; daily need of the child Including food; clothing; medicines; education; vocational training; management of individual case file; provision of Inspection Committee and Children Committee etc.

(e) **Rule 60** of the Model Rules framed under the JJ Act also prescribes comprehensive measures to respond in case of any kind of abuse, including sexual abuse, neglect and maltreatment is noticed in the CCI.

(f) **Rule 25 (p)** of the Model Rules framed under the JJ Act provides that Child Welfare Committee shall visit each institution where children are sent for care and protection or adoption at least once in three months to review the condition of children in institutions, with support of the State Government and suggest necessary action.

(g) **Rule 55** of the provides for setting up of a Management Committee for every institution for the management of the institution and monitoring the progress of every juvenile and child. The Management Committee is required to consist of the following personnel:

District Child Protection Officer (District Child Protection Unit)
Chairperson

(If DCPU not constituted, District Magistrate or Collector or his nominee)

Officer-in-charge - Member-Secretary

Probation Officer or Child Welfares Officer nr Case. Worker - Member

Medical Officer	- Member
Psychologist or Counsellor	- Member
Workshop Supervisor or Instructor in Vocation	- Member
Teacher	- Member
Social Worker Member of Juvenile Justice Board or Child Welfare Committee	- Member
A juvenile or child representatives from each of the Children's Committees (on a monthly rotation basis to ensure representation of juveniles or children from all program	- Member
Representatives from voluntary organizations involved in providing professional and technical services like education, vocations: training, psychosocial care, mental health intervention and legal aid	- Special invitee

The Management Committee shall meet every month to consider and review inter alia the facilities in the Home, individual problems of juveniles and children, provision of legal aid services, vocational training, education and life skills development programmes, review of progress, adjustment and modification of residential programmes to the needs of the juveniles and children etc.

(h) **Rule 56** of the Model Rules provides for facilitation of setting up of Children's Committees in every institution by the Officer-in-Charge for three different age groups of 6-10 years, 11-15 years and 16-18 years. Such Committee is required to meet every month and encouraged to participate in following activities:

(a) improvement of the condition of the institution;

(b) reviewing the standards of care being followed;

(c) preparing daily routine and diet scale;

(d) developing educational, vocational and recreation plans;

(e) supporting each other in managing crisis;

(f) reporting abuse and exploitation by peers and caregivers;

(g) creative expression of their views through wall papers or newsletters or paintings or music or theater;

(h) management of institution through the Management Committee,

The Officer-in-Charge shall ensure that the Children's Committees maintain a register for recording the activities and proceedings, and place it before the Management Committee in their monthly meetings.

The Management Committee shall seek a report from the Officer-in-Charge on the setting up and functioning of the Children's Committees, review these reports in their monthly meetings and take necessary action where required.

(If Rule 55 (7) of the Model Rules provides for setting up of a complaint and redress mechanism in every institution and a Children's Suggestion Box is required to as installed in every institution at a place easily accessible to juveniles and children away from its office set up and closer to the residence of rooms or demoties of the children. They the Suggestion Box shall remain in the custody of the Chairperson of the Management Committee and shall

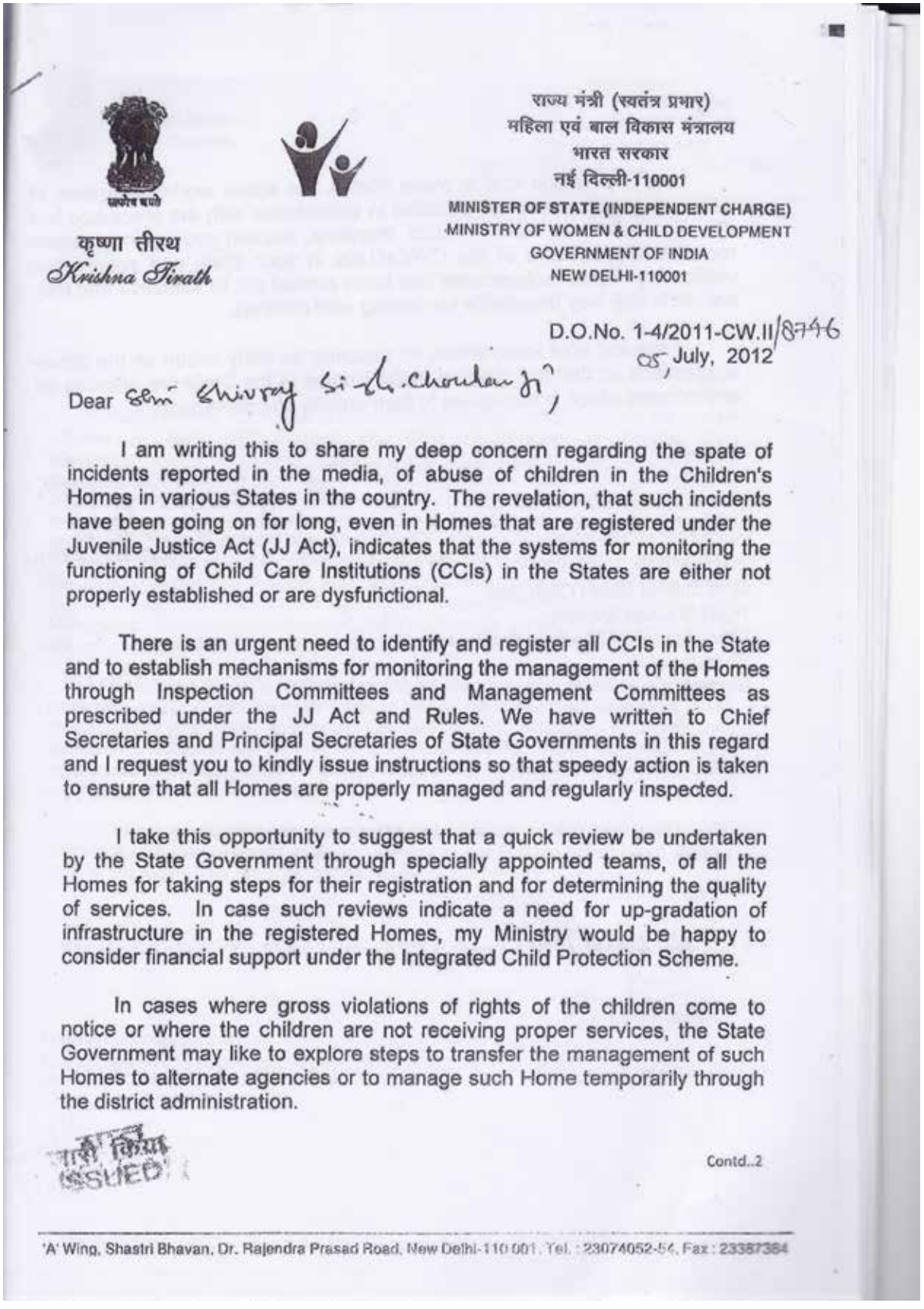
be checked every week by the him or his representative from District Child Protection Unit in the presence of the members of the Children's Commities.

If there is a problem or suggestion that requires immediate attention, the Chairperson of the Management Committee shall call for an emergency meeting of the Management Committee to discuss and take necessary action. The quorum for conducting the emergency meetings shall be five members, including two members of Children's Committees, Chairperson of the Management Committee, Member of Committee or the Board as the case may be and the Officer-in-Charge of the institution.

In the event of a serious allegation or complaint against the Officer-in-Charge of the institution, ha shall not be part of the emergency meeting and another available member of the Management Committee shall be included in his place.

All suggestions received through the suggestion box and action taken as a result of the decisions made in the emergency meeting or action required to be taken are required to be placed for discussion and review in tie monthly meeting of the Management Committee.

(j) The Rules also provide for a Children's Suggestion Book to be maintained in every institution where the complaints and action taken by the Management Committee are duly recorded and such action and follow up shall be communicated to the Children's Committees after every monthly meeting of the Management Committee. The Board or Committee is required to review the Children's Suggestion Book at least once in three months.



राज्य मंत्री (स्वतंत्र प्रभार)
महिला एवं बाल विकास मंत्रालय
भारत सरकार
नई दिल्ली-110001

MINISTER OF STATE (INDEPENDENT CHARGE)
MINISTRY OF WOMEN & CHILD DEVELOPMENT
GOVERNMENT OF INDIA
NEW DELHI-110001

कृष्णा तीरथ
Krishna Tirath

D.O.No. 1-4/2011-CW.II/8746
05 July, 2012

Dear Shri Shivraj Singh Chouhan ji,

I am writing this to share my deep concern regarding the spate of incidents reported in the media, of abuse of children in the Children's Homes in various States in the country. The revelation, that such incidents have been going on for long, even in Homes that are registered under the Juvenile Justice Act (JJ Act), indicates that the systems for monitoring the functioning of Child Care Institutions (CCIs) in the States are either not properly established or are dysfunctional.

There is an urgent need to identify and register all CCIs in the State and to establish mechanisms for monitoring the management of the Homes through Inspection Committees and Management Committees as prescribed under the JJ Act and Rules. We have written to Chief Secretaries and Principal Secretaries of State Governments in this regard and I request you to kindly issue instructions so that speedy action is taken to ensure that all Homes are properly managed and regularly inspected.

I take this opportunity to suggest that a quick review be undertaken by the State Government through specially appointed teams, of all the Homes for taking steps for their registration and for determining the quality of services. In case such reviews indicate a need for up-gradation of infrastructure in the registered Homes, my Ministry would be happy to consider financial support under the Integrated Child Protection Scheme.

In cases where gross violations of rights of the children come to notice or where the children are not receiving proper services, the State Government may like to explore steps to transfer the management of such Homes to alternate agencies or to manage such Home temporarily through the district administration.

जारी किया
ISSUED

Contd..2

'A' Wing, Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi-110 001. Tel. : 23074052-54, Fax : 23387384

It is understood that in many States, the social worker Members of JJBs/CWCs have not been selected in accordance with the procedure laid down in JJ Act and Rules. I would, therefore, request you to kindly review recruitment procedure of the CWCs/JJBs in your State and ensure that verification of their antecedents has been carried out to establish that they are not in any way unsuitable for dealing with children.

I request your intervention for ensuring an early action on the above suggestions so that the children in the Homes in the State are afforded an environment which is conducive to their growth and development.

With Regards,

Yours sincerely,

(Krishna Tirath)

Shri Shivraj Singh Chouhan
Hon'ble Chief Minister,
Government of Madhya Pradesh,
Secretariat,
Bhopal

To,
All States / UTs.

Preeti Madan
Joint Secretary

भारत सरकार
महिला एवं बाल विकास मंत्रालय
शास्त्री भवन, नई दिल्ली-110 001
GOVERNMENT OF INDIA
MINISTRY OF WOMEN & CHILD DEVELOPMENT
SHASTRI BHAWAN
NEW DELHI-110 001 (INDIA)
Ph. : 91-11-2338-9434
Fax : 91-11-23070272
E-mail : preetim@nic.in

D.O. No.1-4/2011-CW.II

Dated: 7th November, 2012

Dear

Please refer to D.O. letter of even number dated 5th July, 2012 from the Hon'ble Minister of State (IC), Women and Child Development to Hon'ble Chief Minister/Administration of your State/UT regarding registration of all Child Care Institutions (CCIs) under the Juvenile Justice (Care and Protection of Children) Act, 2000 (copy enclosed). In this regard, I would like to reiterate that with a view to ensure that children in all the Homes receive the best of care, and are not subjected to abuse and neglect, it is imperative that all the homes running in your State which house children in need of care and protection, be immediately identified and registered under the Juvenile Justice Act. Further, there is also an urgent need to establish mechanism for monitoring the management of Homes through Inspection Committee and Management Committee as prescribed under the Juvenile Justice Act and Rules so that interest of children in Homes is better safeguarded.

I would also like to draw your attention towards the issue raised by the Hon'ble MOS (IC), WCD in the aforesaid letter to review the recruitment procedure of the CWCs/JJBs in your State and ensure that verification of their antecedents has been carried out to establish that they are not in any unsuitable for dealing with children. It is again requested that expeditious action is required to be taken on this issue so that the fate of children in difficult circumstances is further not jeopardized.

I, therefore, would like to reiterate the request made by the Hon'ble MOS (IC), WCD in the above-mentioned letter and further request that the action taken by your State in this regard may kindly be communicated to this Ministry.

Yours sincerely,

(Preeti Madan)

Principal Secretary/Secretary
Women and Child Development Department/Social Welfare Department
(All States Governments/UTs Administration)

Preeti Madan
Joint Secretary

भारत सरकार
महिला एवं बाल विकास मंत्रालय
शास्त्री भवन, नई दिल्ली-110 001
GOVERNMENT OF INDIA
MINISTRY OF WOMEN & CHILD DEVELOPMENT
SHASTRI BHAWAN
NEW DELHI-110 001 (INDIA)
Ph. : 91-11-2338-9434
Fax : 91-11-23070272
E-mail : preetim@nic.in

D.O. No.1-4/2011-CW.II (pt)

Dated: 8th April, 2013

Dear

Kindly refer to D.O. of even number dated 5th July, 2012 from Hon'ble Minister for Women & Child Development, Government of India and subsequent reminder dated 7th November, 2012 regarding registration of Child Care Institutions (CCIs) under the Juvenile Justice (Care and Protection of Children) Act, 2000 (Copy enclosed). I would like to bring to your notice that a response from your State/UT regarding compliance of the above issue is still awaited in this Ministry.

I would also like to reiterate that there is an urgent need to identify and register all CCIs in the State and to establish mechanisms for monitoring the management of the Homes through Inspection Committees and Management Committees as prescribed under the Juvenile Justice Act and Rules.

Further, as you may be aware already, the Hon'ble Supreme Court of India vide order dated 7th February, 2013 in Writ Petition (CRL) No.102 of 2007 in the matter of EXPLOI. Of CHILN. IN J ORPH. IN ST. of T.N. V/s Union of India & Ors has directed that all these institutions are required to be registered under various provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000."

I, therefore, request your intervention for ensuring an early action on the above issues so that the children in the State are afforded an environment which is conducive to their growth and development. Action taken in the matter may please be intimated to this Ministry, at the earliest.

With regards.

Yours sincerely,

(Preeti Madan)

Encl: As above.

Principal Secretary/Secretary
Women and Child Development Department/Social Welfare Department of Andhra Pradesh, Assam, Bihar, Chhattisgarh, Daman & Diu, Dadra & Nagar Haveli, Goa, Jammu and Kashmir, Jharkhand, Kerala, Lakshadweep, Manipur, Meghalaya, Nagaland, Orissa, Puducherry, Sikkim, Uttar Pradesh, Uttarakhand, West Bengal

No. 14-3/2013-CW-II
Government of India
Ministry of Women and Child Development
****

Shastri Bhawan, New Delhi – 1,
Dated: 16th June, 2015

To

The Pay & Account Officer,
Ministry of Women and Child Development
Shastri Bhavan,
New Delhi.

Subject: **Central share of First Instalment of grants-in-aid to the States (other than North Eastern States and J&K) under the scheme namely 'Integrated Child Protection Scheme' (ICPS) for the current financial year of 2015-16.**

Sir,

I am directed to convey the sanction of the President of India to the grants-in-aid of **Rs. 79,59,23,000/- [Rupees Seventy Nine Crores Fifty Nine Lakhs and Twenty Three Thousand only]** as Central share of first instalment for grants-in-aid during current financial year 2015-16 under the Centrally Sponsored Scheme, namely, "**Integrated Child Protection Scheme**" to the States as per details given below:

1	2	3	4
S. No.	Name of the State/UT	Total Entitlement as per PAB approval (recurring grant) for 2014-15 (Rs. In Lakhs)	Net Grant to be released (20.07% of Col. 3) (Rs. In Lakhs)
1	Andhra Pradesh	1206.50	238.58
2	Bihar	1850.68	371.62
3	Chattisgarh	1578.63	316.99
4	Goa	274.66	55.15
5	Gujarat	2363.32	474.55
6	Haryana	1830.73	367.61
7	Himachal Pradesh	751.28	150.86
8	Jharkhand	1036.71	208.17
9	Karnataka	4209.37	845.24
10	Kerala	1088.00	218.47
11	Madhya Pradesh	1655.66	332.46
12	Maharashtra	3392.96	681.31
13	Orissa	2584.88	519.04
14	Punjab	674.59	135.46
15	Rajasthan	4124.17	828.13
16	Tamil Nadu	4108.75	825.04
17	Uttar Pradesh	2371.98	476.29
18	Uttarakhand	252.55	50.71
19	West Bengal	2533.23	508.67
20	Telangana	1767.33	354.88
	Total	**39655.98**	**7959.23**

Contd...

(नवीन यादव/NAVEEN YADAV)
अवर सचिव/Under Secretary
महिला एवं बाल विकास मन्त्रालय
Ministry of Women & Child Dev.
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

2. The above-mentioned grant is subject to the under mentioned conditions:-

[i] The release of 1st instalment of recurring grant for the financial year 2015-16, for all existing components/projects under ICPS, to all State Governments who have received grants under ICPS in 2014-15 as per **the directions of Secretary (WCD)**. This release is on ad hoc basis for the financial year 2015-16.

[ii] The grant being released as 1st Instalment during 2015-16, is 20.07% of the central share of recurring grant for each component under ICPS except SPSU, which ceased to function from 1st April, 2015 as mentioned in the sanction letter issued during 2014-15 to each State Governments as listed at Para1(Table) above. Further, the funds being released need to be utilized component-wise only as per the central share mentioned in the sanction letter issued for e.g. the 20.07% of recurring grant being released for SCPS should only be utilized for SCPS component and not for any other component.

[iii] The 2nd and final Instalment will be approved subject to the consideration of financial proposal by the PAB, submission of statement of expenditure by the State for financial year 2014-15 and the grant being released now as first instalment for 2015-16, and approval thereon. Also, any new project/component will be considered in the PAB at the time of release of 2nd instalment of the current year. The State Governments will maintain separate records of expenditure incurred for implementation of ICPS and furnish Utilization Certificate along with Statement of Expenditure for financial year 2014-15 and the 1st Instalment of 2015-16 along with the Implementation Report.

[iv] The State Governments/UT Administrations shall reflect the amount in the audited statement of accounts together with the necessary Utilization Certificate and Statement of Expenditure in respect of the above grants and submit the same to this Ministry immediately after the close of the current financial year 2015-16.

[v] It is certified that Rule 209(6)(iii) of GFR, have kept in view at the time of releasing Grant to the State Government.

[vi] The accounts of all grantee Institutions or Organisations shall be open to inspection by the sanctioning authority and audit, both by the Comptroller and Auditor General of India under the provision of CAG(DPC) Act 1971 and internal audit by the Principal Accounts Office of the Ministry or Department, whenever the Institution or Organisation is called upon to do so.

[vii] It is certified that 'Rule 212(5) is not applicable to this grant.

[viii] It is certified that all the principles of Rule 215(2) of GFR have been kept in view at the time of releasing Grant to the State Government.

3. The amount of grant-in-aid is finally adjustable in the books of the Principal Pay and Accounts Officer, Ministry of Women and Child Development, D-Wing, Ground Floor, Shastri Bhawan, New Delhi. **The payment of the State Governments would be arranged through CAS, Reserve Bank of India, Nagpur**. The State Accountant Generals will send intimation regarding receipt of grant-in-aid to the Principal Pay & Accounts Office, Ministry of Women and Child Development, D-Wing, Ground Floor, Shastri Bhawan, New Delhi.

Contd...

(नवीन यादव/NAVEEN YADAV)
अवर सचिव/Under Secretary
महिला एवं बाल विकास मन्त्रालय
Ministry of Women & Child Dev.
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

: 3 :

4. The expenditure involved is debitable to Major Head 3601; Grants-in-aid to State Government; 02-Grants for Centrally Sponsored Plan Schemes; 358-Social Welfare – Child Welfare; 01-Integrated Child Protection Scheme[ICPS]; 01.00.31-Grants-in-aid; Demand No.**108,** Ministry of Women and Child Development for the year 2015-16 (Plan).

5. This issues with the concurrence of **IF Division** of this Ministry vide their **Dy. No.JS&FA/413/WCD dated 08.06.2015.**

6. Entry has been made in the Grants-in-aid Register at **Serial No. 10.**

Yours faithfully,

(Naveen Yadav)
Under Secretary to the Government of India

(नवीन यादव/NAVEEN YADAV)
अवर सचिव/Under Secretary
महिला एवं बाल विकास मन्त्रालय
Ministry of Women & Child Dev.
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Copy forwarded to:

1. The Principal Secretary, dealing with ICPS for the State Governments as listed at para 1 (table) above.
2. The Secretary, Department of Finance, State Governments as listed at para 1 (table) above.
3. The Director, dealing with ICPS for the State Governments as listed at para 1 (table) above.
4. The Accountant Generals, for the State Governments as listed at para 1 (table) above.
5. Reserve Bank of India, Nagpur Branch, Nagpur.
6. The Ministry of Finance (Department of Expenditure), Plan Finance Division, North Block, New Delhi.
7. The Director of Audit, Central Revenues, AGCR Building, IP Estate, New Delhi.

8-13. PS to MOS (WCD)/PS to Secretary (WCD)/PS to Joint Secretary (VJ)/ US (Budget)/ DDO (Cash), WCD/Director-NIC for uploading on website of WCD.

14. Guard file/Section Folder.

(Naveen Yadav)
Under Secretary to the Government of India

(नवीन यादव/NAVEEN YADAV)
अवर सचिव/Under Secretary
महिला एवं बाल विकास मन्त्रालय
Ministry of Women & Child Dev.
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Guidelines For Sponsorship for Children under ICPS

1. Introduction/Preamble:

These guidelines are based on the Juvenile Justice (Care and Protection) Act 2000 Amendment 2006, Integrated Child Protection Scheme, UN Guidelines for Alternative Care 2009 and on the UN Convention on the Rights of the Child. These guidelines have been formulated by the Ministry of Women and Child Development after series of consultations with key stakeholders, NGOs working on the issues, experts, academicians and officials from various states.

In all Sponsorship procedures, the best interests of the child shall be the paramount consideration. The Fundamental principle behind these guidelines is every child's right to grow up in a family.

In accordance with the child's age and level of development, he/she has the right to be consulted and to have his/her opinion taken into account in any matter or procedure affecting him/her.

In all Sponsorship procedures it is important that the highest possible standards of practice are followed, within accepted principles. These guidelines, which incorporate the best of practice and principles, can be helpful in achieving this.

What is Sponsorship?

In the context of these guidelines, sponsorship is the provision of supplementary support to families to meet medical, nutritional, educational and other needs of their children with a view to improving their quality of life. It is a conditional assistance to enable children who were at risk from being removed from school and sent for work, to continue their education.

Types of Sponsorship

- **REHABILITATIVE-** Children placed into institutions by families as a poverty coping measure to reunite them with their families
- **PREVENTIVE –** Support to families living in extreme conditions of deprivation or exploitation to enable the child to remain in his/her family

2. Focus of the Scheme

To begin with the scheme will focus on deinstitutionalisation of children already residing in child care institutions. Hence, in the first phase of the implementation of the Integrated Child Protection Scheme, ICPS will give priority to Family based sponsorship for institutionalized children, who have either both or at least one parent alive, in order to facilitate their re -unification with their biological family.

3. Criteria for Selection of Children:

a) Children, of the age of 0 to18 years

b) Children staying in child care institutions for more than six months continuously, who can be restored to their families, with financial support

c) The total income of the family should not be more than Rs. 24,000 per year.

d) Priority shall be given to:

- Children of a single mother/widow
- Children of Leprosy patients/HIV infected parent
- Children whose parent/bread earner is in jail

4. Financial Norms

- Rs. 1000 per child per month for maximum 2 children per family
- The ratio between Centre and State Government will be 75:25 as mentioned under the ICPS budget.
- Duration - Maximum three years or up to 18 years, whichever is earlier – other than exceptional circumstances.

5. Process of Approval

i) Role of CCI/SAA

In case of children within institutions the first steps are to be taken by the Child Care Institutions (CCI) as below:

Preparation of Individual Care Plan: The CCIs are required to prepare Individual Care Plans (Annex A), within a month of admission, for each child within the Home. The care plan has to be prepared on the basis of home visits and detailed interviews of the parents and the child, and should include the needs of the child and the nature of difficulties faced by the biological family which prompted them to place the child in the institution, the family's current situation including their reaction to the suggestion that they can be considered for financial support if they are willing to have their child back with them and their motivation to continue the child's education.

Identification & Recommendation for Sponsorship: Based on the Individual Care Plan, the Probation Officer (in case of CIL) or Child Welfare Officer (in case of CNCP) of the Child Care Institution shall identify such children as may benefit from being restored to their families. Based on their assessment of the family's capacity to take care of the child, the CCI may recommend to the PO (IC), within one month of admission of the child, specific cases for restoration to family, with sponsorship support.

Transmission of data to DCPS: The CCI shall send the individual child care plans, as well as disaggregated data, of all the children in their institution which should include sex, age educational status and educational performance of child, child's health status, disability if any in child, whether one or both parents are alive, and parents' socio-economic status to the Protection Officer (Institutional Care) in the DCPS. Such data shall be updated every month by the CCI.

ii) Role of PO (Institutional Care)

For such children who are in institutional care the identification for recommendation of children for deinstitutionalization would be done by Protection Officer Institutional Care, (PO- NIC). The following steps are involved:

Preparing list of children who would benefit from family based sponsorship service: The PO (IC) of the DCPS will study the recommendations as well as data of all children received from all CCIs, and prepare a list of all the children whose own and family situation indicate that the child would benefit from restoration to the family with financial support. The PO may also include such children from the institutions who are not recommended by the CCI but are otherwise found eligible. Such process should not normally take more than 15 days.

Home Study Report by CCI: The PO (IC) will direct the concerned CCI to prepare a Home Study Report, of the family in a prescribed format (Annex B), after a home visit by the CWO/PO of the CCI. Such Home Studies should not take more than a month

from the request from PO(IC). In case of children whose family is residing in another district, the PO (IC) will request the DCPS of that district to conduct the Home study through a suitable agency.

Recommendation to Protection Officer (Non-Institutional Care): After receipt of the Home Study report, the PO (IC) will recommend suitable cases immediately to PO (NIC) for further processing.

iii) Role of Protection Officer-Non Institutional Care PO (NIC)

In case the child is from another district, the PO (NIC) will be required to contact that particular DCPS for further follow up and contact with the child's family in that district. In this instance the child will then need to be transferred to that district after the Home Study and other formalities are completed. The PIO (NIC) should ensure that the child's admission into a school near the child's residence prior to placement of the child in the family.

Scrutiny of Documents: The PO (NIC) will scrutinize the documents for eligibility of children recommended by PO(IC) for deinstitutionalization. He/She would then finalise recommendations for sponsorship and call for a meeting of the SFCAC every month. These cases will be placed before the SFAC for consideration and approval along with all necessary documents which should include -

- Order of CWC for placing the child in the institution
- Individual care plan of the child
- Home study report

iv) Role of Sponsorship and Foster Care Approval Committee (SFCAC):

Every district will have a Sponsorship and Foster Care Approval Committee (SFCAC). This Committee will be constituted in each district to implement and monitor the programme and would consist of the following members:

- District Child Protection Officer- Chairperson
- Protection Officer (Non-Institutional Care)- Member
- Chairperson/Member, Child Welfare Committee- Member
- Representative of SAA- Member
- Representative of a Voluntary Organization working in the area of Child Protection- Member

The SFCAC will review each recommendation and approve family based sponsorship support in all cases found deserving by it.

Duration for sponsorship is to be decided by SFCAC on a case to case basis depending on the family circumstances, age of the child etc. for a period not exceeding three years. In exceptional cases the SFCAC may decide to extend the period of support beyond three years if, during review it finds that the child is doing well within the family and continued support is essential for the well being of the child.

v) Role of CWC/JJB

The JJB/CWC will examine the Individual Care Plan of the child, Home Study report of the family and approval of SFCAC submitted by the PO (NIC), and satisfy itself regarding the suitability for restoration with family with sponsorship support. The CWC should

also ensure that the child has got admission into school before the placement order is passed.

In case of a child who is able to understand, the CWC may also interview the child to take his/her consent.

The JJB/CWC shall make an order in prescribed format given in the J. J. Rules [Form XVIII Rule 37 (5)], for support to the child through sponsorship, and send a copy to DCPS for appropriate action.

vi) Role of DCPS

The DCPS would send the list of the children approved for sponsorship support to the Head of the concerned Gram Sabha for information to the Gram Sabha members.

Preparation of Child and Family:

The DCPO, of the district where the family is residing, through the PO (NIC) or a Social Worker, will guide the family and the child regarding the support that they would be given and the responsibilities they would be required to fulfill under the sponsorship programme. He/she will need to explain to biological parents that they are responsible for providing shelter, food, medical needs, and education as well as emotional care and nurturing to the child and that it is binding on the biological parents that if their child is of school going age i.e. above 6 years, they have to ensure that the child attends school. Children between 3-6 years are to regularly attend Anganwadis. He/she will need to inform them that they will receive a monthly grant of Rs 1000 per child for this purpose and that the progress will be reviewed quarterly.

Prior to re-integration of the child into his/her own family, the child and the family would be counseled so the child and family can adapt to the new situation.

Commencing Sponsorship support (and Placement in Family in case of deinstitutionalized children):

- The DCPO will open a Post Office account/ bank account in the name of the child, to be operated by the child's guardian, preferably by the mother.
- The money will be directly transferred from the DCPS's bank account to the Post Office/ bank account of the child at the beginning of every quarter
- The DCPO will arrange for escorting the child from the CCI to the family's residence
- The DCPO will provide assistance to the family in enrolment of the child in a school near his/her place of residence, through SSA. He/she will also ensure that all facilities including uniforms, books etc. are provided to the child as under the rules of SSA.
- The DCPS will ensure the parents role by signing an undertaking with the parents on commencement of the sponsorship.

Convergence with other Departments:

Strengthening of the family through convergence with other Departments will enable the families to look after the children better and will eventually reduce dependence on sponsorship support. The DCPS may establish linkages with other Departments including Rural Development Agency, Panchayati Raj Agency, Tribal Development Agency etc., to enable the child and the families to avail of benefits to which they are entitled through convergence. Such efforts may include housing through Indira Avas Yojna, employment through NREGA, and support to women through self help groups. And assistance in getting loans etc

Counselling and Guidance:

Once the sponsorship support begins, the DCPS will provide supportive services such as counseling and guidance programs for holistic development of children and capacity building of the family towards long term empowerment through work with individual families as well as work with them in groups.

vii) Role of Parents

The parents will–

- sign an undertaking that they would take care of all the needs of the child (Annex C)
- ensure that he/she attends anganwadi/school (75% attendance)
- ensure that the child receives age appropriate nutrition
- provide due health care, including timely immunization
- ensure that the child is not put into gainful employment

6. Monitoring and Review

Tracking Progress of the Child

The PO (NIC) will maintain an individual case file for each child under sponsorship and draw up a clear care plan after discussion with the child and the parents.

The PO (NIC) will make quarterly home and school/anganwadi visits, obtain attendance certificates and maintain records of the same. During the home visit, the PO would also note the general well being of the child including his/her health and general family environment.

Parents should be encouraged by DCPS to obtain 'Aadhar' number (which would be compulsory by 2014-15) for themselves and the child. This would form the basis for tracking the child.

An annual review will be conducted for each child under sponsorship by the SFCAC too determine if the child is being well taken care of and has is well adjusted. On the basis of this review the approval for continued sponsorship support will be given. The SFCAC will also review if the DCPS has made adequate efforts for family strengthening though convergence with other Departments.

Only in exceptional circumstances, if the sponsorship is required for more than three years/ the period stipulated in ICPS, a review will be conducted by SCPS to ensure that the child is progressing well and that all efforts have been made to strengthen the family.

Records to be maintained by DCPS: The PO (NIC) of the DCPS will have to maintain the following records:

- Intake register- mentioning details of all the children referred for sponsorship assistance;
- Master register of children covered under the family based sponsorship program;
- Annual register of children covered under the family based sponsorship program;

This register should provide a disaggregated picture of the whole process including:

- Date of placement,
- Gender
- Age of child at time of placement,

- Parental status,
- Educational status of child,
- Period of placement according to the order of the CWC,
- Child's educational progress,
- Number of children sponsored in the family,
- Date and reasons of termination of placement.
- Register of disbursement of sponsorship grant to family.
- Minutes of the meetings of the SFCAC and DCPC.
- Individual file of every child placed in family based sponsorship service which should have the following documents:
    - Source of referral,
    - Home study report of the biological family and the child,
    - Individual care plan envisaged at time of placement,
    - The placement order of the District CWC,
    - Number of visits to the sponsored child and his/her family, child's school and significant details of each visit,
    - Observations made at the time of each review of the placement in terms of extent and quality of compliance with care plans, child's developmental milestones, child's progress at school, and change in family environment.
    - Date and reason for termination when case is terminated.

Submission of Quarterly reports to SFCAC: The PO of the DCPS will place quarterly reports of each child before the Sponsorship and Foster Care Approval Committee (SFCAC) every quarter for review. In exceptional circumstances, where the progress of the child is highly unsatisfactory, the PO may specifically bring this to the notice of SFAC.

Submission of Annual report to the DCPC and the SCPC: The PO of the DCPS will have to prepare a consolidated annual report which will need to be placed before the District Child Protection Committee (DCPC) and the State Child Protection Committee (SCPC) for review in order to ascertain the child's progress and the family's efforts at meeting the physical and psychosocial needs of the child.

Termination of the Sponsorship: SFCAC may terminate the family based sponsorship service in the following circumstances-

- When the child has achieved the age of 18 years
- When the family's economic position has improved and it does not need this service for meeting the educational needs of their child/children.
- The child has stopped going to school/anganwadi (except in special instances of disability or illness of the child which shall be verified by DCPS). Atleast 75% attendance in school is necessary.
- Child has been once again placed in an institution
- In case child has medical problems and parents are unable to take care.
- In case both parents have become incapacitated or unfit to look after the child

- In case family is receiving any cash assistance for the child under any other Scheme of State/Central Government
- In case the child and family is unable to adjust even after being with each other for at least three months

The PO of the DCPS should place before the SFCAC the current situation of the child and family and reasons for possible termination of the service and seek its advice for further action on behalf of the child.

If the SFCAC decides to terminate the sponsorship, it may recommend alternate rehabilitation measure for the child, if required. This may include, Foster Care or Institutionalisation. In such a case the PO (NIC) would approach the CWC for suitable placement of the child.

7. Management of Sponsorship & Foster Care Fund

ICPS will support creation of a Sponsorship & Foster Care Fund which will be placed at the disposal of DCPS. This will be a pilot project and initially an amount of Rs. 5 lakhs will be provided under the scheme. The SCPS will review the utilization of the Fund and ask for recoupment when required. The State Governments/ UT Administrations may augment this fund through additional grants and donations.

There will be no cash transfer from the Fund. The sponsorship amount will be directly transferred from the DCPS's bank account to the Post Office /Bank account of the child.

ANNEX A

INDIVIDUAL CARE PLAN

Important: Individual care plan for each child shall be prepared following the principle of the best interest of the child. In preparing 'Individual Care Plan' the care options in the following order of preference shall be considered:

(i) Restoration of child to family

(ii) Sponsorship

(iii) Kinship Care

(iv) Foster Care

(v) In-country adoption

(vi) Inter-country Adoption

(vii) Institutional Care

Based on the information given below, any one of the above mentioned options could be selected as the most suitable for the child.

Case/Profile No. of 20___(year) of the Juvenile Justice Board/Child Welfare Committee

Admission No:

Date of Admission:

Name of Home:

Address:

A. PERSONAL DETAILS

1. Name of the Child:
2. UID number, if allocated:
3. Age:
4. Sex : Male/Female
5. Father's/Mother's name:
6. Nationality:
7. Religion:
8. Caste:
9. Address of family (if available):
10. Family background: -Social status/background, employment of parents:
11. Any siblings in the same or other Home? : Yes/No, if yes, how many?
12. Orphaned/abandoned/surrendered/placed by mother/father in Home
13. Purpose of being placed in Home:
14. Summary of Case History (give details):

    14.1 Health Status:

    - Is the child currently being treated for any illness or other physical problem?

- Does the child have any special needs?
- Is there any history of mental illness?
- Has the child been immunised?
- If yes to any of the above, Please give details and attach doctor's/medical report and type of treatment being received

14.2 Educational Status:

- Education level:
- Is the child attending any formal education within the institution? Please give details.
- Is the child enrolled in any formal education outside the institution? Please give details
- Is the child attending any Bridge course/non-formal education within institution?
- Not undergoing any educational programme
- In case of child with special needs please state what education is being provided

14.3 Emotional and Psychological Support

- Is there any history of abuse? (Physical or emotional)
- Is the child currently undergoing counselling? If so, please give reason.
- Please give details of any attachments, relationships etc.

14.4 Leisure, creativity and play

- Does the child have an aptitude for any particular activity, music or sport? If so, please give details.

14.5 Religious beliefs

- Does child practice any religious beliefs? If, so please specify.

14.6 Social mainstreaming

- Is child undergoing any vocational training? If so, please give details of the training programme/course
- Has the child been given any training for life skills?
- Is there any programme/training for the child with special needs? If so, please specify.

Please also state the most suitable option for the child as per options mentioned above:

Based on the above mentioned information a care plan for the child will be required to be prepared as per the following:

SL. NO.	COMPONENT	STATUS	PROPOSED PLAN
1.	Health	Current course of treatment, if any. Special Needs, if any.	

2.	Education	Current level or if enrolled in any course/school (formal or non-formal):	
3.	Vocational Training	Current course:	
4.	Other Activities	Life skill training, Sports, arts, music and crafts, any other.	
5.	Counselling	-Current status for child: -Counselling of parents	
6.	Any other	-	

B. POST- RELEASE REPORT - (FOR CHILD WHO IS BEING SENT HOME TO FAMILY WITH SPONSORSHIP SUPPORT)

B1. THE FOLLOWING INFORMATION WILL BE REQUIRED ON A ONE-TIME BASIS

1. Name of the Probation Officer/Case Worker:
2. For the month of:
3. Registration No.
4. Profile No.
5. Name of the Child
6. Date of Sponsorship Order
7. Address of the Child
8. Period of Sponsorship
9. Savings Bank Account in his/her name (if any)
10. Status of Bank Account: Closed / Transferred
11. Has Bank Account/Post Office account been opened in child's name after child is placed back in the family with sponsorship support?
12. Earnings and belongings of the child: handed over to the child or his/her parents/ guardians – Yes/No
13. Requisition for escort if required
14. Identification of escort
15. Final progress report of the officer-in-charge/probation officer/child welfare officer/ case worker/social worker (to be attached)

B2. QUARTERLY PROGRESS REPORT OF THE PROBATION OFFICER/CHILD WELFARE OFFICER/CASE WORKER/SOCIAL WORKER/NON-GOVERNMENTAL ORGANISATION IDENTIFIED FOR FOLLOW-UP WITH THE CHILD POST-SPONSORSHIP

Date of visit:

1. PROGRESS OF THE CHILD AS PER THE FOLLOWING COMPONENTS:

SL. NO.	COMPONENT	STATUS	PROGRESS
1.	Health	Current course of treatment, if any. Special Needs, if any.	

2.	Education	Current level or if enrolled in any course/ school (formal or non-formal) :	
3.	Vocational Training	Current course:	
4.	Other Activities	Life skill training, Sports, arts, music and crafts, any other.	
5.	Counselling	-Current status for child: -Counselling of parents	
6.	Any other		

2. Family's behaviour towards the child as observed
3. Social milieu of the child, particularly attitude of neighbours/community
4. Child's behaviour at Home and whether he/she has adjusted to being back in the family
5. Has the child has been admitted to a School or vocation? Give date and name of the school/ institute/any other agency
6. Has child attended school regularly? (Officer to check school records, minimum 75% attendance and meet with teachers regarding child's performance) If not, please state reasons why?
7. Remarks on his/her general conduct and progress.
8. Is the child properly cared for? (General appearance of child)
9. Gender Issues: If child is a girl, please note if there is any discrimination from other children and if she is being properly cared for. Please also observe for any signs of neglect or abuse.
10. Please note if there is any sign of abuse (physical/emotional) and recommend suitable measures if required.
11. Has child received age appropriate immunisation? Pl give record.
12. Has child faced any serious medical problem? If yes, please state.
13. Recommended rehabilitation plan including possible placements based on the individual care plan prepared.

Date of report_____

Signature of the Probation Officer/Case Worker_____

ANNEX B

FORMAT FOR PREPARATION OF HOME STUDY REPORT (HSR)

(Professional social worker with MSW/MA Psychology background attached to an adoption agency or any competent person identified by the State Government is competent to prepare Home Study Report.)

Assessing the ability of parents to take care of the child with sponsorship support after the child has been in institutional care is very important for the well being of the child and for the family.

Positive qualities that can be identified are:- an evident enthusiasm to have the child back in the family, adjustability and tolerance in their requirements of the child. Negative characteristics can be identified as:- tension in their marital relationship, or indecisiveness in their commitment to keeping the child at Home. It is important to note that the family will not use the money meant for the child on other purposes that will adversely affect the child. The family environment is of utmost importance:

Reference No:

Name of Child:

(a) Identifying Information:

Details of Father:

Name of Father:

UID number, if available:

Age:

Address:

District:

Educational Qualifications of Father:

Financial Situation:

Occupation:

Health History:

Is father under any treatment? If so, please give details

Details of Mother:

Name of Mother:

UID number, if available:

Age:

Address:

District:

Educational Qualifications of Mother:

Financial Situation: (Is Mother currently employed? If so, what is approximate income? If not employed, since when?)

Occupation:

Health History:

Is Mother under any treatment? If so, please give details

(b) Detail's of other children and family members

Name and age of other siblings (if any):

Current relationship between the parents and children, if any;

Details of other family members:

Home and Neighborhood:

(c) Description and amenities of the home

Is the place of residence of family safe and suitable for the child? Are the sanitation facilities adequate?

(d) Is there a School in the neighbourhood?

-Private or Government?

-Distance to School?

(e) Are there any health facilities available in the neighbourhood? Eg. PHC?

(f) Why did parents place child in the institution? Or/ How did child reach/enter institutional care?

(g) Year when parents sent child to institution.

(h) For how long was child in the institution?/ Number of years that child was in the institution

(i) Any other observation/comment

ANNEX C

UNDERTAKING BY THE PARENT OR 'FIT PERSON' TO WHOM CHILD IS RESTORED

I _____ resident of House no. _____ Street _____ Village/ Town _____ District _____ State _____ do hereby declare that I am willing to take charge of (name of the child) _____ Aged _____ under the orders of the Child Welfare Committee as per the Sponsorship Programme_____ subject to the following terms and conditions:

(i) If his/her conduct is unsatisfactory I shall at once inform the Committee.

(ii) I shall do my best for the welfare and education of the said child as long as he/ she remains in my charge and shall make proper provision for his/her maintenance.

(iii) In the event of his/her illness, he/she shall have proper medical attention in the nearest hospital.

(iv) I agree to adhere to the conditions of the sponsorship programme

(v) I undertake to produce him/her before the competent authority as and when required.

Date this ……day of ……...

Signature

Signature and address of witness (es)

(Signed)

❑❑❑

SECTION - III

RELEVANT CASE LAWS
AND
JUDGMENTS

SAMPURNA BEHRUA Versus UNION OF INDIA & ORS.

Date: 24/07/2015 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE UDAY UMESH LALIT

ORDER

.., we pass the following directions:

(1) It is mandated that every State should have a Juvenile Justice Board in place in every District on or before 31st December, 2015.

Arunachal Pradesh is very vast and perhaps does not have much juvenile crime. If that is so, the State of Arunachal Pradesh need not have a Juvenile Justice Board in every District, but the other States and Union Territories must have a Juvenile Justice Board in every District, as mentioned above on or before 31st December, 2015.

It is made clear that there is no prohibition in law in having more than one Juvenile Justice Board in a District depending upon the number of pending inquiries and the distance involved in moving children from the Observation Home to the venue of the Juvenile Justice Board.

Therefore, it is made clear that a District can have more than one Juvenile Justice Board.

For example, in the District of Pune, there are 1935 inquiries pending (as on 31.3.2015) as reported by NALSA, and there seems to be no reason why there should be only one Juvenile Justice Board in that District.

Under the circumstances, wherever necessary, more than one Juvenile Justice Board should be set up in districts, wherever necessary.

We, therefore, direct the Registrar General of all the High Courts to take up the matter with Hon'ble the Chief Justice of the High Court and the Juvenile Justice Committee of the High Court and look into this matter in conjunction with the Executive Chairman of the State Legal Services Authority and the Member Secretary of the State Legal Services Authority and set up an appropriate number of Juvenile Justice Boards, wherever necessary.

As regards vacancies, we direct that all vacancies in the Juvenile Justice Boards should be filled up on or before 31st December, 2015 in accordance with Rule 92 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 by a Selection Committee presided over by a retired Judge of the High Court.

(2) The number of inquiries pending with the Juvenile Justice Boards across the country as on 31st March, 2015 is an alarming figure of 1,30,572.

In the State of Uttar Pradesh, there appear to be 34,569 cases pending. The State of Uttar Pradesh is directed to comply with the directions we have given above at the earliest (and not wait till 31st December, 2015) so that the number of inquiries is substantially reduced.

Ideally, there should not be more than 100 inquiries pending before each Juvenile Justice Board so that they can be disposed of in the required period of four months. This will mean that many of the Juvenile Justice Boards will have to streamline their working so that the numbers are reduced at the earliest.

(3) From the report prepared by NALSA, we find that the number of sittings of the Juvenile Justice Board per week is extremely inadequate in some places. For example, in the District of Pune, the Juvenile Justice Board meets three times in a week. Given the large number of inquiries pending in that District, it will be more appropriate if the Juvenile Justice Board holds its sittings daily.

We, therefore, direct that wherever there are a large number of inquiries, as decided by the Juvenile Justice Committee of the High Court and the Registrar General of the High Court, instructions should be issued to the Juvenile Justice Boards to hold their sittings daily, so that the pendency does not pile up. In this regard, our attention has been drawn to Rule 9(3) the Rules, which reads as follows:

"9. Sittings of the Board.

(1) ***

(2) ***

(3) The Board shall meet on all working days of a week, unless the case pendency is less in a particular district and concerned authority issues an order in this regard."

(4) We are distressed to note that the distance between the Juvenile Justice Board and the Observation Home in some cases is extremely large. NALSA has pointed out that in Assam and Odisha, for example, the distance between the Juvenile Justice Board and the Observation Home is in the region of 400kms/450 kms. This is totally unacceptable considering the fact that in Rule 9(1) of the Rules, it is required that the Juvenile Justice Board should sit in the vicinity of the Observation Home.

The State Governments are directed to look into the matter at the earliest and to comply with the Rules. The Juvenile Justice Committee of the High Court and the Registrar General of the High Court are requested to look into the matter and ensure that the Juvenile Justice Boards hold their sittings in close proximity to the Observation Homes.

We direct the State Governments to ensure that, to the extent possible, certified Observations Homes are set up within the close proximity of the Juvenile Justice Boards, in case it is not possible to establish new Observation Homes.

We may note that in view of the large distances that are involved more often than not, the children are not able to be in touch with their relatives including their parents and this can also have a psychological impact on them. It is, therefore, necessary that the Observation Home should not be far away from the place where the Juvenile Justice Board is located.

(5) From the report prepared by NALSA, we find that in many places the number of panel lawyers engaged by the State Legal Services Authority is inadequate. Ms. Indu Malhotra, learned senior counsel appearing on behalf of NALSA assures that this matter will be looked into and an adequate number of effective lawyers will be empanelled to provide free legal assistance, advice and services to juveniles in conflict with law.

(6) We are informed by the learned senior counsel appearing for NALSA that a Committee for Developing Module for Training of Lawyers has been set up with Hon'ble Mrs. Justice Manju Goel (retd.) as a Chairperson. We are told that the Committee is in the process of framing the curriculum and methodology for training of legal aid lawyers on issues relating to child rights. We request the Committee to complete its task on or before 31st December, 2015. While doing so, the Committee will take the assistance of others who are not connected with the legal fraternity and in terms of our order dated 10th April, 2015.

(7) With regard to the number of Probation Officers and the nature and duration of training, we propose to take up the matter on some other date.

It has been suggested by Mr. Colin Gonsalves, learned senior counsel for the petitioner, that the Principal Magistrates heading the Juvenile Justice Boards should not be asked to do any other judicial work. This is a matter which is to be decided by the High Court and we direct the Registrar General of each High Court to look into the matter. Of course, the Registrar General will take into consideration the number of pending inquiries before the Juvenile Justice Board and if there are a large number of such inquiries, it would be worthwhile to have a full time Principal Magistrate, In-charge of the Juvenile Justice Board.

We are also of the opinion that it may be preferable to have a lady judicial officer as the Principal Magistrate. This may also be looked into.

We also direct the Registrar Generals of the High Courts to issue directions to the social workers to participate actively in the deliberations before the Juvenile Justice Boards.

Mr. Colin Gonsalves has also pointed out that a large number of posts and supporting staff of Juvenile Justice Boards are lying vacant. We request the Juvenile Justice Committee of the High Courts to look into the matter and direct the State Governments to fill up all the posts, in any case, by 31st December, 2015. The Member Secretary, NALSA will direct the Member Secretary, State Legal Services Authorities to look into this aspect and follow up with the State Governments so that the posts are filled up and our directions are complied with at the earliest.

We are distressed to note that in spite of our order dated 10th April, 2015, the Union of India, through the Ministry of Women and Child Development, has not filed its affidavit. We have commented on the laxity of this Ministry in other proceedings also and also about the lack of concern that this Ministry has for children. We are unable to appreciate this complete apathy of the Ministry on an important issue concerning the children of our country. We record our displeasure.

Learned Additional Solicitor General says that the affidavit in terms of our order dated 10th April, 2015 is ready and will be filed within one week. The Registry will accept the affidavit subject to payment of costs of Rs.25,000/- to the Supreme Court Legal Services Committee which shall be utilized for juvenile justice issues.

List the matter on 11th September, 2015. A copy of this order be sent to the Register General of all the High Courts forthwith to be placed before the Juvenile Justice Committee of the High Courts.

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Ram Narain Versus STATE OF U.P.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL MISC. PETITION NO. 7526 OF 2015

IN

SPECIAL LEAVE PETITION (CRL.) NO.1446 OF 2004

Ram Narain ... Petitioner

Versus

STATE OF U.P. ... Respondent

ORDER

1. This application has been filed to release the applicant from the prison on the ground mentioned in the petition that the petitioner-applicant has already served the sentence for more than 10 years and still is in jail. The petitioner-applicant was sentenced for life imprisonment for commission of offence under Section 302 of the Indian Penal Code, 1860 ("IPC" for short). Subsequent thereto he filed an application for declaration of his juvenility on the date of the incident, before the competent Court of jurisdiction, under the advice of his counsel, being Application No.259 of 2013. The Juvenile Justice Board vide its order dated 16.11.2013, a copy whereof is also annexed hereto, arrived at the conclusion that the age of the applicant on the date of the incident was 15 years 11 months 26 days only and thereby he was below 18 years at the time of occurring of incident. Accordingly, by the said order the Juvenile Justice Board declared him as a juvenile offender. It further appears that before the Juvenile Justice Board the applicant-petitioner produced a transfer certificate wherein his date of birth was recorded as December 25, 1960.

2. Learned counsel appearing for the petitioner-applicant submitted that in view of the aforesaid fact the petitioner-applicant should be given exemption under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000. He further drew our attention to the certificate issued by the Senior Jail Superintendent, Central Jail, Agra, certifying the period he is in jail. The learned counsel appearing in this matter further submitted that according to the prosecution the petitioner-applicant was charged under Section 302 of the Indian Penal Code, 1860 for committing the murder of one Nathi Lal on 21st December, 1976 at about 6.30 P.M. by causing him gunshot injury. The petitioner-applicant pleaded juvenility before the Trial Court in his statement recorded under Section 313 of the Code of Criminal Procedure, 1973 on 28th July, 1978, along with other grounds in his defence, but he could not produce the transfer certificate during prosecution being helpless and as a result whereof he had to suffer the sentence under Section 302 IPC culminating to life imprisonment. The special leave petition filed by the petitioner-applicant before this Court was dismissed on 20.08.2004 and the review petition was also dismissed by this Court by its order dated 13.10.2004.

3. In these circumstances, the petitioner-applicant had to spend more than 10 years in prison without getting any remedy under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. We have heard the learned counsel for the petitioner-applicant. We have also considered the decisions cited by the learned counsel.

4. In the case of **Upendra Pradhan v. State of Orissa,** 2015 (5) SCALE 634, wherein the appeal of the accused was allowed granting him the benefit of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, this Court observed:

> "The learned counsel for the appellant raises the plea of juvenility under Section 7(A) of the Juvenile Justice (Care and Protection) Act, 2000. The plea can be raised before any Court and at any point of time. We feel that the stand taken by the counsel is correct and we will look into the present lis keeping in mind the juvenility of the accused appellant at the time of commission of the crime. As stated earlier, the age of the accused appellant was less than 18 years at the time of the incident. It has been brought to our notice that the appellant has undergone about 8 years in jail. The appellant falls within the definition of "juvenile" under Section 2(k) of the Juvenile Justice (Care and Protection of children) Act, 2000. He can raise the plea of juvenility at any time and before any court as per the mandate of Section 7(a) and has rightly done so. It has been proved before us, as per the procedure given in the Rule 12 of the Juvenile Justice Model Rules, 2007, and the age of the accused appellant has been determined following the correct procedure and there is no doubt regarding it.
>
> On the question of sentencing, we believe that the accused appellant is to be released. In the present matter, in addition to the fact that he was a juvenile at the time of commission of offence, the accused appellant is entitled to benefit of doubt. Therefore, the conviction order passed by the High Court is not sustainable in law. Assuming without conceding, that even if the conviction is upheld, Upendra Pradhan has undergone almost 8 years of sentence, which is more than the maximum period of three years prescribed under Section 15 of the Juvenile Justice Act of 2000. Thus, giving him the benefit under the Act, we strike down the decision of the High Court. This Court has time and again held in a plethora of judgments on the benefit of the Act of 2000 and on the question of sentencing."

We have also noticed that in **Ajay Kumar v State of M.P.,** (2010) 15 SCC 83, this Court observed as follows:

> "In the light of the aforesaid provisions, the maximum period for which a juvenile could be kept in a special home is for three years. In the instant case, we are informed that the appellant who is proved to be a juvenile has undergone detention for a period of about approximately 14 years. **In that view of the matter, since the appellant herein was a minor on the date of commission of the offence and has already undergone more than the maximum period of detention as provided for under section 15 of the Juvenile Justice Act, by following the provisions of Rule 98 of Juvenile Justice Rules, 2007 read with Section 15 of the Juvenile Justice Act, we allow the appeal with a direction that the appellant be released forthwith."**
> (Emphasis Supplied

The same view was followed in **Hakim v. State**, (2014) 13 SCC 427, and **Lakhan Lal v. State of Bihar**, (2011) 2 SCC 251.

5. Hence, we think that the petitioner-applicant should get the benefit under the said Act since he was a juvenile on the date of commission of the offence. In view of the above, this appeal is allowed and the impugned judgment and order passed by the Trial Court as also the High Court are set aside. The petitioner-applicant is directed to be released forthwith.

.....J
(Pinaki Chandra Ghose)

.....J
(R.K. Agrawal)

New Delhi;
August 07, 2015.

❑❑❑

Manuel Theodore Versus Unknown

Bombay High Court

Manuel Theodore

vs

Unknown

on 27 October, 1999

2000 (2) BomCR 244, II (2000) DMC 292

Author: F Rebello, Bench: F Rebello

ORDER

F.I. Rebello, J.

1. Two couples, Indian citizens, professing the Christian faith, applied to this Court for being appointed as guardians under the Guardians & Wards Act. In the course of the proceedings they amended their petition, to seek a prayer that the children be given to them in adoption. The petitioners being Christians are presently only entitled to be appointed as guardians. They do not fall within the definition of "Hindu" as defined in the Hindu Adoption & Maintenance Act, 1956. A question immediately arose, whether a civilized State committed to the Rule of law, governed by a written Constitution and signatory to International Conventions on the Rights of a child, could deny to a section of its own citizens the right to adopt a child and to give that child, a home, a name and nationality. Article 14 of our Constitution ensures equality before law to all citizens. Non-arbitrariness is the hallmark of this Article. On 26th November, 1949 we gave to ourselves, a Bill of Rights, when the Constituent Assembly voted and approved the Preamble to the Constitution of India. The "Tryst with Destiny" Speech, of the first Prime Minister of the new Nation, symbolized its hopes and aspirations. Much earlier our Noble Laureate Gurudev Tagore had penned a poem. Where the mind is without fear and the head is held High visualizing what the new nation yet to be born out of the freedom struggle must aspire. These hopes and aspirations permeate the preamble to our Constitution. They now constitute our Rule of law. The Preamble is the judicial tool. This tool is of metal which is malleable, ductile and tenacious. Its effectiveness and strength lies in the hands of the maker. Belief in the Constitution and social commitments temper the approach in its use. Experience and age adds maturity to actions. Practical field experiences adds to this armory. Experience, therefore, has a great role to play not only in shaping our thoughts but in our approach in interpreting the constitutional provisions. The fight against injustice must be inherent in you. It cannot be conferred or imposed by mere occupation of a judicial chair. Justice does not flow from the chair, but from the person occupying it. The chair reflects authority. The weak should not occupy it, nor the submissive. The Constitutional structure will be damaged beyond repair if Constitutional functionaries fail to express their views. Expressing views which may not be palatable to some is not dissent, but upholding of Constitutional values. These are not stray or rambling thoughts. These views are borne out of experience. A reflection of the present and the past.

   A Division Bench of this Court sitting at Panaji, Goa a decade ago presided over by a Visiting Judge, had to hear a petition filed on behalf of orphan children housed in Homes run by an Institution known as Provedoria Assistanca Publica. These children from the infancy were left in the custody of these Homes. All through their young life that was home to them. The Government of Goa issued a Circular that on reaching majority, both girls and boys would have to leave the Institutions. Most of them were not trained for any occupation and were otherwise unemployed. By the petition, relief was sought that they should be allowed to stay even after attaining majority or till they were employed and/or rehabilitated in a useful vocation. The learned Judge after hearing Counsel for the petitioner summarily dismissed the petition whilst expressing, 'oh what beautiful poetry'. The Judge was appreciative of the language of the petition, but deaf to the orphans anguished cry for justice.

   Many of us examining such issues forget that we have taken a solemn oath or protect and defend the Constitution. That requires examining legislation and fundamental rights in such a manner that the tears of the abandoned and homeless infants are wiped away, of course within the Constitutional parameters. In this matter the exercise of power of parens patraie and Article 226to give effect to the fundamental rights, what is in issue are the enforceability of directive principles and International covenants to which India is a signatory.

   It was the Poet Khalil Gibran who in a couplet said:---

   "Our children are not our children, they are the sons and daughters of life, longing for itself."

   How long must these children wait for justice in the absence of positive steps taken by the State. Even the good Lord seems to have forgotten them. I quote from the Book of Psalms:

   "How long, Oh Lord? Will thee forget me forever".

   They are children just like other children. These are children, however, without home and family. Don't they have a right to love and security. Should not the Constitution be also meaningful to them. Having been orphaned should the Republic abandon them forever.

The Rule of law must reach them. Protests, from whatever sections should not stop the pursuit of justice to those in need of it. The right of a child cannot be confused with the personal law of any section of our pluralistic society. Adoption is not to be treated as an act by a State to force a child on unwilling parents. On the contrary it is a voluntary act on the part of eligible persons to provide comfort, love and security to the abandoned and homeless children. No religion, can deny family love to these children of God. Religions preach peace and brotherhood. How can there be brotherhood if you will not treat a section of your citizens as brothers. Children are the living embodiment of God. In them you find the manifestation of God in all its forms. In the smile of the child you see beauty of creation.

2. The question then, in the absence of legislation has the Court powers of giving an abandoned or orphaned or destitute child in adoption? Before formulating the questions I may once again refer to the Bible, the Gospel by Mathew. When a disciple came to Jesus saying "who is the greatest in the Kingdom of Heaven? Calling a child, he put him in the midst of them and said "Truly, I say to you, unless you turn and become like children, you will never enter the Kingdom of Heaven. Whoever humbles himself like this child, he is the greatest in the Kingdom of heaven. Whoever receives one such child in my name receives me:...."

   To answer the question, the points formulated are as under:---

   1. Does an abandoned or orphaned or destitute child has a right to a family, a name and nationality as a part of the right to life?
   2. Is the right of being adopted a fundamental right guaranteed to a child by Article 21 of the Constitution?
   3. Can the State deny to a orphaned, abandoned or destitute child the right to be adopted because of its constitutional failure to enact legislation to give effect to Entry 5 of List III of the Seventh Schedule to the Constitution of India?
   4. Whether a married childless couple has the fundamental right to adopt a child?
   5. Is adoption purely a part of personal law?
   6. If the right to adopt is a fundamental right, can Civil Courts enforce this right, in the absence of legislation and/or administrative instructions having the force of law?
   7. Can this Court in exercise of the power conferred on it under Clause 17 of the Amended Letters Patent give a child in adoption?

3. Counsel arguing for Adoption have raised various submissions to support the contention that a child in the absence of law can be given in adoption. The Advocate General of State of Maharashtra, after referring to judicial authorities pointed out to the Court that both Houses constituting the Legislature of the State of Maharashtra had passed a Bill which was awaiting assent of the President of India. On behalf of the Union of India, the learned Additional Solicitor General strongly contended that in the absence of legislation courts cannot pass orders. Matter pertaining to adoption being a sensitive issue the Court should not pass any orders which rightly belongs to the domain of the Legislature and or the Executive. It is further pointed out that Article 21 is couched in a negative language and as such also no relief can be granted by the Court. Various Institutions have also put forward their views which I would briefly refer to.

4. The Indian Council of Social Welfare has submitted their written submissions. It is pointed out that on 26th January, 1990, sixty countries signed the Convention of the Rights of the child. India ratified. The Convention on the rights of the child on 2nd December, 1992. The Convention imposes the commitment to provide for all children in India, a first lien on all resources for their welfare and protection. The need for adoption for the rehabilitation of destitute/orphan children is very much included as part of this. There are about 12.32 million orphans/destitute children in India and the number is ever increasing. They constitute about 4% of the child population. There are about 1,50,000 children in over 1000 institutions in the country, which are under the Juvenile Justice Act. These children are denied parental care and attention. A child needs love, shelter, care, a sense of identity and belonging. These are normally obtained in families. In case of breakdown of a family there are only three possible ways of looking after a child (a) strengthening the family; (b) Institutional care and (c) Foster care/adoption. Studies have shown that institutional care does not provide all the needs of a child, especially personal attention. The Institutions are also expensive and overcrowded. Therefore, adoption is a means for finding a right parent for the child and not the other way round. The right of a family to every child is a necessity. Adoption is one of the best means of rehabilitating a child without a family and giving stability needed for its normal growth and development.

   Nine Institutions involved in looking after abandoned/destitute children have also submitted a Memorandum. These include, Bal Anand, Family Service Centre, Indian Association for Promotion of Adoption and Child Welfare, Convener, Adoption Group, M.S.W.G. Asha Sadan, Shajar Chhaya, Bal Asha Trust, Missionaries of Charity and Children of the World (India) Trust. In their submission they point out that they are concerned with care and rehabilitation of children who are orphaned, abandoned, declared destitute or relinquished in their care by their biological parents. They have intimate knowledge of the trauma these children experience. Above the psychological impact of rejection early in life, the child who is taken under the guardianship provision, faces further discrimination being only a "ward" of his or her guardian upto the age of 18 years. Though receiving the care,

nurture and love in the guardian's family these children suffer deprivation compared to a legally adopted child. From a basic humanitarian point of view, it is unconscionable on the part of the State to deprive the destitute child the status equivalent to a biological child with rights and obligations in the family of his/her guardian, which are conferred to the child adopted under the Hindu Adoption and Maintenance Act, 1956. It is a travesty of justice that the State which has guaranteed its citizens protection against discrimination based on religion should withhold protection and security in this respect particularly to the helpless minor. The State has abdicated its commitment made to the child, under the U.N. Convention on the Rights of the Child, by not making appropriate provisions for full adoption of the child.

5. On behalf of Archdiocese of Mumbai, appearance has been put on behalf of Archbishop of Mumbai, to whom notice was issued, as the matter arose from petitions for adoption by Christian couples who had initially applied only for guardianship. Similar submissions as made on behalf of various institutions are reflected therein. Apart from that it is specifically set out that there is no bar for Christian parents to adopt a child. Reference is made to Canon Nos. 110, 877 and 1094. They are reproduced herein below:---

"Canon No. 110:---Children who have been adopted in accordance with the civil law are considered the children of that person or those persons who have adopted them."

"Canon Ho. 877:---# 1 The parish priest of the place in which the baptism was conferred must carefully and without delay record in the register of baptism the names of the baptized, the minister, the parents, the sponsors and, if there are such, the witnesses, and the place and date of baptism. He must also enter the date and place of birth.

#2 In case of a child of an unmarried mother, the mother's name is to be entered if her maternity is publicly known or if, either in writing or before two witnesses, she freely asks that this be done. Similarly, the name of the father is to be entered, if his paternity is established either by some public document or by his own document in the presence of the parish priest and two witnesses. In all other cases, the name of the baptized person is to be registered, without any indication of the name of the father or of the parents.

#3 In the case of an adopted child, the names of the adopting parents are to be registered and, at least if this is done in the local civil registration, the names of the natural parents in accordance with # 1 and #2, subject however to the rulings of the Episcopal Conference."

"Canon No. 1094:---Those who are legally related by reason of adoption cannot validly marry each other if their relationship is in the direct line or in the second degree of the collateral line."

It is further set out that Adoption also traces its history from scriptures although strictly speaking, no laws of adoption as such are found formulated in the Old Testament. In Exod. 2:10, Moses becomes son of Pharaoh's daughter. In Ruth 4:16, Naomi adopted the son of Boaz and Ruth. In Esth. 2:7, Mordeci adopts Esther. In Gen. 16:1-4 and 30:1-13, Sarai Rachel and Lean each gave a female slave to her husband for the purpose of procreation. Gen. 16:2 and 30:3-13 gave a Biblical account which could imply adoption by wife and her regard for the children as her own and has also reference to possible allusion by Rachel to an adoption right. Gen. 48:5-6 shows that Ephraim and Manasseh are adopted by their grandfather Jacob. In the New Testament, there are references to adoption as sons in Rom, 8:15, 23, Gol. 4:5. There is also an interpretation and reference that a Slave, if adopted as a son would inherit his master's property in a phrase addressed to Slaves in Col. 3:24. The idea of adoption can also be linked to the idea of the Holy Spirit in the New Testament and Rom. 8:23 speaks of waiting for adoption as sons wherein Paul regards adoption as a promise for future. Then, Acts, 7:21 and Heb. 11:24 understand Moses as the adopted son of Pharaoh's daughter. It will, therefore, be seen that the concept of adoption also flows from scriptures. Catholic Bishop's Conference of India had given its unqualified approval to the Christian Adoption and Maintenance Bill, 1994. The Bill, however seeks to exclude Goa and some other areas. The drafters of the Bill perhaps are unaware that in Goa, Daman & Diu also there is no provision for Adoption for other than Hindus by law and that those areas, therefore, ought not to be excluded.

The following Unstarred Question No. 752 was tabled in the Lok Sabha on 6th March, 1996. The answer is reproduced herein below:---

"752. SHRIMATI SUSEELA GOPALAN:

Will the PRIME MINISTER be pleased to state:

(a) whether Christian community has requested the Government to make progressive changes in the Indian Christian Act;

(b) If so, the details thereof; and

(c) the time by which the legislation is likely to be introduced?

ANSWER THE MINISTER OF STATE IN THE MINISTRY OP LAW, JUSTICE AND COMPANY AFFAIRS:

(SHRI H.R. BHARADWAJ):

(a) to (c): The Joint Women's Programme, a Women's organisation has submitted certain draft legislation relating to marriage, divorce, adoption, maintenance and succession amongst Christians for enactment. As the Policy of the Government has been not to interfere in the personal laws of the minority communities unless the necessary initiative

therefor comes from the community concerned, the Government has requested the National Commission for Minorities to give its considered thought on the idea, that the views of the Christian community may be assessed by the Commission by interacting directly with different sections of that community before the matter is processed further. Hence it is too early to set any time-frame for undertaking any legislation in this regard."

To our Legislators the law making limb of our Constitutional Structure. I may only remind them of the words of Gabrieala Mistral:---

"We are guilty of many errors and many faults but our worst crime is abandoning the children, neglecting the fountain of life.

Many of the things we need can wait. The child cannot.

Right now is the time his bones are being formed, his blood is being made, and his senses are being developed.

To him we cannot answer "Tomorrow,"

His name is "Today."

II. FAMILY AND ADOPTION:

7. Social Scientists, Jurists and others accept that there is no single, universal method of classifying households in which people live together. Two types of families feature in current social and legal research; the 'extended' and the 'nuclear' family. In Blackwell v. Bull, 1836, Lord Langdale MR stated: 'It is evident that the word 'family' is capable of so many applications that if any one particular construction were attributed to it in wills, the intention of testators would be more frequently defeated than carried into effect. Under different circumstances it means a man's household, consisting of himself, his wife, children and servants; it may mean his wife and children, or his children excluding his wife; in the absence of wife and children, it may mean his brother and sisters or his next of kin, or it may mean the genealogical stock from which he may have sprung. All these applications of the word and some others are found in common parlance'. The reference to the family is in the context of the role of the child in the family. It is clear that whether it be a 'nuclear' family or in common parlance, the child forms a part of what is popularly known as family. It is this child which we are concerned with.

8. "Adoption is currently defined as a legal and social process by which the child of one pair of parents becomes the child of other parents. Adoption confers upon the child and the adoptive parents the same mutual rights and the obligation that exists between the child and his natural parents. The adoptive child is permanently removed from his biological parents and becomes the legitimate child of his adoptive parents. In theory, the adoptive child secures all the rights and performs all the duties of a biological child." (Carlson. 1965). In Corpus Juris Secundum, Volume 2 adoption has been defined as the establishment of the relation of parent and child between persons not so related by nature. A popular meaning, apart from the law, is the taking of a child, not one's own, into the family and rearing it. Adoption in legal contemplation, is the act of which the parties thereto establish the relationship of parent and child between persons not so related by nature, and which, in many respects, severs the natural relations existing between the child and its parents, although in a narrower sense it is restricted to the act of the person taking the child. Adoption also has a popular meaning, apart from its use in the law. While generally the term has reference to some form of legal procedure, in common use, it is frequently applied to taking a child, not one's own, into the family and rearing it. Historically in so far as our country is concerned, adoption has been accepted as a custom which stands ultimately codified under the Hindu Adoption & Maintenance Act. Again in C.J.S. it is set out that Adoption is a practice of very great antiquity. It appears to have been known to the Egyptians, Babylonians, Assyrians, Greeks, and ancient Germans, and among the Hebrews the Practice, although probably not recognised by their system of jurisprudence, was undoubtedly well-known.

   Ms. Madhavi Hegde-Karandikar's, "Issues, Laws & Procedures on Adoption" sets out that in ancient times, the practice of adoption prevailed both in the East and the West. It prevailed in ancient times in Greece and Rome. The ancient Roman law provided for State intervention and required official sanction for adoption. In ancient times, adoption was primarily concerned with strengthening a family by giving it direct heirs. It was essentially a family-oriented practice with the main objective of continuance of the family for religious purposes (for example, performance of last rites by a son in India) and inheritance of property. The children adopted were mostly from amongst the kith and kin or at least from the same caste (particularly in India). Adoptions were rarely carried out for security and welfare of the children in need. (Billimoria, 1984)

   In India, the importance attached to a male successor provided the main motivation for adoption. The son begotten from the wedded wife occupied the highest status and in the absence of one, the adopted son took the position of importance. In the times when polygamy was legally and socially accepted, children born from the concubines or from illicit relationships were also given some status and limited rights over maintenance and inheritance of property. The Rao Rajas and Rao Ranis from princely states were the off springs of the Maharajas but not begotten from the wedded wives. They were brought up in the palaces, given the same education and other facilities as the princes and princesses, and even inherited properties but they could never be given succession rights over the throne. Thus the ancient Hindu tradition in India conferred some recognition and protection upon illegitimate children but one does not easily come across instances of adoption of a male child by father who had a legitimate female child or even an illegitimate male child.

9. Let me now refer to several excerpts from the Book. "Ours by Choice" by "Nilima Mehta". The learned author points out that: It is found that most of the personality characteristics which make people seem pleasant or unpleasant are a result of their upbringing or nurturing. The child who is brought up in a neglected, unloved and emotionally deprived environment will blossom in a happy home; even the child's appearance will be transformed. They will start resembling the people who take care. The child will adopt your expressions, gestures, behavioural patterns to such an extent that strangers might even remark on the resemblance between you and your adopted child. Most of the characteristics which make people seem pleasant, likable or unlikable are a result of a upbringing and what they have imbibed through role modeling. The values of caring, concern, justice, honesty, integrity are all learnt from parents and they are attributes of the mind and personality which are created, nurtured and learnt through environmental influences. Infant research has reinformed the importance of environmental influences on a child's personality development. Despite being of a lower socio-economic background and born to illiterate parents, for instance, adopted children were found to be leading very successful lives. They had not developed characteristics of their biological parents, but had imbibed the standards, values and attributes of their adoptive parents. While the contribution of environment and upbringing to a child's personality is thus determined, heredity cannot be ignored. Even an ideal environment can only develop what is already present in an individual. No amount of coaching or pressure can develop in a child an artistic or musical talent that did not exist in the first. What about the adopted child's level of intelligence? Psychologists and social scientists believe that a child's basic intelligence is the one they are born with. Apparent intelligence is the result of education exposure and social learning. Sometimes people from deprived, non-stimulating environments may seem very dull, even though they are not actually so. It is hard to accurately predict a child's intelligence, but heredity does play an important role in this area. Each child is an individual in her own right and should be considered and accepted as such. Destitute children certainly need adoptive homes and families that will give them opportunities they might not have otherwise had. To live in the shadow of unrealistic parental expectations is unfair to any child. It is being increasingly felt that even bad or broken homes are better than not having a home. Every child has a right to have a home in loving care and within the effective atmosphere of the home.

   In India the only existing legislation on Adoption is the Hindu Adoption and Maintenance Act, 1956. Non-Hindus have can only avail of the Guardianship & Wards Act, 1890. As a result of canvassing by child welfare groups, the Joint Select Committee of Parliament approved the Adoption of Children Bill of 1972 which was introduced in Parliament in 1978 but later withdrawn. A modified bill known as Adoption of Children Act, 1980 was introduced which excluded Muslims. However, nothing came out of the same. In fact on the initiative of the Christian Community of India, a Bill was forwarded known as Christian Adoption and Maintenance Act, 1995. It had the support of the Catholic Bishops' Conference of India as also of the various other Christian denominations throughout the country. However, nothing has emerged inspite of the readiness of Christian community in the country to accept the bill on Adoption & Maintenance. The Maharashtra Legislative Assembly introduced a bill on 9th August, 1995 known as "Maharashtra Adoption Act, 1995". The Act was made applicable to every person adopting a child in the State irrespective of the persons's religion, caste and creed. The Bill sought to displace The Hindu Adoption and Maintenance Act, 1956 in the State of Maharashtra. Section 27 of the bill, is a saving provision whereby on coming into force of the Maharashtra Adoption Act the provisions of Hindu Adoption and Maintenance Act, 1956 will cease to have effect in the State of Maharashtra. In the Statement of Objects and Reasons it is set out that the Legislation was enacted to give effect to Articles 32 and 44 of the Constitution. The Bill is pending assent of the President of India. There I believe are various objections filed by some groups.

III. ARTICLE 21:--- Right to Life:

11. The judicial long march to find the true scope and intent of Article 21 ironically began with those associated with suppression of liberty during the emergency. Emergency politics led the search for human rights. The Constitution once stated by Justice Vivan Bose, as meant for the Butcher, the Baker and the Candle stick maker has given way to what Justice Krishna Iyer says, as for the tortured prisoner, the bonded labourer, the discriminated gender, the marginalised, dissenter and the disabled, deprived human. The case of Smt. Maneka Gandhi v. Union of India and another, , was the water shed in this historical march in a deeper understanding of the Constitution and more specifically Articles 14 and 21 of the fundamental rights: The Apex Court observed that the purpose behind Article 21 was to help the individual to find his own viability, in order to give expression to his creativity and to prevent governmental and other forces from alienating the individual from his creative impulses. These are rights which are wide ranging and comprehensive. Though Article 21 is couched in a negative meaning nevertheless it confers right to life and personal liberty.

   Immediately thereafter in the case of Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others A.I.R. 1981 S.C. 746, the Apex Court observed that the fundamental right to life which is the most precious human right and which forms the ark of all other rights, must, therefore, be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. While understanding the proper meaning and content of the right to life, it must be understood that it is a constitutional provision which is being expounded and moreover it is a provision enacting a fundamental right. Court's should always attempt to expand the reach and ambit of the fundamental right rather than to attenuate its meaning and content. Constitutions, it is pointed out, are

not ephemeral enactments designed to meet passing occasions. They are designed to approach immortality as nearly as human institutions can approach it. The term "life" as used in Article 21 is something more than mere animal existence. The right to life includes the right to life with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings. These human rights represent the basic values cherished by men since civilization began. They are wide ranging and comprehensive and include the right to equality, right to freedom, right against exploitation, educational rights and the right to constitutional remedies. Of course, the magnitude and content of the components of these rights would depend upon the extent of the economic development of the country, but it must, in any view of the matter include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation protanto of his right to live and it would have to be in accordance with reasonable, fair and just procedure established by law, which stands the test of other fundamental rights. This exposition came after judgment of the Apex Court in the case of Additional District Magistrate, Jabalpur v. Shivakant Shukla, , during the emergency period, when the right to life and liberty were denied to the citizens of this country. The Apex Court then by a majority judgment had held that the right to personal liberty is the right of the individual to personal freedom nothing more and nothing less. That right along with certain other rights had been elevated to the status of fundamental right in order that they may not be tinkered with and in order that a mere majority should not be able to trample over them. That right was, however, subject to the right of the President under Article 356 to suspend the enforcement even of these rights which were sanctified by being lifted out of the common morass of human rights. The Apex Court observed that the enforcement of the fundamental rights can be suspended during an emergency.

12. The various facets of Article 21 as now being discovered by the Apex Court have led the Judges to search the various hues of its composition, in order to make our society more humane and just, in tune with the Constitutional mandate as reflected by the preamble. The Preamble has become the viewing glass. The fundamental rights are now viewed from the language of the preamble. Directive principles no longer mean what the Nation must aspire and what the Legislature and Executive must proceed to make functional. Article 21 amongst the fundamental rights is now the pinnancle of the pyramid that constitutes the basic rights of citizens. To understand these basic or what are known as human rights we have to examine the diverse implication of the term "life". These rights could either be positive or moral. The rights which have been conferred on us, by the law of the country and which are subject to revocation by relevant Legislation can be termed as positive rights. In this sense moral rights are principal rights which appeal to the ethical and emotional feelings of every human being. These rights are coextensive with the right of man himself. These are rights which cannot be revoked. They are inalienable rights that man acquires by the very fact that he belongs to the human race. The first such acceptance was in the Bill of Rights as adopted in Virginia on June 12, 1776. Its first article affirmed that:-

> "... All men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

It was so reflected in the French Revolution which proclaimed and endorsed that "Men are born, and always continue, free and equal in respect of their rights." The right traceable to Article 21 are basic and inalienable rights. Protection of these rights forms part of the Rule of Law. We must remember that the Rule of law provides the foundation and the basic for legal respect and for human dignity. Lawyers and Judges together are the engineers of this human right jurisprudence. Only an activist bar can broaden and innovate social action litigation to motivate courts to promote public interest "lis", since Judges are obliged to do justice.

13. We may now examine the judicial precedents, to find whether in the search for justice, of the cause being expounded, the Constitutional ship can be navigated into the harbour of human rights. Navigation today may be much easier than was for the first explorers - Magellan, Vespuci, Columbus or Vasco-de-Gama, amongst the Europeans. Now Captains who have occupied seats on the judicial ship of justice have charged out courses in their pursuit and in the search for human rights. These we call precedents.

In the case of Bandhua Mukti Morcha v. Union of India and others, the Apex Court was considering a petition by public spirited organisations on behalf of bonded labourers. While passing directions for relief, the Apex Court observed as under :---

> "The right to live with human dignity, free from exploitation enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and the children of tender age against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and neither the

> Central nor any State Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials."

In the case of Olga Tellis and others v. Bombay Municipal Corporation and others, , the Apex Court was considering the rights of pavement dwellers, residing on the footpaths of public streets in Bombay. What is important from this judgment is that the Apex Court in no uncertain terms held, that the Constitution is not only the paramount law of the land but, it is the source and sustenance of all laws. Its provisions are conceived in public interest and are intended to serve a public purpose. Then considering as to what would be the right to life the Apex Court has observed as under :-

> "The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away, as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life."

While interpreting the right to life and generally the fundamental rights, the directive principles which are fundamental in the governance of the country, have served as the beacon light in the interpretation of the constitutional provisions.

In the case of State of Himachal Pradesh and another v. Umed Ram Sharma and others, , the Apex Court in a Public Interest Litigation petition had to consider whether the right of usable roads to poor in so far as residents of hilly areas would constitute a part of their right to life. After examining Article 38(2), Article 19(1) (d) and Article 21 the Apex Court held that residents of hilly areas as far as feasible and possible, society has constitutional obligation to provide roads for communication in reasonable conditions. The Apex Court then went on to hold that the affirmative actions by the judiciary is sometimes necessary to keep the judiciary in tune with the legislative intention.

13. In Lakshmi Kant Pandey v. Union of India, Apex Court was considering the conditions to be imposed on foreigners taking a child in adoption. At the relevant time and even today there is no statutory enactment in India providing for adoption of a child by foreign parents or laying down the procedure which must be followed. In this context the Court was considering the rights of the child and child welfare. The Apex Court observed that children are "supremely important national asset" and the future well being of the nation depends on how its children grow and develop. The Court then quoted Milton for the following:---

> "Child shows the man as morning shows the day."

The child is a soul with a being, a nature and capacity of its own, they must be helped to find them, to grow into their maturity, into fullness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation. The following observations are noteworthy:---

> "Now obviously children need special protection because of their tender age and physique mental immaturity and incapacity to look after them-selves. This is why there is a growing realisation in every part of the globe that children must be brought up in an atmosphere of love and affection and under the tender care and attention of parents so that they may be able to attain full emotional, intellectual and spiritual stability and maturity and acquire self-confidence and self-respect and a balanced view of life with full appreciation and realisation of the role which they have to play in the nation building process without which the nation cannot develop and attain real prosperity, because a large segment of the society would then be left out of the developmental process. This consciousness is reflected in the provisions enacted in the Constitution by enacting Clause (3) of Article 15 which enables the State to make special provisions inter alia for children and Article 24 which provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment".

In his Foreword to Manual on Adoption, A guidebook on Principles, Practices and Procedures, brought out by Indian Association for Promotion of Adoption, Justice Bhagwati, who had spoken for the Bench in Lakshmi Kant Pandey (supra) observed that the directions given on Inter-Country Adoption were given as a part of the fundamental right of the child to life under Article 21 of the Constitution. This is what Justice Bhagwati said "The laying down of the procedure and the guidelines was almost in the nature of legislation by the Court but, it had to be done, because the Government was dragging its feet in enacting a suitable Adoption of children Act and it was necessary for the Court to intervene to protect the fundamental right of the child to life under Article 21 of the

Constitution." Even without that from the judgment itself it was apparent that it was referable to Article 21, as the petition was under Article 32 and reference to Article 15(3) and24 were in aid thereof. The Court accepted the right to a home, a name and a family as a part of the "right to life".

Why must these children be treated as castaways of society to be ostracized, and carry the mark of "cain" on their heads for no fault of their's.

14. In Vikram Deo Singh Tomar v. State of Bihar, 1988 (Supp.) S.C.C. 734 the question arose before the Apex Court on a letter informing the Apex Court that female inmates of Care Home of Patna (Bihar) were compelled to live in inhuman condition in an old dilapidated building, that they were ill-treated, provided food which was both insufficient and of poor quality. While disposing of the petition and issuing directions the Apex Court observed that under Article 21 of the Constitution, every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian Citizen and it is in the discharge of its responsibilities to the people, the State recognises the need for maintaining establishments for the care of those unfortunates, both women and children, who are castaways of an imperfect social order and for whom, therefore, of necessity provision must be made for their protection and welfare. Both out of common humanity and considerations of law the State is bound to provide such Homes to abide by the constitutional standards recognised by well accepted principles. It is incumbent upon the State when assigning women and children to such Homes that it must provide minimum conditions ensuring human dignity.

In Pt. Parmanand Katara v. Union of India and others, the issue was of providing immediate minimum medical aid to injured persons. The Apex Court observed that Article 21 of the Constitution casts an obligation on the State to 'preserve life'. While dealing with an accident victim the Doctor whether attached to a public or private hospital has the professional obligation to render service with due expertise for protecting 'life'.

In Ramsharan Autyanuprasi and another v. Union of India and others, the Apex Court was called upon to settle a dispute in respect of the Museum Trust created by Maharaja of erstwhile Jaipur State. While disposing of the petition the Apex Court observed as under :---

> "It is true that life in its expanded horizons today includes all that gives meaning to a man's life including his tradition, culture and heritage and protection of that heritage in its full measure would certainly come within the encompass of an expanded concept of Article 21."

In Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P. and others, , the matter arose on violation of the provisions of the Air & Water (Prevention and Control of Pollution) Act. The Apex Court has observed as under :---

> "Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution of India. Anything which endangers or impairs by conduct of anybody either in violation or in derogation of law, that quality of life and living by the people is entitled to (be taken) recourse of Article 32 of the Constitution."

In the case of Subhash Kumar v. State of Bihar and others, the question arose on account of pollution caused by discharge of slurry/sludge from a Steel Plant. While disposing of the petition the Apex Court observed as under :---

> "Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life."

15. In C.E.S.C. Limited and others v. Subhash Chandra Bose and others, the issue arose out of applicability of provisions of the Employees' State Insurance Act, 1948. While considering the ambit of Article 21 the Court also considered Article 25(2) of the Universal Declaration of Human Rights, 1948. While disposing of the petition, the Apex Court observed as under:---

> "The right to social justice is a fundamental right. Right to livelihood springs from the right to life guaranteed under Article 21. The health and strength of a worker is an integral facet of right to life. The aid of fundamental rights is to create an egalitarian society to free all citizens from coercion or restrictions by society and to make liberty available for all. Right to human dignity, development of personality, social protection, right to rest and leisure as fundamental human rights to common man mean nothing more than the status without means.
>
> To the tillers of the soil, wage earners, labourers, wood cutters, rickshaw pullers, scavengers and hut dwellers, the civil and political rights are 'mere cosmetic' rights. Socio-economic and cultural rights are their means and relevant to them to realise the basic aspirations of meaningful right to life. The Universal Declaration of Human Rights, International Convention of Economic. Social and Cultural Rights recognise their needs which include right to food, clothing, housing, education, right to work, leisure, fair wages, decent working conditions, social security, right to physical or mental health, protection of their families as integral part of the right to life. Our Constitution in the Preamble and Part IV reinforces them compendiously as socio-economic justice, a bedrock to an egalitarian social order. The right to social and economic justice is thus a fundamental right."

In Peerless General Finance and Investment Co. Ltd. and another v. Reserve Bank of India, the issue pertained to directions issued by the Reserve Bank of India to regulate several schemes run by what is known as Residuary Non-Banking Companies. While disposing of the petition the Apex Court observed as under:---

> "The solidarity of political freedom hinges upon socio-economic democracy. The right to development is one of the most important facets of basic human rights. The right to self-interest is inherent in right to life. Mahatma Gandhiji, the Father of the Nation, said that "Every human being has a right to live and therefore to find the wherewithal to feed himself and where necessary, to clothe and house himself. Article 25 of the Universal Declaration of Human Rights provides that "everyone has a right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care. Right to life includes the right to live with basic human dignity with necessities of life such as nutrition, clothing, food, shelter over the head, facilities for cultural and socio-economic well being of every individual. Article 21 protects right to life. It guarantees and derives therefrom the minimum of the needs of existence including better tomorrow."

In Surjit Singh v. State of Punjab & others, question arose of reimbursement of expenses for medical treatment. The Court while considering the case observed as under :---

> "It is otherwise important to bear in mind that self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defence in criminal law."

In Chameli Singh & others v. State of U.P. & another, 1996(2) S.C.C. 54 an issue arose out of acquisition of land for a public purpose. The Apex Court considering the scope and ambit ofArticle 21 observed as under :--

> "In any organised society, right to live is a human being to not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention of under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads, etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As it enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in the democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself."

In the case of People's Union for Civil Liberties (PUCL) v. Union of India and another, the issue arose as to the right of citizen to transmit telephone message or hold telephone conversation in privacy. While disposing of the question the Court noted that :---

> "India is a signatory to the International Covenant on Civil and Political Rights, 1966."

The Court then observed that Article 17 of the International Covenant does not go contrary to any part of our Municipal Law. Article 21 of the Constitution has, therefore, been interpreted in conformity with the International Law. Therefore, the Court spelt out that though International Covenant by themselves may not be enforceable in Municipal courts yet when they constitute a part of Article 21 and when there is no Municipal Law to the contrary the International Covenant can be resorted to.

In the case of M/s. Shantistar Builders v. Narayan Khimalal Totame and others, , certain lands were exempted under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 for construction of dwelling units under the scheme for weaker sections of the society. There was a ceiling in so far as income is concerned. The petitioners belonging to weaker section of society filed a petition contending that the builder had violated the conditions imposed in the order of exemption. Various grounds were set out therein. The petition was dismissed as by then the Government Policy had changed. Without examining the factual aspects certain directions were given. It is against those directions that the builder challenged the order before the Apex Court. While disposing of the Special Leave Petition the Apex Court observed as under:---

> "The right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body, for a human being it has to be a suitable accommodation which would allow him to grow in every aspect physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fireproof accommodation."

16. In Unnikrishnan J.P. & others v. State of Andhra Pradesh and others, the question before the Apex Court was whether children aged upto 14 years have a fundamental right to education. The issue arose out of a judgment of the Apex Court in the case of Mohini Jain v. State of Karnataka . In Mohini Jain (supra) the issue was whether a citizen has a fundamental right to education in a Medical, Engineering or other professional Degree. The question whether the right to primary education as mentioned in Article 45 of the Constitution of India is a fundamental right underArticle 21 did not directly arise in Mohini Jain's case. The correctness of the view taken in Mohini Jain's case was under issue before the Apex Court before a larger Bench. One of the contentions sought to be argued was that Article 37 of Part IV was not enforceable in the absence of any law and that, therefore, assuming the right under Article 45 is to be included within the ambit ofArticle 21 it would not be enforceable. Articles 45 and 49 were sought to be compared and it was suggested that whereas in Article 49 there was an obligation placed on the State, under Article 45what was required was an endeavour. The minority view took a stand that the issue as it did not squarely arise in the case need not be decided. The majority, however, proceeded to dispose of the said issue. The majority proceeded to answer the question as to why the Constitution did not positively confer a fundamental right to life or personal liberty like Article 19 but had couched it in negative language. The question was answered as under :---

> "The reason is, great concepts like liberty and life were purposefully left to gather meaning from experience. They relate to the whole domain of social and economic fact. The drafters of this Constitution knew too well that only a stagnant society remains unchanged."

17. The Apex Court then proceeded to answer the interaction between fundamental rights and directive principles. The Court answered the question as under :---

> "This Court has also been consistently adopting the approach that the fundamental rights and directive principles are supplementary and complementary to each other and that the provisions in Part III should be interpreted having regard to the Preamble and the Directive Principles of the State Policy. The initial hesitation to recognise the profound significance of Part IV has been given up long ago."

The Court further observed that :

> "It is thus well established by the decisions of this Court that the provisions of Parts III and IV are supplementary and complementary to each other and that fundamental rights are but a means to achieve the goal indicated in Part IV. It is also held that the fundamental rights must be construed in the light of the directive principles."

An argument was raised that Article 21 is negative in character and that it merely declares that no person shall be deprived of his life or personal liberty and that since the State is not responsible for the right to education, Article 21 is not attracted and only in the event the State makes a Law taking away the right to education would Article 21 be attracted. The said argument was rejected by observing as under:---

> "This argument, in our opinion, is really born of confusion; at any rate, it is designed to confuse the issue. The first question is whether the right to life guaranteed by Article 21 does take in the right to education or not. It is then that the second question arises whether the State is taking away that right. The mere fact that the State is not taking away the right as at present does not mean that right to education is not included within the right to life. The contents of the right is not determined by perception of threat. The content of right to life is not to be determined on the basis of existence or absence of threat of deprivation. The effect of holding that right to education is implicit in the right to life is that the State cannot deprive the citizen of his right to education except in accordance with the procedure prescribed by law."
>
> majority view then held that the view taken in Mohini Jain (supra) that the right to education flows directly from right to life had been correctly answered. The Court, however, proceeded to answer as to how much and what level of education is necessary to make life meaningful? We are not actually concerned with that aspect of the matter.

Air India Statutory Corporation, etc. v. United Labour Union and others, etc., after reviewing the Preamble to the Constitution as explained in S.R. Bommai v. Union of India, and the amendment to the Preamble brought about by the 42nd (Amendment) Act and its effect on the directive principles of State Policy, the Apex Court laid down this proposition, which to my mind is fundamental for the purpose of deciding the issue herein. The Apex Court observed as under :---

> "The directive principles in our Constitution are forerunners of the U.N.O. Convention on Right to Development as inalienable human right and every person and all people are entitled to participate in, contribute to and enjoy economic, social cultural and political development in which all human rights, fundamental freedoms would be fully realised. It is the responsibility of the State as well as the individuals, singly and collectively, for the development taking into account the need fuller responsibility for the human rights, fundamental freedoms as well as the duties to the community which alone can ensure free and complete fulfillment of the human being. They promote and protect and appropriate social and economic order in democracy for development. The State should provide facilities and opportunities to ensure development and to eliminate all obstacles to development by appropriate economic and social reforms so as to eradicate all social injustice. These principle are imbedded, as stated earlier, as integral part of our Constitution in the Directive Principles. Therefore, the Directive Principles now stand elevated to inalienable fundamental human rights. Even they are justiciable by themselves."

While dealing with a similar issue which had arisen as here, a learned Single Judge of the Kerala High Court in the case of Philips Allred Malvin v. Y.J. Gonsalvis and others, has held that the right of the couple to adopt a son is a constitutional right guaranteed under Article 21 as the right to life includes those things which make life meaningful. The Court considered Canon Law as applicable to various denominations of Christians as also Mohammedan Law which recognised adoption if there is custom prevailing amongst the Mohammedan community. It is in that context that the Court held that the right of a couple to adopt a son is a constitutional right guaranteed under Article 21. However, there are no reasons to indicate how the Court has arrived at the conclusion except for quoting Article 21.

18. The judicial long march as a consequence has thrown out fossilised concepts and has breathed life into the Directive Principles by transplanting them into Fundamental Rights. The skeleton of Fundamental Rights has now flesh and blood and is clothed with the Preamble to the Constitution. It is ready to battle the forces of status quo, in search of social justice and as an upholder of human rights. It was Cardozo who stated "As statutes are designed to meet the fugitive exigencies of the hour..... A Constitution or a bill of rights - States or ought to state not rules for the passing hour, but principles for an expanding future". It is in that context that the expansion of judicial review must be understood within a broader constitutional setting. The explosion of regulatory power led to the Courts coming to be regarded as a central part of a broader constitutional mechanism, securing responsible government. In this manner growth of review and the perception of the judicial function upon what it is founded, constituted a mature response to the changing needs of good governance. In developing the power of judicial review and to articulating the reading of the preamble and the directive principles, whilst interpreting the fundamental rights, has become a creative interpretative process in the field of public law. As the Lord Chancellor of England, Lord Irvine of Lairg, said in his 1999 Paul Sieghart Memorial Lecture and I quote :---

> "When Scholars begin to write the legal history of the twentieth century they will need to allocate a considerable space for their chapter on Public Law. Judicial activism in the development of a mature system of public law is likely to come to count as the century's single greatest judicial achievement."

19. Let me now articulate this broad concept of life based on judicial precedents. Why does the right to life in the case of an abandoned orphan or destitute child includes the right to be taken in adoption. Precedent no doubt forms part of the rule of law. Article 141 has sanctified it, that the law laid down by the Apex Court is binding on all courts in India. The interpretation and application of precedent involves recourse to criteria of justice, developed in response to the fundamental requirement that law should reflect and embody an account of the common good. The equality secured by the application of precedent is ultimately therefore, an equality of common good. The process of interpretation and reinterpretation has evidenced a constituent tradition in the light of experience and changing values. Judges rely on precedent to buttress their conclusions. They have made use of precedent in extending the boundaries of social justice via the interpretative process. The new dimensions struck by the Apex Court in Unnikrishana (supra) and carried forward in Air India Statutory Authorities (supra) must help an activist judiciary committed to socio, economic and political justice to lead law into hereto unexplored areas. Lakshmi Kant Pandey is the high water mark in the development of the rights of the child. If an Indian child can be given to foreign adoptive parents irrespective of their religion, does the same child not have the right to be adopted in a home under Indian sky's. The directions issued by the Apex Court in Lakshmi Kant Pandey (supra) were in recognition of the right to life guaranteed under Article 21 to the child. In the absence of adoption being a part of the right to life the Court could not have proceeded to issue the said directions. In Shanti Star (supra) the Court recognised the right of housing as a fundamental right in order to ensure a fuller development of every child. That would be possible, the Court said, if the child is in a proper home. The right of the child to education upto the age of 14 has been accepted as a part of his fundamental right to life. In Air India Statutory Corporation (supra) the Apex Court said that the directive principles now stand elevated to inalienable fundamental human rights. They are even justiciable by themselves. In Unnikrishnan (supra) no doubt the Court tested the right to life to make it meaningful within the economic capacity of the State. In other words though the directive principles were read into the chapter on fundamental rights nevertheless the Court hastened to add that it should be within the economic capacity of the State. What emerges is that the directive principles now are read as a part of the

right to life subject to the economic capacity of the State. In the case of adoption there is no economic burden cast on the State. The economic capacity of the State is not in issue. The simple and short issue is the right of the child to be taken in adoption by willing parents without the State having to bear any economic burden. Once the economic aspect and the burden on the State is discharged the Article 21 must stand tall and reach to Article 39(f) of the Constitution. So read the right of the child to be adopted and consequently to have a home, a name and a nationality has to be considered as part of his right to life.

IV. INTERNATIONAL COVENANTS AND THEIR ENFORCEABILITY BY MUNICIPAL COURTS:

20. Article 39(f) was introduced by the Constitution (Forty-second Amendment) Act, 1976 with effect from 3rd January, 1977. The said Article reads as under:---

> "39(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

The need for this Article, it may be pointed out has arisen because India is a Signatory to various International Conventions pertaining to child and child welfare. We may now refer to these various International Conventions. The first in point of time is the Universal Declaration of Human Rights to which India is a Signatory. We are concerned with Articles 161 and 163 which read as under :---

> " 1. Men and Women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
>
> 2. .....
>
> 3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

Article 252 reads as under :---

> "2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out or wedlock, shall enjoy the same social protection.
>
> We then have the declaration of the rights of the child which was proclaimed by General Assembly Resolution No. 1386 (XIV) of 20th November, 1959. The relevant provisions are Principle No. 3 which reads as under:-
>
> "3. The child shall be entitled from his birth to a name and a nationality."

Principle No. 6, reads as under :---

> "6. The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case in any atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable."

relevant part of Principle No. 7 which is important is as under:---

> "The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents."

The declaration of the rights of the child was satisfies by India on 2nd December, 1999.

We then have the International Covenant on Economic, Social and Cultural Rights was adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A(XXI) of 16th December, 1966. The relevant portions are Article 10, which reads as under :---

> "The States Parties to the present Covenant recognized that:
>
> 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
>
> 2. .....
>
> 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law."

We then have then the Declaration on Social and Legal Principles relating to Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally. The relevant Articles would be as under :---

> Article 3: The first priority for a child is to be cared for by his or her own parents.
>
> Article 4: When care by the child's own parents is unavailable or inappropriate, care by relatives of the child's parents, by another substitute-foster or adoptive-family or, if necessary, by an appropriate institution should be considered.
>
> Article 13: The primary aim of adoption is to provide the child who cannot be cared for by his or her own parents with a permanent family.

The Convention on the Rights of the Child was adopted and ratified by India on 20th November, 1989. The Preamble to this covenant has referred to various other declarations and conventions in regard to the child. The relevant Articles are as under:---

> "Article 20.---1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
>
> 2. States Parties shall in accordance with their National Laws ensure alternative care for such a child.
>
> 3. Such care could include, inter alia, foster placement, Kafala in Islamic law, adoption or if necessary placement in suitable institutions care of children. When considering solutions, due regard shall be paid desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.
>
> Article 21: States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:.....
>
> Article 36: State Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

These no doubt are International Conventions. The State has yet to frame laws in terms of the aforesaid International Conventions though it has ratified the conventions. Law pertaining to Adoption has been enacted for a section of the Society consisting of certain religious groups.

21. The question is whether the courts can enforce these treaties/conventions without they forming a part of Municipal Law. We need not debate much on the issue as the Apex Court has in so many words now said that even though there is no Municipal Law, if those rights form a part of the fundamental rights under Chapter III and/or they are not in conflict with the Municipal law they can be enforced in the National courts. The earliest judgment was in the case of Jolly George Verghese and another v. State Bank of Cochin, . In that case the judgment debtor was sought to be imprisoned for failure to pay the moneys under a decree. After passing of the decree he had no means to pay. The Civil Procedure Code provides for detaining of such a person in Civil prison for a period as set out in the Code of Civil Procedure. Krishna Iyer, J., speaking for the Apex Court referred to the Universal Declaration of Human Rights. The learned Judge held that India being a signatory to the said declaration no person could to be deprived of his life or liberty if he had no means to pay. In other words though the Municipal Law provided that on failure to satisfy the decree in execution the Court may commit the judgment debtor to Civil prison. Nonetheless no man could be deprived of his liberty without the due process of law. If the man had no means of paying, his right to liberty could not be denied considering the Universal Declaration of Human Rights and as such it was not in conflict with the Municipal Law. The said declaration should be read as a part of the Municipal Law and be enforceable by the National Court.

In the case of Gramophone Company of India Ltd. v. Birendra Bahadur Pandey and others, the issue arose of transit of goods from India to Nepal pursuant to a Treaty between India and Nepal providing a corridor for the transport of goods. Various Municipal Acts were under consideration along with the Treaty between the two countries and International Convention. The Court posed two questions (1) whether the International Law is, of its own force, drawn into the law of the land without the aid of a municipal statute and (2) whether so drawn, it overrides Municipal Law in case of conflict. The Apex Court relied on various International Covenants as well as the law as expanded by other National Courts. The Apex Court then proceeded to answer the question as under :---

> "There can be no question that nations must march with the international community and the Municipal Law must respect rules of International Law even as nations respect international opinion. The comity of Nations requires that rules of International Law may be accommodated in the Municipal Law even without express legislative sanction provided they do not run into conflict with Act of Parliament."

However, in the event when they do run into such conflict, the sovereignty and the integrity of the Republic and the supremacy of the constituted legislatures in making the laws may not be subject to external rules except to the extent legitimately accepted by the constituted legislatures themselves. The Apex Court then went on to observe as under :---

> "The doctrine of incorporation also recognises the position that the rules of International Law are incorporated into National Law and considered to be part of the National Law, unless they are in conflict with an Act of Parliament. Comity of nations or no, Municipal Law must prevail in case of conflict. National Courts cannot say "yes" if Parliament has said no to a principle of International Law. National Courts will endorse International Law but not if it conflicts with National Law. National Courts being organs of the National State and not organs of International Law must perforce apply National Law if International Law conflicts with it. But the courts are under an obligation within legitimate limits, to so interpret the Municipal Statute as to avoid confrontation with the comity of Nations or the well established principles of International Law. But if conflict is inevitable, the latter must yield."

The question came up again before the Apex Court in the case of People's Union for Civil Liberties v. Union of India & another, . The matter arose before the Apex Court out of a petition filed by the petitioners in a matter of what is known as fake encounter. The question again was whether the International Covenants to which India was a party could be enforced and/or relied upon. The Court observed that in Nilabati Behera v. State of Orissa, , the Court had held that award of compensation in a proceeding under Article 32 by the Supreme Court or under Article 226 by the High Court is a remedy available in public law based on strict liability for contravention of fundamental rights. The Court posed the question as to whether the reference to and reliance upon Article 9(5) of the International Covenant on Civil and Political Rights, 1966 in Nilabati Behra (supra) raises an interesting question, viz. to what extent can the provisions of such international covenants/conventions be read into National Laws. The Court noted a decision of the Australia High Court, Minister for Immigration and Ethnic Affairs v. Teoh., 1995(69) Aus.L. J. 423. After discussing the said judgment at length the Court proceeded to answer as under:---

> "For the present, it would suffice to state that the provisions of the covenant, which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can certainly be relied upon by courts as facets of those fundamental rights and hence, enforceable as such."

22. In the case of Vishaka and others v. State of Rajasthan & others, the question was of sexual harassment of working woman at work places. The question before the Apex Court was as to what would be the position in law if there was no law for effective enforcement. In that case the Supreme Court exercised its powers under Article 32 and laid down guidelines and directed that the same be treated as law declared under Article 141. In so far as absence of Municipal Law the Court observed as under: -

> "In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein." Any International Convention not-inconsistent with the fundamental rights and in harmony with its spirity must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and the enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue ofArticle 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make law. The executive power of the Union is, therefore, available till the Parliament enacts legislation to expressly provide measures needed to curb the evil."

The Court then proceeded to further observe as under:---

> "The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the filed when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law."

The Apex Court then observed that :---

> "The High Court of Australia in Minister for Immigration and Ethnic Affairs v. Teoh., 128 A.L.R. 353, has recognised the concept of legitimate expectation of its observance in the absence of a contrary legislative provision, even in the absence of a Bill of Rights in the Constitution of Australia."

The Apex Court then said that there is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity. The Court then proceeded to lay down certain guidelines to effectuate what they held.

In the case of Gita Hariharan v. Reserve Bank of India, the question before the Apex Court was of construction of section 6-A of the Hindu Minority and Guardianship Act. The Court was considering section 6, which reads as under :--

> "The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property) are (a) in case of a boy or an unmarried girl the father and after him the mother: Provided that the custody of a minor who has not completed the age of five years shall ordinary be with the mother."

The question before the Court was as to what is the meaning of the word "after" in the aforesaid sub-section. The Court noted that the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 and the Beijing Declaration, which directs all State parties to take appropriate measures to prevent discrimination of all forms against women is quite clear. India is a signatory to the said Convention. The Court noted that the International Covenants could be the Rule to give true effect to the Municipal Law and then proceeded to answer that the word "after" is in a case where the father is not in actual charge of the affairs of the minor either because of his indifference or because of any agreement between him and the mother of the minor (oral or written} and the minor is in the exclusive care and custody of the mother or the father for any other reason is unable to take care of the minor because of his physical and/or mental incapacity, the mother, can act as natural guardian. This the Court held would be the law correctly read keeping in mind. International Conventions and non-arbitrariness.

From these line of judgments, therefore, it is clear that when there are International Covenants to which India is a Signatory and even though there is no Municipal Law or if there is Municipal Law when such covenants are not in conflict with the Municipal law they can be read to give effect to what is explicit in Part III of the Constitution.

23. The enforcement of International Covenants by the Executive in the absence of Legislation had come up for consideration before the Apex Court in the case of Maganbhai Ishwarbhai Patel v. Union of India & another, . The issue before the Apex Court was of handing over Indian territory to Pakistan pursuant to the Indo-Pakistan Western Boundary Case Tribunal award dated 19th February, 1968 in Rann of Kutch. No law was enacted by Parliament to give effect to the Award. The Apex Court yet upheld the right of the Executive to surrender the territory without any Act of Parliament in order to give effect to International Treaties and Obligations. The Apex Court has observed as under :--

> "Our Constitution makes no provision making legislation a condition of the entry into an international treaty in times either of war or peace. The executive power of the Union is vested in the President and is exercisable in accordance with the Constitution. The executive is qua the State competent to represent the State in all matters international and may by agreement, convention or treaties incur obligations which in International Law are binding upon the State. But the obligations arising under the agreement or treaties are not their own force binding upon Indian nationals. The power to legislate in respect of treaties lies with the Parliament under Entries 10 and 14 of List I of the Seventh Schedule. But making of law under that authority is necessary when the treaty or agreement operates to restrict the rights of citizens or others or modifies the laws of the State. If the rights of the citizens or others which are justiciable are not affected, no legislative measure is needed to give effect to the agreement or treaty."

V. EXECUTIVE POWER OF THE UNION AND THE STATES:

24. The Executive power of the Union is as set out in Article 73 of the Constitution of India, Correspondingly Article 162 provides for Executive Power of the State.

We may now trace the content and extent of the Executive power as explained by the Apex Court itself. In Rai Sahib Ram Jawaya Kapur and others v. The State of Punjab, , the question arose as to what exactly was an Executive function. While deciding the said issue the Apex Court observed that it may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. Explaining further the Court observed that neither Articles 162 and 73 contain any definition as to what the executive function is and what activities would legitimately come within its scope. Interpreting Articles 162 and 73 the Court observed that they are concerned primarily with the distribution of the executive power between the Union on the one hand arid the States on the other. They do not mean that it is only when the Parliamentary or the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State executive, as the case may be, can proceed to function in respect to them. On the other hand, the language of Article 162 clearly indicates that the powers of the State executive do extend to matters upon which the State Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. Comparing our Constitution with the British Parliamentary System the Court observed that though our Constitution is federal in its structure, it is modelled on the British Parliamentary system where the executive is deemed to have the primarily responsibility for the formulation of governmental policy and its transmission into law, though the condition precedent to the exercise of this responsibility is retaining the confidence of the legislative branch of the State. The executive functioning comprises both the determination of the policy as well as carrying in into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State.

The matter was further explained in Samsher Singh v. State of Punjab, . Construing similar and some other provisions of the Constitution, the Apex Court reiterated that executive power is generally described as the residue

which does not fall within the legislative or judicial power. But executive power may also partake of legislative or judicial actions. All powers and functions of the President except his legislative powers as for example in Article 123, viz. ordinance making power, and all powers and functions of the Governor except his legislative power as for example in Article 213, being ordinance making powers are executive powers of the Union vested in the President under Article 53(1) in one case and are executive powers of the State vested in the Governor under Article 154(1) in the other case. Clause (2) or Clause (3) of Article 77 is not limited in its operation to the executive action of the Government of India under Clause (1) ofArticle 77. Similarly, Clause (2) or Clause (3) of Article 166 is not limited in its operation to the executive action of the Government of the State under Clause (1) of Article 166. The expression "Business of the Government of India" in Clause (3) of Article 77, and the expression. "Business of the Government of the State" in Clause (3) of Article 166 includes all executive business.

In J.R. Raghupathy etc. v. State of A.P. and others, the Apex Court was considering whether prerogative powers of the Crown in England are akin to the executive function of Union and State under Article 73 and 162 of the Constitution. The Court did not pass any final pronouncement but prima facie observed that executive powers of the Union and the States under Articles 73 and 162 are much wider than the prerogative powers in England. Reliance was placed on some judgments in furtherance of that prima facie view.

25. From a perusal of the constitutional provisions and their interpretation by the Apex Court, it is clear that the Executive Power of the State is co-extensive with the Legislative power. It does not require legislation for the State to exercise its executive power. It is independent of the legislative functions. It is resorted to either in the absence of legislation or to fill in gaps on which legislation is silent.

In Madhu Kishwar and others v. State of Bihar & others, , a case of legislative and executive action while considering the directive principles, the Court observed as under :---

> "Legislative and executive actions must be conformable to, and effectuation of the fundamental rights guaranteed in Part III and the directive principles enshrined in Part IV and the Preamble of the Constitution which constitute the conscience of the Constitution. Covenants of the United Nations add impetus and urgency to eliminate gender-based obstacles and discrimination. Legislative action should be devised suitably to constitute economic empowerment of women in socio-economic restructure for establishing egalitarian social order. Law is an instrument of social change as well as the defender of social change. Article 2(e) of CEDAW enjoins this Court to breathe life into the dry bones of the Constitution, international conventions and the Protection of Human Rights Act, to prevent gender-based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights."

VI. ROLE OF THE JUDICIARY IN INTERPRETING PART HI AND PART IV OF THE CONSTITUTION.

26. Let us, now examine the role of the judiciary in this country in shaping what may be described as the Social, Cultural and Economic rights via interpretative process, to Part III and Part IV of our Constitution.

In State of Karnataka v. Appa Balu Ingale & others, 1995(4) S.C.C. 469 the issue before the Apex Court where the complaints by Harijans against the respondent who by use of force were threatened them from taking water from a newly dug up borewell. The Court there was considering the judgment of the Court to shape progress of law and to recognise changing conceptions of social values and having regard to public policy of law as determined by new conditions. Explaining the role of the Judge- The Apex Court observed as under:-

> "The Judge must be attune with the spirit of his/her times. Power of judicial review, a constituent power has, therefore, been conferred upon the judiciary which constitutes one of the most legal or constitutional rights. The judges are participants in the living stream of national life, steering the law between the dangers of rigidity on the one hand and formlessness on the other hand in the seamless web of the life. The great tides and currents which engulf the rest of the men do not turn aside in their course and pass the judges idly by. Law should subserve social purpose. Judge must be a jurist endowed with the legislator's wisdom, historian's search for truth, prophet's vision, capacity to respond to the needs of the present, resilience to cope with the demands of the future and to decide objectively disengaging himself/herself from every personal influence or predilections. Therefore, the judges should adopt purposive interpretation of the dynamic concepts of the Constitution and the Act with its interpretative armoury to articulate the felt necessities of the time."

The Court then further went on to observe as under :---

> "Public policy of law, as determined by new conditions, would enable the courts to recast the changing conceptions of social values of yester years yielding place to the changed conditions and environment to the common good. The courts are to search for light from among the social elements of every kind that are the living force behind the factors they deal with. By judicial review, the glorious contents and the trite realisation in the Constitutional words of width must be made vocal and audible giving them continuity of life, expression and force when they might otherwise be forgotten or ignored in the heat of the moment or under say of passions or emotions remain aroused, that the rational faculties get befogged and the people are addicted to take immediate for eternal, the transitory for the permanent

> and the ephemeral for the timeless. It is in such surging situation the presence of consciousness and the restraining external force by judicial review ensures stability and progress of the society. Judiciary does not forsake the ideals enshrined in the Constitution, but makes them meaningful and makes the people realise and enjoy the rights."

In Madhu Kishwar and others v. State of Bihar & others (supra) the issue before the Apex Court was the matter of rights of Scheduled Tribes women as Tribal Law to succession. The Apex Court therein observed that the custom though given status of law under Article 13(3)(a), should not be inconsistent with the fundamental right of the tribal women. Examining the purposeful role cautioning the courts of what is described as Judge made amendments, the Court observed as under :---

> "Judge-made amendments to provisions, over and above the available legislation, should normally be avoided. In the face of the divisions and visible barricades put up by the sensitive tribal people valuing their own customs, traditions and usages, judicially enforcing on them the principles of personal law applicable to others, on an elitist approach or on equality principle, by judicial activism, is a difficult and mind-bogging effort. An activist Court is not fully equipped to cope with the details and intricacies of the legislative subject and can at best advise and focus attention on the State policy on the problem and shake it from its slumber, goading it to awaken, march and reach the goal. For in whatever measure be the concern of the Court, it compulsively needs to apply, somewhere and at sometime, brakes to its self-motion, described in judicial parlance as self-restraint."

In Air India Statutory Corporation etc. (supra) the Apex Court observed as under :---

> "Constitutional issues require interpretation broadly not by play for words or without the acceptance of the line of their growth. Preamble of the Constitution, as its intergral part, is designed to realise socio economic justice to all people including workmen, harmoniously blending the details enumerated in the Fundamental Rights and the Directive Principles."

The Court then further observed as under :---

> "Article 39-A furnishes beacon light that justice be done on the basis of equal opportunity and no one be denied justice be reason of economic or other disabilities. Court are sentinel in the qui vive of the rights of the people, in particular the poor. The judicial function of a Court, therefore, in interpreting the Constitution and the provisions of the Act, requires to build up continuity of socio-economic empowerment to the poor to sustain equality of opportunity and status and the law should constantly meet the needs and aspiration of the society in establishing the egalitarian social order. Therefore, the concepts engrafted in the statute require interpretation from that perspectives, without doing violence to the language. Such an interpretation would elongate the spirit and purpose of the Constitution and make the aforesaid rights to the workmen a reality lest establishment of an egalitarian social order would be frustrated and Constitutional goal defeated."

VII. THE JUDGE AS A LEGISLATOR:

27. I need not dwell at length on this aspect, as the Apex Court in various judgments even in the absence of statute or otherwise has been issuing directions. Let me only refer to recent pronouncements beginning with the case of D.K. Basu, which principles were reiterated in Dilip K. Basu v. State of West Bengal and others, . Similar directions in the matter of women involved in prostitution and for their rescue and rehabilitation have been given in Gaurav Jain v. Union of India and others, . In Vishaka and others (supra) the Apex Court has been pleased relying on International Conventions and has issued directions against harassment of women at work places, etc. and declared it as the law under Article 141. Article 141 has been final.

It is thus seen that in the absence of legislation and where fundamental rights are involved courts have refused to remain silent spectators. The interpretative process coupled with International Convenants have been resorted to while issuing directions.

VIII. CUSTOM AS A SOURCE OF LAW:

28. Article 13(3)(a) of the Constitution of India reads as under:---

> "13(3)(a("law" includes any Ordinance, order, bye-law, rule regulation, notification, custom or usage having in the territory of India the force of law."

Under Article 13(1) all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the provisions of Part III, shall, to the extent of such inconsistency, be void. Before enacting the Hindu Adoptions andMaintenance Act, 1956 adoption was recognised amongst Hindus as a custom. I need not dwell at length on that aspect as that is not an issue and discussion on the same is not required for the purpose of disposing of the issues arising herein. On the coming into force of the Hindu Adoptions & Maintenance Act, 1956 by virtue of section 2, the Act is made applicable to any person (a) who is a Hindu by religion in any of its forms; (b) to any person who is a Buddhist, Jaina or Sikh by religion and (c) to any other person who is not a Muslim, Christian, Parsi or jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of

the matters dealt with herein if this Act had not been passed. In other words in so far as Buddhist, Jaina and Sikh are concerned they have been brought within the ambit of the said Act.

Customary Law has assumed that there are no such customs prevalent amongst those professing Muslim, Christian, Parsi or Jewish faiths. By virtue of Article 25, subject to public order, morality and health and to the other provisions of Part III, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. In this Article also for the purpose of sub-clause (2)(b) the word "Hindu" is construed as a reference to persons to profess Sikh, Jaina and Buddhist and reference to Hindu Religious Institutions are to be construed accordingly. Article 25(2)(b) is the provision providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. In other words Article 25 permits citizens subject to what is aforestated to freely profess, practise and propagate religion. Practise of religion within its ambit will also include the right to personal laws, if the source of law is religion itself. However, again such a law or religious belief is subject to public order, morality and health and other provisions of the Constitution. Further this would include Article 13 and any law including Customs which is inconsistent with the provisions of Part III to the extent of such inconsistency are void.

In Akbarally A. Adamji Peerbhoy v. Mohamedally Adamji Peerbhoy, 34 Bom.L.R. 655 a Division Bench of this Court was considering the Customs and Usages amongst those professing Mahomedan faith. The Court observed that considering the provisions of the Government of India Act the Court perhaps seek indirect light from the injunction that "the law of the Koran with respect of Mohammedans shall be invariably" adhered to": and that the rules and orders shall be so framed by the Court as to be most consonant to the religions and manners and law and usages of the parties. The Court then observed that the Privy Council has laid down that customs in derogation of the law of Islam ought to be allowed to be proved even in cases governed by an enactment to the imperative effect that the rule of decision shall be the Muhammadan law. The Court observed as under :---

> "The reasons seems to be that in regard to such questions, there being no established Islamic religion in India, the courts cannot determine that a particular exposition of Muhammadan Law is correct to the exclusion of all these; but justice, equity and good conscience require the application of that law which the parties as a matter of fact by their customs and usages have adopted, not the law which the courts by a consideration of the historical circumstances relating to the parties or of their religious books, or otherwise consider to be the law that they ought to have adopted: Kojas and Memons' case."

In an Article 'Adoption on Muslim Law' on introduction in the Rajya Sabha of "Adoption of Children Bill", Danial Latifi had written an Article. He observed that the Holy Quran has placed two restrictions on adoption or, more precisely, on the effects of adoption and the second Lineage. The learned Lawyer has quoted the relevant text from the Quran which may be reproduced as under :---

> "Ud'uhum li abaibhim hua aqsatu 'inda' Allahi fa in lam ta 'lamu abauhum".

(Call adopted sons by the names of their father: that is more just in the sight of God, unless you do not know their fathers).

This article was contributed for the purpose of suggestion that possibly there is no total ban on adoption and by bringing in some amendments it could be brought in conformity to what is contained in the Holy Qur'an.

In so far as Christians are concerned, as I have already set out earlier that Bible itself shows that adoption was being practised.

I have referred to the above for the purpose of finding out the position on the coming into force of the Constitution of India and more specifically Part III and, considering Article 13. If Article 13has to be read in respect of the law of customs or usage what becomes apparent is that the law must be in conformity with the principles contained in Part III of the Constitution. If the law is violative of the principles contained in Part III then such a law will be void. In Unnikrishnan (supra) the Apex Court has given a new direction to the interpretation of the fundamental right when it said that the effect of holding that the right to education is implicit in the right to life is that the State cannot deprive the citizen of his right to education except in accordance with the procedure prescribed by law. In other words the Court has held that the right to education forms a part of the right to life and as such is enforceable. It is not that, therefore, the State must enact a legislation to give effect to the fundamental rights. On the contrary the fundamental right itself confers a right on the child, to education. If this be the interpretation given to Article 21 then while holding that personal customs and usages are protected by Part III, what in fact must be held is that there is a right in the child to be adopted and it is on account of that right that the right of the Hindu to adopt has been held not to be inconsistent with Part HI of the Constitution. If so read the right to life becomes a fountain head in so far as adoption is concerned. Therefore, custom must be in conformity with Part III. It cannot be opposed to Part HI. If that be so, the adoption of a child will flow from Part III of the Constitution more specifically Article 21. Custom amongst Hindus after the coining into force of the Constitution has a secondary rote. This is because 'adoption' as a custom amongst Hindus before the Hindu Adoption and Maintenance Actwas restrictive. It could be, therefore, supported by Article 25. However, after the coming into force of 'The Hindu Adoption & Maintenance Act' adoption is not restricted to custom only, it is much wider. This part of adoption, therefore, can only be traceable to Article 21. Custom must confirm to Part III and not the other way. In so far as the adoptive parents are concerned, it flows from the right of such parents from Article 14 of the Constitution of India

even amongst those couples whose belief or customs do not provide for adoption. They cannot be discriminated from adopting a child without the State being accused of arbitrariness and infracting Article 14 of the Constitution. Once a couple is permitted under the Guardians and Wards Act of being capable of taking a child in guardianship the consequence must follow that the legal guardian can move the Court for adoption of the child in order to fulfill the constitutional objective of such a child to have a home, a name and a nationality. The Court no doubt has strayed into the area of personal law in what I may describe as the post adoption stage. Though adoption by itself is a fundamental right of an orphaned, abandoned or destitute child, the legal consequence of being given in adoption will entail application of Family Law or what we term as Personal law. This to my mind will not have the effect on the rights of any citizen to profess his religion guaranteed under Article 25 of the Constitution. The Special Marriage Act is in force. Any citizen of the country can marry under the said Act. Marriages and Divorce of those who marry under the said Act are governed by the said Act. Succession by the Indian Succession Act. People professing different faiths marry under that said Act. The vision of the new millennium must guide our religious leaders. Their broad vision can lead their flock to understand religions, as the founders of Religions would have wanted their followers to follow, love and tolerance must be the cornerstone. Religious teachings must undergo the same interpretative processes much as Judges to through for finding answers to justice social, economic and political.

IX. COMMON CIVIL CODE AND THE RIGHT TO ADOPT:

29. Article 44 of the Constitution enjoins that the State shall endeavour to secure for the citizens a uniform Civil Code throughout the territory of India. A section of public opinion on this aspect has been more vocal specific after the judgment of the Apex Court in Smt Sarla Mudgal v. Union of India, , wherein the learned Judge speaking for the Bench has observed as under:---

> "One wonders how long will it take for the Government of the day to implement the mandate of the framers of the Constitution under Article 44 of the Constitution of India. The traditional Hindu law personal law of the Hindus governing inheritance, succession and marriage was given go-bye as back as 1955-56 by codifying the same. There is no justification whatsoever in delaying indefinitely the introduction of a uniform personal law in the country."

In y. Narasimha Rao & others v. Y. Venkata Lakshmi & another, 1991 S.C.C. 451, another Bench of the Apex Court observed as under:---

> "In matters of status or legal capacity of natural persons, matrimonial disputes, custody of children, adoption, testamentary and intestate succession, etc. the problem in this country is complicated by the fact that there exist different personal laws and no uniform rule can be laid down for all citizens. The distinction between matters which concern personal and family affairs and those which concern commercial relationship, Civil wrongs, etc. is well recognised in other countries and legal system. The law in the former area tends to be primarily determined and influenced by social, moral and religious consideration, and public policy plays a special and important role in shaping it. Hence, in almost all the countries the jurisdictional, procedural and substantive rules which are applied to disputes arising in this area are significantly different from those applied to claims in other area. This is as it ought to be. For, no country can afford to sacrifice its internal unity, stability and tranquillity for the sake of uniformity of rules and comity of nations which considerations are important and appropriate to facilitate international trade, commerce, industry, communication, transport, exchange of services, technology, manpower etc."

In Madhu Kishwar & others (supra) the issue before the Apex Court was whether the personal laws applicable to Hindus should be extended to the Scheduled Tribes. One of them pertained to the provisions pertaining to succession. The Court noted that neither the Hindu Succession Actnor even the Shariat Law is applicable to the custom-governed tribals. The Court observed as under : ---

> "In the face of these divisions and visible barricades put up by the sensitive tribal people valuing their own customs, traditions and usages, judicially enforcing on them the principles of personal laws applicable to others, on an elitist approach or on equality principle, by judicial activism, is a different and mind-boggling effort. Brother K. Ramaswamy, J., seems to have taken the view that Indian legislature (and Governments too) would not prompt themselves to activate in this direction because of political reasons and in this situation, an activist Court, apolitical as it avowedly is, could get into action and legislate broadly on the lines as suggested by the petitioners in their written submissions. However, laudable, desirable and attractive the result may seem, it has happily been viewed by our learned brother that an activist Court is not fully equipped to cope with the details and intricacies of the legislative subject and can at best advise and focus attention on the State policy on the problem and shake it from its slumber, goading it to awaken, march and reach the goal. For in whatever measure be the concern of the Court, it compulsively needs to apply, somewhere and at sometime, brakes to its self-motion, described in judicial parlance as self restraint."

Reference has been made to these judgments on account of a peculiar line of thinking, that the unity of the nation itself is at stake if there is no common Civil Code, in so far as personal law is concerned. While Sarla Mudgal has

become the chorus of a determinate section, the voice of reason reflected in Y. Narsimha Rao (supra) and in Madhu Kishwar is sought to be glossed over of forgotten. In the distant past the Bar Council of India on the occasion of its Silver Jubilee had presented a report and a plan of action on the Common Civil Code. The Common Civil Code proposed was in respect only of personal laws. I have had occasions also to consider Articles supporting Common Civil Code written by various distinguished Judges. In an article published in the Radical Humanist of March, 1997 under the heading Personal Law Reform in Human Rights Perspective by Iqbal A. Ansari. The learned Author observed as under :---

> "Let rights oriented people who are genuinely interested in improving human condition, work for sociological reform while warning the wider citizenry of the counter-productiveness of the politics of Personal Law, entering round U.C.C."

In the Constituent Assembly Debates when Article 35 now Article 44 was being debated, Shri Alladi Krishnaswami Ayyar was pleased to observe as under:---

> "The Civil Code, as has been pointed out, runs into every department of civil relations, to the law of contracts, to the law of property, to the law of succession, to the law of marriage and similar matters. How can there be any objection to the general statement here that the States shall endeavour to secure a uniform Civil Code throughout the territory of India?"

He thereafter observed as under:---

> "The future Legislatures may attempt to uniform Civil Code or they may not. The uniform Civil Code will run into every aspect of Civil Law. In regard to contracts, procedure and property uniformity is sought to be secured by their finding a place in the Concurrent List. In respect of these matters the greatest contribution of British jurisprudence has been to bring about a uniformity in these matters."

Dr. B.R. Ambedkar, while replying to various proposed amendments observed as under:---

> "Now I must confess that I was very much surprised at that statement, for the simple reason that we have in this country a uniform Code of laws covering almost every aspect of human relationship. We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Law of Transfer of Property, which deals with property relations and which is operative throughout the country. Then there are the Negotiable Instruments Act: and I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this later corner which we have not been able to invade so far and it is the intention of those who desire to have Article 35 as part of the Constitution to bring about that change. Therefore, the argument whether we should attempt such a thing seems to me somewhat misplaced for the simple reason that we have, as a matter of fact, covered the whole lot of the field which is covered by a uniform Civil Code in this country. It is therefore too late now to ask the question whether we could do it. As I say, we have already done it."

30. Those who see urgency in enacting the Common Civil Code, perhaps have forgotten that there is already an enactment known as The Special Marriage Act' which covers both marriage and succession. That Act is applicable to all citizens. That is what Dr. Ambedkar had aspired for in the Constituent Assembly and it has been done. However, its application is voluntary and not applicable as a matter of course. What the die hards contend is that even if the pluralistic character of our society is not unanimous today in favour of a Common Civil Code, the absence of Common Civil Code jeopardises the unity and integrity of the nation. Whilst stressing on the aspect of Article 44, nobody seems to be interested in Article 41 which provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want or for that matter Article 35and 39. Force on the citizens common personal law. What does it matter if they have no shelter, food or education. I have referred to these aspects as in the earlier part of the judgment. I have referred to various bills tabled in Parliament which have not seen the light of the day on account of so called opposition based on personal law. Similarly, the Bill passed by the Maharashtra Legislative Assembly is pending assent of the President of India on account of various objections raised. Intolerance towards the view of other seems to be the meeting point, where respective sides can unsheath their swords. The voice of reason is lost in the dead dreary sand of habit. That this nation was born out of Revolutionary changes and its future lies in respecting the view of the other is forgotten.

My attempt in referring to the uniform Civil Code is to point out that the right of such child to be adopted, is not pursuant to any personal law. The right of the child is independent, as a human being, and flows from his right to life as contained in Article 21 of the Constitution. Any eligible parent or parents irrespective of religion can apply to adopt a child. Personal laws, as pointed out earlier, have to meet the test of Part III of the Constitution, if they are to be saved. Customs and usage amongst Hindus provided for adoption as a custom, but it was restrictive. On the coming into force of the Constitution it is Article 21 in which the rights of the child are cradled. Custom has given way to Article 21. The case I have made out is that the right of adoption after coming into force of the Constitution

is not referable to any customary or personal right. It is now impregnated in Article 21. Its flow now is sustained from the Republican Constitution and not age old Customs.

X. CONCEPT OF PARENS PATRIAE:

31. Clause 17 of the amended Letters Patent of the High Court of judicature for the Presidency of Bombay reads as under :---

> "And we do further ordain that the said High Court of Judicature at Bombay shall have the life power and authority with respect to the person and estate of infants, idiots and lunatics, within the Bombay Presidency, as that which was vested in the said High Court immediately before the publication of these presents."

Prior to the Letters Patent of 1865 the jurisdiction and powers of the High Court were defined by the Letters Patent of 1862. Under Clause 16 of the Letters Patent 1862, it was provided that the High Court shall have the "like power and authority with respect to the persons and estates of infants, idiots and lunatics, whether within or without the Presidency of Bombay as that which is now vested in the said Supreme Court at Bombay." The Supreme Court of Bombay came to be abolished by operation of section 8 of the High Court of Judicature Act, 1861 which provided that upon the establishment of a High Court in the presidency of Bombay, the Supreme Court, the Sudder Dewani Adalat and the Sudder Foujdarry Adalat shall stand abolished. The jurisdiction and powers of the erstwhile Supreme Court of Bombay were defined by the provisions of the Letters Patent of the Supreme Court, 1823. Clause 37 of the said Letters Patent authorised the Supreme Court, inter alia, "to appoint guardians and keepers for infants and their estates, according to the order and course observed in that part of Great Britain called England. Under the English common law, the father as patraie potestas enjoyed rights akin to property ones over his children to the exclusion of all others including the natural mother. However, the rights of the father in the common law were tempered by the intervention of equity. The prerogative of the crown as parens patriae to exercise supervisory powers over those having guardianship and custody of minor children was enjoyed by the Lord Chancellor, until the assumption of these powers by the Court of Wards set up in 1540 by 32 Hen 8, C-46. The Court of Wards was in turn abolished by the Tenures Abolition Act. 1660 and the power to appoint guardians of the person of infants was assumed by the Court of Chancery and thereafter, by Chancery Division of the High Court under the Judicature Acts of 1873 and 1875. However, there does not appear to have been a recognition in either law or equity of a power in any judicial body or the Lord Chancellor to give an infant in adoption. At common law, the rights, liabilities and duties of parents are inalienable and adoption in the sense of a transfer of parental rights and duties in respect of a child to another person is unknown, (See Poole v. Stokes), 1914-15 All.E.R. 1083, Brooks v. Blount, 1923(1) KB 257, Humphreys v. Polak, 1901(2) K.B. 385. In equity, it was possible for a relative or stranger to put himself in loco parentis to assume the fiduciary position of a father in relation to a child and undertakes the obligation to make provision of the child, (See Powys v. Mansfield), 1904(40) E.R. (Chancery) 964. However, de facto assumption of parental rights did not amount to a vesting of parental rights and duties in those who put themselves in loco parentis. It was only with the passing of the Adoption of Children Act, 1926 that adoption received legal recognition for the first time in England so as to irrevocably vest parental rights and duties in adoptive parents. In view of the position that English law did not recognise adoption or the power of courts to give in adoption in 1823 when the Supreme Court to be established, it follows that the Supreme Court and by derivation the High Court of Bombay has no power to give a minor child in adoption. It does however, have a guardianship jurisdiction by the power to appoint "guardians and keepers" of infants.

32. The exercise of power of parens patriae is the exercise of the power of the sovereign. These powers were to be exercised by the Lord Chancellor, afterwards by the Court of Chancery by virtue of Clause 17. That power has been conferred on this High Court and under the Rules framed these powers are exercised by the Chamber Judge appointed to dispose of Chamber matters. The law in so far as parens patriae in India is concerned is enunciated in Ramaji Adaji Pagi, A.I.R. 1941 Bom. 397, in Budhkaran Chaukhani and others v. Thakur Prasad Shah & another A.I.R. 1942 Calcutta 322, Banku Behary Mondal v. Banku Behary Hazra and another and in the matter of A.T. Vasudeuan & others A.I.R. 1949 Madras 260. This concept of parens patriae has also been considered by the Supreme Court of the United States in the matter of State of Georgia v. Tennessee Copper Company, 1906 200 U.S. 230 and in Alfred L. Snapp & Co. INC v. Puerto Rico, 458 US 592. Our Apex Court had an occasion to refer to this doctrine in the case ofCharan Lal Sahu v. Union of India, in what is known as the Bhopal Gas Disaster case. The Apex Court was considering the Bhopal Gas Disaster (Processing of Claims) Act, 1985. In para 100 of the judgment the Apex Court considered the concept of parens patriae. The following observations of the Court in my opinion are of importance:---

> "If that is the position then, in our opinion, even if the strict application of the 'parens patriae' doctrine is not in order, as a concept is a guide. The jurisdiction of the State's power cannot be circumscribed by the limitations of the rational concept of the parens patriae. Jurisprudentially, it could be utilised to suit or alter or adapt itself in the changed circumstances. In the situation in which the victims were, the State had to assume the role of a parent protecting the rights of the victims who must come within the protective umbrella of the State and the common sovereignty of the Indian people. As we have

noted the Act is an exercise of the sovereign power of the State. It is an appropriate evolution of the expression of sovereignty in the situation that had arisen."

On consideration of the above what emerges is that both in England and India no adoption has been ordered so far by applying the principle of parens patriae. That was because in England adoption was not a part of the common law or based on equity. In India it was recognised as custom in a restrictive form. Once it is established that the right to be adopted is a fundamental right, in my opinion the position would stand dramatically altered. Under Article 225 of the Constitution subject to the provisions of the Constitution, and the provisions of any taw of the appropriate legislature., the jurisdiction of the law administered in existing High courts and the respective powers of Judges thereof in relation to the administration of justice shall be the same as immediately before the commencement of the Constitution. In other words in those High Court on whom the power of parens patriae is conferred, these powers stand protected underArticle 225 of the Constitution of India. Under Article 226 apart from issuing writs there is a power in the Court to issue directions or orders. The right of the High Court saved under Article 225 coupled with the power to issue writs or directions under Article 226 it would be in my opinion open to a Judge, exercising guardianship jurisdiction to exercise the power of parens patriae to give minors in adoption.

33. What conclusion does the above discussion lead us to. One thing that has emerged from consideration of precedents on fundamental rights, directive principles and International Covenants is that the abandoned, the orphaned, the destitute or a similarly situated child has a right to be adopted as a part of his fundamental right to life. The fundamental right to life to become meaningful to the child includes the right to be adopted. The State, therefore, cannot deprive this right to the child. Deprivation can be in two forms, by executive instructions or by enacting legislation which would affect right to life as also by failing to issue instructions or enact legislation to give effect to this right to life. The two are but two sides of the same coin. If the State fails to enact legislation or issue administrative instructions in the exercise of its executive power can the courts as protectors and upholders of the Constitution remain judicially inactive or passive. While considering the judgments on the role of the judiciary in giving effect to the preamble and directive principles and international covenants while interpreting fundamental rights, courts have issued directions, where the State has failed to do. In the instant case as we have seen the right of adoption as a part of right to life has also been carved out from the International Conventions to which India is a signatory and from the directive principles as set out under Article 39(f) which stands embodied into Article 21. In the case of Maganbhai Ishwarbhai Patel (supra) the Apex Court upheld the right of the executive to enforce the International Conventions or Awards in the absence of legislation. The question, therefore, ultimately is whether this Court can issue directions which would be in the nature of subordinate legislation, pending legislation by the Constitutional arm namely the Legislature. The Constitution has conferred on the High Courts power under Article 226 to issue to any person or authority including in appropriate cases Government, writs in the nature of mandamus or any other direction or order. This is the Constitutional power conferred on the High Court. Apart from this Constitutional power this High Court also exercises the powers conferred on it under the amended Letters Patent. By virtue of Clause 17 as already stated, it has jurisdiction over infants. This jurisdiction has been traced and identified as the power of parens patriae. The power of the king in England in other words, ..the power of the sovereign stands delegated to the Court exercising the jurisdiction over the person and property of minors. This power of the Court has been protected by Article 225 of the Constitution. We have also discussed the nature and extent of the power of parens patriae. The power to enact legislation in matters pertaining to adoption is traceable to Entry 5 of List III of the VIIth Schedule to the Constitution of India. That being in the concurrent list, the executive power can be exercised both by the State Government as also by the Union Government. Does this executive power of the State take away the power of parens patriae delegated to the Court. It must be remembered that the courts were exercising power of parens patriae atleast within this jurisdiction before the Guardians & Wards Act of 1890 was enacted. The Guardians & Wards Act in fact by section 3 has also saved the power of the Court. The power, therefore, over the person and property of minors was exercised by the courts. Such a power would be in the nature of both exercise of judicial as well as executive power. Therefore, within this jurisdiction in the absence of legislation considering Article 225 this Court in the matter of protection of the person and property of the minor as parens patriae can issue directions which would be protected by Article 225 of the Constitution of India. This power would be as a delegate, to issue executive instructions and judicial directions in conformity with the power protected byArticle 225. It is true that historically both in England and India the power of parens patriae has never been exercised to give children in adoption. The reason is apparent. In England the right to adopt is not found as in the common law nor does it form a part of equity jurisdiction of English courts. The power has been conferred and is traceable to rights conferred by statute. In India, the right to adopt to a limited extent was part of the customary right of Hindus. This customary right which was recognised by law is now codified into the Hindu Adoption and Makintenance Act and is of wider amplitude than under Customary law. The Court as parens patriae, therefore, had no occasion to exercise the power of parens patriae in giving children in adoption. This position has now changed. The right of the orphaned, the abandoned, the destitute and/or similarly situated child has now been recognised as a part of his fundamental right founded in Article 21, namely the right to life. Once such a right has been traced the child cannot be denied the right to be adopted. The failure by the other two Constitutional Branches namely the Legislature and the Executive makes it possible for this Court to exercise its power of parens patriae. It is true that normally it is the father or the parents who has the control of the

children. In the issue before us we have considered a class of children who have either been abandoned or given in custody of Homes under the provisions of the Juvenile Justice Act. These children ultimately have been given in guardianship and it is these children who have been given in guardianship over whom and/or in respect of whom the power of parens patriae is being exercised. To my mind, therefore, both under Article 225 as well as under Article 226 this Court can either pass directions or issue directions for giving effect to the fundamental rights of these children,

34. In the Book "What Next In Law" in the last chapter titled "Epilogue" Lord Denning's concluding sentence is 'so there it is. In this book I have stood the law on its head on the hope that you may help to get it the right way up'. These humble words of a great jurist made possible the task of trying to understand the dynamics of human rights. The cry of the orphaned child awoke me from the slumber of judicial insensitivity; the evasion of Constitutional responsibilities by the legislative organs made me search for judicial precedents and the Tagore Law Lectures published under the caption "The Dialectic & Dynamic of Human Rights in India" by Justice Krishna Iyer, the propounder of the new Asian Jurisprudence served as a stimulus to reach out to justice. In proceeding to answer the issues that have arisen before me, I too perhaps may have taken liberty with jurisprudential principles. The road was and is full of pot holes. The judicial functionary does not possess the entire wherewithal to fulfill the constitutional objective of filling the pot holes. For the present it has been an attempt to avoid the pot holes, in order to activate the constitutional objective I hope the judgment will awaken the insensitivity of our law makers, so that all our children, all of them in the new millennium will have an opportunity to enjoy the joys of childhood, before the sun sets on the old.

35. I may now turn to the reliefs to be granted, conclusions and directions.

(1) The fundamental right to life of an orphaned, abandoned, destitute or similarly situated child includes the right to be adopted by willing parent/parents and to have a home, a name and a nationality. The right to be adopted, therefore is an enforceable civil right which is justiciable in a Civil Court;

(2) In the absence of any legislation setting out who can adopt, person or persons who has/have taken a child in guardianship under the Guardians & Wards Act will have the right to petition the courts to adopt the child;

(3) As jurisdiction to pass orders on guardianship is in the District Court and/or a High Court having jurisdiction under its Letters Patent, pending legislation, it will be these courts which have the right to give the child in adoption by way of a miscellaneous application in the petition for Guardianship.

(4) Considering that it is the welfare of the child which is paramount the Court before giving the child in adoption must satisfy itself, that it is in the best interest of the child that the person or persons whom guardianship of the child is given is and/or are suitable parent or parents.

(5) A period of 2 years must elapse before the Court considers the petition for adoption from the date the Court passes the order of guardianship. Before making an order of adoption the following directions will have to be satisfied. A home study should be available which must contain amongst other information the following:---

(a) The financial status of the adoptive parent or parents and their capacity to look after the needs of the child.

(b) The health and the medical Report of the adopted parent/parents.

(c) The opinions formed by the interviewer, after interviewing the adoptive parent/parents and the child of possible.

(d) Progress Report of the child after having been given in guardianship, including state of health.

(e) The cost of preparing the Report shall be borne by the adoptive parent/parents.

(f) Before passing final orders on the petition, the views of I.C.S.W. shall be heard. The costs of I.C.S.W. will be borne by the adoptive parent/parents. The adoptive parent/parents will have to deposit a sum of Rs. 500/- initially. Any additional expenses will be reimbursed by the adoptive parent/parents.

(6) As a child can be given in guardianship to person/persons eligible under the Indian Guardianship & Wards Act and as they also have been given the right to adopt, the issue whether a childless couple has a fundamental right to adopt need not be answered, though prima facie it may be possible to arrive at that conclusion.

(7) A Guardian/Guardians who have been appointed by courts in the past and whose guardianship continues, can apply for adoption if the period of two years has elapsed, since the date of order of appointment of guardianship.

(8) The legal consequences of an order of adoption will be that the personal law of the adoptive parent/parents would be applicable to the child whose right of inheritance will be the same as that of a natural born child.

(9) As a consequences of adoption the adopted parent/parents will have the right to apply and get rectified the Register of Births showing the adopted parent/parents as parents of the adopted child and bearing their name and surname if so desired by the adoptive parents.

36. These directions are binding and are issued to all State Governments and Authorities in the States and Union Territories within the territorial jurisdiction of this High Court under Article 226, as also and under Article 225 of the Constitution of India as parens patriae.

37. Before concluding I must place on record the Court's appreciation of all Counsel including Shri iqbal Chagla, Senior Counsel, as Amicus Curiae, the learned Advocate General of Maharashtra, the learned Additional Solicitor General, who appeared for the Union of India, and ably put-forth their propositions with a view to assist the Court. Apart from them the Court must also place on record the services rendered by Advocates, Mr. Colin Gonsalves, Mr. Mihir Desai, Ms. Nandita Chickermane, Mr. Ishwari Prasad Bagaria, Ms. Flavia Agnes and Ms. Lalita Raj, who prepared compilation consisting of material and case law on the subject. Ms. Asha Bajpai, Author of "Adoption Law and Justice to the child", Indian Council for Social Welfare and the various adoption agencies who assisted the Court, Both the petitions disposed of accordingly.

Registry to send copy of this judgment to the Chief Secretary, Government of Maharashtra, the Chief Secretary, Government of Goa, and the Principal Secretary to the Prime Minister of India, New Delhi for necessary action.

Personal Assistant to issue ordinary copies to the parties/social organisations.

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Vinod Krishnan Versus Missionaries Of Charity

Kerala High Court

Vinod Krishnan

vs

Missionaries Of Charity

on 3 November, 1997

(1998) DMC 266

Author: V Kamat
Bench: V Kamat, K A Gafoor

JUDGMENT

V.V. Kamat, J.

1. The petitioner by O.P. 150/97 approached the Family Court, Ernakulam with a prayer that he may be granted permission to adopt the minor child Divya under Section 9(4) of the Hindu Adoptions and Maintenance Act, 1956.
2. Relevant facts pleaded in support of the above prayer would show that the petitioner Mr. Vinod Krishnan was aged 34 years and was residing at 'Kavitha'. Menathumukku Olai, Thevalli P.O., Kollam District. He is married to Mrs. Lekha V. Krishnan, aged 29 years. It is then averred that they are Hindu Nairs and . therefore, governed by the provisions of the Hindu Adoptions andMaintenance Act, 1956. By the petition they expressed a desire of taking the child Divya in adoption.
3. Respondents to this petition are Missionaries of Charity represented by its Rev. Sister Superior in the proceedings. It is then averred that the minor Divya born on 7.12.1994 was then aged 2 years who was abandoned and relinquished and in possession of the respondent-Missionary Institution.
4. Both the petitioner and his wife earlier presented O.P. No. 178/96 under the Guardians andWards Act before the Family Court for their appointment as guardian of the minor child Divya. It appears and it is so mentioned that the respondent-Missionary Institution had no objection for the appointment of guardian as stated above in the above circumstances. It is then averred and there is no dispute also that the Family Court in O.P. (G&W) No. 178/96 by the order dated 29.6.1996 appointed the petitioner Mr. Vinod Krishnan as the guardian of the minor child Divya. Certain factors answering the requirements are pleaded in the petition in the context of the ultimate prayer in relation to adoption of the minor child and in pursuance of the earlier order of appointment of guardianship.
5. By the impugned order the Family Court, Ernakulam returned the petition for presentation to the proper Court in accordance with the provisions of the Hindu Adoptions and Maintenance Act, 1956. The Family Court, after referring to the statutory provisions of Section 9(4) of the Hindu Adoptions and Maintenance Act, 1956 has observed that the only Court competent to give this permission would be the 'District Court' in accordance with the provisions of Clause (ii) of the Explanation to Section 9 of the Act. It was submitted before the learned Judge placing reliance onSection 7 of the Family Courts Act, 1984 that such a petition could be considered under Section 7(1) Clause (g) to the explanation thereto.
6. Analysing the said statutory provision of Section 7, the Family Court observed that the jurisdiction of the Family Court is limited to specific categories of cases referred to in the explanation thereto and if, in the context of relevance, Clause (g) is taken into consideration, the Family Court could legally have jurisdiction in respect of suits and proceedings only in relation to the guardianship of the person or custody of the person or access to any minor. The controversy in regard to the question relating to the contents of the petition before the Family Court actually rivets around the understanding of the statutory provision of Clause (g) to Explanation of Section 7(1) of the Family Courts Act, 1984.
7. The Family Court has considered the statutory language of the said Clause (g) as concerned and confined with the question of guardianship and custody and also access to the minor. It is held that the prayer of the petition could not be understood as connected either with guardianship or with custody or with "access to" the minor in any manner. It is held mat the petition as presented in the context of the prayer cannot be treated as relating to "access to" a minor because the prayer for adoption cannot be considered to having any connection with access, custody or even guardianship. The Family Court has taken the view that the petition would not be maintainable before the Family Court and if it is not maintainable, then it would have to be referred for presentation to the proper Court. In the process of reasoning the Family Court has placed reliance on the decision of the Karnataka High Court, AIR 1991 Karnataka 6, Canara Bank Relief and Welfare Society and Ors.
8. Initially there was a question of maintainability of this appeal to this Court against the order impugned. By the order based on 20.8.1997 this Court treated that the remedy against such an order would be an appeal and accordingly the proceedings are before us as M.F.A. against the impugned order.
9. Jurisdiction of a Court is not a matter of inference but it has to be found froth the language in the context. It is not possible to think in terms of any stretch to the language in any manner. Howsoever the learned Counsel attempted

to be persuasive on the count, it must be established clearly and unequivocally that there is jurisdiction with the Court to entertain the petition as it is presented. We make it clear more because the learned Counsel attempted in his persuasive and strenuous manner to urge that the provisions of Clause (g) to Explanation to Section 7(1) of the Family Courts Act, 1984 would need to be understood in such a way that the proceedings and suits referred to in Section 7(1) of the Act would have to be understood to be in relation to guardianship of the person or the custody or access to any minor to include cases of adoption also by necessary and inevitable implication. Learned Counsel submitted in particular that the words, 'access to' would have to be understood to include situation of adoption also.

10. Learned Counsel supported his submissions by urging the prevalent situation in relation to adoptions in foreign countries be initiated on the basis of permission relating to guardianship of the minor. In fact the learned Counsel submitted that as a matter of established course in regard to inter-country adoptions, reference to Form No. 3 in petitions of similar character in the matter of Guardians and Wards Act, 1890 in the matter of appointment of guardian the form refers to the undertaking to adopt the said minor within a period of two years, after recognising the situation of guardianship, to his adopted home according to the laws applicable there. The learned Counsel submitted that the guardianship and custody will have to be understood to be situated in a similar situation as that of adoption. It would be more than inconvenient and incongruent, the learned Counsel submitted to consider, within the jurisdiction of we Family Court, the situation in a truncated form. The learned Counsel submitted that proceedings in relation to guardianship, the proceedings in relation to me matters of custody of minors and the proceedings relating to the facilities of access to any minor cannot be understood on a different plain of relationship in the matter of dealing with the situation of adoption which is virtually a consequence thereof. The learned Counsel submitted, it is difficult to accept that 'access to' with its grammatical variations would have to be understood to be synonimous with a situation of adoption. The learned Counsel also went to the extent of submitting that me Family Courts Act, 1984 is a social welfare legislation and should be considered meaningfully in the context of convenience more than the grammatical meaning of the word and its extent and limits.

11 Giving our anxious consideration to the meticulous submissions we find ourselves unable to be in line with me submissions of the learned Counsel; As stated at the outset it is not possible to think assumption or usurpation of jurisdiction by a Court with a view to treat the Family Court Act, 1984 as a social welfare legislation. The Act enacts a Forum with its jurisdiction and powers specifying its scope to deal with matters precisely enumerated in Section 7 of the Act. Precisely enumerated because apart from the language of Section 7(1), Clause (g) to its Explanation,Section 7(2) of the specially enacts that subject to the other provisions a Family Court shall also have an exercise-(b) such other jurisdiction as may be confirmed on it by any other enactment.Section 7(2)(a) confers jurisdiction with regard to provisions of Chapter IX of the Code of Criminal Procedure, 1973, and it is thereafter specifically enacted that other jurisdiction is to be conferred by any other enactment. In addition thereto the situation is also crystal clear that theFamily Courts Act is enacted by Act No. 66 of 1984 and established the Family Courts, to promote conciliation, to secure speedy settlement of disputes relating to marriage and family affairs and matters connected therewith. In other words the jurisdiction will have to be understood to be connected with the clause specified in the Explanation and it would not be possible to read there into something by way of a desirous extension in regard thereto. The learned Counsel wanted a resort to the dictionary to understand what is the dictionary meaning of 'access to'. It is necessary to state that the term 'access to' cannot be considered to be having any such connection of similarity or parity with a situation of adoption. Adoption, it is more than elementary, changes the status of the person to be adopted. It cannot be understood to be connected with any thing like guardianship, custody and access. It is a situation completely distinct and unconnected and therefore, could not be understood to be having any kind of association with the situations provided by the language of the section. Apart therefrom there is an inbuilt provision in Section 7itself in the nature of Section 7(2)(b) making it clear mat such other jurisdiction will have to be conferred by any other enactment. It is plain that it cannot be understood otherwise than that.

12. At the other end the statutory provisions of the Hindu Adoptions and Maintenance Act, 1956, particularly Section 9 thereof dealing with persons capable of giving any adoption make the position crystal clear. In fact the petition as presented before the Family Court which has resulted into me impugned order is one under Section 9 of the Act providing statutorily mat the guardian of the child may give the child in adoption with the previous permission of the Court to any person including the guardian himself. The provision of the said section itself dispells the situation of doubt when "Court" is specified in Clause (ii) to Explanation to the said Section meaning a "District Court within me local limits of whose jurisdiction the child to be adopted ordinarily resides".

13. The learned Counsel submitted that even the Presiding Officer of the Family Court underSection 7(1) of the Act gets power and all the jurisdiction exercisable by any District Court, in respect of suits and proceedings of the nature referred to in the Explanation. The learned Counsel submitted that the Family Court having all the powers of the District Court should have no difficulty in exercising power under the Hindu Adoptions and Maintenance Act, 1956. The submission need not take time to be answered. The statutory provision of Section 7(1)(a)clarifying the power to exercise all the jurisdiction by any District Court ipso facto cannot be understood to confer jurisdiction which is specifically conferred on the District Court by the statutory provision to Section 9 of the Act.

14. The Family Court cannot be considered to have jurisdiction by implication or inference.

15. In fact the learned Judge has referred to the decision of the Karnataka High Court (supra) in the context of the observation suggesting that it is open to the Parliament to invest the Family Courts established under the Family Courts Act with the jurisdiction to deal with the matter covered by Section 9(4) of the Hindu Adoptions and Maintenance Act. We have carefully considered the said decision and we have our respect to the view expressed by the Karnataka High Court when it observed that none of the matters categorised in Clauses (a) to (g) of the Explanation to Sub-section (1) of Section 7 of the Actor in Clauses (a) and (b) of Subsection (2) thereof could be understood to be relating to the grant of previous permission to give a child in adoption by its guardian envisaged under Section 9(4) of tine Hindu Adoptions and Maintenance Act, 1956. The observations of the Karnataka High Court (supra) have also led to the view taken by the Family Court in the impugned judgment. It would also be, not out of place, necessary to mention that the Karnataka High Court, AIR 1991 Karnataka 10, In the matter of Ashraya and Ors.etc.etc., had an occasion to consider the situation in the context of proceedings for appointment of guardian of the child, in connection with the ultimate object of the petitioners to take the child out of India and to adopt according to law leading to the situation that Family Court alone would have jurisdiction to deal with the matter. It is obvious that in the matter of inter-country adoptions the situation would not present differently. The Family Court gets legal concern with the appointment of a guardian of a child in the process of the averment that the guardian desired to adopt the child in a foreign country obviously in a different Court having the territorial jurisdiction.

16. The learned Counsel brought to our notice the decision of a Single Judge of the Bombay High Court, AIR 1990 Bombay 299, Kamal V.M. Allaudin v. Raja Shaikh, relating to the proceedings dealing with the question of transfer of the proceedings to the Family Court after the enactment of the Family Courts Act, 1984. In regard to a question relating to the matter of adoption reliance was placed on Rule 35 of the Maharashtra Family Court Rules, 1987. Rule 35 of the Maharashtra Family Court Rules provides all applications for guardianship and adoption other than applications over which the High Court has jurisdiction required to be filed before the Family Courts. Learned Single Judge of the Bombay High Court has placed reliance on the said provision in the context of Section 7(1) Clause (g) of the Explanation. We are afraid it is not possible to bodily shift the statutory provision of Rule 35 of the Maharashtra Family Court Rules in the context, not to speak of their application in the present proceedings. Apart therefrom the question is as to whether inspite of the statutory provision of Section 7(2) providing inclusion of jurisdiction only by enactments, such introduction by rule is a situation which should be atlas to be open to a debate in the context. In our judgment the learned Judges could not be said to be in error in any way in passing the impugned order returning the proceedings for presentation to the proper Court in accordance with the provisions of the Hindu Adoptions and Maintenance Act, 1956.

For all the above reasons appeal stands dismissed. As a result the impugned order dated 17.3.1997 of the Family Court, Ernakulam in O.P. 150/97 stands confirmed. Order accordingly.

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Andrew Mendez And Ors. Versus State Of Kerala

Kerala High Court

Andrew Mendez And Ors.

vs

State Of Kerala

on 19 February, 2008

2008 (1) KarLJ 647, 2008 (1) KLT 1000

Author: R Basant
Bench: R Basant

ORDER

R. Basant, J.

1. Which is the court referred to in Section 41(6) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the Act) after its amendment by Act 33/06? can it be said that it is the Juvenile Justice Board itself? If not, which is the court which the Legislature had in mind when the Act was amended by Act 33/06? These are the question which come up before this court for consideration in this petition. How an in alert amendment of a statute can reap pernicious consequences in the implementation of the provisions of the statute is clearly revealed from the dilemma which is posed before the court in this case.

2. The petitioners 1 and 2 are a couple, who had got themselves appointed as guardians of a child sponsored by the placement agency, the third petitioner. By order dated 6/6/97 passed by the Family Court, Ernakulam in O.P. No. 97/97 petitioners 1 and 2 were appointed as guardians of the child and the child continue to be under their care and custody. According to them, since there was no law enabling them to adopt the child they had to remain satisfied with their status as legal guardians of the child.

3. Then came the enactment of The Juvenile Justice (Care and Protection of Children) Act, 2000. It contained provisions relating to adoption. Adoption as a legal concept was available only among the members of the Hindu community except where custom permits such adoption for any sections of the polity. But in Chapter 6 of the Act dealing with rehabilitation and social re-integration of children we find the legislature accepting the concept of secular adoption whereby without any reference to the community or the religious persuasions of the parents or the child concerned, a right appears to have been granted to all citizens to adopt and all children to be adopted. The history of the attempt to bring in the concept of secular adoption into our system of laws narrates a sad tale of inaction and action without conviction on the part of the legislature. It is perhaps unfortunate that even now the republic of India does not have a codified law of adoption applicable to all Indians. The attempts of the Indian Parliament in this direction did not bear fruit. The history of the Adoption of Children's Bill 1972 and Adoption of Children's Bill 1980 do not, of courts, bring credit to the secular credentials of the Indian polity. Let us accept the reality. Awareness and acceptance of failure can be stepping stones to eventual success. We have not been able to bring in a secular law of adoption applicable to all Indians so far. It is in this context that a laudable attempt is undertaken by the legislature by the stipulations which have been made in Chapter IV of the Juvenile Justice (Care and Protection of Children) Act, 2000. There was still confusion as the concept of adoption was not defined in the Act. The provisions were criticized to be inadequate as the legal status of the adopted child has not by law been declared to be equal to that of a biological legitimate child. It is in this context that Act 33 of 2006 was introduced under which the concept of adoption was defined by enacting Section 2(aa) of the Act which reads as follows:

   "Adoption" means the process though which the adopted child is permanently separated from his biological parents and become the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship;

4. The legislature appears to have moved decisively to atleast declare under the Act that secular adoption is possible for those cases covered by Chapter IV of the Act. Section 41 before amendment read as follows:

   41. Adoption:

   (1) The primary responsibility for providing care and protection to children shall be that of his family.

   (2) Adoption shall be resorted to for the rehabilitation of such children as are orphaned, abandoned, neglected and abused through institutional and non-institutional methods.

   (3) In keeping with the provisions of the various guidelines for adoption issued from time to time by the State Government, the Board shall be empowered to give children in adoption and carry out such investigation as are required for giving children in adoption in accordance with the guidelines issued by the State Government from time to time in this regard.

   (4) The children's homes or the State Government run institutions for orphans shall be recognised as an adoption agencies both for scrutiny and placement of such children for adoption in accordance with the guidelines issued under Sub-section (3).

(5) No child shall be offered for adoption-

(a) until two members of the Committee declare the child legally free for placement in the case of abandoned children.

(b) till the two months period for reconsideration by the parent is over in the case of surrendered children, and

(c) without his consent in the case of a child who can understand and express his consent.

(6) The Board may allow a child to given in adoption-

(a) to a single parent, and

(b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters. (emphasis supplied)

5. After the amendment by Act 33 of 2006, Section 41 reads as follows:

41. Adoption:- (1) The primary responsibility for providing care and protection to children shall be that of his family.

(2) Adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribed.

(3) In keeping with the provisions of the various guidelines for adoption issued from time to time, by the State Government, children may be given in adoption by a court after satisfying itself regarding the investigations having been carried out as are required for giving such children in adoption.

(4) The State Government shall recognise one or more of its institutions or voluntary organisations in each district as specialized adoption agencies in such manner as may be prescribed for the placement of orphan, abandoned or surrendered children for adoption in accordance with the guidelines notified under Sub-section (3):

Provided that the children's homes and the institutions run by the State Government or a voluntary organisation for children in need of care and protection, who are orphan, abandoned or surrendered, shall ensure that these children are declared free for adoption by the Committee and all such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with the guidelines notified under Sub-section (3).

(5) No child shail be offered for adoption.

(a) until two members of the Committee declare the child legally free for placement in the case of abandoned children.

(b) till the two months period for reconsideration by the parent is over in the case of surrendered children, and

(c) without his consent in the case of a child who can understand and express his consent.

(6) The Court may allow a child to be given in adoption-

(a) to a person irrespective of Marital status or;

(b) to parents to adopt a child of same sex irrespective of the number of living biological sons or daughters; or

(c) to childless couples. (emphasis supplied)

6. Let it be noted that there is no common law of adoption. The Customary Hindu law as modified and codified by the Hindu Adoptions and Maintenance Act recognized the rights of Hindu parents and Hindu children to adopt and be adopted. Except when customary law permits adoption those of other faiths had no legal option of adopting a child and conferring on such child all rights of a biological legitimate child. The Juvenile Justice Act 2000 made it possible for Indian children to be adopted and Indian parents to adopt. Initially it was stipulated that the Juvenile Justice Board may allow the child to be adopted. Later by Act 33/06, the Act was amended to clarify what adoption meant. It was further declared that the 'court' and not the Board has powers under Section 46 of the Act to allow adoption. What the Parliament did not or could not do overtly by introducing the Adoption Bills in 1972 and 1980 was sought to be achieved covertly by making stipulations in Chapter IV of the Juvenile Justice Act.

7. It will be apposite in this context to refer to the attempt made by the judicial functionaries to declare that under Article 21 of the constitutions, the child as well as the parents have a right to adopt/be adopted. The decision of the Bombay High Court (Justice Rebello) in Manual Theodore D'Souza [II (2000) PMC 2921 recognises the constitutional right of the parents to adopt and the children to be adopted under law and their rights to claim the legal status of natural/biological parents and children. In that luminous decision, His lordship Justice Rebello of the Bombay High Court, adverted to all the aspects and declared such right to adopt and be adopted flows from the fundamental right to life under Article 21 of the constitution.

8. Petitioners 1 and 2, in these circumstances, encouraged evidently by the decision of Justice Rebello referred above and the subsequent amendment by Act 33/06 filed application before the Juvenile Justice Board, Ernakulam for

permission to adopt the child whose guardians they were. Objections were raised that Juvenile Justice Board is not the court under the amended Section 41(6) and the Board cannot have jurisdictional competence to entertain such a request now - after the 2006 amendment.

9. The Juvenile Justice Board considered the question in detail and came to the conclusion that the Board cannot, at any rate, be reckoned as the "court" contemplated under Section 41(6). A direction was hence issued that the petition filed under Section 41(6) be returned to the petitioners for presentation before the proper court having jurisdiction in the matter - whichever that court be. Since the legislature has consciously amended the expression 'Board' and had substituted it with the word 'Court' I find it impossible to accept that the Juvenile Justice Board must itself be reckoned as the court. That would make the amendment meaningless. I do endorse the conclusion of the Juvenile Justice Board what whichever be the Court under Section 41(6) it cannot be the Board itself.

10. The petitioners, the laity and those learned in the law are all groping in the dark as to which that court is which is referred to in Section 41(6) after amendment of the Act. Detailed arguments have been advanced before me by learned Counsel Sri. C.S. Dias who has taken pains to take the court through all the dimensions of the problem. This is a piece of central legislation and notice was issued to the A.S.G.I. I must say that not much of assistance has been forthcoming from the A.S.G.I correctly understand and interpret the concept of the court in Section 41(6) after amendment.

11. The Juvenile Justice (Care and Protection of Children) Act, 2000 does not define a court. However, Section 2(y) of the Act declares that all words and expressions used; but not defined in this Act and defined in the Code of Criminal Procedure shall have the meanings respectively assigned to them in that code. Under the Code of Criminal Procedure, there is no definition of the expression court through the Code speaks of constitution of criminal courts in Chapter 2 of the Code. Section 2(y) of the Cr.P.C. further states that words and expressions used in the Code and not defined; but defined in the Indian Penal Code shall have the meanings respectively assigned to them in that Code; but unfortunately the I.P.C. does not also define the expression "court". Assistance was sought from the General Clauses Act. The same does not also define the expression "court". The Code of Civil Procedure also does not define the expression "court" though the said code also refers to constitution of courts.

12. Section 3 of the Indian Evidence Act defines courts to include all Judges and Magistrate and all persons except arbitrators legally authorised to take evidence. The said definition is also of no crucial help to this court in understanding the concept of the court for the purpose of Section 41(6). In order to decode the intention of the legislature and to decipher the purpose for which the expression 'Board' which was there earlier in Section 41(6) was amended to bring in the expression "court", the learned Counsel Sri. C. Dias took me through the object and reasons of theAmendment Act and also the entire discussions in Parliament on the subject of amendment in 2006. Significantly the objects and reasons of the Amendment Act or the Parliamentary discussions do not help this court in any manner to understand the purpose or motivation of the amendment and the reasons that prompted the legislature to substitute the word Board by the word court in Section 41(6). Thus the fairly exhaustive effort made to fine meaning for the expression court in Section 46(1) and the attempt to identify that court has unfortunately not yielded any success. I may straight away refer to the decision by the Bombay High Court (Justice Rebelloe) Manuel Theodore D'Souza (supra) where it was held that the right to adopt and be adopted being a fundamental right must be capable of enforcement through the civil courts as the dispute will fall within the sweep of Section 9 C.P.C. It was held in the said decision that it will be the District Court or the High Court which shall have jurisdiction to deal with such questions relating to adoption as it is such courts that normally deal with disputes regarding custody, guardianship etc. of children. A detailed discussion on this aspect is available in the said decision and it is finally held that such applications can be filed before the District Courts exercising powers under the Guardian & Warts Act and such applications for adoption of the child by a guardian must be reckoned as a miscellaneous application in the petition in guardianship. I have thus come across the first indication as to what can be reckoned as the court for the purpose ofSection 41(6) from the said decision i Manuel Theodore D'Souza & Anr. In the absence of any statutory provision the learned Judge in Manuel Theodore D'Souza has reasoned that the enforceable civil right to adopt and be adopted can be considered, decided and enforced by the District Court or the High Court having jurisdiction under its letters patent pending legislation by the legislature on this specific aspect.

13. In the absence of any other indications, this court grouping in the dark in its attempt to ascertain the court which must take over the functions of the Board under the amended Section 41(6) thus comes across the decision in Manuel Theodore DiSouza as a possible guideline in such ascertainment.

14. During the pendency of this petition, I take note with great relief the model rules have been framed by the Central Government armed with the authority which it derived consequent to the amendments brought in by Act 33 of 2006 with effect from 22-8-2006. The amended Section 68(1) with its proviso reads as follows:

    68(1): The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

    [Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this Section, and where any such model rules have been framed in respect of any such matter, they shall apply to the State until the rules in respect of that matter is made

by the State Government and while making any such rules, so far as is practicable, they conform to such model rules]

15. It is in exercise of powers of the Central Government that the model rules relation to Adoptions have been formulated now under Rule 33 in Chapter 5. The relevant sub-rule is Sub-rule 5 of Rule 33 which reads as follows:

For the purpose of Section 41 of the Act, 'court' implies a civil court, which has jurisdiction in matters of adoption and guardianship and may include the court of the district judge, family courts and city civil court.

16. Even before the amendment of Section 68 was brought in with effect from 22-8-2006, we find that the Government of Kerala had promulgated rules under the Juvenile Justice Act applicable in Kerala. Those rules had come into force in 2003, that is with effect from 13-8-2003. The said rules were promulgated at a time when Section 41(6) referred to the Board and not the court. The rules made in Kerala covering that aspect appear in Rule 37. It may be unnecessary to advert to the said rules in any greater detail as those rules relate to the pre-amendment text of the statute and cannot be of any crucial assistance in the attempt to decode and ascertain which the court is under the amended Section 41(6). It has therefore got to be accepted that no rule has been framed in Kerala after the amendment of Section 41(6) and in respect of matters covered by Section 41(6). It is the Central Rules which must prevail until rules otherwise are formulated by the Kerala Government.

17. It follows from the above discussions that it is possible for this court now to understand the expression court appearing in Section 41(6) with the aid of Rule 33(5) of the Central Rules promulgated under Section 68. Lest there be any confusion on this aspect, I would like to clarify that the Kerala rules will continue to remain in force except where by necessary implication those rules must be held to have been replaced. The Kerala Rules shall continue to remain in force in future in respect of all such matters for which provision has made in the Kerala Rules and which remain unaffected by the subsequent amendment of the Central Statute. Such rules shall continue to hold the field notwithstanding the promulgation of the Central Rules.

18. The problem does not seem to end there also. The next question is as to which is the court before which an application can be filed by the petitioners and others similarly placed for relief under Section 41(6). Which court can be said to be the civil court which has jurisdiction in matters of adoption and guardianship under Rule 33(5). Of course, Rule 33(5) declares that such court will include the court of the District Judge, Family Courts and City Civil Courts. In Kerala, we have Family Courts for all districts concerned by now. Is it the District Court which is the court under Rule 33(5) for the purpose of Section 41(6)? This is the next question that will have to be resolved.

19. Questions regarding guardianship are decided by the Family Courts in exercise of their powers/jurisdiction under Section 7(1)(g) of the Family Courts Act. Can the claim for adoption be brought under any of Sub Clauses (a) to (g) of the extraction to Section 7(1) the Family Courts Act so that this court can declare that the Family Court must be the court for the purpose of Section 41(6)? I have rendered my very anxious consideration on this question. I have no doubt that since Family Courts are dealing with disputes regarding claims for guardianship under Section 7(1)(g), it would have been better if the Family Court is declared to be the court for the purpose of Section 41(6) also. But convenience by itself may not be sufficient as one has to reason legally and come to the conclusion that the Family Court has got the jurisdiction under Section 7 to deal with such a claim for adoption.

20. It will now be apposite to extract Section 7 of the Family Courts Act. It reads as follows:

7. Jurisdiction- (1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purpose of exercising such jurisdiction under such law, to be a district court or, as the case maybe, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation:- The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage.

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship.

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance.

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise.

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.

(emphasis supplied)

21. The question came up before the Division Bench of this court in a decision in Vinod Krishnan v. Missionaries of Charity 1997 (2) KLT 863. That decision is authority for the proposition that the Family Court cannot be held to be clothed by the stipulations in Section 7(1) to deal with a claim for adoption. The question that arose for consideration in that case was whether the Family Court has jurisdiction under Section 9(4) of the Hindu Adoption and Maintenance Act to entertain an application by a guardian for permission to give a child in adoption to himself. The learned Judges of the Division Bench in the said decision answered the question against the jurisdiction of the Family Court and held that it is only the District Court, which shall have the jurisdiction to entertain such an application for permission under Section 9(4) of the said Act. The stipulation is Clause (g) was held to be insufficient to confer jurisdiction on the Family Court in the matter of adoption. I am bound by the decision of the Division Bench and cannot definitely be tempted by the argument that explanation (g) in Section 7(1) is sufficient to clothe the Family Court with the requisite jurisdiction to consider an application for adoption by reckoning the same as incidental to guardianship and custody.

22. It was discussed at the Bar whether it can be held that the Family Court has jurisdiction underSection 7(2)(b) of the Family Court Act to entertain a claim for appointment as guardian. After exhausting the stipulations in Section 7(1) and 7(2)(a), a residuary provision is enacted in Section 7(2)(b) to declare that the Family Court shall also have and exercise "be such other jurisdiction as may be conferred on it by any other enactment". Has Section 41(6) of the Juvenile Justice Act read with Rule 33(5) of the Central Rules conferred on the Family Court the jurisdiction to entertain a claim for appointment as guardian? This is the next question to be considered. That leads me to the question as to what is an enactment. Section 41(6) does not certainly say that the Family Court shall be the court for the purpose of Section 41(6). If at all it can only be held that Rule 33(5) confers by implication jurisdiction on the Family Court. But can the rules promulgated under Section 68 of the Juvenile Justice Act be equated to an "enactment". That is the next question to be considered. The Family Courts Act does not give any guideline as to what is the "enactment" contemplated under Section 7(2)(b). Ordinarily and normally a statute enacted by the legislature is referred to as an enactment. So much appears to be evident from the general principles of law. The General Clauses Act 1897 in Section 3(19) defines the expression in the following words.

"enactment" shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code and shall also include any provision contained in any Act or in any such Regulation as aforesaid.

23. The expression regulation in Section 3(19) is further defined in Section 3(50) in the following words:

"Regulation" shall mean a Regulation made by the President [under Article 240 of the Constitution and shall include a Regulation made by the President under Article 243 thereof and] a Regulation made by the Central Government under the Government of India Act, 1870, or the Government of India Act, 1915, or the Government of India Act, 1935.

24. It is significant that Section 3(19) and Section 3(15) read together must lead the court to the conclusion that a statutory rule like Rule 33(5) of the Central Rules may not fall within the sweep of the expression enactment. Doubts, if any, on this aspect is laid to rest when we consider the meaning of the expression rule in Rule 3(51) of the General Clauses Act which reads as follows:

"rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment.

25. Rule 33(5) appears in the Central Rules promulgated under Section 68 of the Juvenile Justice Act and in any view of the matter, the said rule cannot claim a status superior to 'rule' defined inSection 3(51) of the General Clauses Act. It cannot claim a status equal to regulation under Rule 3(50) or an enactment under Rule 3(19). It is therefore clear that Section 7(2)(b) of the Family Court Act cannot be pressed into service to sail to the conclusion that a Family Court has jurisdiction to entertain an application under Section 41(6). The Family Court cannot hence be held to be the court under Section 41(6) which can entertain applications for adoption by a guardian.

26. The conclusion appears to be inescapable in these circumstances that it is only the District Court which can be reckoned as the court for the purpose of Section 41(6) read with Rule 33(5) of the Central Rules. Similar appears to be the conclusion in the decision of the Bombay High Court in Manuel Theodore D'Souza.

27. I find it absolutely safe in these circumstances to come to a definite conclusion that it is only the District Court which can have jurisdiction to entertain an application under Section 41(6) of the Juvenile Justice Act read with Rule 33(5) of the Central Rules. It is declared so. All petitions pending before the Juvenile Justice Boards in the State or filed before them hereafter shall forthwith be returned for presentation before the District Court within

a stipulated period of time and if so presented it shall be reckoned that they have been duly presented before the District Courts. The District Courts shall proceed to exercise jurisdiction under Section 41(6) and appropriate orders shall be passed under Section 41(6) by the District Courts of the State. I may hasten to observe that the District Courts concerned must scrupulously comply that the direction in Lakshmikant Pandey v. Union of India that such applications must be disposed of within a period of two months from the date of presentation. The courts have to sympathetically consider the plight of the guardians yearning for an order for adoption and the need of children being given in adoption with expedition.

This Crl. M.C. is in these circumstances allowed. The petitioners shall be at liberty to present M.P. No. 105/07 returned by the Juvenile Board, Ernakulam to the petitioners before the District Court, Ernakulam within one month from today whereupon the District Court shall proceed to pass appropriate orders under Section 41(6) as indicated above.

28. A copy of this order shall forthwith be issued by the Registry to all the Juvenile Justice Boards are not functional, to the Principal Magistrate as also the District Courts with original jurisdiction to receive petitions. Their attention shall be drawn specifically to the observations and directions in paragraph 28 of this judgment.

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SHABNAM HASHMI Versus UNION OF INDIA & ORS.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 470 OF 2005

SHABNAM HASHMI ... PETITIONER(S)
VERSUS
UNION OF INDIA & ORS. ... RESPONDENT (S)

A. Constitution of India — Arts. 14, 15 and 44 — Adoption by any person irrespective of religion, caste, creed, etc., held, permissible — Impact of applicable Personal Laws not recognising such adoption — Held, any person can adopt a child under Juvenile Justice (Care and Protection of Children) Act, 2000 (as amended in 2006) — Prospective parents have option to employ the provisions of S. 41 of JJ Act, 2000 to adopt a child or they can also choose not to do so and to submit themselves to their applicable Personal Laws — However, Personal Laws cannot dictate the operation of provisions of an enabling statute like JJ Act, 2000 and cannot come in the way of person who chooses to adopt a child under JJ Act, 2000 — Further held, JJ Act, 2000 is a secular law and a small step in reaching the goal of Uniform Civil Code under Art. 44 of Constitution — Juvenile Justice (Care and Protection of Children) Act, 2000 — Chap. IV, S. 41 r/w S. 2(aa) (as amended in 2006) — Nature of — Held, overrides Personal Law when resorted to by any person — Juvenile Justice (Care and Protection of Children) Rules, 2007 — Chap. V, R. 33 — Central Adoption Resource Agency (CARA) Guidelines Governing the Adoption of Children, 2011 — Family and Personal Laws — Adoption — Words and Phrases — "Adoption"

B. Family and Personal Laws — Muslim Law — Adoption — Adoption by Muslims permitted vide JJ Act, 2000 — Held, Muslims can adopt a child with full rights as natural parents under provisions of S. 41 of Juvenile Justice (Care and Protection of Children) Act, 2000 (as amended in 2006) — Juvenile Justice (Care and Protection of Children) Act, 2000 — S. 41 r/w S. 2(aa) (as amended in 2006) — Juvenile Justice (Care and Protection of Children) Rules, 2007 — R. 33 — Central Adoption Resource Agency (CARA) Guidelines Governing the Adoption of Children, 2011 — Constitution of India, Arts. 14, 15 and 44

A public interest litigation (PIL) was filed under Article 32 of the Constitution requesting the Supreme Court to lay down optional guidelines to enable and facilitate adoption of children by persons irrespective of religion, caste, creed, etc. The petitioner, a Muslim and a civil rights activist had approached the Supreme Court to be legally recognised as the parent of her adopted daughter. The petitioner had taken her daughter in custody way back in 1996 but under the prevailing adoption laws applicable to Muslims, the petitioner was called only a guardian and her daughter, a ward.

[Ed.: The facts are taken from: http:/Awww.ndtv.c»m/artcle/india/when-court-485800, last visited on 10-3-2014.]

The petitioner in view of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006 (JJ Act, 2000), stated that the prayer made in the writ petition with regard to the guidelines was satisfactorily answered and admitted before the Supreme Court that the JJ Act, 2000 is a secular law enabling any person, irrespective of the religion she professes, to take a child in adoption.

The All India Muslim Personal Law Board (AIMPLB) however raised an objection that the Islamic law (Muslim Personal Law) does not recognise adoption and instead professes "kafala" system under which the child is placed under a ^kafil" who provides for the well-being of the child including financial support and is legally allowed to take care of the child. Further, the Islamic law does not recognise an adopted child to be on par with a biological child and adopted child remains the true descendant of his biological parents and not that of the "adoptive" parents.

Rejecting the objection of the AIMPLB to the extent it questioned the applicability of the JJ Act, 2000 to Muslims, the Supreme Court Held :

The Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006 (JJ Act, 2000), is an enabling legislation that gives a prospective parent the option of adopting an eligible child by following the procedure prescribed by the JJ Act, 2000, the Rules i.e the Juvenile Justice (Care and Protection of Children) Rules, 2007 and the CARA (Central Adoption Resource Agency) Guidelines, as notified under the JJ Act, 2000. The JJ Act, 2000 does not mandate any compulsive action by any prospective parent leaving such person with the liberty of accessing the provisions of the JJ Act, 2000, if he so desires. Such a person is always free to adopt or choose not to do so and, instead, follow what he comprehends to be the dictates of the Personal law applicable to him. The JJ Act, 2000 is a small step in reaching the goal enshrined by Article 44 of the Constitution. Personal beliefs and faiths, though must be honoured, cannot dictate the operation of the provisions of an enabling statute. An optional legislation that does not contain an unavoidable imperative cannot be stultified by the principles of Personal law which, however, would always continue to govern any person who chooses to so submit himself until such time that the vision of a Uniform Civil Code is achieved. The same can only happen by the collective decision of the generation(s) to come to sink conflicting faiths and beliefs that are still active as on date. (Para 13)

Lakshmi Kant Pandey v. Union of India, (1984) 2 SCC 244, relied on

[Ed.: This judgment has opened the doors for all the communities in India including Muslims, Christians, Parsis, Jews to adopt and also for millions of orphan children who are waiting for a home.

Earlier also, the Madras High Court hi R.R George Christopher, In Re, (2010) 2 LW 881, while dealing with application of Christian parents for recognising their adopted female child as natural born child, had accepted the rights of the aspiring parents to adopt under the provisions of the JJ Act, 2000. It would be relevant to mention the following few paragraphs from R.R George case: Q.W pp. 886 & 888, paras 13 & 22)

"13. The JJ Act for the first rime provides 'adoption' as a means to rehabilitate and socially reintegrate a child. It had empowered the State Government and the JJ Board to give a child for adoption. This is the first secular law in India providing for adoption. The provision in Sections 40 and 41 are not restricted to persons belonging to particular religion alone.

22. As can be seen from the Preamble to the JJ Act, the Act itself was enacted with a view to fulfil the international obligations as well as the constitutional goal envisaged in Part IV of the Constitution. Therefore, this Court thought tit to deal with this issue in extenso. Aspiring parents, who intend to adopt children, without being inhibited by their personal laws, are entitled to adopt a child in terms of the provisons of the J J Act."]

C. Constitution of India — Pt. XXI, Arts. 21, 44, 15 and 14 — Adoption — Right to adopt and right of child to be adopted — Held, not a fundamental right — Elevation of this right to status of fundamental right not possible at present in view of conflicting faith/beliefs of different communities — View expressed by legislature for the present by enactment of Juvenile Justice (Care and Protection of Children) Act, 2000 (as amended in 2006) under which adoption can be made by any person irrespective of religion, caste, creed, etc., however, must be given due respect — Juvenile Justice (Care and Protection of Children) Act, 2000 — S. 41 r/w S. 2(aa) (as amended in 2006) — Juvenile Justice (Care and Protection of Children) Rules, 2007, R. 33

D. Constitution of India — Pt. Ill and Art. 32 — Content of fundamental rights — Recognition of a particular entitlement as a fundamental right by Court when not expressly provided for in Constitution — Considerations involved — Conflicting faith/beliefs of different communities — Relevance — Constitutional Interpretation — Basic Rules — Temporally concordant interpretation

E. Constitutional Interpretation — Aids to construction — External Aids — Beliefs/Faith of People — Relevance — Constitution of India, Preamble, Pt. Ill and Arts. 14, 21, 15, 44 and 32

Held :

The fundamental rights embodied in Part III of the Constitution constitute the basic human rights which inhere in every person and such other rights which are fundamental to the dignity and well-being of citizens. While it is correct that the dimensions and perspectives of the meaning and content of the fundamental rights are in a process of constant evolution as is bound to happen in a vibrant democracy where the mind is always free, elevation of the right to adopt or to be adopted to the status of a fundamental right, will have to await a dissipation of the conflicting thought processes in this sphere of practices and belief prevailing in the country. The legislature which is better equipped to comprehend the mental preparedness of the entire citizenry to think unitedly on the issue has expressed its view, for the present, by the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the same must receive due respect. Conflicting viewpoints prevailing between different communities, as on date, on the subject makes the vision contemplated by Article 44 of the Constitution i.e a Uniform Civil Code a goal yet to be fully reached and the Court is reminded of the anxiety expressed by it earlier with regard to the necessity to maintain restraint. All these impel the Court to take the view that the present is not an appropriate time and stage where the right to adopt and the right to be adopted can be raised to the status of a fundamental right and/or to understand such a right to be encompassed by Article 21 of the Constitution. (Para 16)

Manuel Theodore D'Souza, In re, (2000) 3 Bom CR 244; Philips Alfred Malvin v. Y.J Gonsalvis, AIR 1999 Ker 187, distinguished and limited

Advocates who appeared in this case:

R.K Khanna, Additional Solicitor General, Saurab Ajay Gupta, Suryanarayana Singh and Manjit Singh, Additional Advocates General, Colin Gonsalves, J.S Attri, Raju Rama Chandran, Y.H Muchhala, Huzefa Ahmadi and A. Mariarputham, Senior Advocates (Ms Vamika Singh, Ms Jyoti Mendiratta, Ms Sunita Sharma, Ms Seema Rao, Anirudh Tanwar, V.IM Subramanium, A.K Kaul, D.S Mahra, Ms Sushma Suri, B. Krishna Prasad, Ejaz Maqbool, Ms Tanima Kishore, Mrigank Prabhakar, Ms K. Enatoli Sema, Amit Kr. Singh, J.S Chhabra, Ms Pragati Neekhra, Mishra Saurabh, Naveen Sharma, Ms Vanshaja Shukla, Mukul Singh, Anil K. Jha, Ms Priyanka Tyagi, Ms Bina Madhavan, Sapam Biswajit, Meitei, Kh. Nobin Singh, Ms Aruna Mathur, Yusuf, M/s Arputham Aruna & Co., Balasubramanian, K.V Jagidishvaran, Ms G. Indira, Abhishek Atrey, Ashutosh Kr. Sharma, Ms Babita Tyagi, Ms Hemantika Wahi, Ms Preeti Bhardwaj, Anip Sachthey, Mohit Paul, M/s KJ John & Co., Ms Neeru Vaid, Ajay Pal, Gopal Singh, M/s Corporate Law Group, Shibashish Misra, Milind Kumar, P.V Yogeswaran, Sanjay R. Hegde, B.S Banthia, Anuvrat Sharma, T.V George, G. Prakash, Naresh K. Sharma, Ms Kamini Jaiwal, T. Harish Kumar, Ms D. Bharati Reddy, Aniruddha P. Mayee, Balaji Srinivasan, Ms A. Subhashini and Debasis Misra, Advocates) for the appearing parties.

Chronological lists of cases cited

RELEVANT CASE LAWS AND JUDGMENTS

1. (2000) 3 Bom CR 244, Manuel Theodore D'Souza, In re
2. AIR 1999 Ker 187, Philips Alfred Malvin v. Y.J. Gonsalvis
3. (1984) 2 SCC 244, Lakshmi Kant Pandey v. Union of India

The Judgment of the Court was delivered by

RANJAN GOGOI, J.—

1. Recognition of the right to adopt and to be adopted as a fundamental right under Part-III of the Constitution is the vision scripted by the public spirited individual who has moved this Court under Article 32 of the Constitution. There is an alternative prayer requesting the Court to lay down optional guidelines enabling adoption of children by persons irrespective of religion, caste, creed etc. and further for a direction to the respondent Union of India to enact an optional law the prime focus of which is the child with considerations like religion etc. taking a hind seat.
2. The aforesaid alternative prayer made in the writ petition appears to have been substantially fructified by the march that has taken place in this sphere of law, gently nudged by the judicial verdict in Lakshmi Kant Pandey Vs. Union of India1 and the supplemental, if not consequential, legislative innovations in the shape of the Juvenile Justice (Care And Protection of Children) Act, 2000 as amended in 2006 (hereinafter for short 'the JJ Act, 2000) as also The Juvenile Justice (Care and Protection of Children) Rules promulgated in the year 2007 (hereinafter for short 'the JJ Rules, 2007').
3. The alternative prayer made in the writ petition may be conveniently dealt with at the outset. The decision of this Court in Lakshmi Kant Pandey (supra) is a high watermark in the development of the law relating to adoption. Dealing with inter-country adoptions, elaborate guidelines had been laid by this Court to protect and further the interest of the child. A regulatory body, i.e., Central Adoption Resource Agency (for short 'CARA') was recommended for creation and accordingly set up by the Government of India in the year 1989. Since then, the said body has been playing a pivotal role, laying down norms both substantive and procedural, in the matter of inter as well as in country adoptions. The said norms have received statutory recognition on being notified by the Central Govt. under Rule 33 (2) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 and are today in force throughout the country, having also been adopted and notified by several states under the Rules framed by the states in exercise of the Rule making power under Section 68 of the JJ Act, 2000.
4. A brief outline of the statutory developments in the concerned sphere may now be sketched. In stark contrast to the provisions of the JJ Act, 2000 in force as on date, the Juvenile Justice Act, 1986 (hereinafter for short 'the JJ Act, 1986') dealt with only "neglected" and "delinquent juveniles". While the provisions of the 1986 Act dealing with delinquent juveniles are not relevant for the present, all that was contemplated for a 'neglected juvenile' is custody in a juvenile home or an order placing such a juvenile under the care of a parent, guardian or other person who was willing to ensure his good behaviour during the period of observation as fixed by the Juvenile Welfare Board. The JJ Act, 2000 introduced a separate chapter i.e. Chapter IV under the head 'Rehabilitation and Social Reintegration' for a child in need of care and protection. Such rehabilitation and social reintegration was to be carried out alternatively by adoption or foster care or sponsorship or by sending the child to an after-care organization. Section 41 contemplates adoption though it makes it clear that the primary responsibility for providing care and protection to a child is his immediate family. Sections 42, 43 and 44 of the JJ Act, 2000 deals with alternative methods of rehabilitation namely, foster care, sponsorship and being looked after by an after-care organisation.
5. The JJ Act, 2000, however did not define 'adoption' and it is only by the amendment of 2006 that the meaning thereof came to be expressed in the following terms:

   "2(aa)-"adoption" means the process through which the adopted child is permanently separated from his biological parents and become the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship"
6. In fact, Section 41 of the JJ Act, 2000 was substantially amended in 2006 and for the first time the responsibility of giving in adoption was cast upon the Court which was defined by the JJ Rules, 2007 to mean a civil court having jurisdiction in matters of adoption and guardianship including the court of the district judge, family courts and the city civil court. [Rule 33 (5)] Substantial changes were made in the other sub-sections of Section 41 of the JJ Act, 2000. The CARA, as an institution, received statutory recognition and so did the guidelines framed by it and notified by the Central Govt. [Section 41(3)].
7. In exercise of the rule making power vested by Section 68 of the JJ Act, 2000, the JJ Rules, 2007 have been enacted. Chapter V of the said Rules deal with rehabilitation and social reintegration. Under Rule 33(2) guidelines issued by the CARA, as notified by the Central Government under Section 41 (3) of the JJ Act, 2000, were made applicable to all matters relating to adoption. It appears that pursuant to the JJ Rules, 2007 and in exercise of the rule making power vested by the JJ Act, 2000 most of the States have followed suit and adopted the guidelines issued by CARA making the same applicable in the matter of adoption within the territorial boundaries of the concerned State.

   Rules 33(3) and 33(4) of the JJ Rules, 2007 contain elaborate provisions regulating pre-adoption procedure i.e. for declaring a child legally free for adoption. The Rules also provide for foster care (including pre-adoption foster care) of such children who cannot be placed in adoption & lays down criteria for selection of families for foster

care, for sponsorship and for being looked after by an aftercare organisation. Whatever the Rules do not provide for are supplemented by the CARA guidelines of 2011 which additionally provide measures for post adoption follow up and maintenance of data of adoptions.

8. It will now be relevant to take note of the stand of the Union of India. Way back on 15th May, 2006 the Union in its counter affidavit had informed the Court that prospective parents, irrespective of their religious background, are free to access the provisions of the Act for adoption of children after following the procedure prescribed. The progress on the ground as laid before the Court by the Union of India through the Ministry of Women and Child Development (respondent No. 3 herein) may also be noticed at this stage. The Union in its written submission before the Court has highlighted that at the end of the calendar year 2013 Child Welfare Committees (CWC) are presently functioning in a total of 619 districts of the country whereas State Adoption Resource Agencies (SARA) has been set up in 26 States/Union Territories; Adoption Recommendation Committees (ARCs) have been constituted in 18 States/Union Territories whereas the number of recognized adoption organisations in the country are 395. According to the Union the number of reported adoptions in the country from January, 2013 to September, 2013 was 19884 out of which 1712 cases are of inter-country adoption. The third respondent has also drawn the attention of the Court that notwithstanding the time schedule specified in the guidelines of 2011 as well as in the JJ Rules, 2007 there is undue delay in processing of adoption cases at the level of Child Welfare Committees (CWS), the Adoption Recommendation Committees (ARCs) as well as the concerned courts.

9. In the light of the aforesaid developments, the petitioner in his written submission before the Court, admits that the JJ Act, 2000 is a secular law enabling any person, irrespective of the religion he professes, to take a child in adoption. It is akin to the Special Marriage Act 1954, which enables any person living in India to get married under that Act, irrespective of the religion he follows. JJA 2000 with regard to adoption is an enabling optional gender-just law, it is submitted. In the written arguments filed on behalf of the petitioner it has also been stated that in view of the enactment of the JJ Act, 2000 and the Amending Act of 2006 the prayers made in the writ petition with regard to guidelines to enable and facilitate adoption of children by persons irrespective of religion, caste, creed etc. stands satisfactorily answered and that a direction be made by this Court to all States, Union Territories and authorities under the JJ Act, 2000 to implement the provisions of Section 41 of the Act and to follow the CARA guidelines as notified.

10. The All India Muslim Personal Law Board (hereinafter referred to as 'the Board') which has been allowed to intervene in the present proceeding has filed a detailed written submission wherein it has been contended that under the JJ Act, 2000 adoption is only one of the methods contemplated for taking care of a child in need of care and protection and that Section 41 explicitly recognizes foster care, sponsorship and being look after by after-care organizations as other/ alternative modes of taking care of an abandoned/surrendered child. It is contended that Islamic Law does not recognize an adopted child to be at par with a biological child. According to the Board, Islamic Law professes what is known as the "Kafala" system under which the child is placed under a 'Kafil' who provides for the well being of the child including financial support and thus is legally allowed to take care of the child though the child remains the true descendant of his biological parents and not that of the "adoptive" parents. The Board contends that the "Kafala" system which is recognized by the United Nation's Convention of the Rights of the Child under Article 20(3) is one of the alternate system of child care contemplated by the JJ Act, 2000 and therefore a direction should be issued to all the Child Welfare Committees to keep in mind and follow the principles of Islamic Law before declaring a muslim child available for adoption under Section 41(5) of the JJ Act, 2000.

11. The JJ Act, 2000, as amended, is an enabling legislation that gives a prospective parent the option of adopting an eligible child by following the procedure prescribed by the Act, Rules and the CARA guidelines, as notified under the Act. The Act does not mandate any compulsive action by any prospective parent leaving such person with the liberty of accessing the provisions of the Act, if he so desires. Such a person is always free to adopt or choose not to do so and, instead, follow what he comprehends to be the dictates of the personal law applicable to him. To us, the Act is a small step in reaching the goal enshrined by Article 44 of the Constitution. Personal beliefs and faiths, though must be honoured, cannot dictate the operation of the provisions of an enabling statute. At the cost of repetition we would like to say that an optional legislation that does not contain an unavoidable imperative cannot be stultified by principles of personal law which, however, would always continue to govern any person who chooses to so submit himself until such time that the vision of a uniform Civil Code is achieved. The same can only happen by the collective decision of the generation(s) to come to sink conflicting faiths and beliefs that are still active as on date.

12. The writ petitioner has also prayed for a declaration that the right of a child to be adopted and that of the prospective parents to adopt be declared a fundamental right under Article 21 of the Constitution. Reliance is placed in this regard on the views of the Bombay and Kerala High Courts in In re: Manuel Theodore D'souza2 and Philips Alfred 2 (2000) 3 BomCR 244 Malvin Vs. Y.J.Gonsalvis & Ors.3 respectively. The Board objects to such a declaration on the grounds already been noticed, namely, that Muslim Personal Law does not recognize adoption though it does not prohibit a childless couple from taking care and protecting a child with material and emotional support.

13. Even though no serious or substantial debate has been made on behalf of the petitioner on the issue, abundant literature including the holy scripts have been placed before the Court by the Board in support of its contention, noted above. Though enriched by the lengthy discourse laid before us, we do not think it necessary to go into any of the issues raised. The Fundamental Rights embodied in Part-III of the Constitution constitute the basic human rights which inhere in every person and such other rights which are fundamental to the dignity and well being of citizens. While it is correct that the dimensions and perspectives of the meaning and content of fundamental rights are in a process of constant evolution as is bound to happen in a vibrant democracy where the mind is always free, elevation of the right to adopt or to be adopted to the status of a Fundamental Right, in our considered view, will have to await a dissipation of the conflicting thought processes in this sphere of practices and belief prevailing in the country. The legislature which is better equipped to comprehend the mental preparedness of the entire citizenry to think unitedly on the issue has expressed its view, for the present, by the enactment of the JJ Act 2000 and the same must receive due respect. Conflicting view points prevailing between different communities, as on date, on the subject makes the vision contemplated by Article 44 of the Constitution i.e. a Uniform Civil Code a goal yet to be fully reached and the Court is reminded of the anxiety expressed by it earlier with regard to the necessity to maintain restraint. All these impel us to take the view that the present is not an appropriate time and stage where the right to adopt and the right to be adopted can be raised to the status of a fundamental right and/or to understand such a right to be encompassed by Article 21 of the Constitution. In this regard we would like to observe that the decisions of the Bombay High Court in Manuel Theodore D'souza (supra) and the Kerala High Court in Philips Alfred Malvin (supra) can be best understood to have been rendered in the facts of the respective cases. While the larger question i.e. qua Fundamental Rights was not directly in issue before the Kerala High Court, in Manuel Theodore D'souza (supra) the right to adopt was consistent with the canonical law applicable to the parties who were Christians by faith. We hardly need to reiterate the well settled principles of judicial restraint, the fundamental of which requires the Court not to deal with issues of Constitutional interpretation unless such an exercise is but unavoidable.

14. Consequently, the writ petition is disposed of in terms of our directions and observations made above.

……CJI.
[P. SATHASIVAM]

……J.
[RANJAN GOGOI]

……J.
[SHIVA KIRTI SINGH]

NEW DELHI,
FEBRUARY 19, 2014.

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Childline India Foundation & Anr. Versus Allan John Waters & Ors.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos. 1208-1210 OF 2008

Childline India Foundation & Anr. .... Appellant(s)
Versus
Allan John Waters & Ors. .... Respondent(s)

WITH

CRIMINAL APPEAL NOs. 1205-1207 OF 2008

JUDGMENT

P. Sathasivam, J.

1) These appeals are filed against the common final judgment and order dated 23.07.2008 passed by the Division Bench of the High Court of Bombay in Criminal Appeal Nos. 476, 603 and 681 of 2006 whereby the High Court allowed the appeals and reversed the judgment dated 18.03.2006 passed by the Additional Sessions Judge for Greater Bombay in Sessions Case Nos. 87 of 2002, 886 of 2004 and 795 of 2005 convicting all the accused under various Sections of the Indian Penal Code (in short 'the IPC'), the Code of Criminal Procedure, 1973 (in short 'the Code') and the Juvenile Justice Act, 2000 (in short 'the JJ Act').

2) Brief Facts:

(a) In the year 1986, a petition was brought before the High Court of Bombay complaining about the plight of children at various children homes in Maharashtra. In the same petition, the High Court appointed a Committee, namely, the Maharashtra State Monitoring Committee on Juvenile Justice (in short "the Committee") headed by Justice Hosbet Suresh, a retired Judge of the High Court of Bombay. This Committee received some complaints from the Child Rights Organizations like Saathi Online, Childline and CRY about the mismanagement of Anchorage Shelters, and on that basis, the Committee sought permission of the High Court to visit various Anchorage Shelters. After visiting various Anchorage Shelters including the one at Colaba and Cuffe Parade, a report was submitted before the High Court.

(b) On the basis of the said report, specifically expressing unconfirmed report of sexual exploitation of children, on 17.10.2001, one Ms. Meher Pestonji telephoned Advocate Ms. Maharukh Adenwala and informed her that some children residing in Shelter Homes were sexually exploited by those who were running these Homes. On receiving this information, Ms. Maharukh Adenwala met those boys, who were allegedly sexually assaulted, at the residence of Ms. Meher Pestonji to ascertain the truth. After confirming the said fact, Ms. Maharukh Adenwala thought it proper to inform it to the Members of the Committee. After consulting the Committee, Ms. Maharukh Adenwala moved a suo motu Criminal Writ Petition No 585 of 1985 before the High Court. On 19.10.2001, the High Court passed an order for the protection of the children at Anchorage Shelter Homes. On 21.10.2001, one Shridhar Naik telephonically contacted Ms Maharukh Adenwala and informed her that the order of the High Court giving protection to the children was being misinterpreted by the police and, therefore, certain clarifications were sought from the High Court and by order dated 22.10.2001, the High Court clarified the same.

(c) With regard to the sexual and physical abuse at the Anchorage Shelters, on 24.10.2001, Childline India Foundation filed a complaint with the Cuffe Parade Police Station and while lodging the said complaint, Ms. Maharukh Adenwala was also present there. In spite of the fact that a complaint had been lodged, the police did not take cognizance of the offence under the pretext that the matter was sub judice and was pending before the High Court. Since the matter was not being looked into by the police, Ms. Maharukh Adenwala recorded statements of some of the victims and informed the said fact to the Members of the Committee. On 28.10.2001, Dr. (Mrs.) Kalindi Muzumdar and Dr. (Mrs.) Asha Bajpai met those victims at the office of India Centre for Human Rights and Law and endorsed that the statements previously recorded by Ms. Maharukh Adenwala were correctly recorded. After ascertaining the correctness of the statements by the Members of the Committee, the said facts were placed before the High Court and it was also submitted that the police authorities at Cuffe Parade Police Station were not seriously pursuing the complaint. The High Court, by order dated 07.11.2001, directed the police authorities of the State of Maharashtra to take action on the basis of the complaint lodged by the Childline India Foundation.

(d) Based on this specific direction, Sr. Inspector of Police, Colaba Police Station was directed to investigate in detail the complaint lodged by Childline and to take such action as is required to be taken in law. On 12.11.2001, Colaba Police Station recorded the statement of one Sonu Raju Thakur and the statement of one

Sunil Kadam (PW-1) was recorded by Murud police station on 13.11.2001. On 15.11.2001, police ultimately registered an offence at Colaba police station by treating the statement of Sonu Raju Thakur as formal First Information Report (in short 'the FIR') being C.R. No. 312/2001 and started investigation.

(e) Though the offence was mainly registered against three accused barring William D'Souza (A1), the remaining two accused, namely, Allan John Waters (A2) and Duncan Alexander Grant (A3) had already left the country and therefore, on 05.04.2002, an Interpol Red Corner Notice was issued against A2 and A3. In pursuance of Red Corner Notice, A2 was arrested in USA and sometimes thereafter A3 also surrendered before the Court in India. The Metropolitan Magistrate committed the case to the Court of Session and after committal, it was initially assigned to the First Track Court at Sewree. All the three accused pleaded not guilty and, therefore, claimed to be tried.

(f) The Sessions Judge, by judgment dated 18.03.2006, convicted William D'Souza (A1) for the offence punishable under Section 377 read with Section 109 IPC, Sections 120B and 323 IPC and under Section 23 of the JJ Act. Allan John Waters (A2) was convicted under Section 377 IPC, Section 120B read with Section 377 IPC and Section 373 IPC. Duncan Aleander Grant (A3) was convicted under Section 377 IPC, Section 373 read with 109 IPC, Section 372 IPC and Section 23 of JJ Act.

(g) Aggrieved by the said order, A1 filed Criminal Appeal No. 681 of 2006, A2 and A3 filed Criminal Appeal No. 476 of 2006 before the High Court of Bombay. State Government also preferred Criminal Appeal No. 603 of 2006 before the High Court for enhancement of the sentence of the accused persons. The High Court, vide its common judgment dated 23.07.2008, set aside the order of conviction passed by the Sessions Judge and allowed the criminal appeals filed by A1, A2 and A3 and acquitted all of them from the charges leveled against them and dismissed the appeal filed by the State Government.

(h) Aggrieved by the order of the High Court, Childline India Foundation and Ms. Maharukh Adenwala filed Criminal Appeal Nos. 1208-1210 of 2008 and State of Maharashtra has filed Criminal Appeal No. 1205-1207 of 2008 before this Court by way of special leave petitions.

3) Heard Mr. K.V. Vishwanathan, learned senior counsel for the appellants in Criminal Appeal Nos. 1208-1210 of 2008, Mr. Sanjay V. Kharde, learned counsel for the appellants in Criminal Appeal Nos. 1205-1207 of 2008, Mr. Shekhar Naphade, learned senior counsel for Respondent Nos. 1 & 2 in Crl. A. Nos. 1208 and 1210 of 2008 and Respondent Nos. 2 & 3 in Crl. A. No. 1206 of 2008 and Respondent No. 3 in Crl. A. No. 1210 of 2008 and Mr. Rameshwar Prasad Goyal, learned counsel for Respondent No. 1 in Crl.A. Nos. 1209, 1210, 1206 and sole Respondent in Crl. A.No. 1207 of 2008.

4) The only point for consideration in these appeals is whether the High Court is justified in acquitting all the accused by interfering with the order of conviction and sentence passed by the trial Court?

5) Childline India Foundation is a project of the Ministry of Social Justice & Empowerment, Government of India and runs a 24 hrs. emergency phone helpline for children in distress. It was at their behest that investigation into the sexual and physical abuse of children at the Anchorage Shelters was initiated and F.I.R. No. 312 of 2001 was registered. When initially the police refused to record the statements of the victims, it was the Childline along with Ms. Maharukh Adenwala and others talked to the victims and recorded their statements and also produced them before the Committee. The Childline India Foundation intervened in support of the prosecution before the trial Court.

6) Ms. Maharukh Adenwala has been a practicing advocate since 1985 litigating matters concerning social issues, including child rights. She has been appointed as Amicus Curiae in several child related cases by the Bombay High Court including suo motu Criminal Writ Petition No. 585 of 1985 about the plight of street children in Mumbai. She was involved in the present case since its inception and she brought the activities going-on at Anchorage Shelters to the notice of the Bombay High Court in the above said suo motu writ petition and obtained several orders and directions for the protection of the boys. She was examined before the trial Court as PW-2, especially to depose about the background of the case, how the complaint came to be filed and the various orders passed by the Bombay High Court in the abovesaid suo motu writ petition. Childline India Foundation and Ms. Maharukh Adenwala have been closely associated with the present case right from its inception. Childline India Foundation as a de facto complainant and intervenor and Ms. Maharukh Adenwala as PW-2.

7) In October, 2001, when it was brought to the notice of Ms. Maharukh Adenwala that some children living at the Anchorage Shelters had complained about sexual abuse, she immediately brought this to the notice of the High Court of Bombay and obtained necessary orders. She along with the representatives of Childline lodged a complaint at Cuffe Parade Police Station about the unlawful activities at Anchorage Shelters. Since the police officers of Cuffe Parade Police Station refused to investigate the said complaint under the pretext that the matter is sub judice and pending before the High Court, she recorded the statements of some of the victims and placed it before the High Court seeking direction for the police to investigate into the complaint filed by the Childline. By order dated 07.11.2001 passed by the High Court in suo motu Criminal W.P. No. 585 of 1985, the representatives of the Childline were permitted to visit the Anchorage Shelters to interview the boys and to submit a report before the High Court and seek police assistance, if any. Their representatives have since been regularly visiting the Anchorage Shelters and providing necessary assistance to the boys residing there.

8) The other facts relating to these criminal appeals are that Duncan Alexander Grant (A3), a British national, in and around 1995 opened three Shelters called the Anchorage Shelters for the welfare of street children in Mumbai and its vicinity, namely, at Colaba, Cuffe Parade and Murud. Allan John Waters (A2), who was also a British national and a friend of Dunkan Alexander Grant (A3) used to visit the said Shelters regularly. Both of them were formerly working with the British Navy. Another accused William D'Souza (A-1) was the Manager of the Anchorage Shelters.

9) In January, 2001, Dr. (Mrs.) Kalindi Muzumdar, a Member of the Committee received complaints from organizations working in the field of child rights such as Childline, Saathi, CRY about the sexual exploitation of children residing in Anchorage Shelters and other children's institutions in Mumbai. She has been examined as PW-3. By letter dated 22.01.2001, she sought permission from the High Court to visit Anchorage Shelters and other institutions in respect of which she had received complaints and permission was subsequently granted by the Division Bench of the High Court by its order dated 28.02.2001 in Suo Moto Criminal W.P. No. 585 of 1985. Accordingly, on 18.08.2001, the Members of the Committee including Justice H. Suresh who headed the said Committee, visited the Anchorage Shelters and submitted their reports to the High Court. These reports show that the atmosphere in the Shelters was unconducive for growing children, there was no education and health facilities, the management of the Shelters was unprofessional, the children were scared to go to the Murud Shelter, there were allegations of repeated beatings of the boys, the Shelters were not licensed and did not maintain children's records, nor proper accounts were maintained etc. Moreover, the said Report stated that,

"There are unconfirmed reports of sexual abuse in the Shelters especially at Murud", and that "the Shelters, especially, the Murud Shelter should be investigated thoroughly for possibility of sexual abuse".

10) There is no doubt that when Cuffe Parade Police Station refused to investigate the matter, it was Ms. Maharukh Adenwala and Ms. Meher Pestonjee who recorded the statements and supplementary statements of the minor boys, namely, Rasul Mohd. Sheikh, Sonu Thakur and Gopal Shrivastav, on 25th, 26th and 27th October, 2001. In their respective statements, the boys have spoken of the sexual abuse at the hands of (A2) and (A3) and physical abuse at the hands of (A1). The said statements also show that the boys had told (A1) about the sexual abuse, but he did not take any appropriate action to protect them. The complaint of the Childline is the basis of the FIR in this case. The written complaint dated 24.10.2001 submitted by the Childline to the Cuffe Parade Police Station and the boys' statements were brought to the notice of the High Court. On 07.11.2001, the High Court directed the police authorities of the State of Maharashtra to take immediate action on the complaint of Childline. Thereafter, the matter was investigated by Colaba Police Station and an offence was registered on 15.11.2001 being FIR No. C.R.No. 312 of 2001. In the course of the investigation, the police recorded the statements of five boys, who had suffered sexual abuse at the hands of (A2) and (A3) and physical abuse at the hands of (A1). All the three accused were arrested at different times. The Colaba Police Station filed three separate charge sheets but the matters, viz., Sessions Case Nos. 87 of 2002, 886 of 2004 and 795 of 2005 were heard together by the trial Court and the accused persons were charged under Sections 377, 373, 372 and 323 IPC read with Sections 120-B and 109 IPC and Section 120-B IPC and Section 23 of the JJ Act.

11) The prosecution examined six witnesses, namely, two victim boys – Sunil Suresh Kadam as PW-1 & Kranti Abraham Londhe as PW-4, Ms. Maharukh Adenwala as PW-2, Ms. Kalindi Muzumdar as PW-3 and two Investigation Officers as PWs 5 & 6. The defence examined two witnesses, namely, Kiran Waman Salve as DW-1 and Rasul Mohd. Sheikh as DW-2, both being boys who resided in the Anchorage Shelters at Mumbai. DW-2 had been cited as a prosecution witness. Thereafter the prosecution examined Veersingh P. Taware – the Additional Chief Metropolitan Magistrate as PW-7, who had recorded the statement of Rasul Mohd. Sheikh under Section 164 of the Code, wherein he had spoken about the sexual abuse.

12) The two victim boys, namely, Sunil Suresh Kadam (PW-1) and Kranti Abraham Londhe (PW-4) deposed in detail about the activities going-on at the Anchorage Shelters and their depositions reflect that there was a criminal conspiracy amongst the accused to obtain possession of minor vulnerable boys residing on the streets and subject them to sexual abuse. The trial Court, by order dated 18.03.2006, accepted the evidence of PWs 1 & 4 who have been victimised in the Shelter Homes and social activists PWs 2 & 3 and after considering various aspects convicted all the three accused and sentenced them as mentioned hereunder:

Accused	U/s	Sentence
A-1 William D'Souza	377 r/w 149 IPC 120B IPC 323 IPC 23 JJ Act	3 Yrs RI+Rs. 5000/- ID 1 yr RI No separate sentence. 3m RI+Rs. 5000/- ID 15 days RI 1m RI+Rs. 500/- ID 1 week RI.
A-2 Allan John Waters	377 IPC 377 r/w 120B IPC 373 IPC	6 yrs. RI no fine No separate sentence 3 yrs. RI. No fine Compensation of 20000 UK pounds ID 1 yr RI.

A-3 Duncan Alexander Grant	377 IPC 377 r/w 120B IPC 373 r/w 109 IPC 372 IPC 323 IPC	6 yrs. RI. No fine. 6 yrs. RI. No fine. 3 yrs. RI. No fine. 3 yrs. RI. No fine. 3 months RI. No fine. Compensation of 20000 UK pounds ID 1 yr RI.

13) The Division Bench of the High Court, by the impugned order, doubted the veracity of the statements of PWs 1 & 4. According to the High Court, their statements are suspicious, unreliable, not proved beyond shadow of doubt and not credit worthy. The High Court has also eschewed the evidence of PWs 2 & 3 as not admissible and ultimately doubting the prosecution case, set aside the order of conviction and sentence passed by the trial Court and acquitted all the three accused from the charges leveled against them.

14) We have already highlighted the plight of street children at the Shelter Homes in Mumbai. At the foremost, let us consider the testimony of PWs 1 and 4. On the date of deposing before the Court, PW-1 was about 20 years old. However, from the age of 12 to 13 he was wandering in the streets and earning by doing any sort of work for maintaining himself. He had stated that there was no shelter for him at that time and he was sleeping on footpath. His father was earning a little amount by shoe shining and he was addicted to liquor and he used to quarrel with the family everyday. He used to stay on the pavements near Dhanraj Mahal which is situated near Gateway of India. While deposing before the Court and in the dock, he identified A2 and A3. According to him, he came to know that A3 has opened one Shelter Home and he was asked to stay in the Shelter Home along with other boys. The Shelter Home is situated at Colaba. He admitted that he knows A2 because he was a friend of A-3 and he met him at the Shelter Home. He also informed that about 40-50 boys were staying in the said Shelter Home and the boys staying there were between the age of 8 to 20 years. There is one more Shelter Home situated at Murud at Alibag District and one at Cuffee Parade. He stayed in the Shelter Home up to 2001. He highlighted how Duncan Alexander Grant (A3) and Allen Water (A2) had sex with him and also explained how he was beaten by William (A1). PW-1 has stated before the trial Court as under:

> "Duncan had sex with me on many occasions. He used to tell me to hold his penis and also he used to hold my penis. This must have taken place at least on 20 to 25 occasions. This happened at Murud (Janjira) shelter home as well as Colaba shelter home. Allan Waters also had sat with me on many occasions. He also used to tell me to hold his penis and he also used to hold my penis. Allan waters also had sex with me at Colaba shelter home and also at Murud (Janjira) shelter home. Allan must have had sex with me on 10 to 15 occasions. Duncan Grant and Allan Waters also had a similar relationship with other boys. Accused Duncan and Allan Waters used to ask for fellatio with the other boys and not the other way round. I have seen this happened with my own eyes. I have seen this with respect to other boys named Babu, Kiran, Sai and Dhanraj. I know Sonu Thakur, Rasul Sheikh, Gopal Srivastava, Kranti Londhe. With the abovementioned boys also the same thing had happened and I had witnessed it. The abovementioned boys used to stay in the shelter home during the relevant period. When this happened for the first time with me I was aged about 14/15 years. Prior to that I had no knowledge about sex. When I had it for the first time I did not like it. Even though I did not like it, I stayed in the shelter home because it was my compulsion. I made a complaint to William about the conduct of Duncan Grant and Allan Water"
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> "Accused No.1 William used to beat us on flimsy grounds. He used to do canning. However, he never had sex with either me or with other boys. When I made a complaint to William (about Allan and Duncan), he told me not to divulge the said fact to anybody failing which he would beat me."
>
> "On the day I was interrogated I had an injury on my right hand as William had bitten me. I had taken medical treatment with respect to the said injury."

In the cross-examination, PW-1 asserted that during his stay in the shelter home, nearly for a period of five years, these instances were happening regularly. He also stated that "Accused Duncan Grant and Allan Waters used to have sex with me independently and they did not do it together with me". About William, in cross-examination PW-1 has stated that "it is a fact that whenever we used to commit mistake, William used to beat us". When a question was put to him whether he had said so before police, he answered that "I did state that fact to the police at the time of recording my statement that Allan Waters also had sex with me at Colaba shelter home and also at Murud (Janjira) shelter home. Allen must have had sex with me on 10-15 occasions. I cannot assign any reason as to why the said statement in exact sequence is missing in the police report. I did state the said fact to the police at the time of recording my statement that, "Accused Duncan and Allan Waters used to ask for fellatio with the other boys. Duncan Grant and Allan Waters used to do fellatio with the other boys and not the other way round. I have seen this happened with my own eyes. I have seen this with respect to other boys named Babu, Kiran, Sai and Dhanraj. I know Sonu Thakur, Rasul Sheikh, Gopal Srivastava, Krani Londhe. With the abovementioned boys also the same thing had happened and I had witnessed it."

15) Before analyzing the evidence of PW-1 further, it is also useful to refer the statement of PW-4 before the Court. He deposed that he lost his father when he was a child and his entire family was residing on a footpath near Gateway of India. Though his house was at Jogeswari, according to him, he along with his mother used to stay on the pavements near Gateway of India. His elder brother Madhu Londhe was a Rickshaw puller. He has not studied in any school. He used to work as guide and earn his livelihood. According to him, for many days, he used to stay on the pavements near Gateway of India. PW-4 has identified each accused correctly when they were in the dock. About William (A1), he deposed that:

> "I know accused William since my childhood. I know William because he used to come at Gateway of India to work. William used to work as a pimp. William is also known as Natwar."

About Duncan (A3), he stated that:

> "I know accused Duncan since I used to stay near Gateway of India along with my mother. I know accused Duncan because he used to come near Gateway of India and used to collect the boys there and used to talk to the boys. Duncan used to come near Gateway of India sometimes on bicycle and sometimes on foot. I had a conversation with Duncan at that point of time and he used to offer me to stay at Anchorage. The said Anchorage of Duncan is situated at Colaba. I do not know as to why he was offering me to come and stay at Anchorage. When I was offered to stay at Anchorage after I lost my mother, I am unable to state approximately when I went to stay at Anchorage. Today, I stay near Gateway of India on the pavements. I am unable to state as to how long I stayed at Anchorage. When I started residing at Anchorage, I met William (accused No. 1) as he was working as a Manager at Anchorage. I do not know the name of the building in which the said anchorage is situated. I also do not know the name of the road on which the said building is situated. The said Anchorage is situated on the 3rd floor. 30 to 40 boys used to stay in the Anchorage when I was staying there. All the boys were from the age group of 10 to 12 years.

Thereafter, he went to stay at Anchorage and met Allan Water (A2). The Anchorage is consisting of one big room with attached bathroom and a terrace. All of them were provided food at Anchorage Shelters. Duncan also used to distribute pocket money on every Sunday amongst the boys staying at Anchorage Shelters. He also explained the reason for his stay at Anchorage was that on many days, he had no earnings and he was starving. After staying at Anchorage, he used to work in a garage and getting Rs. 10/- or Rs. 20/- a day. He also informed the Court that William used to beat them by a cane when they were staying at Anchorage for no reason.

About Duncan, PW-4 has also deposed:

> "Duncan used to beat me when I used to stay at Anchorage. Duncan used to remove all the clothes and by making me naked he used to beat me. Duncan used to hold my head between his thighs and then used to ask the monitor to beat me by a stick either 6 times at a time or 12 times at a time. In spite of my telling them not to beat me, they used to beat me. The same was the treatment given to the other boys residing in the Anchorage by Duncan."

About Allan Waters (A2), he deposed that

> "Allan Waters used to have sex with the boys. Allan used to have fellatio with me and the other boys. Allan used to take my penis in his mouth. He might have done this act with me on 30 to 40 occasions. When I was staying in Anchorage Duncan also did the same thing with me. Duncan did this act with me on many occasions. When this was done for the first time with me I felt bad. I then told the said fact to William with respect to the act done by Duncan and Allan. Thereafter William beat me. I was beaten because I told William about the acts done by Duncan and Allan."

He further stated that:

> "Allan and Duncan used to have sex with me sometimes in the bathroom and sometimes on the cot. When these persons used to have this act with me on the cot the other boys used to remain in the same room but asleep."

In the cross-examination, about recording of his statement by Police, it was stated:

> "When my statements were recorded for the first time the other boys from Anchorage were also present in the police station with whom similar instances had taken place. It is true that the other boys also stated the same thing to the police about the incident. It is true that those boys also stated it in my presence about the incident. The questions were asked to me in Hindi and I answered the questions in Hindi to the police."

He also asserted that similar statements were made by him before the Police and according to him, it is not clear why the same were not recorded fully.

16) The analysis of the evidence of PW-1 and PW-4, victims, at the hands of these accused in the shelter homes clearly shows that both Duncan Alexander Grant (A3) and Allan Waters (A2) had sex with them on many occasions. They also had similar sex with other boys who stayed in the shelter homes. Both these accused used to have fellatio with them and also with other boys. They also asserted that the accused used to direct them and other boys to

hold their penis and they also used to hold penis of them. It is also seen that many a times they directed them to take their penis in their mouth. Though many other boys had similar experience, out of fear, except PWs 1 and 4 nobody narrated the incident to the police and to the Court. As a matter of fact, they did not attribute any sexual activities to William except alleging that he used to beat them on flimsy grounds and used to do canning. Both PWs 1 and 4 asserted that William never had sex with them or other boys. As rightly observed by the trial Judge, the above information by PWs 1 and 4 shows that they were staying in the shelter homes at the relevant time. After analyzing the evidence of PWs 1 and 4, we are of the view that more confidence can be reposed on their evidence and the omissions as pointed out by the High Court are not fatal to the prosecution case. In case, there may be some omissions because the Public Prosecutor has put questions to these witnesses which the I.O. has not, we are, however, satisfied that there is no variance between the examination-in-chief and cross-examination of PWs 1 and 4 with regard to the material particulars of sexual abuse. No statement of these boys during cross-examination has been negated before the examination-in-chief. Considering the background of PWs 1 and 4, the delay in divulging the facts of beating and also of sexual abuse to any other person does not mean that there is no sexual exploitation or abuse or that they were deterred or that they were deposed falsely as per the design of some other person. We hold that the trial Judge has correctly appreciated the evidence of PWs 1 and 4 and arrived at a proper conclusion, on the other hand, the High Court committed an error in holding that their statements are suspicious and not reliable and not proved beyond shadow of doubt. We are fully satisfied that there is no such basis for arriving at the above conclusion.

17) Coming to the evidence of Maharukh Adenwala (PW-2), as stated in the earlier paragraphs she is a practising advocate, however, evincing more interest on the welfare of uncared street children. It was brought to our notice that all alone she worked and even now working sincerely and selflessly to protect the street children for no personal gain. As an activist, her intention was to protect the children. The High Court of Bombay had reposed faith in her and appointed her as an amicus curiae in child related cases. From the initial stage, she brought all the events that have taken place at Anchorage Shelters to the notice of the Committee and to the Bombay High Court. Even in cross-examination, the statement of PW-2 has not been shattered and there is no reason to doubt her integrity. It is true that whatever she did cannot be the basis for convicting the accused. However, she did not stop enquiring the children and submitting a report to the Committee and to the High Court but she also participated as a prosecution witness, namely PW-2 and highlighted the grievance of the neglected children at shelter homes and sexual abuse undergone by them. On going through the activities of PW-2 prior to the launching of prosecution against the accused, her report to the High Court and to the Committee, her evidence before the Court and her activities aimed for the welfare of the neglected children, particularly, in shelter homes, we are unable to agree with the conclusion arrived at by the High Court in rejecting her evidence in toto. We have already noted that conviction cannot be based on her evidence alone. However, while appreciating the evidence of victims PWs 1 and 4, the work done by PW-2 cannot be ignored.

18) Coming to the evidence of PW-3 Dr (Mrs.) Kalindi Muzumdar, her academic credentials show that she retired as Vice Principal of Nirmala Niketan and she is also a Member of the Committee appointed by the High Court. PW-3 in association with Dr. Asha Bajpai and PW-2, personally and independently interacted with the children in the shelter homes and as in the case of the evidence of PW-2, the evidence of PW-3 also solely relied on for convicting the accused. However, as rightly observed by the trial Court for a limited purpose, namely, to corroborate the evidence of Ms. Maharukh Adenwala, the role played by Ms. Maharukh Adenwala (PW-2) and Mrs. Kalindi Mazmudar (PW-3) undoubtedly supported this case for taking the cause of vulnerable street children and they played their role in a responsible manner. Undoubtedly PW-3, like PW-2, had no enmity with the accused nor can any ulterior motive be attributed to them.

19) The analysis of the evidence and the role played by PWs 2 and 3 show that they supported the boys in bringing to the notice of the relevant authorities that what was happening in the Anchorage Shelters. As rightly observed by the trial Court, both of them, particularly, PW-2 played her role in a responsible manner. It is further seen that PW-3 along with Dr. Asha Bajpai, Members of the Committee verified the witnesses and endorsed their statements made to PW-2. It is further seen that PW-3 forwarded statement of victims to the Registrar of the High Court on many occasions.

20) As stated earlier, based on the statement of PWs 2 and 3, undoubtedly the accused persons cannot be convicted. But as observed earlier and taking into account their initiation, work done, interview with the children at the shelter homes laid the foundation for the investigation. To that extent, the trial Court has rightly considered their statements and actions. Unfortunately, the High Court ignored their statements as unacceptable.

21) Learned senior counsel appearing for the accused submitted that except the testimony of PWs 1 and 4, there is no corroborative statement by any of the other boys who stayed with them in the shelter homes. First of all, there is no need to examine more victims of similar nature. It is not in dispute that most of the children before reaching the shelter homes were on streets, particularly, near Gateway of India to eke out their livelihood and used the same place as shelter during night. Since the boys in the shelter homes were provided with stay, clothes and food and these persons were not taken care of by their families, most of them lost their parents and relatives, out of fear and in order to continue the life in the same shelter, they did not make a complaint to anyone. Only when the matter was taken up to the High Court by persons like PWs 2 and 3 and on the orders of the High Court they enquired and

submitted a report which was the basis for investigation by the Police. Regarding the requirement of corroboration about the testimony of PWs 1 and 4, with regard to sexual abuse, it is useful to refer the decision of this Court in **State of Kerala vs. Kurissum Moottil Antony,** (2007) 1 SCC (Crl) 403. In that case, the respondent was found guilty of offences punishable under Section 451 and 377 IPC. The trial Court had convicted the respondent and imposed sentence of six months and one year's rigorous imprisonment respectively with a fine of Rs.2,000/- in each case. The factual background shows that on 10.11.1986 the accused trespassed into the house of the victim girl who was nearly about 10 years of age on the date of occurrence and committed unnatural offence on her. After finding the victim alone in the house, the accused committed unnatural offence by putting his penis having carnal intercourse against order of nature. The victim PW-1 told about the incident to her friend PW-2 who narrated the same to the parents of the victim and accordingly on 13.11.1986, an FIR was lodged. On consideration of the entire prosecution version, the trial Court found the accused guilty and convicted and sentenced as aforesaid. An appeal before the Sessions Judge did not bring any relief to the accused and revision was filed before the High Court which set aside the order of conviction and sentence. The primary ground on which the High Court directed acquittal was the absence of corroboration and alleged suppression of a report purported to have been given before the FIR in question was lodged. In support of the appeal, the State submitted that the High Court's approach is clearly erroneous and it was pointed out that corroboration is not necessary for a case of this nature. The following observations and conclusion are relevant:

> "7. An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery. A similar view was expressed by this Court in Rafiq v. State of U.P. with some anguish. The same was echoed again in Bharwada Bhoginbhai Hirjibhai v. State of Gujarat. It was observed in the said case that in the Indian setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity or dignity had ever occurred. She would be conscious of the danger of being ostracised by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in Rameshwar v. State of Rajasthan were:
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> "The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge, …"
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> 8. To insist on corroboration except in the rarest of rare cases is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars as in "the case of an accomplice to a crime". (See State of Maharashtra v. Chandraprakash Kewalchand Jain.) Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance.
>
> 9. It is unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. Decency and morality in public and social life can be protected only if courts deal strictly with those who violate the social norms.
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> 10. The above position was highlighted by this Court in Bhupinder Sharma v. State of H.P.
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> 11. The rule regarding non-requirement of corroboration is equally applicable to a case of this nature, relating to Section 377 IPC."

We are in agreement with the said conclusion and in a case of this nature, the Court is not justified in asking further corroboration apart from the testimony of PWs 1 and 4. Accordingly, we reject the contention raised by the learned senior counsel for the accused.

22) A serious argument was projected by learned senior counsel for the accused stating that even if the allegations/ statements of prosecution witnesses are acceptable, the same would not constitute an offence under Section 377 IPC. Section 377 reads thus:

> "377. Unnatural offences.- Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

23) To attract the above offence, the following ingredients are required: 1) Carnal intercourse and 2) against the order of nature. Though the High Court has adverted to various dictionary meanings and decisions to hold that the offence has not been made out, we have extracted the exact statements of the victims - PWs 1 and 4. PW-1 has stated before the trial Court as under:

i "Duncan had sex with me on many occasions. He used to tell me to hold his penis and also he used to hold my penis."

ii "Allan Waters also had sex with me on many occasions. He also used to tell me to hold his penis and he also used to hold my penis."

iii "Duncan Grant and Allan Waters also had a similar relationship with other boys. Accused Duncan and Allan Waters used to ask for fellatio with the other boys Duncan Grant and Allan Waters used to do fellatio with the other boys and not the other way round. I have seen this happened with my own eyes"

iv "Accused No.1 William used to beat us on flimsy grounds. He used to do canning. However, he never had sex with me or with other boys. When I made a complaint to William (about Allan and Duncan), he told me not to divulge the said fact to anybody failing which he would beat me."

(PW4) has stated before the trial Court as under:

i. "Allan Waters used to have sex with the boys. Allan used to have fellatio with me and the other boys. Allan used to take my penis in his mouth"

ii. "When I was staying in Anchorage Duncan also did the same thing with me."

iii. "When this was done for the first time with me, I felt bad. I then told the said fact to William with respect to the act done by Duncan and Allan. Thereafter William beat me. I was beaten because I told William about the acts done by Duncan and Allan."

iv. "William used to tell me to speak before the Court that Allan and Duncan are good people."

Those statements show how these accused, particularly, A1 and A2, sexually abused the children at the shelter homes. The way in which the children at all the three places i.e. Colaba, Murud (Janjira) and Cuffe Parade were being used for sexual exploitation, it cannot be claimed that the ingredients of Section 377 have not been proved. The street children having no roof on the top, no proper food and no proper clothing used to accept the invitation to come to the shelter homes and became the prey of the sexual lust of the paedophilia. By reading all the entire testimony of PWs 1 and 4 coupled with the other materials even prior to the occurrence, it cannot be claimed that the prosecution has not established all the charges leveled against them. On the other hand, the analysis of the entire material clearly support the prosecution case and we agree with the conclusion arrived at by the trial Judge.

Constitutional provisions relating to children

24) Children are the greatest gift to humanity. The sexual abuse of children is one of the most heinous crimes. It is an appalling violation of their trust, an ugly breach of our commitment to protect the innocent. There are special safeguards in the Constitution that apply specifically to children. The Constitution has envisaged a happy and healthy childhood for children which is free from abuse and exploitation. Article 15(3) of the Constitution has provided the State with the power to make special provisions for women and children. Article 21A of the Constitution mandates that every child in India shall be entitled to free and compulsory education upto the age of 14 years. The word "life" in the context of article 21 of the Constitution has been found to include "education" and accordingly this Court has implied that "right to education" is in fact a fundamental right.

25) Article 23 of the Constitution prohibits traffic in human beings, beggars and other similar forms of forced labour and exploitation. Although this article does not specifically speak of children, yet it is applied to them and is more relevant in their context because children are the most vulnerable section of the society. It is a known fact that many children are exploited because of their poverty. They are deprived of education, made to do all sorts of work injurious to their health and personality. Article 24 expressly provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment. This Court has issued elaborate guidelines on this issue.

26) The Directive Principles of State Policy embodied in the Constitution of India provides policy of protection of children with a self- imposing direction towards securing the health and strength of workers, particularly, to see that the children of tender age is not abused, nor they are forced by economic necessity to enter into avocations unsuited to their strength.

27) Article 45 has provided that the State shall endeavor to provide early childhood care and education for all the children until they complete the age of fourteen years. This Directive Principle signifies that it is not only confined to primary education, but extends to free education whatever it may be upto the age of 14 years. Article 45 is supplementary to Article 24 on the ground that when the child is not to be employed before the age of 14 years, he is to be kept occupied in some educational institutions. It is suggested that Article 24 in turn supplements the clause (e) and (f) of Article 39, thus ensuring distributive justice to children in the matter of education. Virtually,

Article 45 recognizes the importance of dignity and personality of the child and directs the State to provide free and compulsory education for the children upto the age of 14 years.

28) The Juvenile Justice Act was enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of such matters relating to disposition of delinquent juveniles. This is being ensured by establishing observation homes, juvenile houses, juvenile homes or neglected juveniles and special homes for delinquent or neglected juveniles.

29) Even in the case of Vishal Jeet vs. Union of India, (1990) 3 SCC 318 this Court issued several directions to the State and Central Government for eradicating the child prostitution and for providing adequate and rehabilitative homes well manned by well qualified trained senior workers, psychiatrists and doctors.

30) The above analysis shows our Constitution provides several measures to protect our children. It obligates both Central, State & Union territories to protect them from the evils, provide free and good education and make them good citizens of this country. Several legislations and directions of this Court are there to safeguard their intent. But these are to be properly implemented and monitored. We hope and trust that all the authorities concerned through various responsible NGOs implement the same for better future of these children.

31) Under these circumstances, the impugned judgment of the High Court acquitting all the accused in respect of charges leveled against them is set aside and we restore the conviction and sentence passed by the trial Judge. It is brought to our notice that A1 has undergone imprisonment for 3 years and 1 month and A2 was in custody for about 5 years and A3 was in custody for about 3 years and 2 months. Inasmuch as the trial Court has imposed maximum sentence of 3 years for William D'Souza (A1) and he had already undergone 3 years and 1 month while confirming his conviction imposed by the trial Court, we clarify that there is no need for him to undergo further imprisonment. On the other hand, inasmuch as Allan John Waters (A2) and Duncan Alexander Grant (A3) were awarded 6 years imprisonment under Section 377 IPC while confirming their conviction, we direct them to serve the remaining period of sentence. The trial Judge is directed to take appropriate steps to serve the remaining sentence and for payment of compensation amount, if not already paid. For the disbursement and other modalities, the directions of the trial Court shall be implemented. The appeals are allowed on the above terms.

(P. SATHASIVAM)
(DR. B.S. CHAUHAN)
NEW DELHI; MARCH 18, 2011.

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Jitendra Singh @ Babboo Singh & Anr. Versus State of U.P.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 763 OF 2003

Jitendra Singh @ Babboo Singh & Anr. ... Appellants
Versus
State of U.P. ... Respondent

A. Crimes Against Women and Children — Victimology — Bride burning — Compensation to family members — Accused being a juvenile under JJ Act, 2000 but not under 33 Act, 1986 (i.e being 17 yrs on the date of crime i.e in 1988) committing crime of bride burning of his wife — Realistic sentence/fine and authority competent to determine such sentence/fine (after coming into force of 33 Act, 2000) — By considering that appellant was 40 years old at the time of appeal, by applying S. 357 CrPC and by applying judgment pronounced in Ankush Shivaji Gaikwad, (2013) 6 SCC 770, held (per curiam), the only realistic punishment would be fine to be paid by the accused to the family members of the victim — Said fine/sentence has to be determined by the Juvenile Board as per the mandate of S. 20 r/w S. 15, 33 Act, 2000 — Matter, therefore, remanded to Juvenile Board for determination of appropriate fine — Observed (per curiam), that fine of Rs 100 imposed by trial court was ex facie inadequate — Juvenile Justice Act, 1986 — Ss. 2(h), 8 and Ss. 21(l)(a) to 21(l)(e) — Juvenile Justice (Care and Protection of Children) Act, 2000 — Ss. 20, 2(k), 2(1) and 15 — Criminal Procedure Code, 1973 — S. 357 — Applied

B. Juvenile Justice and Children's Acts — Juvenile Justice (Care and Protection of Children) Rules, 2007 — R. 12 — Age of accused at the time of the offence — Determination of — Appreciation of evidence — Conflict of two findings regarding age I.e finding during trial (i.e 17 yrs) and finding during inquiry directed by Supreme Court (i.e about 14 yrs) — Medical evidence and ossification test by authentic experts were conducted during trial as well as during subsequent inquiry — As per both group of said medical experts, age of accused was 17 yrs on the date of commission of offence — Said two medical evidences (regarding age being 17 yrs during offence) were corroborated by Family Register maintained by Panchayat and proved by APW 2 (during subsequent inquiry) and electoral roll for year 2009 proved by PW 12 (Gram Sabha head) — But Sessions Judge conducting subsequent inquiry holding appellant's age to be about 14 yrs on basis of School Admission Register proved by the Principal of School (said register being produced for first time during subsequent inquiry) and also by relying on oral evidences of APWs 5, 8, 9 and 10 that appellant was about 6 yrs younger than his deceased wife and husband being younger than wife being a common practice in their community — At the time of commission of offence, appellant's age, held (per curiam), was 17 yrs — Per Thakur, J. (further adding), it is not believable that a boy of 13 yrs 8 months would harass his wife of 19 yrs — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 2(1), 7 and 7-A (Paras 1.1, 8 to 16 and 67 to 71)

C. Juvenile Justice and Children's Acts — Juvenile Justice (Care and Protection of Children) Rules, 2007 — R. 12 — Determination of age of accused — Factors and considerations — Negligence of appellant-accused, noticed — Appellant had not challenged the finding of his age during trial as 17 yrs (since as per applicable law i.e JJ Act, 1986, he would have been entitled to benefits of a juvenile if his age was less than 16 yrs) — Even in Supreme Court appellant raising the issue of age for the first time 7 yrs after filing of appeal — Juvenile Justice (Care and Protection of Children) Act, 2000, Ss. 7-A, 7 and 2(1)

D. Juvenile/Child accused — Age — Determination — Procedure for determination of — JJ Act, 2000 or JJ Act, 1986 — Priority given to school register than to medical evidence, as per Rr. 12(3)(a) and (b), JJ Rules, 2007 framed under JJ Act, 2000 - Applicability to present case i.e crime being committed during JJ Act, 1986 but subsequent inquiry regarding age being conducted after JJ Act, 2000 and JJ Rules, 2007 coming into force — Said prioritisation, held (per Thakur, J.), would not be applicable to present case — Though accused would get the benefit of S. 20 r/w S. 15, JJ Act, 2000 for determination of his sentence as his age was below 18 yrs on date of commission of crime — But his age would be determined as per JJ Act, 1986 (because crime was committed during JJ Act, 1986) — Jurisdiction of a court is determined by reference to the legal position that prevailed on the date the court tried, convicted and sentenced the accused — The result is that said determination has be on basis of cumulative effect of all evidence (without giving priority to school register only) — Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rr. 12(3) (a) and (b) r/w R. 3 — Applicability — Juvenile Justice (Care and Protection of Children) Act, 2000, S. 20 r/w S. 15

E. Penal Code, 1860 — Ss. 304-B/498-A — Dowry death — Bride burning — Concurrent conviction by trial court and High Court, upheld — Deceased dying within 7 yrs of marriage — There being documentary and oral evidence of demand of dowry as proved by letter written by deceased to her father — High Court and trial court convicting accused — All ingredients of offence under Ss. 304-B/498-A being fulfilled concurrent conviction upheld — Plea of accidental death not tenable — No explanation was given for delay of 4 hours in taking deceased to hospital — But as accused was a juvenile at the time of commission of offence under JJ

Act, 2000 his sentence, further held (per curiam), has to be determined as per S. 20 r/w S. 15, JJ Act, 2000 — Matter therefore, remanded to Juvenile Justice Board to determine quantum of fine — Juvenile Justice (Care and Protection of Children) Act, 2000, S. 20 r/w S. 15

F. Juvenile Justice and Children's Acts — Juvenile Justice (Care and Protection of Children) Act, 2000 — S. 20 r/w S. 15 and Ss. 7 and 7-A — Accused being 17 yrs during crime committed in 1988 — Benefit under S. 20 r/w S. 15, JJ Act, 2000 — Held (per curiam), would not mean that the conviction of accused by normal criminal courts would be set aside — That is because the accused was above 16 yrs on date of crime was not a juvenile as per the then law (i.e JJ Act, 1986) — However, as the accused was a juvenile under JJ Act, 2000 (being less than 18 yrs on date of crime) he should be punished as per S. 20 r/w S. 15, JJ Act, 2000 — Matter remanded to Juvenile Board to determine quantum of fine

A-1's deceased wife in her letters to her father had complained about the harassment meted out to her by her in-laws on account of her inability to meet their dowry demands. Allegedly, on the midnight of 23-5-1988/24-5-1988, the deceased was set on fire by her husband (A-l) and her father-in-law (A-2). The trial court convicted A-l and A-2 under Section 304-B IPC and sentenced them to undergo 7 years' RI. They were also convicted under Section 498-A IPC and sentenced to undergo 2 years' RI and to pay a fine of Rs 100 each. The High Court upheld the said conviction. Hence the present appeal.

During pendency of present appeal, A-2 died and A-l raised the plea of juvenility. The Supreme Court therefore, directed an inquiry to determine the age of accused on date of commission of offence (relevant date). In the said post trial inquiry, the age of accused on the relevant date was found to about 14 years on basis of school admission certificate proved by the Principal of the School

(APW 1) and the evidence of witnesses. APW 5 (sister of deceased), stated that the deceased was 4 -5 years older than A-l. On the relevant date, deceased was 19 years. APWs 5, 8, 9 and 10 gave evidence regarding marriage of older girls with younger boys in their community. Therefore, the judge conducting the post trial inquiry arrived at the conclusion that age of accused was 14 years on the relevant date. However, in the said post trial inquiry, the medical board found the age of accused to be 40 years, which implied that the accused was 17 years on the relevant date. Again, as per the ossification test conducted within two-three months of alleged crime (i.e during trial of accused) the age of A-l was found by doctors to be 17 years.

The State Government submitted that it is improbable that a girl of about 15 years of age would get married to a boy of about 9 years of age.

Therefore, treating the age of the accused to be 17 years and partly allowing the appeal, the Supreme Court

Held :

Per Lokur, J. (for himself and Thakur, J.)

The conviction of the appellant must be upheld. But on the quantum of sentence, he ought to be dealt with in accordance with the provisions of Section 20 read with Section 15, JJ Act, 2000. Both the trial court as well as the High Court have concurrently found that the appellants had demanded dowry from the deceased and that she had been set on fire for not having complied with the demands for dowry. On facts, the ingredients of Section 304-B IPC were made out. There is no apparent reason to disturb the concurrent findings of fact arrived at by the trial court and the High Court and so the conviction of the appellant must be upheld. (Paras 12, 17, 20, 21, 22 and 57)

Jitendra Singh v. State of U.P, (2003) 3 All Cri R 2431, partly affirmed

Jitendra Singh v. State of U.P, (2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857; Pawan v. Stare of Uttaranchai, (2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522, referred to

The course to adopt is laid down in Section 20, JJ Act, 2000. Thus the case of the juvenile has to be examined on merits. If it found that the juvenile is guilty of the offence alleged to have been committed, he simply cannot go unpunished. However, as the law stands, the punishment to be awarded to him or her must be left to the Juvenile Justice Board constituted under the JJ Act, 2000. This is the plain requirement of Section 20, JJ Act, 2000.
(Paras 28 to 30)

Ashwani Kumar Saxena v. State of M.P, (2012) 9 SCC 750 : (2013) 1 SCC (Cri) 594, followed

Jayendra v. State of U.P, (1981) 4 SCC 149 : 1981 SCC (Cri) 809; Bhoop Ram v. State of U.P, (1989) 3 SCC 1 : 1989 SCC (Cri) 486; Pradeep Kumar v. State of U.P, 1995 Supp (4) SCC 419 : 1995 SCC (Cri) 395; Bhola Bhagat v. State of Bihar, (1997) 8 SCC 720 : 1998 SCC (Cri) 125; Upendra Kumar v. Store of Bihar, (2005) 3 SCC 592 : 2005 SCC (Cri) 778; Gurpreet Singh v. Stare of Punjab, (2005) 12 SCC 615 : (2006) 1 SCC (Cri) 191; Vijay Singh v. Stare of Delhi, (2012) 8 SCC 763 : (2012) 3 SCC (Cri) 1044; Satish v. State of M.P, (2009) 14 SCC 187 : (2010) 1 SCC (Cri) 1320; Dharambir v. State (NCT of Delhi), (2010) 5 SCC 344 : (2010) 2 SCC (Cri) 1274; Hart Ram v. State of Rajasthan, (2009) 13 SCC 211 : (2010) 1 SCC (Cri) 987; Daya Nand v. State ofHaryana, (2011) 2 SCC 224 : (2011) 1 SCC (Cri) 666, considered

Jitendra Singh v. State of U.P, (2003) 3 All Cri R 2431, partly reversed

In the present case, the offence was committed by the appellant when the Juvenile Justice Act, 1986 (JJ Act, 1986) was in force. Therefore, only the "punishments" not greater than those postulated by the JJ Act, 1986 ought to be awarded to

him. This is the requirement of Article 20(1) of the Constitution.
(Para 31)

A perusal of the "punishments" provided for under the JJ Act, 1986 indicate that given the nature of the offence committed by the appellant, advisinq or admonishinq him r Section 21(l)(a)l is hardly a "punishment" that can be awarded since it is not at al commensurate with the gravity of the crime. Similarly, considering his age of about 40 years, it is completely illusory to expect the appellant to be released on probation of good conduct, to be placed under the care of any parent, guardian or fit person [Section 21(1)(6)]. For the same reason, the appellant cannot be released on probation of good conduct under the care of a fit institution [Section 21(l)(c)] nor can he be sent to a special home under Section 10, JJ Act, 1986 which is intended to be for the rehabilitation and reformation of delinquent juveniles [Section 21(l)(d)]. The only realistic punishment that can possibly be awarded to the appellant on the facts of this case is to require him to pay a fine under Section 21(l)(e), JJ Act, 1986. (Para 32)

While dealing with the case of the appellant under IPC, the fine imposed upon him is only Rs 100. This is ex facie inadequate punishment considering the fact that the deceased suffered a dowry death. The appropriate course of action in the present case would be to remand the matter to the jurisdictional Juvenile Justice Board constituted under the JJ Act, 2000 for determining the appropriate quantum of fine that should be levied on the appellant and the compensation that should be awarded to the family of the deceased. (Paras 33, 34 and 57)

Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770, applied

Accordingly, the matter is remanded to the jurisdictional Juvenile Justice Board constituted under the JJ Act, 2000 for determining the appropriate quantum of fine that should be levied on the appellant and the compensation that should be awarded to the family of the deceased. Of course, in arriving at its conclusions, the said Board will take into consideration the facts of the case as also the fact that the appellant has undergone some period of incarceration. The appeal is partly allowed with the directions given above. (Paras 60 and 61)

Per Thakur, J. (supplementing)

The question whether the appellant was less or more than 16 is important not because the benefit of the JJ Act, 2000 depends on that question, but because the answer to that question has a bearing on whether the conviction of the appellant was itself illegal, hence liable to be set aside. The benefit of the 2000 Act, would be in any case available to the appellant, so long as he was less than 18 years of age on the crucial date, and it is nobody's case that he was above that age on that date.

(Paras 67 and 68)

Hari Ram v. State of Rajasthan, (2009) 13 SCC 211 : (2010) 1 SCC (Cri) 987, followed

Equally important is the fact that the jurisdiction of the court to try the appellant, as indeed any other person accused of commission of an offence would have to be determined by reference to the legal position that prevailed as on the date the court tried, convicted and sentenced the appellant. As on the date of the commission of the offence and right up to the date the trial court convicted and sentenced the appellant to imprisonment, the provisions of the JJ Act, 1986 held the field. Apart from the fact that the upper age limit for claiming juvenility was 16 years for boys, the question whether a person was or was not a juvenile could be dedded by the court on the basis of documentary or medical evidence or on a fair assessment of both of them. That is because, the provisions of JJ Act, 1986, did not, prioritise the basis on which such determination could be made. The weightage which the JJ Rules, 2007 framed under the JJ Act, 2000 provide and the order of preference settled for purposes of placing reliance upon evidence coming from different sources were not in vogue while the JJ Act, 1986 held the field. The result was that the court was free to determine the question on the basis of one such piece of evidence or on a cumulative effect and on such evidence that may have been produced before it. It is necessary to bear in mind this dichotomy in the legal framework while determining whether the trial court had committed an error of jurisdiction in holding the appellant to be not a juvenile and hence triable by it. (Para 69)

The question whether the appellant was a juvenile was first raised before the trial court at a very early stage of the case. The medical examination determined his age to be 17 years, which took him beyond the upper age of juvenility under the JJ Act, 1986. No attempt was made by the appellant to adduce any evidence to support his claim of being a juvenile nor was any documentary evidence in the form of school certificate or otherwise adduced. As a matter of fact the chapter was totally forgotten, and the trial allowed to proceed to its logical conclusion without the appellant raising his little finger against the competence of the court or agitating the issue regarding his age in any higher forum. The conviction and sentence recorded by the trial court was also assailed on merits before the High Court but not on the ground that the trial was vitiated on account of the appellant being a juvenile, not triable by an ordinary criminal court. It was only in the Supreme Court and 7 years after the appeal was filed that a fresh claim for benefit under the JJ Act, 2000 was made by the appellant in which the Supreme Court directed a fresh enquiry that was conducted in terms of Rule 12, JJ Rules, 2007. The enquiry report submitted supports the appellant's claim of his being a juvenile under Section 2{k), JJ Act, 2000, hence, entitled to the benefits admissible thereunder. Although an attempt was made by the respondent State to assail the finding that the appellant was less than 18 years of age on the date of the occurrence, there is no cogent reason to hold that the appellant was more than 18 years on the date of the occurrence. (Paras 70 and 65)

Even the subsequent medical examination conducted by the Board of Doctors has determined the appellant's age to be 40 years as on 24-12-2010 which implies that he was around 17Vi years old on the date of the occurrence. This is

corroborated by other documentary evidence like Family Register maintained by the Panchayat and proved by APW 2, electoral roll for the year 2009 proved by PW 12 Gram Sabha Head. The two medical examinations and the documents referred to above come from proper custody and lend complete corroboration to the appellant's age being above 16 years on the date of the occurrence. Besides, what cannot be lightly brushed away is the fact that the appellant was a married man on the date of the occurrence and that the charge levelled against him was one of dowry harassment and dowry death of his wife who was 19 years old at the time of her demise. If the appellant was only 13 years and 8 months old as suggested by the school certificate the question of his harassing the deceased almost six years his senior would not arise for he would be only an adolescent while his wife, the deceased, was a grown up girl who could hardly get harassed by a mere child so young in age that he had barely cut his teeth. The trial court did not in that view commit any error of jurisdiction in trying the appellant for the offences alleged against him.

(Paras 71 and 66)

Hence while the appellant was above 16 years of age on the date of the commission of the offence, he was certainly below 18 years and hence entitled to the benefit of the JJ Act, 2000, no matter the later enactment was not on the statute book on the date of the occurrence. The conviction cannot however be set aside for more than one reason. Firstly because there was and is no challenge to the order of conviction recorded by the courts below in this case either before the High Court or in present appeal. As a matter of fact the plea of juvenility before the Supreme Court by way of an additional ground stopped short of challenging the conviction of the appellant on the ground that the court concerned had no jurisdiction to try the appellant. Secondly because the fact situation in the case at hand is that on the date of the occurrence I.e on 24-5-1988 the appellant was above 16 years of age. He was, therefore, not a juvenile under the JJ Act, 1986 that covered the field at that point of time, nor did the JJ Act, 1986 deprive the trial court of its jurisdiction to try the appellant for the offence he was charged with. The repeal of the JJ Act, 1986 by the JJ Act, 2000 raised the age of juvenility to 18 years. Parliament provided for cases which were either pending trial or were, after conclusion of the trial, pending before an appellate or a revisional court by enacting Section 20, JJ Act, 2000.

(Paras 72, 72.1 and 72.2)

Section 20, JJ Act, 2000 starts with a non obstante clause, which implies that the provisions have an overriding effect on all other provisions contained in the enactment. Section 20, JJ Act, 2000 deals with proceedings pending against a juvenile in any court. In all pending cases including trial, revision, appeal or any other criminal proceedings the determination of juvenility shall be in terms of Section 2(1) even if the juvenile ceases to be so on or before the date of commencement of the JJ Act, 2000. Far from stipulating a specific prohibition, Section 20 makes it obligatory for the court concerned to proceed with the matter and record its conclusion as to the guilt or otherwise of the juvenile. The prohibition is against the court passing an order of sentence against the juvenile, for which purpose the juvenile has to be forwarded to the Juvenile Board constituted under Section 6, JJ Act, 2000 for appropriate orders. Applying Section 20, JJ Act, 2000 to the case at hand, the trial court and the High court could and indeed were legally required to record a finding as to the guilt or otherwise of the appellant. Ail that the courts could not have done was to pass an order of sentence, for which purpose, they ought to have referred the case to the Juvenile Justice Board.

(Paras 73.1 to 73.6, 74 and 80)

Pratap Singh v. Stare of Jharkhand, (2005) 3 SCC 551 : 2005 SCC (Cri) 742; Bijender Singh v. State ofHaryana, (2005) 3 SCC 685 : 2005 SCC (Cri) 889; Kalu v. State of Haryana, (2012) 8 SCC 34 : (2012) 3 SCC (Cri) 761; Dharambir v. State (NCT of Delhi), (2010) 5 SCC 344 : (2010) 2 SCC (Cri) 1274; Daya Nand v. State of Haryana, (2011) 2 SCC 224 : (2011) 1 SCC (Cri) 666, relied on

A claim of juvenility can be raised by a person at any stage and before any court. However, there is no provision to set aside the conviction of the juvenile on the ground that on the date of commission of the offence he was a juvenile, and hence not triable by an ordinary criminal court. Applying the maxim of expressio unius est exclusio aiterius, it would be reasonable to hold that the law insofar as it requires a reference to be made to the Board excludes by necessary implication any intention on the part of the legislature requiring the courts to set aside the conviction recorded by the lower court. Parliament was content with setting aside the sentence of imprisonment awarded to the juvenile and making of a reference to the Board without specifically or by implication requiring the court concerned to alter or set aside the conviction. That perhaps is the reason why the Supreme Court has in several decisions simply set aside the sentence awarded to the juvenile without Interfering with the conviction recorded by the court concerned and thereby complied with the mandate of Section 7-A(2), JJ Act, 2000. (Paras 81 and 82)

In the totality of the above circumstances, there is no reason why the conviction of the appellant should be interfered with, simply because he is under the JJ Act, 2000, a juvenile entitled to the benefit of being referred to the Board for an order under Section 15, JJ Act, 2000. There is no gainsaying that if the appellant had been less than sixteen years of age, on the date of the occurrence, he would have been referred for trial to the Juvenile Court in terms of Section 8 of the 1986 Act. The Juvenile Court would then hold a trial and record a conviction or acquittal depending upon the evidence adduced before it. In an ideal situation a case filed before an ordinary criminal court when referred to the Board or Juvenile Court may culminate in a conviction at the hands of the Board also. But law does not countenance a situation where a full-fledged trial and even an appeal ends in a conviction of the accused but the same is set aside without providing for a trial by the Board.

(Paras 84 and 85)

Pradeep Kumar v. State of U.P, 1995 Supp (4) SCC 419 : 1995 SCC (Cri) 395; Bhola Bhagat v. State of Bihar, (1997) 8 SCC 720 : 1998 SCC (Cri) 125; Upendra Kumar v. State of Bihar, (2005) 3 SCC 592 : 2005 SCC (Cri) 778; Kalu v. State ofHaryana, (2012) 8 SCC 34 : (2012) 3 SCC (Cri) 761; Vaneet Kumar Gupta v. State of Punjab, (2009) 17 SCC 587 : (2011) 1 SCC (Cri) 1092, followed

Hari Ram v. State ofRajasthan, (2009) 13 SCC 211 : (2010) 1 SCC (Cri) 987, dted With the above observations, I agree with the order proposed by Brother Lokur, J. (Para 86)

G. Juvenile Justice and Children's Acts — Juvenile Justice (Care and Protection of Children) Act^ 2000 — Ss. 6, 8, 9, 11, 7-A, 12, 14, 15, 20, 21, Preamble and SOR — Object of JJ Act, 2000 and JJ Rules, 2007 and duties and responsibilities cast on authorities, stated (per curiam) — There are several procedures in said Act and Rules to put the child in a category separate and distinct from the adult accused of a crime — To integrate a juvenile into society (as intended by statute) is not an easy task — While doing so the best interest of juvenile should be the primary consideration — Directed (per curiam), keeping in mind our domestic law and our international obligations, JJ Act, 2000 and as amended CrPC should be scrupulously followed by Police, Magistrate and authorities under JJ Act in respect of juveniles in conflict with law — Difficulties on part of a juvenile, to claim his rights and resultant duty of Magistrate, pointed out (per curiam) — Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rr. 2, 3 and 11 to 14 — Statutory object and implications — Human and Civil Rights — Convention on the Rights of Child — United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules) — Principles 7, 10, 14 and 15 — Rights of juvenile under — Implications and effect — Convention on the Rights of Child — Convention on the Rights of the Child, 1989 — Arts. 37 and 39 to 41 — Rights of juvenile under — Effect and implications — Criminal Procedure Code, 1973 — Ss. 41-B, 50, 50-A and 54 — Effect and implications

Held :

Per Lokur, J. (for himself and Thakur, J.)

To prevent the recurrence of a situation where an accused is subjected to a trial by a regular court having criminal jurisdiction, appropriate directions is given to the Magistrates. Several special procedures (like Sections, 6, 8, 9, 12, 14 and 15, JJ Act, 2000), over and above or despite the CrPC have been laid down for the benefit of a juvenile or a child in conflict with law. These special procedures are to be found both in the JJ Act, 2000 and the Juvenile Justice (Care and Protection of Children) Rules, 2007 (JJ Rules, 2007). The JJ, Rules 2007 particularly Rule 3 provide that in all decisions taken within the context of administration of justice, the principle of best interests of a juvenile shall be the primary consideration. The purpose of the JJ Act, 2000 is to rehabilitate a juvenile in conflict with law with a view to reintegrate him into society. This is by no means an easy task and it is worth researching how successful the implementation of the JJ Act, 2000 has been in its avowed purpose in this respect. The JJ Act, 2000 and the JJ Rules, 2007 clearly constitute an independent code for issues concerning a child or a juvenile, particularly a juvenile in conflict with law. This code is intended to safeguard the rights of the child and a juvenile in conflict with law and to put him in a category separate and distinct from an adult accused of a crime.

(Paras 1.3, 36, 41, 43 and 46)

Convention on the Rights of the Child, 1989, referred to

[Ed.: A PDF file of the Convention on the Rights of the Child, which concluded at New York on 20-11-1989 can be downloaded from the following link as verified on 6-9-2013. http://treaties.un.org/doc/Publication/UNTS/Volume% 201577.v1577.pdf. The English version of the said convention can be found at page 56 of said PDF file marked as page 44 in the said document.]

An inquiry at the earliest possible time, would be in the best interests of the juvenile, since he would be kept away from adult undertrial prisoners and would not be subjected to a regimen in jail, which may not be conducive to his well being. It would also be in the interests of better administration of criminal justice. It is, therefore, enjoined upon every Magistrate to take appropriate steps to ascertain the juvenility or otherwise of an accused person brought before him or her at the earliest possible point of time, preferably on first production. It must also be appreciated that due to his juvenility, a juvenile in conflict with law may be presumed not to know or understand the legal procedures making it difficult for him to but forth his claim for juvenility when he is produced before a Magistrate. Added to this are the factors of poor education and poor economic set-up that are jointly the main attributes of a juvenile in conflict win law, making it difficult for him to negotiate the legal procedures. (Paras 48, 49, 51, 56 and 59)

Abuzar Hossain v. State of W.B, (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83; D.K Basu v. State of W.B, (1997) 1 SCC 416 : 1997 SCC (Cri) 92, relied on

Studies conducted by the National Crime Records Bureau (NCRB), Ministry of Home Affairs; B.N Mishra: Juvenile Delinquency and Justice System', United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), referred to

(Ed.: The Beijing Rules can be viewed in the following web page as verified on 6-9-2013. http://www.un.org/documents/ga/res/40.a40r033.htm]

Keeping in mind the domestic law and India's international obligations, JJ Act, 2000 and CrPC as amended should be scrupulously followed by the authorities concerned in respect of juveniles in conflict with law.

(Para 58)
SS-M/52155.SR

Advocates who appeared in this case:

Sushil Kr. Jain, Anurag Gohil and Ms Ruchika Gohil, Advocates, for the Appellants; Ameet Singh, Mukul Singh and Ms Pragati Neekhra, Advocates, for the Respondent.

Chronological list of bases cited

1. (2013) 6 SCC 770, Ankush Shivaji Gaikwad v. State of Maharashtra
2. (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83, Abuzar Hossain v. State of W.B
3. (2012) 9 SCC 750 : (2013) 1 SCC (Cri) 594, Ashwani Kumar Saxena v. State of M.P
4. (2012) 8 SCC 763 : (2012) 3 SCC (Cri) 1044, Vijay Singh v. State of Delhi
5. (2012) 8 SCC 34 : (2012) 3 SCC (Cri) 761, Kalu v. State of Haryana
6. (2011) 2 SCC 224 : (2011) 1 SCC (Cri) 666, Daya Nand v. State of Haryana
7. (2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857, Jitendra Singh v. State of U.P.
8. (2010) 5 SCC 344 : (2010) 2 SCC (Cri) 1274, Dharambir v. State (NCT of Delhi)
9. (2009) 17 SCC 587 : (2011) 1 SCC (Cri) 1092, Vaneet Kumar Gupta vs. State of Punjab
10. (2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522, Pawan v. State of Uttaranchal
11. (2009) 14 SCC 187 : (2010) 1 SCC (Cri) 1320, Satish v. State of M.P.
12. (2009) 13 SCC 211 : (2010) 1 SCC (Cri) 987, Hari Ram v. State of Rajasthan
13. (2005) 12 SCC 615 : (2006) 1 SCC (Cri) 191, Gurpreet Singh v. State of Punjab
14. (2005) 3 SCC 685 : 2005 SCC (Cri) 889, Bijender Singh v. State of Haryana
15. (2005) 3 SCC 592 : 2005 SCC (Cri) 778, Upendra Kumar v. State of Bihar
16. (2005) 3 SCC 551 : 2005 SCC (Cri) 742, Pratap Singh v. State of Jharkhand
17. (2003) 3 All Cri R 2431, Jitendra Singh v. State of U.P. (partly reversed)
18. (1997) 8 SCC 720 : 1998 SCC (Cri) 125, Bhola Bhagat v. State of Bihar
19. (1997) 1 SCC 416 : 1997 SCC (Cri) 92, D.K. Basu v. State of W.B.
20. 1995 Supp (4) SCC 419 : 1995 SCC (Cri) 395, Pradeep Kumar v. State of U.P.
21. (1989) 3 SCC 1 : 1989 SCC (Cri) 486, Bhoop Ram v. State of U.P.
22. (1981) 4 SCC 149 : 1981 SCC (Cri) 809, Jayendra v. State of U.P.

The Judgments of the Court were delivered by

JUDGMENT

Madan B. Lokur, J.— (for T.S. Thakur, J. and himself) — Three principal issues arise for consideration in this appeal.

1.1 The first is whether the appellant was a juvenile or a child as defined by Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 on the date of occurrence of the offence he was charged with. On a consideration of the Report called for by this Court on this question, the issue must be answered in the affirmative.

1.2 The second is whether the conviction of the appellant can be sustained on merits and, if so, the sentence to be awarded to the appellant. In our opinion the conviction of the appellant must be upheld and on the quantum of sentence, he ought to be dealt with in accordance with the provisions of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 read with Section 15 thereof.

1.3 The third question is whether any appropriate measures can be taken to prevent the recurrence of a situation, such as the present, where an accused is subjected to a trial by a regular Court having criminal jurisdiction but he or she is later found to be a juvenile. In this regard, we propose to give appropriate directions to all Magistrates which, we hope, will prevent such a situation from arising again.

The facts:

2. On the midnight of 23rd / 24th May 1988 it is alleged that Asha Devi was set on fire by the appellants and two other persons. A demand for dowry, which she was unable to meet, resulted in the unfortunate incident. On 24th May 1988 at about 5 a.m., Asha Devi's uncle came to know of the incident and he lodged a complaint with the local police. In the meanwhile, Asha Devi had been taken to the District Hospital where she succumbed to the burns.

3. After completing the investigation, the local police filed a charge sheet on 10th July 1988 against the appellants and two other persons. The charge sheet alleged offences committed under Section 147, Section 302, Section 304-B and Section 498-A of the Indian Penal Code (for short the 'IPC'). Thereafter the case proceeded to trial and the Sessions Judge, Rae Bareli in S.T. No. 186 of 1988 delivered judgment on 30th August 1990 convicting the

appellants and acquitting the other two persons. The appellants were convicted under Section 304-B of the IPC (dowry death) and sentenced to undergo 7 years rigorous imprisonment. They were also convicted under Section 498-A of the IPC (husband or relative of husband of a woman subjecting her to cruelty) and sentenced to undergo 2 years rigorous imprisonment and to pay a fine of Rs.100/- each.

4. Feeling aggrieved by their conviction and sentence, the appellants preferred Criminal Appeal No. 464 of 1990 in the Lucknow Bench of the Allahabad High Court. By its judgment and order dated 23rd May 2003 the High Court dismissed the Criminal Appeal.

5. Against the judgment and order passed by the Allahabad High Court the appellants came up in appeal to this Court. It may be mentioned that during the pendency of this appeal the second appellant (father of the first appellant) died and therefore only the appeal filed by the first appellant, the husband of Asha Devi, survives.

6. During the pendency of these proceedings the appellant filed Criminal Miscellaneous Petition No. 16974 of 2010 for raising additional grounds. He sought to contend that on the date of commission of the offence, he was a juvenile or child within the meaning of that expression as defined in Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the 'Act'). According to the appellant his date of birth was 31st August 1974 and therefore, when the offence is alleged to have been committed, he was about 14 years of age.

7. The application for urging additional grounds was considered by this Court and by an order dated 19th November 2010 it was held, while relying upon Pawan v. State of Uttaranchal, (2009) 15 SCC 259 that prima facie there was material which necessitated an inquiry into the claim of the appellant that he was a juvenile at the time of commission of the offence. Accordingly, the following direction was given:

"12. In the result we allow the appellant to urge the additional ground regarding juvenility of the appellant on the date of the commission of the offence and direct the Trial Court to hold an enquiry into the said question and submit a report as expeditiously as possible, but not later than four months from today. We make it clear that the Trial Court shall be free to summon the concerned School, Panchayat or the Electoral office record or any other record from any other source which it considers necessary for a proper determination of the age of the appellant. We also make it clear that in addition to the above, the Trial Court shall be free to constitute a Medical Board comprising at least three experts on the subject for determination of the age of the appellant, based on medical tests and examination."

Report of the Additional Sessions Judge:

8. The Additional Sessions Judge, Rae Bareli acted on the order dated 19th November 2010 and registered the proceedings as Miscellaneous Case No. 1 of 2010. He then submitted his Report dated 18th February 2011 in which he accepted the claim of the appellant that his date of birth was 31st August 1974. As such, the appellant was a juvenile on the date of commission of the offence.

9. For the purposes of preparing his Report, the Additional Sessions Judge examined several witnesses including A.P.W. 1 Samar Bahadur Singh, Principal, Pre-Middle School, Sohai Bagh who produced the school admission register pertaining to the admission of the appellant in the school. The register showed the date of birth of the appellant as 31st August 1974 and the Additional Sessions Judge found that the register had not been tampered with.

10. The Additional Sessions Judge also examined A.P.W. 11 Dr. Birbal who was a member of the Medical Board constituted by him. The Medical Board examined the appellant on 24th December 2010 and gave his age as about 40 years. Reference in this context was also made to an ossification test conducted on the appellant while he was in judicial custody in the District Jail in Rae Bareli during investigation of the case. The ossification test was conducted on 8th July 1988 and that determined the appellant's age as about 17 years. At this stage, it may be mentioned that on the basis of the ossification test the appellant had applied for bail before the Additional Sessions Judge in Rae Bareli being Bail Application No. 435 of 1988. The Additional Sessions Judge noted that while the age of the appellant was determined at about 17 years by the Chief Medical Officer, there could be a difference of about 2 years either way and therefore by an order dated 13th July 1988 the application for bail was rejected.

11. The appellant then moved the Lucknow Bench of the Allahabad High Court by filing a bail application which was registered as Criminal Miscellaneous Case No. 1859(B) of 1988. By an order dated 25th November 1988 the Allahabad High Court granted bail to the appellant while holding, inter alia, that it was difficult to discard the opinion of the Chief Medical Officer regarding the appellant's age.

12. Coming back to the Report, the Additional Sessions Judge also examined A.P.W. 5 Pankulata the younger sister of deceased Asha Devi. She stated that Asha Devi was about 4 or 5 years older than the appellant and that it was not unknown, apparently in their community, for the wife to be older than the husband. The record of the case shows that Asha Devi died at the age of about 19 after having been married for about 4½ years. This would mean that the appellant was married to Asha Devi when he was about 9 years old and that on the date of the incident he was about 14 years old.

13. The Additional Sessions Judge also examined A.P.W. 8 Sanoj Singh, husband of Pankulata, who gave a statement in tune with that of his wife. The Additional Sessions Judge also examined A.P.W. 9 Narendra Bahadur Singh husband

of A.P.W. 10 Kanti Singh. All these witnesses stated to the effect that apparently in their community the wife is normally older than the husband at the time of marriage. All these persons also produced proof of their age to show that the wife (A.P.W. 5 Pankulata and A.P.W. 10 Kanti Singh) was older than her husband at the time of their marriage.

14. On the basis of the material before him, the Additional Sessions Judge accepted the claim of the appellant that he was younger than his wife at the time of marriage and that his date of birth was 31st August 1974.

15. Objections have been filed to this Report by the State of Uttar Pradesh, but the only objection taken is that the documents pertaining to the education of the appellant were produced after a great delay and not immediately. It was also submitted that it is improbable that a girl of about 15 years of age would get married to a boy of about 9 years of age.

16. The Report given by the Additional Sessions Judge has been examined with the assistance of learned counsel and there is no reason to reject it. While the circumstances are rather unusual, the fact remains that there is documentary evidence to show from the school admission register (which has not been tampered with) that the date of birth of the appellant is 31st August 1974. That apart, the medical examination of the appellant conducted on 8th July 1988 less than two months after the incident, also shows his age to be about 17 years. This was not doubted by the Additional Session Judge while rejecting the bail application of the appellant and was also not doubted by the Allahabad High Court while granting bail to him. Therefore, it does appear that the appellant was about 17 years of age when the incident had occurred and that he had set up a claim of being a juvenile or child soon after his arrest and before the charge sheet was filed. In other words, the appellant was a juvenile or a child within the meaning of that expression as defined in Section 2(k) of the Act.

Should the conviction be upheld:

17. The next question that arises is whether the conviction of the appellant is justified or not. Before examining the evidence on record, it is necessary to mention that both the Trial Court as well as the High Court have concurrently found that the appellants had demanded dowry from Asha Devi and that she had been set on fire for not having complied with the demands for dowry.

18. Section 304-B of the IPC which is the more serious offence for which the appellant has been found guilty, reads as follows:

> **"304-B. Dowry death.—**(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.
>
> Explanation.—For the purpose of this subsection, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).
>
> (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

19. A plain reading of this section, which explains a dowry death, makes it clear that its ingredients are (a) the death of a woman is caused by burns or a bodily injury or that it occurs otherwise than under normal circumstances; (b) the death takes place within seven years of her marriage; (c) the woman was subjected, soon before her death, to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry.

20. In the present case, both the Trial Court and the High Court have found that Asha Devi had died of burn injuries as per the medical evidence; she had been set on fire on the midnight of 23/24 May 1988 and taken to the hospital at about 4 a.m. on 24th May 1988 where she succumbed to the burn injuries at about 5.30 a.m.; she had been married to the appellant for about 4½ years before her death; and that the evidence of PW-1 Ram Bahadur (uncle of Asha Devi) and PW-3 Tej Bahadur Singh (father of Asha Devi) disclosed that demands were being made by the appellants for dowry soon before her death. Apart from cash, a demand was made by the in-laws of Asha Devi for a gold chain and a horse. Since the demands were not complied with, Asha Devi was frequently beaten and harassed. She had brought this to the notice of her uncle as well as her father. In fact, before her demise, she had written a letter to her father about the beating and harassment given to her due to the inability to meet the dowry demands. The letter was proved by the prosecution and was relied on by the Trial Court as well as the High Court in accepting the version of the prosecution. Clearly, therefore, the ingredients of Section 304-B of the IPC were made out.

21. However, the case put up by the appellant was that Asha Devi had accidentally caught fire while she was cooking and therefore it was a case of accidental death. This was not accepted by both the Trial Court as well as the High Court since there was no explanation given for the delay of about 4 hours in taking Asha Devi to the hospital if the case was really one of accidental death. Moreover, there was nothing to suggest that the appellant or anyone in the family had made any attempt to extinguish the fire.

22. There is no doubt, on the basis of the facts found by the Trial Court as well as the High Court from the evidence on record that a case of causing a dowry death had convincingly been made out against the appellant. There is no apparent reason to disturb the concurrent findings of fact arrived at by the Trial Court and the High Court and so the conviction of the appellant must be upheld.

Sentence to be awarded:

23. On the sentence to be awarded to a convict who was a juvenile when he committed the offence, there is a dichotomy of views.

24. **In the first category of cases**, the conviction of the juvenile was upheld but the sentence quashed.

24.1 In Jayendra v. State of Uttar Pradesh, (1981) 4 SCC 149 the conviction of the appellant was confirmed though he was held to be a child as defined in Section 2(4) of the Uttar Pradesh Children Act, 1951. However, he was not sent to an 'approved school' since he was 23 years old by that time. His sentence was quashed and he was directed to be released forthwith.

24.2 Similarly, in Bhoop Ram v. State of U.P. (1989) 3 SCC 1 this Court followed Jayendra and while upholding the conviction of the appellant who was 28 years old by that time, the sentence awarded to him was quashed.

24.3 In Pradeep Kumar v. State of U.P., 1995 Supp (4) SCC 419 yet another case under the Uttar Pradesh Children Act, 1951 the conviction of the appellant was upheld but since he was 30 years old by that time, his sentence was set aside.

24.4 In Bhola Bhagat and other v. State of Bihar, (1997) 8 SCC 720 the conviction of the appellant was upheld by this Court but the sentence was quashed keeping in mind the provisions of the Bihar Children Act, 1970 read with the Bihar Children Act, 1982 and the Juvenile Justice Act, 1986.

24.5 In Upendra Kumar v. State of Bihar, (2005) 3 SCC 592 this Court followed Bhola Bhagat and upheld the conviction of the appellant but quashed the sentence awarded to him.

24.6 In Gurpreet Singh v. State of Punjab, (2005) 12 SCC 615 one of the appellants was a juvenile within the meaning of that expression occurring in Section 2(h) of the Juvenile Justice Act, 1986. This Court held that if the accused was a juvenile on the date of occurrence and continues to be so, then in that event he would have to be sentenced to a juvenile home. However, if on the date of sentence, the accused is no longer a juvenile, the sentence imposed on him would be liable to be set aside. In this context, reference was made to Bhoop Ram.

24.7 Finally in Vijay Singh v. State of Delhi, (2012) 8 SCC 763 the conviction of the appellant was upheld but the sentence was quashed since he was about 30 years old by that time.

25. **The second category of cases** includes :

25.1 Satish v. State of Madhya Pradesh, (2009) 14 SCC 187 wherein the conviction of the appellant was upheld but the sentence awarded was modified to the period of detention already undergone.

25.2 Similarly, in Dharambir v. State (NCT of Delhi), (2010) 5 SCC 344 the conviction of the appellant was sustained but since the convict had undergone two years and four months of incarceration, the sentence awarded to him was quashed.

26. **The third category of cases** includes :

26.1 Hari Ram v. State of Rajasthan, (2009) 13 SCC 211 wherein the appellant was held to be a juvenile on the date of commission of the offence. His appeal against his conviction was allowed and the entire case remitted to the Juvenile Justice Board for disposal in accordance with law.

26.2 In Daya Nand v. State of Haryana, (2011) 2 SCC 224 this Court followed Hari Ram and directed the appellant to be produced before the Juvenile Justice Board for passing appropriate orders in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

27. **The fourth category of cases** includes : Ashwani Kumar Saxena v. State of Madhya Pradesh, (2012) 9 SCC 750 in which the conviction of the appellant was upheld and the records were directed to be placed before the Juvenile Justice Board for awarding suitable punishment to the appellant.

28. The sum and substance of the above discussion is that in one set of cases this Court has found the juvenile guilty of the crime alleged to have been committed by him but he has gone virtually unpunished since this Court quashed the sentence awarded to him. In another set of cases, this Court has taken the view, on the facts of the case that the juvenile is adequately punished for the offence committed by him by serving out some period in detention. In the third set of cases, this Court has remitted the entire case for consideration by the jurisdictional Juvenile Justice Board, both on the innocence or guilt of the juvenile as well as the sentence to be awarded if the juvenile is found guilty. In the fourth set of cases, this Court has examined the case on merits and after having found the juvenile guilty of the offence, remitted the matter to the jurisdictional Juvenile Justice Board on the award of sentence.

29. In our opinion, the course to adopt is laid down in Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000. This reads as follows:

"**20. Special provision in respect of pending cases.—**Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into

force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

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

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

30. It is clear that the case of the juvenile has to be examined on merits. If it found that the juvenile is guilty of the offence alleged to have been committed, he simply cannot go unpunished. However, as the law stands, the punishment to be awarded to him or her must be left to the Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000. This is the plain requirement of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000. In other words, Ashwani Kumar Saxena should be followed.

31. In the present case, the offence was committed by the appellant when the Juvenile Justice Act, 1986 was in force. Therefore, only the 'punishments' not greater than those postulated by the Juvenile Justice Act, 1986 ought to be awarded to him. This is the requirement of Article 20(1) of the Constitution. The 'punishments' provided under the Juvenile Justice Act, 1986 are given in Section 21 thereof and they read as follows:

"**21. Orders that may be passed regarding delinquent juveniles.—**(1) Where a Juvenile Court is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Juvenile Court may, if it so thinks fit,—

(a) allow the juvenile to go home after advice or admonition;

(b) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety as that Court may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years; Juvenile Justice Act, 1986

(c) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(d) make an order directing the juvenile to be sent to a special home,—

(i) in the case of a boy over fourteen years of age or of a girl over sixteen years of age, for a period of not less than three years;

(ii) in the case of any other juvenile, for the period until he ceases to be a juvenile:

Provided that xxx xxx xxx.

Provided further that xxx xxx xxx;

(e) order the juvenile to pay a fine if he is over fourteen years of age and earns money.

(2) Where an order under clause (b), clause (c) or clause (e) of sub-section (1) is made, the Juvenile Court may, if it is of opinion that in the interests of the juvenile and of the public it is expedient so to do, in addition make an order that the delinquent juvenile shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the delinquent juvenile:

Provided that xxx xxx xxx.

(3) xxx xxx xxx.

(4) xxx xxx xxx."

32. A perusal of the 'punishments' provided for under the Juvenile Justice Act, 1986 indicate that given the nature of the offence committed by the appellant, advising or admonishing him [clause (a)] is hardly a 'punishment' that can be awarded since it is not at all commensurate with the gravity of the crime. Similarly, considering his age of about 40 years, it is completely illusory to expect the appellant to be released on probation of good conduct, to be placed under the care of any parent, guardian or fit person [clause (b)]. For the same reason, the appellant cannot be released on probation of good conduct under the care of a fit institution [clause (c)] nor can he be sent to a special home under Section 10 of the Juvenile Justice Act, 1986 which is intended to be for the rehabilitation and reformation of delinquent juveniles [clause (d)]. The only realistic punishment that can possibly be awarded to the

appellant on the facts of this case is to require him to pay a fine under clause (e) of Section 21(1) of the Juvenile Justice Act, 1986.

33. While dealing with the case of the appellant under the IPC, the fine imposed upon him is only Rs.100/-. This is ex facie inadequate punishment considering the fact that Asha Devi suffered a dowry death.

34. Recently, one of us (T.S. Thakur, J.) had occasion to deal with the issue of compensation to the victim of a crime. An illuminating and detailed discussion in this regard is to be found in Ankush Shivaji Gaikwad v. State of Maharashtra, 2013 (6) SCALE 778. Following the view taken therein read with the provisions of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 the appropriate course of action in the present case would be to remand the matter to the jurisdictional Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000 for determining the appropriate quantum of fine that should be levied on the appellant and the compensation that should be awarded to the family of Asha Devi.

Avoiding a recurrence:

35. How can a situation such as the one that has arisen in this case (and in several others in the past) be avoided? We need to only appreciate and understand a few provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (the Act) and the Model Rules framed by the Government of India called the Juvenile Justice (Care and Protection of Children) Rules, 2007 (the Rules).

36. The preamble to the Act draws attention to the Convention on the Rights of the Child which was ratified by the Government of India on 11th December 1992. The Convention has prescribed, inter alia, a set of standards to be adhered to in securing the best interests of the child. For the present purposes, it is not necessary to detail those standards. However, keeping this in mind, several special procedures, over and above or despite the Criminal Procedure Code (for short the Code) have been laid down for the benefit of a juvenile or a child in conflict with law. These special procedures are to be found both in the Act as well as in the Rules. Some (and only some) of them are indicated below.

37. A Juvenile Justice Board is constituted under Section 6 of the Act to deal exclusively with all proceedings in respect of a juvenile in conflict with law. When a juvenile charged with an offence is produced before a Juvenile Justice Board, it is required to hold an inquiry (not a trial) and pass such orders as it deems fit in connection with the juvenile (Section 14 of the Act).

38. A juvenile or a child in conflict with law cannot be kept in jail but may be temporarily received in an Observation Home during the pendency of any inquiry against him (Section 8 of the Act). If the result of the inquiry is against him, the said juvenile may be received for reception and rehabilitation in a Special Home (Section 9 of the Act). The maximum period for reception and rehabilitation in a Special Home is three years (Section 15 of the Act). Even this, in terms of Article 37 of the Convention on the Rights of the Child, shall be a measure of last resort.

39. The provision dealing with bail (Section 12 of the Act) places the burden for denying bail on the prosecution. Ordinarily, a juvenile in conflict with law shall be released on bail, but he may not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

40. Orders that may be passed by a Juvenile Justice Board against a juvenile, if it is satisfied that he has committed an offence, are mentioned in Section 15 of the Act. One of the orders that may be passed, as mentioned above, is for his reception and rehabilitation in a Special Home for a period of three years, as a measure of last resort.

41. The Rules, particularly Rule 3, provide, inter alia, that in all decisions taken within the context of administration of justice, the principle of best interests of a juvenile shall be the primary consideration. What this means is that "the traditional objectives of criminal justice, that is retribution and repression, must give way to rehabilitative and restorative objectives of juvenile justice". The right to privacy and confidentiality of a juvenile is required to be protected by all means and through all the stages of the proceedings, and this is one of the reasons why the identity of a juvenile in conflict with law is not disclosed. Following the requirements of the Convention on the Rights of the Child, Rule 3 provides that institutionalization of a child or a juvenile in conflict with law shall be the last resort after a reasonable inquiry and that too for the minimum possible duration.

42. Rule 32 provides that:

"32. Rehabilitation and Social reintegration.—The primary aim of rehabilitation and social reintegration is to help children in restoring their dignity and self-worth and mainstream them through rehabilitation within the family where possible, or otherwise through alternate care programmes and long-term institutional care shall be of last resort."

43. It is quite clear from the above that the purpose of the Act is to rehabilitate a juvenile in conflict with law with a view to reintegrate him into society. This is by no means an easy task and it is worth researching how successful the implementation of the Act has been in its avowed purpose in this respect.

44. As regards procedurally dealing with a juvenile in conflict with law, the Rules require the concerned State Government to set up in every District a Special Juvenile Police Unit to handle the cases of juveniles or children in terms of the provisions of the Act (Rule 84). This Unit shall consist of a juvenile or child welfare officer of the rank

of Police Inspector having an aptitude and appropriate training and orientation to handle such cases. He will be assisted by two paid social workers having experience of working in the field of child welfare of which one of them shall be a woman.

45. Rule 75 of the Rules requires that while dealing with a juvenile or a child, except at the time of arrest, a police officer shall wear plain clothes and not his uniform.

46. The Act and the Model Rules clearly constitute an independent code for issues concerning a child or a juvenile, particularly a juvenile in conflict with law. This code is intended to safeguard the rights of the child and a juvenile in conflict with law and to put him in a category separate and distinct from an adult accused of a crime.

47. Keeping in mind all these standards and safeguards required to be met as per our international obligations, it becomes obligatory for every Magistrate before whom an accused is produced to ascertain, in the first instance or as soon thereafter as may be possible, whether the accused person is an adult or a juvenile in conflict with law. The reason for this, obviously, is to avoid a two-fold difficulty: first, to avoid a juvenile being subjected to procedures under the normal criminal law and de hors the Act and the Rules, and second, a resultant situation, where the "trial" of the juvenile is required to be set aside and quashed as having been conducted by a court not having jurisdiction to do so or a juvenile, on being found guilty, going 'unpunished'. This is necessary not only in the best interests of the juvenile but also for the better administration of criminal justice so that the Magistrate or the Sessions Judge (as the case may be) does not waste his time and energy on a "trial".

48. It must be appreciated by every Magistrate that when an accused is produced before him, it is possible that the prosecution or the investigating officer may be under a mistaken impression that the accused is an adult. If the Magistrate has any iota of doubt about the juvenility of an accused produced before him, Rule 12 provides that a Magistrate may arrive at a prima facie conclusion on the juvenility, on the basis of his physical appearance. In our opinion, in such a case, this prima facie opinion should be recorded by the Magistrate. Thereafter, if custodial remand is necessary, the accused may be sent to jail or a juvenile may be sent to an Observation Home, as the case may be, and the Magistrate should simultaneously order an inquiry, if necessary, for determining the age of the accused. Apart from anything else, it must be appreciated that such an inquiry at the earliest possible time, would be in the best interests of the juvenile, since he would be kept away from adult under-trial prisoners and would not be subjected to a regimen in jail, which may not be conducive to his well being. As mentioned above, it would also be in the interests of better administration of criminal justice. It is, therefore, enjoined upon every Magistrate to take appropriate steps to ascertain the juvenility or otherwise of an accused person brought before him or her at the earliest possible point of time, preferably on first production.

49. It must also be appreciated that due to his juvenility, a juvenile in conflict with law may be presumed not to know or understand the legal procedures making it difficult for him to put forth his claim for juvenility when he is produced before a Magistrate. Added to this are the factors of poor education and poor economic set up that are jointly the main attributes of a juvenile in conflict with law, making it difficult for him to negotiate the legal procedures. We say this on the strength of studies conducted, and which have been referred to by one of us (T.S. Thakur, J) in Abuzar Hossain v. State of West Bengal, (2012) 10 SCC 489. It is worth repeating what has been said: (SCC p. 513, para 47)

"47... Studies conducted by National Crime Records Bureau (NCRB), Ministry of Home Affairs, reveal that poor education and poor economic set up are generally the main attributes of juvenile delinquents. Result of the 2011 study further show that out of 33,887 juveniles arrested in 2011, 55.8% were either illiterate (6,122) or educated only till the primary level (12,803). Further, 56.7% of the total juveniles arrested fell into the lowest income category. A similar study is conducted and published by B.N. Mishra in his Book 'Juvenile Delinquency and Justice System', in which the author states as follows:

"One of the prominent features of a delinquent is poor educational attainment. More than 63 per cent of delinquents are illiterate. Poverty is the main cause of their illiteracy. Due to poor economic condition they were compelled to enter into the labour market to supplement their family income. It is also felt that poor educational attainment is not due to the lack of intelligence but may be due to lack of opportunity."

50. Such being the position, it is difficult to expect a juvenile in conflict with law to know his rights upon apprehension by a police officer and if the precautions that have been suggested are taken, the best interests of the child and thereby of society will be duly served. Therefore, it may be presumed, by way of a benefit of doubt that because of his status, a juvenile may not be able to raise a claim for juvenility in the first instance and that is why it becomes the duty and responsibility of the Magistrate to look into this aspect at the earliest point of time in the proceedings before him. We are of the view that this may be a satisfactory way of avoiding the recurrence of a situation such as the one dealt with.

51. We may add that our international obligations as laid down in the Convention on the Rights of the Child and the Beijing Rules require the involvement of the parents or legal guardians in the legal process concerning a juvenile in conflict with law. For example, a reference may be made to Article 40 of the Convention and Principles 7, 10 and 15 of the Beijing Rules. That this is not unusual is clear from the fact that in civil disputes, our domestic law requires a minor to be represented by a guardian.

The remedy:

52. In D.K. Basu v. State of West Bengal, (1997) 1 SCC 416 this Court laid down some important requirements for being adhered to by the police

"in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures". (SCC p. 435, para 35) (emphasis in original)

The Criminal Procedure Code has since been amended and some of the important requirements laid down by this Court have been given statutory recognition. These are equally applicable, mutatis mutandis, to a child or a juvenile in conflict with law.

53. Attention may be drawn to Section 41-B of the Code which requires a police officer making an arrest to prepare a memorandum of arrest which shall be attested by at least one witness who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made. The police officer is also mandated to inform the arrested person, if the memorandum of arrest is not attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest. Section 41-B of the Code reads as follows:

"41-B. Procedure of arrest and duties of officer making arrest.— Every police officer while making an arrest shall—

(a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;

(b) prepare a memorandum of arrest which shall be—

(i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;

(ii) countersigned by the person arrested; and

(c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest."

54. Every police officer making an arrest is also obliged to inform the arrested person of his rights including the full particulars of the offence for which he has been arrested or other grounds for such arrest (Section 50 of the Code), the right to a counsel of his choice and the right that the police inform his friend, relative or such other person of the arrest. Section 50-A of the Code is relevant in this regard and it reads as follows:

"50-A. Obligation of person making arrest to inform about the arrest, etc., to a nominated person.—(1) Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information.

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and subsection (3) have been complied with in respect of such arrested person."

55. When any person is arrested, it is obligatory for the arresting authority to ensure that he is got examined by a medical officer in the service of the Central or the State Government or by a registered medical practitioner. The medical officer or registered medical practitioner is mandated to prepare a record of such examination including any injury or mark of violence on the person arrested. Section 54 of the Code reads as follows:

"54. Examination of arrested person by medical officer.—(1) When any person is arrested, he shall be examined by a medical officer in the service of Central or State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made:

Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.

(2) The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

(3) Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person."

56. In our opinion, the procedures laid down in the Code, in as much as they are for the benefit of a juvenile or a child, apply with full rigour to an apprehension made of a juvenile in conflict with law under Section 10 of the Act. If these procedures are followed, the probability of a juvenile, on apprehension, being shown as an adult and sent to

judicial custody in a jail, will be considerably minimized. If these procedures are followed, as they should be, along with the requirement of a Magistrate to examine the juvenility or otherwise of an accused person brought before him, subjecting a juvenile in conflict with law to a trial by a regular Court may become a thing of the past.

Conclusion:

57. The appellant was a juvenile on the date of the occurrence of the incident. His case has been examined on merits and his conviction is upheld. The only possible and realistic sentence that can be awarded to him is the imposition of a fine. The existing fine of Rs.100/- is grossly inadequate. To this extent, the punishment awarded to the appellant is set aside. The issue of the quantum of fine to be imposed on the appellant is remitted to the jurisdictional Juvenile Justice Board. The jurisdictional Juvenile Justice Board is also enjoined to examine the compensation to be awarded, if any, to the family of Asha Devi in terms of the decision of this Court in Ankush Shivaji Gaikwad.

58. Keeping in mind our domestic law and our international obligations, it is directed that the provisions of the Criminal Procedure Code relating to arrest and the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 being the law of the land, should be scrupulously followed by the concerned authorities in respect of juveniles in conflict with law.

59. It is also directed that whenever an accused, who physically appears to be a juvenile, is produced before a Magistrate, he or she should form a prima facie opinion on the juvenility of the accused and record it. If any doubt persists, the Magistrate should conduct an age inquiry as required by Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 to determine the juvenility or otherwise of the accused person. In this regard, it is better to err on the side of caution in the first instance rather than have the entire proceedings reopened or vitiated at a subsequent stage or a guilty person go unpunished only because he or she is found to be a juvenile on the date of occurrence of the incident.

60. Accordingly, the matter is remanded to the jurisdictional Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000 for determining the appropriate quantum of fine that should be levied on the appellant and the compensation that should be awarded to the family of Asha Devi. Of course, in arriving at its conclusions, the said Board will take into consideration the facts of the case as also the fact that the appellant has undergone some period of incarceration.

61. The appeal is partly allowed with the directions given above.

T.S. Thakur, J. (supplementing) — I have had the advantage of going through the Judgment and Order proposed by my Esteemed Brother Madan B. Lokur, J. The draft judgment formulates three issues for determination and answers them with remarkable lucidity. While I agree with the view taken by Brother Lokur, J. that the appellant was a juvenile on the date of the commission of the offence within the meaning of Section 2(k) of the Juvenile Justice (Care & Protection of Children) Act, 2000 (in short , the "2000 Act") and that his conviction ought to be upheld, I wish to add a few words of my own in support of that view. As regards issue of general directions for guidance of the Courts below, I do not have any serious conceptual or other disagreement with what has been proposed by my erudite Brother, for the proposed directions will promote the objects underlying the 2000 Act, and prevent anomalous situations in which juveniles in conflict with law may stand to get prejudiced because of their economic and other handicaps/ because of proverbial law's delay.

63. The facts have been succinctly summarised in the draft judgment of Brother Lokur, J. which do not bear repetition except to the extent the same is absolutely necessary to elucidate the narrative in which the issues arise for our consideration. The appellant was, together with three others, tried for offences punishable under Sections 302, 304-B and 498-A of the IPC by the Sessions Judge, Rae Bareli, who by her judgment dated 30th August, 1990 convicted him and his father Lal Bahadur Singh (since deceased) under Section 304-B and sentenced both of them to undergo rigorous imprisonment for a period of seven years. They were also convicted under Section 498-A of the IPC and sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.200/- each. The prosecution case against the appellant and his coaccused was that they set on fire Asha Devi, who was none other than the wife of the appellant, on the night intervening 23rd and 24th May, 1988. The motive for the commission of the offence was the alleged failure of the deceased Asha Devi and her parents to satisfy the appellant's demand for dowry.

64. Aggrieved by their conviction and sentence the appellant and his co-accused filed Criminal Appeal No.464 of 1990, which failed and was dismissed by the High Court in terms of the order impugned in this appeal. Demise of the second appellant during the pendency of the present appeal abated the proceedings qua him, leaving the appellant to pursue the challenge mounted against the judgments and orders passed by the Courts below, by himself.

65. Seven years after the filing of the present appeal, the appellant for the first time filed Crl. Misc. Petition No.16974 of 2010 for permission to urge an additional ground to the effect that the appellant was on the date of the commission of the offence a juvenile within the meaning of Section 2 (k) of the 2000, Act. It was urged on the basis of a school certificate that the petitioner was on the date of commission of the offence hardly 14 years of age, and hence a juvenile entitled to the protection of the Act aforementioned. By an order dated 19th November, 2010,

this Court allowed the Criminal Miscellaneous Petition, permitted the appellant to raise the additional plea and directed an inquiry into the claim of juvenility of the appellant by the Trial Court.

66. The Trial Court accordingly conducted an inquiry, examined the relevant school record and, based on the entirety of the evidence including the medical evidence adduced in the course of the inquiry, held that according to the school certificate the age of the appellant on the date of the incident in question was around 13 years 8 months on the date of the incident. In doing so the trial Court gave credence to the school certificate in preference to the medical examination and other equally compelling records touching upon the age of the appellant like the Family Register maintained by the Panchayat and the Electoral rolls according to which the appellant's age was above 16 years and below 17½ years on the date of the occurrence.

67. Although the respondent has objected to the finding of the Trial Court and the assessment of the age as on the date of the commission of the offence, I am inclined to go along with Lokur, J's finding as to age of the appellant when His Lordship says:

"…..Therefore, it does appear that the appellant was about 17 years of age when the incident had occurred and that he had set up a claim of being a juvenile or child soon after his arrest and before the charge sheet was filed. In other words, the appellant was a juvenile or a child within the meaning of that expression as defined in Section 2(k) of the Act."

68. I may, independent of the conclusion drawn by my esteemed brother, briefly state my reasons for holding that the appellant was above sixteen years as on the date of the commission of the offence, no matter the enquiry report submitted by the Trial Court has held him to be less than 16 years on that date. But before I do so, it is important to mention that the question whether the appellant was less or more than 16 is important not because the benefit of the 2000 Act depends on that question, but because the answer to that question has a bearing on whether the conviction of the appellant was itself illegal, hence liable to be set aside. I say so because, the benefit of the 2000 Act, would be in any case available to the appellant, so long as he was less than 18 years of age on the crucial date, and it is nobody's case that he was above that age on that date. The decision of this Court in Hari Ram v. State of Rajasthan (2009) 13 SCC 211 authoritatively settles the legal position in that regard when it says: (SCC p. 228, para 68)

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

69. Equally important is the fact that the jurisdiction of the Court to try the appellant, as indeed any other person accused of commission of an offence would have to be determined by reference to the legal position that prevailed as on the date the Court tried, convicted and sentenced the appellant. It is common ground that as on the date of the commission of the offence and right up to the date the trial Court convicted and sentenced the appellant to imprisonment, the provisions of Juvenile Justice Act, 1986 (in short, the "1986 Act") held the field. Apart from the fact that the upper age limit for claiming juvenility was 16 years for boys, the question whether a person was or was not a juvenile could be decided by the Court on the basis of documentary or medical evidence or on a fair assessment of both of them. That is because, the provisions of 1986 Act, did not, prioritise the basis on which such determination could be made. It was left for the accused to produce evidence or the Court to direct a medical examination for determining his age. The weightage which the Rules framed under the 2000 Act provide and the order of preference settled for purposes of placing reliance upon evidence coming from different sources were not in vogue while the 1986 Act held the field. The result was that the Court was free to determine the question on the basis of one such piece of evidence or on a cumulative effect and on such evidence that may have been produced before it. It is necessary to bear in mind this dichotomy in the legal framework while determining whether the trial Court had committed an error of jurisdiction in holding the appellant to be not a juvenile and hence triable by it.

70. The question whether the appellant was a juvenile was first raised before the trial Court at a very early stage of the case. The appellant had prayed for bail on that basis, which appears to have led the Court to direct assessment of his age on the basis of a medical examination. The medical examination, however, determined the age of the appellant to be 17 years, which took him beyond the upper age of juvenility under the 1986 Act. What is noteworthy is that no attempt was made by the appellant to adduce any evidence to support his claim of being a juvenile nor was any documentary evidence in the form of school certificate or otherwise adduced. As a matter of fact the chapter was totally forgotten, and the trial allowed to proceed to its logical conclusion without the appellant raising his little finger against the competence of the Court or agitating the issue regarding his age in any higher forum. The conviction and sentence recorded by the trial Court was also assailed on merits before the High Court but not on the ground that the trial was vitiated on account of the appellant being a juvenile, not triable by an ordinary criminal Court. It was only in this Court that long after the appeal was filed that a fresh claim for benefit under the 2000 Act was made by the appellant in which this Court directed a fresh enquiry that was conducted in terms of Rule 12 of the Rules framed under the 2000 Act. The enquiry report submitted supports the appellant's claim of his being a juvenile under Section 2(k) of the 2000 Act, hence, entitled to the benefits admissible thereunder. Although an attempt was made by the respondent-State to assail the finding that the appellant was less than 18

years of age on the date of the occurrence, we do not see any cogent reason to hold that the appellant was more than 18 years on the date of the occurrence.

71. In my view, the determination of age of the appellant, by the trial Court, on the basis of the first medical examination is fully supported and corroborated by the medical examination of the appellant conducted in the course of the enquiry directed by this Court by our order dated 19th November, 2010. The medical examination conducted by the Board of Doctors has determined the appellant's age to be 40 years as on 24th December, 2010 which implies that he was around 17 ½ years old on the date of the occurrence. Superadded to the medical evidence is the documentary evidence that has come to light in the course of the enquiry in the form of the Family Register (Ex. Ka-3) maintained by the Panchayat and proved by A.P.W.2-Gokaran Nath Tiwari, Gram Panchayat Officer. According to this witness who spoke from the register, the appellant was born in the year 1969. The Electoral roll for the year 2009 for the constituency in which the appellant's village falls, also mentions this age to be 37 years, implying thereby that he was around 17 years old on the date of the occurrence. Deposition of the Gram Sabha Head examined as PW-12 in the course of the enquiry is supportive of the age of the appellant as given in the Electoral roll. The two medical examinations and the documents referred to above come from proper custody and lend complete corroboration to the appellant's age being above 16 years on the date of the occurrence. Besides, what cannot be lightly brushed away is the fact that the appellant was a married man on the date of the occurrence and that the charge levelled against him was one of dowry harassment and dowry death of his wife who was 19 years old at the time of her demise. If the appellant was only 13 years and 8 months old as suggested by the school certificate the question of his harassing the deceased almost six years his senior would not arise for he would be only an adolescent while his wife-the deceased was a grown up girl who could hardly get harassed by a mere child so young in age that he had barely cut his teeth. The trial Court did not in that view commit any error of jurisdiction in trying the appellant for the offences alleged against him.

72. The upshot of the above discussion is that while the appellant was above 16 years of age on the date of the commission of the offence, he was certainly below 18 years and hence entitled to the benefit of the 2000 Act, no matter the later enactment was not on the statute book on the date of the occurrence. The difficulty arises when we examine whether the trial and the resultant order of conviction of the appellant, would also deserve to be set aside as illegal and without jurisdiction. The conviction cannot however be set aside for more than one reason.

72.1 Firstly because there was and is no challenge to the order of conviction recorded by the Courts below in this case either before the High Court or before us. As a matter of fact the plea of juvenility before this Court by way of an additional ground stopped short of challenging the conviction of the appellant on the ground that the Court concerned had no jurisdiction to try the appellant.

72.2 Secondly because the fact situation in the case at hand is that on the date of the occurrence i.e. on 24th May, 1988 the appellant was above 16 years of age. He was, therefore, not a juvenile under the 1986 Act that covered the field at that point of time, nor did the 1986 Act deprive the trial Court of its jurisdiction to try the appellant for the offence he was charged with. Repeal of the 1986 Act by the 2000 Act raised the age of juvenility to 18 years. Parliament provided for cases which were either pending trial or were, after conclusion of the trial, pending before an appellate or a revisional Court by enacting Section 20 of the Juvenile Justice (Care and Protection) Act, 2000 which is to the following effect:

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

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

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

73. A plain reading of the above brings into bold relief the following features that have a significant bearing on the controversy at hand:

73.1 The provision starts with a non-obstante clause, which implies that the provisions have an overriding effect on all other provisions contained in the enactment.

73.2 The provision deals with proceedings pending against a juvenile in any court.

73.3 The provision sanctions the continuance of such pending proceedings in the very same court, as if the 2000 Act had not been enacted.

73.4 The provision requires the Court seized of the matter to record a finding as to whether the juvenile has committed an offence.

73.5 If the finding is against the juvenile in that he is found to have committed an offence, the court is required to forebear from passing an order of sentence and instead forward the juvenile to the Board, which shall then pass an order in accordance with the provisions of the Act, as if it had been satisfied on inquiry under the Act that the juvenile had committed an offence.

73.6 In all pending cases including trial, revision, appeal or any other criminal proceedings the determination of juvenility shall be in terms of clause (l) of Section 2 even if the juvenile ceases to be so on or before the date of commencement of the 2000 Act.

74. It is manifest, that a case that was pending before 'any Court' (which expression would include both the trial Court and the High Court) would continue in that Court, who would not only proceed with the trial and/or hearing of the case as if the 2000 Act was not on the Statute book but also record a finding as to the guilt or innocence of the juvenile. Far from stipulating a specific prohibition, the provisions of Section 20, make it obligatory for the Court concerned to proceed with the matter and record its conclusion as to the guilt or otherwise of the juvenile. The prohibition is against the Court passing an order of sentence against the juvenile, for which purpose the juvenile has to be forwarded to the Board for appropriate orders. That is precisely the view which this Court has taken in a line of decisions to which I may briefly refer at this stage.

75. In Pratap Singh v. State of Jharkhand and Anr. (2005) 3 SCC 551, this Court while interpreting the provisions of Section 20 (supra) held that the same is attracted to cases where the person, if male, has ceased to be a juvenile under the 1986 Act being more than 16 years of age but had not yet crossed the age of 18 years. Such cases alone were within the comprehension of Section 20 of the Act, observed the Court, in which the Court seized of the matter was bound to record its conclusion, as to the guilt or innocence of the accused. The Court said: (SCC p. 570, para 31)

"31. Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with non-obstante clause. The sentence "Notwithstanding anything contained in this Act all proceedings in respect of a juvenile pending in any Court in any area on date of which this Act came into force" has great significance. The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the Act is relatable to proceedings initiated before the 2000 Act came into force and which are pending when the 2000 Act came into force. The term "any court" would include even ordinary criminal courts. If the person was a "juvenile" under the 1986 Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or girl had crossed 18 years. This shows that Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act but had not yet crossed the age of 18 years then the pending case shall continue in that Court as if the 2000 Act has not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, shall forward the juvenile to the Board which shall pass orders in respect of that juvenile."

(emphasis supplied)

76. To the same effect is the decision of this Court in Bijender Singh v. State of Haryana and Anr. (2005) 3 SCC 685, where this Court reiterated the legal position as to the true purpose of Section 20 in the following words: (SCC pp. 687-88, paras 8-10 & 12)

"8. One of the basic distinctions between the 1986 Act and the 2000 Act relates to age of males and females. Under the 1986 Act, a juvenile means a male juvenile who has not attained the age of 16 years, and a female juvenile who has not attained the age of 18 years. In the 2000 Act, the distinction between male and female juveniles on the basis of age has not been maintained. The age-limit is 18 years for both males and females.

9. A person above 16 years in terms of the 1986 Act was not a juvenile. In that view of the matter the question whether a person above 16 years becomes "juvenile" within the purview of the 2000 Act must be answered having regard to the object and purport thereof.

10. In terms of the 1986 Act, a person who was not juvenile could be tried in any court. Section 20 of the 2000 Act takes care of such a situation stating that despite the same the trial shall continue in that court as if that Act has not been passed and in the event, he is found to be guilty of commission of an offence, a finding to that effect shall be recorded in the judgment of conviction, if any, but instead of passing any sentence in relation to the juvenile, he would be forwarded to the Juvenile Justice Board (in short the 'Board') which shall pass orders in accordance with the provisions of the Act as if it has been satisfied on inquiry that a juvenile has committed the offence. A legal fiction has, thus, been created in the said provision.

xx xx xx

12. Thus, by reason of legal fiction, a person, although not a juvenile, has to be treated to be one by the Board for the purpose of sentencing which takes care of a situation that the person although not a juvenile in terms of the 1986 Act but still would be treated as such under the 2000 Act for the said limited purpose."

(emphasis supplied)

77. Reference may also be made to the decision of this Court in Dharambir v. State (NCT of Delhi) (2010) 5 SCC 344 where too this Court interpreted Section 20 of the Act, and the explanation appended to the same, to declare that the provision enables the Court to determine the juvenility of the accused even after conviction and while maintaining the conviction to set aside the sentence imposed upon him and to forward the case to the Board for passing an appropriate order in accordance with the provisions of the Act. This Court observed:

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

12. Clause (l) of Section 2 of the Act of 2000 provides that "juvenile in conflict with law" means a "juvenile" who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. Section 20 also enables the Court to consider and determine the juvenility of a person even after conviction by the regular Court and also empowers the Court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Act of 2000."

78. Two recent decisions of this Court are a timely reminder of the legal position on the subject to which I may gainfully refer at this stage. In Daya Nand v. State of Haryana (2011) 2 SCC 224, this Court, reiterated the law on the subject in the following words : (SCC pp. 226-27, para 10)

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

79. Similarly in Kalu @ Amit v. State of Haryana (2012) 8 SCC 34, this Court summed up the law in the following passage: (SCC p. 41, para 21)

"21. Section 20 makes a special provision in respect of pending cases. It states that notwithstanding anything contained in the Juvenile Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which Juvenile Act comes into force in that area shall be continued in that court as if the Juvenile Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of the Juvenile Act as if it had been satisfied on inquiry under the Juvenile Act that the juvenile has committed the offence. The Explanation to Section 20 makes it clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of Clause (l) of Section 2, even if the juvenile ceased to be a juvenile on or before 1/4/2001, when the Juvenile Act came into force, and the provisions of the Juvenile Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed..."

80. The settled legal position, therefore, is that in all such cases where the accused was above 16 years but below 18 years of age on the date of occurrence, the proceedings pending in the Court concerned will continue and be taken to their logical end except that the Court upon finding the juvenile guilty would not pass an order of sentence against him. Instead he shall be referred to the Board for appropriate orders under the 2000 Act. Applying that proposition to the case at hand the trial Court and the High Court could and indeed were legally required to record a finding as to the guilt or otherwise of the appellant. All that the Courts could not have done was to pass an order of sentence, for which purpose, they ought to have referred the case to the Juvenile Justice Board.

81. The matter can be examined from another angle. Section 7A (2) of the Act prescribes the procedure to be followed when a claim of juvenility is made before any Court. Section 7A (2) is as under:

"7A. Procedure to be followed when claim of juvenility is made before any court .—(1) xxx

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

82. A careful reading of the above would show that although a claim of juvenility can be raised by a person at any stage and before any Court, upon such Court finding the person to be a juvenile on the date of the commission of the offence, it has to forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed shall be deemed to have effect. There is no provision suggesting, leave alone making it obligatory for the Court before whom the claim for juvenility is made, to set aside the conviction of the juvenile on the ground that on the date of commission of the offence he was a juvenile, and hence not triable by an ordinary criminal court.

Applying the maxim of expressio unius est exclusio alterious, it would be reasonable to hold that the law in so far as it requires a reference to be made to the Board excludes by necessary implication any intention on the part of the legislature requiring the Courts to set aside the conviction recorded by the lower court. The Parliament, it appears, was content with setting aside the sentence of imprisonment awarded to the juvenile and making of a reference to the Board without specifically or by implication requiring the court concerned to alter or set aside the conviction. That perhaps is the reason why this Court has in several decisions simply set aside the sentence awarded to the juvenile without interfering with the conviction recorded by the court concerned and thereby complied with the mandate of Section 7A(2) of the Act.

83. In Kalu @ Amit's case (supra), the plea of juvenility was raised before this Court for the first time as is the position in the present case also. This Court while dealing with the options available noticed the absence of plea on the ground of juvenility and held that even if such a plea had been raised before the High Court, the High Court would have had to record its finding that Kalu @ Amit was guilty, confirm his conviction, set aside the sentence and forward the case to the Board for passing an order under Section 15 of the Juvenile Act. The Court observed:

"24. The instant offence took place on 7-4-1999. As we have already noted Kalu alias Amit was a juvenile on that date. He was convicted by the trial court on 7-9-2000. The Juvenile Act came into force on 1-4-2001. The appeal of Kalu alias Amit was decided by the High Court on 11-7-2006. Had the defence of juvenility been raised before the High Court and the fact that Kalu alias Amit was a juvenile at the time of commission of the offence has come to light the High Court would have had to record its finding that Kalu alias Amit was guilty, confirm his conviction, set aside the sentence and forward the case to the Board and the Board would have passed any appropriate order permissible under Section 15 of the Juvenile Act (see Hari Ram)."

84. That procedure has been followed in several other cases where this Court has, after holding the accused to be a juvenile as on the date of the commission of offence, set aside the sentence awarded to him without interfering with the order of conviction. (See: Pradeep Kumar & Ors. v. State of U.P. 1995 Supp (4) SCC 419, Bhola Bhagat & Ors. v. State of Bihar (1997) 8 SCC 720, Upendra Kumar v. State of Bihar (2005) 3 SCC 592, Vaneet Kumar Gupta @ Dharmindher v. State of Punjab (2009) 17 SCC 587).

85. In the totality of the above circumstances, there is no reason why the conviction of the appellant should be interfered with, simply because he is under the 2000 Act a juvenile entitled to the benefit of being referred to the Board for an order under Section 15 of the said Act. There is no gainsaying that even if the appellant had been less than sixteen years of age, on the date of the occurrence, he would have been referred for trial to the Juvenile Court in terms of Section 8 of the 1986 Act. The Juvenile Court would then hold a trial and record a conviction or acquittal depending upon the evidence adduced before it. In an ideal situation a case filed before an ordinary Criminal Court when referred to the Board or Juvenile Court may culminate in a conviction at the hands of the Board also. But law does not countenance a situation where a full-fledged trial and even an appeal ends in a conviction of the accused but the same is set aside without providing for a trial by the Board.

86. With the above observations, I agree with the Order proposed by brother Lokur, J.

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Darga Ram alias Gunga Versus State of Rajasthan

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 513 OF 2008

Darga Ram alias Gunga ...Appellant
Versus
State of Rajasthan ...Respondent

A. Criminal Trial — Juvenile/Child accused — No documentary evidence of age — Estimation of age when Medical Board only determines a range: in this case 30-36 yrs on date of examination — Averaging, held, not proper — Taking upper limit, subjecting it to normal rule of variation of plus minus 2 yrs and giving benefit of lowering age vide R. 12(3) (b), age of appellant found to be 17 years, 2 months on the date of incident — Thus, appellant declared to be a juvenile as on the date of occurrence — Sentence awarded to him set aside — Juvenile Justice (Care and Protection of Children) Rules, 2007, R. 12(3)(b)

(Paras 11 to 19)

Held :

An application was filed by the appellant in the Supreme Court seeking to raise a plea that the appellant was a juvenile on the date of occurrence. Since the appellant did not have any documentary evidence like a school or other certificate referred to under Juvenile Act, Principal, Government Medical College, Jodhpur, was directed to constitute a Board of Doctors for medical examination including radiological examination of the appellant to determine the age of the appellant as in April 1998 when offence in question was committed. Concluding all the above radiological findings, dental and clinical appearance, age of the appellant is in between 30 years to 36 years and average age of the appellant is about 33 years on the date of examination. (Paras 11 to 13)

Medical opinion given by duly constituted Board comprising Professors of Anatomy, Radiodiagnosis and Forensic Medicine has determined his age to be "about" 33 years on the date of examination. Board has not been able to give exact age of appellant on medical examination, no matter the advances made in that field. General rule about age determination is that the age as determined can vary plus minus two years but the Board has in the case at hand spread over a period of six years and taken a mean to fix the age of appellant at 33 years. This is not the correct way of estimating the age of appellant. However, what is reassuring about estimate of age is the fact that the same is determined by a Medical Board comprising Professors of Anatomy, Radiodiagnosis and Forensic Medicine whose opinion must get the respect it deserves. That apart, even if age of appellant was determined by upper extremity limit i.e 36 years the same would have been subject to variation of plus minus 2 years meaning thereby that he could as well be 34 years on the date of examination. Taking his age as 34 years on the date of the examination he would have been 18 years, 2 months and 7 days on the date of the occurrence but such an estimate would be only an estimate and the appellant may be entitled to additional benefit of one year in terms of lowering his age by one year in terms of Rule 12(3)(b) of the 2000 rules which would then bring him to be 17 years and 2 months old, therefore, a juvenile.
(Paras 16 and 17)

B. Penal Code, 1860 — Ss. 376 and 302 — Rape and murder of seven-year-old girl — Medical evidence and FSL report fully supporting prosecution case — Conviction confirmed — Jagaran organised by complainant was atteided by appellant and victim — Dead body of victim was found in neighbouring area — She was raped and killed by crushing her head with a stone — On basis of a disclosure statement made by appellant, his bloodstained clothes were recovered — According to FSL report cfciUies of deceased and appellant were found to be smeared with blood of Group A, which happened to be blood group of deceased also — No explanation was offered by appellant for injuries sustained by him, one of which was found even on his penis — Conviction of appellant under Ss. 302 and 376 IPC is affirmed

(Paras 5 to 10)

Darga Ram v. State of Rajasthan, Criminal Appeal No. 604 of 2004, decided on 20-8-2007 (Raj), partly affirmed and partly reversed

Advocates who appeared in this case:

Vijay Panjwani (Amicus Curiae), Advocate, for the Appellant;

Milind Kumar, Advocate, for the Respondent.

Chronological list of cases cited

1. Criminal Appeal No. 604 of 2004, decided on 20-8-2007 (Raj), Darga Ram v. State of Rajasthan **(partly affirmed and partly reversed)**

The Judgment of the Court was delivered by

JUDGMENT

T.S. THAKUR, J.—The appellant was tried and convicted for offences punishable under Sections 376 and 302 IPC. For the offence of rape punishable under Section 376, he was sentenced to undergo imprisonment for a period of 10 years besides a fine of Rs.1000/- and default sentence of one month with rigorous imprisonment. Similarly, for the offence of murder punishable under Section 302 IPC, he was sentenced to undergo life imprisonment besides a fine of Rs.3,000/- and default sentence of three months' rigorous imprisonment. Both the sentences were directed to run concurrently. Criminal Appeal No.604 of 2004 filed by him was heard and dismissed by a Division Bench of the High Court of Judicature for Rajasthan at Jodhpur. The present appeal assails the impugned judgment and order.

2. A first Information Report was registered at Police Station Rani in the State of Rajasthan on 11th April, 1998, inter alia, stating that the complainant on 9th April, 1998 had organised a "Jaagran" (night long prayer meet) near a well belonging to one Magga Ram. The complainant and other relatives, in all around 50 persons assembled for the "Jaagran" that continued till late night. This included his seven year old daughter-Kamala who went to sleep along with other children close to the place where the "Jaagran" was held. When he returned to his house he noticed that Kamala was missing. Assuming that she may have gone away with one of the relatives, a search was made at their houses but Kamala remained untraceable. The search was then extended to neighbouring areas where the dead body of Kamala was discovered by Magga Ram (PW-5) and Pura Ram. On receipt of this information he and Naina Ram (PW-2) went to the place and found that baby Kamala had been raped and killed by crushing her head with a stone. The dead body of Kamala was, according to the report, lying on the spot.

3. A case under Sections 302 and 376 of the IPC was registered on the basis of the above information and investigation started which led to the arrest of the appellant and eventually a charge sheet against him before the jurisdictional magistrate who committed the case to Additional Sessions Judge, (Fast Track), Bali. Before the Sessions Court, the appellant pleaded not guilty and claimed a trial. At the trial the prosecution produced 19 witnesses apart from placing reliance upon several documents. No evidence in defence was, however, led by the appellant. By its judgment and order dated 27th January, 2004 the trial Court eventually held the appellant guilty and accordingly convicted and sentenced him as indicated above. Aggrieved by the judgment and order passed by the trial Court, the appellant preferred Criminal Appeal No.604 of 2004 which was, upon reappraisal of the evidence adduced before the trial Court, dismissed by the High Court affirming the conviction recorded against the appellant and the sentence awarded to him for both the offences.

4. We have heard learned counsel for the parties at considerable length. Prosecution case is based entirely on circumstantial evidence as no ocular account of the incident has been presented to the Court. Both the Courts below have, however, found the circumstantial evidence adduced by the prosecution to be sufficient to record a finding of guilt against the appellant for the offences with which he was charged. We may briefly refer to the circumstance as also the evidence supporting the same.

5. The first and foremost is the deposition of Ota Ram (PW-4) which clearly establishes that the appellant was also one of those who had participated in the "Jaagran" along with other villagers. To the same effect is the statement of Maga Ram (PW-5) who too had testified that the appellant was present in the "Jaagran". He had seen Kamala at around 10.00 in the night. The deposition of both these witnesses proves that apart from the appellant and several others, baby Kamala the deceased was also present at the "Jaagran" with other children and had gone off to sleep after taking dinner. That version is supported even by Naina (PW-1), who states that the appellant was also present in the "Jaagran" around mid night when the tea was served to those present including the appellant. The witness has further deposed that his son and daughter Kamala were sleeping around the place but Kamala was found missing in the morning. There is, in our opinion, no reason to disbelieve the version of these witnesses when they say that the "Jaagran" was held by the complainant in which Kamala his daughter was present and gone off to sleep nor is there any reason to disbelieve the story that even the appellant was present at the "Jaagran" and had tea with other witnesses around mid night.

6. That Kamala died a homicidal death was not seriously disputed either before the Courts below or before us and rightly so because the statement of doctor Omprakash Kuldeep (PW-18) who conducted the post-mortem and authored the report marked as Ex. P-34 has clearly opined that Kamala died a homicidal death on account of injury on her head. In the deposition, the doctor certified injuries even on her private parts. The post-mortem report certifies the following injuries on the person of the deceased:

   "1. Face crushed.

   2. Upper lip wad cut. Bleeding was from right ear, dried seminal stains on right and left thigh.

   3. Nose bone was depressed and fractured.

   4. Fracture was on left orbital margin.

   5. Fracture was in left temporal bone.

   6. Fracture was in maxilla bone of left side.

   7. Fracture in parietal bone and occipital bone of right side which was upto the base of skull.

   8. Incise teeth of lower and upper (jaw) were broken.

9. Achaimoisis was present in Genital organs labia.
10. Crushing wound was on forechet and perineum.
11. Hymn was congested."

7. Rajendra Singh (PW-9), who investigated the case and who is a witness to the scene of occurrence, seized blood stained clothes of the deceased including two hair recovered from the private parts of the deceased. He is also witness to the seizure of blood stained clothes of the appellant on the basis of a disclosure statement made by him. Equally important is the circumstance that the FSL report found the trouser and the shirt of the appellant to be stained with human blood belonging to group 'A' which happened to be the blood group of the deceased also. The stone used for crushing the head of the deceased was also found to be smeared with human blood of group 'A'.

8. What supports the prosecution case in a great measure is also the fact that the appellant had suffered multiple injuries on his private parts. The medical examination report dated 13th April, 1998 marked as Ex. P-38 has noticed the following injuries on the person of the appellant:

"(i)	Abrasion	1x0.5 cm. Size	Dorsal Aspect of (Rt) Elbow joint.
(ii)	Abrasion	3x2 cm. Size	Medical Aspect of (Lt) Elbow joint.
(iii)	Multiple Abrasion	Varying in Size	Dorsal Aspect of (Lt) Elbow joint.
(iv)	Abrasion	7.5x1 cm. Size	Ant. aspect of (Rt.) leg Just below (Rt.) knee joint
(v)	Abrasion	1.5x1 cm.	Ant. aspect of (Lt.) knee joint
(vi)	Abrasion	1x0.5 cm.	Medial side of Ant. Aspect (Lt.) knee joint
(vii)	Abrasion	1x1 cm.	Left side of Ant. Aspect of (Lt.) knee joint
(viii)	Abrasion	1x0.5 cm.	Dorsal Aspect of Retracted Prepuce.
(ix)	Abrasion	2x0.25 cm.	Lat. Aspect of (Rt.) side of Retracted prepuce.
(x)	Abrasion	0.25x0.25 cm.	Dorsal Aspect of glans penis
(xi)	Abrasion	2x0.25 cm.	Lat. Aspect of (Rt.0 Thigh
(xii)	Abrasion	2x0.25 cm.	(Rt.) gluteal Region
(xiii)	Abrasion	2x1 cm.	(Lt.) Palm

Duration of all injuries i.e. S.No. i to xiii is 3-5 days. "

9. No explanation was, however, offered by the appellant for the injuries sustained by him one of which was found even at his penis. To summarise, the prosecution has clearly established:

(1) That a "Jaagran" was arranged by the complainant on the offside of village near the well in which nearly 50 people participated including Kamala the deceased child.

(2) The deceased-Kamala had gone out to sleep after dinner around mid night.

(3) The appellant was also participating in the "Jaagran" and was seen sitting along with some of the prosecution witnesses.

(4) Kamala-deceased was found missing in the morning but upon search her dead body was noticed at some distance in the village in a naked condition with injuries on her private parts and her head smashed with a stone lying nearby.

(5) The appellant made a disclosure statement leading to the recovery of his blood stained clothes.

(6) The blood was found to be of human origin and belonging to group 'A" which also was the blood group of the deceased-Kamala.

(7) The appellant on medical examination was found to have several injuries on his body including injury on his penis.

(8) The injuries found on the person of the appellant were said to be 3 to 5 days old.

(9) The appellant did not offer any explanation for the injuries on his body.

10. The above circumstances, in our opinion, form a complete chain and lead to an irresistible conclusion that the appellant was responsible for the offence of rape and murder of the hapless baby-Kamala who appears to have been picked up from the place where she was sleeping with other children and taken at a distance only to be raped and eventually killed. The trial Court, in the light of the evidence on record and careful analysis undertaken by it, correctly came to the conclusion that the appellant was guilty of murder of the deceased. There is no reason whatsoever for us to interfere with that finding.

11. What remains to be addressed now is an application filed by the appellant in this Court seeking to raise a plea that the appellant was a juvenile on the date of the commission of offence hence entitled to the benefit of Juvenile Justice (Care and Protection of Children) Act, 2000. Since the appellant did not have any documentary

evidence like a school or other certificate referred to under the Act mentioned above, this Court had directed the Principal, Government Medical College, Jodhpur, to constitute a Board of Doctors for medical examination including radiological examination of the appellant to determine the age of the appellant as in April, 1998 when the offence in question was committed. The Superintendant of the Central Jail was directed to ensure production of the appellant for the purpose of determination of his age before the Medical Board for carrying out the tests and examination.

12. In compliance with the said direction, the Principal constituted a Medical Board for determining the age of the appellant and submitted a report dated 4th February, 2014. The report records the following findings and conclusions:

"Age estimation of Darga ram @ Gunga s/o Heera on the basis of findings of X Ray of Elbow, Wrist, Pelvis, Sternum, Medial end of Clavicle, Skull and left shoulder joint (film no.10252 dated 04-02-2014, Eight Film and CT Scan of Skull and Mandible (film 56013, four films) dated 04-02-2014, is as below:-

1. All Epiphysis around elbow joint, lower end of Radius & Ulna, Ilias Crest & Ischial tuberosity & for medial end of Clavicle have appeared 7 fused, it suggests that his age is above 22 years.
2. All the body pieces of sternum have fused with each other but not fused with Xiphoid process & manubrium sternum, it suggests his age is above 25 years but below 40 years.
3. Posterior 1/3 of sagital suture have fused, it suggests his age is above 30 years & below 40 years.
4. Ventral 7 Dorsal margins of pubic symphysis are completely defined 7 there are no granular appearance on it, it suggests his age is below 36 years.

Opinion:-

Concluding all the above radiological findings, dental & Clinical appearance, the age of Darga Ram @ Gunga S/o Heera is in between 30 years to 36 years and the average age of Darga Ram @ Gunga S/o Heera is about 33 years on the date of examination.

Enclosure:- X Ray (8 plates) & CT Scan 4 Plates) as above.

Sd/-	Sd/-	Sd/-
(Dr. L. Raichandani)	(Dr. A.L.Chauhan)	(Dr. P.C. Vyas)
Professor, Anatomy	PHOD, Radiodiagnosis	PHOD, forensic Medicine
Dr. S.N. Medical College	Dr. S.N. Medical College	Dr. S.N. Medical College
Jodhpur	Jodhpur	Jodhpur"

13. It is evident from the opinion tendered by the Board that the appellant's age has been placed in the range of 30 to 36 years. The Board appears to have taken the average of two extremitees and concluded that the appellant's age on the date of the examination was about 33 years. It was on the basis of this estimate that Mr. Panjwani contended that the appellant should have been around 14 years, 2 months and 7 days old if his age was 30 years on the date of medical examination. He should have been 17 years, 2 months and 7 days old on the date of the occurrence if his age is taken as 33 years and 20 years, 2 months and 7 days if his age is taken as 36 years on the date of the medical examination. It was argued that even if one were to accept the average of the two estimates in the range of 30-36 years, mentioned by the Medical Board, he was a juvenile on the date of the occurrence being only 17 years, 2 months hence entitled to the benefit of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

14. The appellant is reported to be a deaf and dumb. He was never admitted to any school. There is, therefore, no officially maintained record regarding his date of birth. Determination of his age on the date of the commission of the offence is, therefore, possible only by reference to the medical opinion obtained from the duly constituted Medical Board in terms of Rule 12(3) (b) of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

15. Rule 12(3)(b) reads as under:

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

(1) xxxxxxxxxxxxxxx

(2) xxxxxxxxxxxxxxx

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

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

16. The medical opinion given by the duly constituted Board comprising Professors of Anatomy, Radiodiagnosis and Forensic Medicine has determined his age to be "about" 33 years on the date of the examination. The Board has not been able to give the exact age of the appellant on medical examination no matter advances made in that field. That being so in terms of Rule 12 (3) (b) the appellant may even be entitled to benefit of fixing his age on the lower side within a margin of one year in case the Court considers it necessary to do so in the facts and circumstances of the case. The need for any such statutory concession may not however arise because even if the estimated age as determined by the Medical Board is taken as the correct/true age of the appellant he was just about 17 years and 2 months old on the date of the occurrence and thus a juvenile within the meaning of that expression as used in the Act aforementioned. Having said that we cannot help observing that we have not felt very comfortable with the Medical Board estimating the age of the appellant in a range of 30 to 36 years as on the date of the medical examination. The general rule about age determination is that the age as determined can vary plus minus two years but the Board has in the case at hand spread over a period of six years and taken a mean to fix the age of the appellant at 33 years. We are not sure whether that is the correct way of estimating the age of the appellant. What reassures us about the estimate of age is the fact that the same is determined by a Medical Board comprising Professors of Anatomy, Radiodiagnosis and Forensic Medicine whose opinion must get the respect it deserves. That apart even if the age of the appellant was determined by the upper extremity limit i.e. 36 years the same would have been subject to variation of plus minus 2 years meaning thereby that he could as well be 34 years on the date of the examination. Taking his age as 34 years on the date of the examination he would have been 18 years, 2 months and 7 days on the date of the occurrence but such an estimate would be only an estimate and the appellant may be entitled to additional benefit of one year in terms of lowering his age by one year in terms of Rule 12 (3) (b) (supra) which would then bring him to be 17 years and 2 months old, therefore, a juvenile.

17. In the totality of the circumstances, we have persuaded ourselves to go by the age estimate given by the Medical Board and to declare the appellant to be a juvenile as on the date of the occurrence no matter the offence committed by him is heinous and but for the protection available to him under the Act the appellant may have deserved the severest punishment permissible under law. The fact that the appellant has been in jail for nearly 14 years is the only cold comfort for us to let out of jail one who has been found guilty of rape and murder of an innocent young child.

18. In the result, this appeal succeeds but only in part and to the extent that while the conviction of the appellant for offences under Section 302 and 376 of IPC is affirmed the sentence awarded to him shall stand set aside with a direction that the appellant shall be set free from prison unless required in connection with any other case.

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Kulai Ibrahim @ Ibrahim Versus State Rep. by the Inspector of Police B-1, Bazaar Police Station, Coimbatore.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1308 OF 2014

[Arising out of Special Leave Petition (Crl.) No.9412 of 2013]

Kulai Ibrahim @ Ibrahim ... Appellant
Vs.
State Rep. by the Inspector of Police B-1, Bazaar Police Station, Coimbatore. ... Respondent

A. Juvenile Justice (Care and Protection of Children) Act, 2000 — Ss. 2(k), (1), 7-A, 20 and 49 — Plea of juvenility — Validity of — Documents filed in court as proof of — Found fabricated and case had been registered under Ss. 467, 471 and 420 IPC in respect of such fabricated documents against accused as well — Directions by Supreme Court to police to expedite investigation in the case of forgery of documents and file charge-sheet — Trial court directed to thereafter dispose case expeditiously, which judgment to be forwarded to Supreme Court — Appeal in murder case wherein appellant was claiming to be a juvenile on basis of purportedly fabricated documents, to be listed thereafter

— Case of murder — Appellant-accused and two others were convicted by trial court under Ss. 302 and 148 IPC, which was upheld by High Court — Appellant based plea of juvenility on school certificate issued by school where he had studied and birth certificate issued by Municipal Corporation — However, counter-affidavit filed on behalf of respondent by Police Inspector, inter alia, shows that appellant, with connivance of his father, conspired and obtained "birth certificate'* by practising fraud, to portray him as a juvenile — Case related to this aspect is registered under Ss. 467, 471 and 420 IPC — Herein, case of the appellant is that as on 2-9-1997, when the offence was committed, he was 17 years and 4 months' old — However, if what is stated in counter-affidavit is true, then appellant and his father are guilty of fraud of great magnitude — Since forgery case is being investigated, no opinion on this aspect is being expressed — Till allegations in forgery case are finally adjudicated upon and proved, Supreme Court cannot take registration of offence against appellant — In the circumstances, police directed to complete investigation in respect of forgery case registered against appellant's father (and appellant, if any) within one month — Charge-sheet, if any, be filed within 15 days thereafter — After filing of charge-sheet, trial court directed to dispose of case within two months and forward its judgment to Supreme Court immediately — Criminal appeal in murder case to be listed after trial court's judgment is received — Juvenile Justice (Care and Protection of Children} Rules, 2007 — Rr. 12 and 98 - Penal Code, 1860, Ss. 302, 148, 467, 471 and 420 (Paras 7 and 15 to 17)

Ketankumar Gopaibhai Tandel v. State of Gujarat, (2014) 12 SCC 341, applied

Yasuddin v. Inspector of Police, Criminal Appeal No. 963 of 2001, decided on 15-10-2004 (Mad), referred to

B. Juvenile Justice (Care and Protection of Children) Act, 2000 — Ss. 7-A, 2(k), (1) and 49 — Scope of S. 7-A(l) proviso — Plea of juvenility — Reiterated, can be raised before any court and at any stage, including after disposal of case (Paras 6 and 11)

Abuzar Hossain v. State of W.B, (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83, applied

Akbar Sheikh v. State of W.B, (2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431; Pawan v. State of Uttaranchal, (2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522; Jitendra Singh v. State ofU.P, (2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857, cited

C. Juvenile Justice (Care and Protection of Children) Rules, 2007 — R. 12(3) — Claim of juvenility — When Juvenile Justice Board or Committee should seek medical report for age determination of accused — Held, it is only in cases where documents mentioned in Rr. 12 (3)(a)(i) to (Hi) of JJ Rules, 2007 are unavailable or where they are found to be fabricated or manipulated, that it is necessary to obtain medical report for age determination of accused — In instant case, such documents are available, but they are according to police, fabricated or manipulated, and therefore, as per above observations, if fabrication is confirmed, it is necessary to obtain medical report for age determination of appellant — Delay cannot act as an impediment in seeking medical report, as S. 7-A of JJ Act, 2000 gives right to an accused to raise question of juvenility at any point of time even after disposal of case — Juvenile Justice (Care and Protection of Children) Act, 2000, S. 7-A (Paras 12 to 14)

Ashwani Kumar Saxena v. State of M.P, (2012) 9 SCC 750 : (2013) 1 SCC (Cri) 594, followed

D. Juvenile Justice (Care and Protection of Children) Act, 2000 — Ss. 2(k) and (1) — Claim of juvenility — If two views are possible — Held, JJ Act, 2000 is a beneficent legislation — If two views are possible, scales must tilt in favour of view that supports claim of juvenility

Advocates who appeared in this case:

Altaf Ahmed, Senior Advocate (S.K Abdul Kalam Bagadin Sha, V.S Lakshmi and A. Venayagam Balan, Advocates) for the Appellant;

M. Yogesh Kanna, Santha Kumaran and C. Vanita Chandra Kant Giri, Advocates, for the Respondent.

Chronological list of cases cited

1. (2014) 12 SCC 341, Ketankumar Gopalbhai Tandel v. State of Gujarat
2. (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83, Abuzar Hossain v. State of W.B
3. (2012) 9 SCC 750 : (2013) 1 SCC (Cri) 594, Ashwani Kumar Saxena v. State of M.P
4. (2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857, Jitendra Singh v. State of U.P
5. (2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522, Pawan v. State of Uttaranchal
6. (2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431, Akbar Sheikh v. State of W.B.
7. Criminal Appeal No. 963 of 2001, decided on 15-10-2004 (Mad), Yasuddin v. Inspector of Police

The Order of the Court was delivered by

(SMT.) RANJANA PRAKASH DESAI, J.—Leave granted. In this special leave petition, judgment and order dated 15/10/2004 passed by the Madras High Court in Criminal Appeal No.963 of 2001 is under challenge.

2. The appellant along with others was tried by the IInd Additional Sessions Judge, Coimbatore for offences punishable under Sections 147, 148, 149 and 302 of the Indian Penal Code ("the IPC"). The Sessions Court convicted the appellant and 2 others for offence punishable under Section 148 of the IPC and sentenced them to suffer rigorous imprisonment for one year each and to pay a fine of Rs.1,000/- each, in default, to undergo rigorous imprisonment for one month each. The Sessions Court also convicted each of them for offence punishable under Section 302 of the IPC and sentenced each of them to imprisonment for life. The appellant along with the other 2 accused preferred an appeal to the High Court. By the impugned judgment and order, the High Court dismissed the said appeal. Being aggrieved by the dismissal of the appeal, the appellant has approached this Court.

3. In the petition, there is no challenge to the conviction and sentence on merits. The only point raised is that the appellant was a juvenile when the offence was committed and, hence, he cannot be convicted. However, in the interest of justice, we have carefully perused the impugned judgment and the relevant record. We are of the considered opinion that the order of conviction and sentence is perfectly legal.

4. We must, therefore, look into the appellant's plea of juvenility. At the outset, we must mention that admittedly the plea of juvenility was not raised by the appellant in the trial court. It was for the first time raised in the High Court while the appeal was being argued. The High Court has noted in the impugned judgment that the plea of juvenility was neither raised before the trial court, nor raised in the memo of appeal before the High Court. The High Court noted that no application was filed before the High Court seeking permission to adduce evidence to establish that the appellant was a juvenile. The High Court, in the circumstances, rejected the plea.

5. The only question which now arises for consideration of this Court is whether the appellant was 'a juvenile' within the meaning of the term 'juvenile' as defined under the Juvenile Justice (Care and Protection of Children) Act, 2000 ("the J.J. Act, 2000") when the offence was committed and whether the plea of juvenility can be raised by him at this stage.

6. Section 7-A states the procedure to be followed when claim of juvenility is raised before any court. Proviso to Section 7-A states that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in the J.J. Act, 2000 and the rules made thereunder even if the juvenile has ceased to be so on or before the date of commencement of the J.J. Act, 2000. In this Court, therefore, the counsel for the appellant has renewed the plea of juvenility. The case of the appellant is that as on 2/9/1997, when the offence was committed, he was 17 years and 4 months' old. Section 2(k) of the J.J. Act, 2000 defines 'juvenile' as a person who has not completed 18 years of age. Section 2(l) defines 'juvenile in conflict with law' as a juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of such offence.

7. It is a settled position in law on a fair consideration of Section 2(k), 2(l), 7-A, 20 and 49 of the J.J. Act, 2000 read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 ("the said Rules") that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1/4/2001, which is the date of commencement of J.J. Act, 2000 could be treated as juveniles even if the claim of juvenility is raised after they have attained the age of 18 years on or before date of the commencement of the J.J. Act, 2000 which is 1/4/2001 and were undergoing sentences upon being convicted (See Ketankumar Gopalbhai Tandel v. State of Gujarat 1). Therefore, the claim of juvenility can be raised by the appellant.

8. Along with the criminal appeal, the appellant has filed an application praying that he may be permitted to urge additional grounds and bring on record additional documents. In the application, it is admitted that in the High 1 JT 2013 (10) SC 554 Court without filing necessary documents, the plea of juvenility was raised and it was rejected

by the High Court. It is further stated that the mother of the appellant died in the year 1997. After the death of his mother, his father had remarried and left the appellant and his brother alone. The appellant and his brother were living on their own. The appellant was tried for murder in the instant case. Since there was nobody to help the appellant, no steps were taken to bring the age of the appellant to the notice of the trial court as well as the High Court. It was only during the argument before the High Court that this plea was raised. Since the appellant was in jail, no steps were taken to obtain documents regarding his date of birth.

9. It is further stated that during the year 2011, the appellant's father came back to him and enquired about the case in which the appellant is convicted. Then he took steps to obtain school certificate from the Good Shephered Primary School, Fort, Coimbatore where the appellant had studied. It is further stated that the appellant's father was advised to obtain birth certificate from the Judicial Magistrate, Coimbatore as per the provisions of Section 13(3) of the Birth and Death Registration Act, 1969. Accordingly, his father filed a petition under the said Act and the Judicial Magistrate, after making enquiry, verified the date of birth of the appellant. Vide order dated 1/2/2013, the Judicial Magistrate directed the Coimbatore City Municipal Corporation to register the birth of the appellant in the Birth Register as 23/5/1980. It appears that as directed by the Judicial Magistrate, the Coimbatore City Municipal Corporation has issued birth certificate to the appellant showing his date of birth as 23/5/1980. Thus, the appellant is relying on the school certificate issued by the Good Shephered Primary School, Fort, Coimbatore and the birth certificate issued by the Coimbatore City Municipal Corporation. These documents on which the appellant has placed reliance are annexed to the affidavit and have thus come on record.

10. Counter affidavit has been filed on behalf of the respondent by R. Srinivasalu s/o. N. Ramachandran, presently working as Inspector of Police, B-12, Ukkadam Police Station, Coimbatore City, Tamil Nadu. In this affidavit, it is stated that the appellant, with connivance of his father Mr. Abdul Razak, conspired and obtained fake record sheet and produced the same before the court and obtained 'Birth Certificate' showing appellant's birth date as 23/5/1980 by practicing fraud to portray him as a juvenile. The gist of the affidavit is as under:

a) When the appellant surrendered before Judicial Magistrate, Udumalpet on 18/9/1997, in the Surrender Petition, he gave his age as 20 years.

b) In the Memo of Appearance filed by the appellant's counsel at that stage, his age is mentioned as 20 years.

c) In the Form of Remand Warrant dated 18/9/1997 issued by learned Magistrate, the appellant's age is mentioned as 20 years as per the Descriptive Roll. Form of Remand warrant is annexed to the affidavit.

d) As required by the J.J. Act, 2000, the appellant has not produced the admission register of the school which he attended for the first time.

e) The appellant has produced record sheet issued by Good Shepherd Primary School, Fort, Coimbatore dated 15/11/2011. The enquiry made by the respondent reveals that no record sheet was ever issued by the Head Master of the school and, hence, it is a forged document. The respondent has verified the school admission register maintained at Good Shepherd Primary School and found that no such student by name 'A. Ibrahim s/o. Abdul Razak' studied in that school, at all. The respondent had filed a requisition to the Head Master to make enquiry and find out whether the record sheet filed by the appellant before this Court dated 15/11/2011 was issued by the Head Master of that school. The Head Master gave a written reply to the respondent that he had been working in the said school from 1/6/2010 onwards and that the said record sheet produced by the appellant was not issued by the school. The Head Master further stated that the certificate has been signed by one Jesudas as the Head Master on 15/11/2011, but no such person by name Jesudas was the Head Master of the school as on 15/11/2011. Jesudas had retired as Head Master as early as on 31/5/2010.

f) The present Head Master of the school has filed complaint at B-12, Ukkadam Police Station, Coimbatore City that somebody has issued a forged record sheet in favour of A. Ibrahim s/o. Abdul Razak purporting to have been issued by the Head Master of the said school and Crime No.1722 of 2013 is registered under Sections 467, 471 and 420 of the IPC on 31/12/2013.

g) Verification certificate dated 31/12/2013 issued by the present Head Master Mr. A. Francis Clement Vimal establishes that he verified and compared the available school records and concluded that the alleged admission No.526 is related to S. Dinakaran s/o. Sreedharan, who is some other student of the institution and certainly not the appellant. The record sheet is, therefore, forged. Verification report of the present Head Master is annexed to the counter affidavit. Copies of the complaint filed by the present Head Master, the FIR registered on the basis thereof are also annexed to the counter affidavit. It is stated that the investigation is in progress.

h) K. Abdul Razak s/o. Late Sulaiman filed CMP No.57 of 2013 in the court of Judicial Magistrate, Coimbatore stating that he was father of A. Ibrahim, the appellant. He prayed for an order directing the Municipal Corporation to register the birth of the appellant in the Birth Register. The only respondent impleaded therein was the Birth & Death Registrar, Coimbatore City Municipal Corporation. This petition was filed under Section 13(3) of the Birth & Death Registration Act, 1969. Certain documents which were not genuine were filed along with it for a declaration that date of birth of the appellant was 23/5/1980. Inspector of

Police, Coimbatore City, ought to have been made a party to the application and it should have been informed to the court that the documents were to be submitted in the Supreme Court, but that was not done.

i) The order passed by the Judicial Magistrate shows that it was an ex-parte order. The Birth & Death Registrar, Coimbatore City Municipal Corporation did not appear before the court. It is not mentioned whether the court summons was served on the Birth & Death Registrar. The Magistrate's order states that five documents were produced by the appellant's side and they were marked. These documents were not proved in accordance with the procedures known to law.

j) The appellant has not produced matriculation or equivalent certificate or date of birth certificate from the school first attended by him as per Rule 12 of the said Rules. Even though, he has produced a birth certificate issued by the Municipal Corporation, it is evident that the birth of the appellant was not entered in the birth register soon after his birth, but it was entered very recently by the end of 2013. Therefore, the certificate issued by the Corporation does not inspire confidence.

11. In Abuzar Hossain alias Gulam Hossain v. State of West Bengal2 a three Judge Bench of this Court considered the question as to when should a claim of juvenility be recognized and sent for determination when it is raised for the first time in appeal or before this Court or raised in trial and appeal but not pressed and then pressed for the first time before this Court or even raised for the first time after final disposal of the case. After considering the 2 (2012) 10 SCC 489 relevant judgments on the point this Court summarized the position in law as follows:

"39.1. A claim of juvenility may be raised at any stage even after the final disposal of the case. It may be raised for the first time before this Court as well after the final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in the appeal court.

39.2. For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.

39.3. As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected. In Akbar Sheikh [Akbar Sheikh v. State of W.B. (2009) 7 SCC 415] and Pawan [Pawan v. State of Uttaranchal (2009) 15 SCC 259] these documents were not found prima facie credible while in Jitendra Singh [Jitendra Singh v. State of U.P. (2010) 13 SCC 523] the documents viz. school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent.
39.4. An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of the age of the delinquent.

39.5. The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in the 2000 Act are not defeated by the hypertechnical approach and the persons who are entitled to get benefits of the 2000 Act get such benefits. The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.

39.6. Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the court at the threshold whenever raised."

12. In Ashwani Kumar Saxena v. State of M.P. 3 this Court dealt with provisions of the J.J. Act, 2000 and the said Rules. The appellant therein and two others were chargesheeted inter alia for offences punishable under Section 302 of the IPC. The case was pending before the Sessions Court. The appellant filed an application before the Chief Judicial Magistrate under Sections 6 and 7 of the J.J. Act, 2000 claiming that he was a juvenile on the date of the incident and, hence, the criminal court had no jurisdiction to entertain the case and that it be transferred to Juvenile Justice Board. In support of his claim, the appellant 3 (2012) 9 SCC 750 produced the attested marksheets of the High School of the Board of Secondary Education as well as Eighth standard Board Examination. The widow of the

victim raised an objection. The appellant's father was examined, who placed reliance on several documents like the appellant's horoscope, transfer certificate issued by his school, etc. The Chief Judicial Magistrate conducted the appellant's ossification test and the medical evidence revealed that the appellant was a major when the offence was committed. The Chief Judicial Magistrate placed reliance on the ossification test and took the view that the appellant was a major on the date of incident. An appeal was carried to the Sessions Court. The Sessions Court severely commented inter alia on the evidence of the father of the appellant, on the non-examination of the Pandit who had prepared the horoscope and dismissed the appeal. The High Court confirmed the Sessions Court's order. This Court considered the scheme of the J.J. Act, 2000 and the said Rules and observed as under:

"32. Age determination inquiry" contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year."

13. Though in this paragraph, this Court observed that the question of obtaining medical opinion from a duly constituted Medical Board arises only if the above-mentioned documents are unavailable, this Court went on to further observe that only in those cases, where documents mentioned in Section 12(a) (i) to (iii) of the J.J. Act, 2000 are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the Committee need to go for medical report for age determination. Thus in cases where documents mentioned in Section 12(a)(i) to (iii) of the J.J. Act, 2000 are unavailable or where they are found to be fabricated or manipulated, it is necessary to obtain medical report for age determination of the accused. In this case the documents are available but they are, according to the police, fabricated or manipulated and therefore as per the above observations of this Court if the fabrication is confirmed, it is necessary to go for medical report for age determination of the appellant. Delay cannot act as an impediment in seeking medical report as Section 7-A of the J.J. Act, 2000 gives right to an accused to raise the question of juvenility at any point of time even after disposal of the case. This has been confirmed in Ashwani Kumar. Moreover, J.J. Act, 2000 is a beneficient legislation. If two views are possible scales must tilt in favour of the view that supports the claim of juvenility. While we acknowledge this position in law there is a disquieting feature of this case which cannot be ignored. We have already alluded to the counter affidavit of Shri R. Srinivasalu, Inspector of Police. If what is stated in that affidavit is true then the appellant and his father are guilty of fraud of great magnitude. A case is registered against the appellant's father at the Ukkadam Police Station under Section 467, 471 and 420 of the IPC. Law will take its own course and the guilty will be adequately punished if the case is proved against them. Since the case is being investigated, we do not want to express any opinion on this aspect. Till the allegations are finally adjudicated upon and proved, we cannot take registration of the offence against the appellant.

14. In the circumstances, we direct the police to complete the investigation in respect of case registered against the appellant's father (and the appellant, if any) within one month. The charge-sheet, if any, be filed within 15 days thereafter. After filing of the charge-sheet, the trial court shall dispose of the case within two months. The case be disposed of independently and in accordance with law as we have not expressed any final opinion on the merits of that case. The trial court shall forward its judgment to this Court immediately.

15. List the criminal appeal after the trial court's judgment is received.

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Recent Judgments

1. Abdul Razzaq vs State of U.P., 2015 SCC OnLine SC 217

   (Pertaining to section 7 A of J.J. Act - Accused was convicted and sentenced in 1980, but as per J.J. Act 200, he was a juvenile at the time of occurrence- held he is entitle to get benefit of J.J. Act- finally released after 14 years of imprisonment.)

2. Darga Ram vs State of Rajasthan, (2015) 2 SCC 775

   (Pertaining to Rule 12 of J.J. Rules 2007 - age determination - giving benefit of lower margin in age determination on the basis of medical.)

3. Kulai Ibrahim @ Ibrahim vs State, (2014) 12 SCC 332

   (Pertaining to section 2(k), (1), 7A, 20 and 49 of J.J. Act - age determination of juvenile - only in cases where documents mentioned in Rule 12 (3)(a)(i) to (iii) of J.J. Rules are unavailable or where it found to be fabricated or manipulated

   - it is necessary to obtain medical assessment.)

4. Hakkim vs State, (2014) 13 SCC 427
5. Upendra Pradhan vs State of Orissa, 2015 SCC On-Line SC 397
6. Ram Narain vs State of U.P., 2015 SCC On-Line SC 696

   (Above three case laws are pertaining to section 15, 64 (2)(k) & (i) of J.J. Act

   - juvenile had already suffered more than maximum period of detention as provided under J.J. Act - Hence - not be detained any further in instant case.)

7. Gaurav Kumar vs State of Haryana, 2015 SCC On-Line SC 28

   (Pertaining to need of re-look, re-scrutinize and re-visit - the relevant provisions under the J.J. Act 2000, at least in respect of offences, which are heinous in nature.)

8. Sikander Mahto vs Tunna, (2014) 4 SCC 28

   (Pertaining to section 7A of J.J. Act - accused relying on certificate issued by school proved to be false by principle - other school certificate produced by victim side showing that accused was 21 years old on date of incident - claim of juvenility liable to be rejected.)

9. Shabnam Hashmi vs Union of India, (2014) 4 SCC 1

   (Pertaining to article 14, 15 & 44 of the Constitution of India and section 41 of J.J. Act - Held - adoption by any person irrespective of religion, caste, creed etc. - permissible - further held - J.J. Act is a secular law.)

10. Mahesh Jogi vs State of Rajasthan, 2014 SCC On-Line SC 1055
11. Nand Kishore vs State of M.P., 2014 SCC On-Line SC 1068
12. Indradeo Sao vs State of Bihar, 2015 SCC On-Line SC 399
13. Jitendra Singh @ Babboo Singh vs State of U.P., (2013) 11 SCC 193

    (Above four case laws are pertaining to section 7A of J.J. Act - accused was aged above 16 years and not a juvenile under J.J. Act 1986 - after commencement of J.J. Act 2000, trial court held that accused was not a juvenile - Held - not a juvenile is not correct - he is entitle to get benefit of J.J. Act 2000.)

14. State of M.P. vs Anoop Singh, 2015 SCC On-Line SC 603

    (Pertaining to age determination of rape victim - Held that rule 12 (3) of J.J. Rules 2007 is also applicable in determining the age of the rape victim.)

15. Subramanian Swamy vs Raju, (2014) 8 SCC 390

    (Hon'ble Court held that - the aim of J.J. System is to reform and rehabilitate the errant juvenile, in other hand criminal trial aims at finding guilt or innocence with object to punish guilty - J.J. System and criminal justice system is therefore different.)

16. Ashwani Kumar Saxena vs State of M.P.

    (Pertaining to age determination of Juveniles under Rule 12 of J.J. Rules

17. Shah Nawaz v. State of UP &Anr, AIR 2011 SC3107

    (Pertaining to age determination of juveniles - Held - school leaving certificate and marks sheet are also relevant documents for proof of age.)`

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SECTION - IV

CHILD PROTECTION SERVICE PROVIDERS DIRECTORY

जिला समाज कल्याण पदाधिकारियों का नाम, मोबाईल संख्या एवं ईमेल

क्रम	नाम	जिला का नाम	मोबाईल सं0	Email-id
1	नृपेन्द्र नारायण वर्मा	राँची	9431959326	awc1.monitoring@gmail.com
2	मनीष वत्स (प्रभार) कार्यपालक दण्डाधिकारी	गुमला	9546887242	awc3.monitoring@gmail.com
3	संजय कुमार ठाकुर	लोहरदगा	"7739612099 8986682572"	awc4.monitoring@gmail.com
4	मो0 इसलामुल हक	सिमडेगा	9546557789	awc5.monitoring@gmail.com
5	लाल सिंह कुरील	खूंटी	9934165195	awc2.monitoring@gmail.com
6	राजेश कुमार लिण्डा (प्रभार) कार्यपालक दण्डाधिकारी	पष्ठिचमी सिंहभूम	9431363716	"awc10.monitoring@gmail.com chaibasa.dlao@gmail.com"
7	रंजना मिश्रा (प्रभार)	पूर्वी सिंहभूम	8271110111	awc6.monitoring@gmail.com
8	पारसनाथ यादव	सरायकेला	9431398544	awc11.monitoring@gmail.com
9	श्री लालचन्द्र डाडेल	पलामू	9572159600	awc13.monitoring@gmail.com
10	योगेन्द्र प्रसाद (प्रभार) कार्यपालक दण्डाधिकारी	लातेहार	9430140930	awc14.monitoring@gmail.com
11	डी0एन0 सिंह	गढ़वा	9431384474	"awc12.monitoring@gmail.com dnsinghdswo@gmail.com"
12	अनंत कुमार	हजारीबाग	9431140245	awc15.monitoring@gmail.com
13	वंदना सेजवलकर (प्रभार)	बोकारो	"8651296925 7839062704"	awc22.monitoring@gmail.com
14	बन्धु फर्नानडीस	चतरा	9431174384	awc7.monitoring@gmail.com
15	गुंजन कुमारी सिन्हा (प्रभार) कार्यपालक दण्डाधिकारी	कोडरमा	7488532663	"awc8.monitoring@gmail.com manjuraniswansi@gmail.com"
16	अवधा नारायण प्रसाद (प्रभार)	गिरिडीह	9431145644	"awc16.monitoring@gmail.com dswo.giridih@gmail.com"
17	परवेज इब्राहिम	धानबाद	9431390935	awc9.monitoring@gmail.com
18	श्रीमती मोनिका रानी टूटी (प्रभार) कार्यपालक दण्डाधिकारी	रामगढ़	9470119001	awc24.monitoring@gmail.com
19	प्रमोद कुमार झा (प्रभार)	पाकुड़	9431388200	awc20.monitoring@gmail.com
20	श्रीमती मेनका (प्रभार)	गोढा	8987263405	awc19.monitoring@gmail.com

21	राजीव रंजन सिन्हा (प्रभार) जिला योजना पदाधिकारी	देवघर	7631010650	awc17.monitoring@gmail.com
22	श्रीमती मनीषा तिर्की	दुमका	9608338203	awc23.monitoring@gmail.com
23	विनोद कु0 जायसवाल	साहेबगंज	9471197191	awc18.monitoring@gmail.com
24	प्रतिभा कुजुर	जामताड़ा	9199932667	awc21.monitoring@gmail.com

List of S.J.P.U. of Jharkhand

S.No.	Name	Post	Contact No.	Name of Distt.
1.	Sri Harishchandra Singh	S.J.P.U.	9431706166	Ranchi
2.	Sri Rakesh Ranjan	S.J.P.U.	9431706156	Khunti
3.	Sri T.N.Singh	S.J.P.U.	9431942613	Gumla
4.	Sri Saroj Kumar Srivastav	S.J.P.U.	9431706229	Simdega
5.	Sri Ashok Kumar	S.J.P.U.	9431706219	Lohardaga
6.	Sri Sudhir Kumar	S.J.P.U.	9431706456	Chaibasa
7.	Sri Devedi Kumar Bhushan	S.J.P.U.	9431706536	Sraikela
8.	Sri M.N. Singh	S.J.P.U.	9431706490	Jamshedpur
9.	Sri Deep Narayan Rajak	S.J.P.U.	9431750995	Palamu
10.	Sri Vivekanand Thakur	S.J.P.U.	9431706266	Latehar
11.	Sri Ajay Kumar Singh	S.J.P.U.	9431147292	Gharwa
12.	Sri Krishna Kumar Mahto	S.J.P.U.	9431706301	Hazaribag
13.	Sri Gopinath Tiwari	S.J.P.U.	9835187934	Ramghar
14.	Sri Harendra Tiwari	S.J.P.U.	9431706352	Koderma
15.	Sri Arun Kumar Tirky	S.J.P.U.	9431437399	Chatra
16	Sri Amar Nath	S.J.P.U.	9431706329	Giridih
17.	Sri Amit Kumar	S.J.P.U.	9431706374	Dhanbad
18.	Sri D.S.K. Minj	S.J.P.U.	9431706426	Bokaro
19.	Sri Vishnu Prasad Choudhry	S.J.P.U.	9430591005	Dumka
20.	Sri Arun Kumar Rai	S.J.P.U.	9431134794	Godda
21.	Sri Balmiki Singh	S.J.P.U.	8051800564	Jamtara
22.	Sri Arbind Uppadhaya	S.J.P.U.	9470591062	Deoghar
23.	Sri Gajendra Prasad Singh	S.J.P.U.	9470595085	Sahebganj
24.	Sri Hari Singh Bari	S.J.P.U.	9431381267	Pakur
25.	Sri Pritvi Nath Tiwari	S.J.P.U.	8409532019	Rail Dhanbad
26.	Sri Jagat Mohan Ram	S.J.P.U.	9473376299	Rail Jamshedpur

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला लातेहार)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	गिरिडीह	नगर थाना	इब्राहिम मिया	पु0अ0नि0	8862932079
2.	गिरिडीह	मुफ्फसिल थाना	केदार प्रसाद	पु0अ0नि0	8051202906
3.	गिरिडीह	बैंगाबाद थाना	गोमेन सोरेन	स0अ0नि0	9470364214
4.	गिरिडीह	गांडेय थाना	लालजी प्रसाद	पु0अ0नि0	9471134949
5.	गिरिडीह	अहिल्याणपुर	ज्ञानेन्द्र शर्मा	स0अ0नि0	9431147595
6.	गिरिडीह	ताराटांड थाना	देवेन्द्र सिंह	स0अ0नि0	9931303649
7.	गिरिडीह	जमुआ थाना	गोबिन्द झा	स0अ0नि0	9430138883
8.	गिरिडीह	धानवार थाना	रामबली प्रसाद	पु0अ0नि0	9693010331
9.	गिरिडीह	हिरोडीह थाना	पुरूषोतम लांगुरी	पु0अ0नि0	9955811781
10.	गिरिडीह	डुमरी थाना	चतुर्भुज झा	पु0अ0नि0	9835355871
11.	गिरिडीह	निमियाघाट थाना	दिलीप कुमार बड़ाईक	पु0अ0नि0	9955085730
12.	गिरिडीह	पीरटांड थाना	बैजु बड़ाईक	पु0अ0नि0	8102701223
13.	गिरिडीह	गावां थाना	संदीप कुजूर	स0ह0नि0	8873564718
14.	गिरिडीह	देवरी थाना	नवल किशोर मिश्रा	पु0अ0नि0	8986611784
15.	गिरिडीह	तिसरी थाना	ललन प्रताप सिंह	स0अ0नि0	9431187104
16.	गिरिडीह	मेलवाघटी थाना	नागेन्द्र कुमार सिंह	स0अ0नि0	9835113578
17.	गिरिडीह	लोकायनयनपुर थाना	रमेश उरांव	स0अ0नि0	9835599320
18.	गिरिडीह	बगोदर थाना	गरीब दास	पु0अ0नि0	9162971483
19.	गिरिडीह	सरियथाना	चन्द्रिका पासवान	पु0अ0नि0	9006452717
20.	गिरिडीह	बिरनी थाना	योगेन्द्र प्रसाद सिंह	पु0अ0नि0	9430149350

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला पश्चिमी सिंहभूम, चाईबासा)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	पश्चिमी सिंहभूम	सदर थाना	सुदामा साय	अ0नि0	9430200483
2.	पश्चिमी सिंहभूम	मुफ्फलिस थाना	श्रीपत राम	अ0नि0	8226803919
3.	पश्चिमी सिंहभूम	मंझारी थाना	कृपा सागर सिंह	स0अ0नि0	8102029676
4.	पश्चिमी सिंहभूम	तांतनगर ओ0पी0	मजहर हुसैन	अ0नि0	7782931964
5.	पश्चिमी सिंहभूम	पाण्ड्रासाली ओ0पी0	विनोद कुमार शर्मा	स0अ0नि0	9204498869
6.	पश्चिमी सिंहभूम	झींकपानी थाना	वरूण कुमार प्रधान	अ0नि0	9199059695
7.	पश्चिमी सिंहभूम	टोन्टो थाना	प्रभुदान टोपनो	अ0नि0	9931348196
8.	पश्चिमी सिंहभूम	हाटगम्हरिया थाना	अशोक कुमार सिन्हा	अ0नि0	9431333717
9.	पश्चिमी सिंहभूम	मझगांव थाना	मदन तिवारी	स0अ0नि0	7549140577

10.	पश्चिमी सिंहभूम	कुमारडुंगी थाना	केदार राम	स0अ0नि0	9304772751
11.	पश्चिमी सिंहभूम	जगन्नाथपुर थाना	रमोद कुमार सिंह (था.प्र)	अ0नि0	9470968609,
12.	पश्चिमी सिंहभूम	जेटेया थाना	उमाकान्त कुमार (था.प्र)	अ0नि0	8804467595,
13.	पश्चिमी सिंहभूम	नोवामुण्डी थाना	बानेश्वर तिवारी	अ0नि0	9939970135
14.	पश्चिमी सिंहभूम	बड़ाजामदा ओ0पी0	साविर उरॉव	स0अ0नि0	8102151699
15.	पश्चिमी सिंहभूम	किरीबुरू थाना	मदन प्रसाद खरवार (था.प्र)	अ0नि0	9431377133
16.	पश्चिमी सिंहभूम	गुवा थाना	सहदेव टोप्पो	पु0अ0नि0	9430150005
17.	पश्चिमी सिंहभूम	छोटानागपुर थाना	राम कृष्ण मुर्म	स0अ0नि0	9470392707
18.	पश्चिमी सिंहभूम	मनोहरपुर थाना	बेचन राम	अ0नि0	9430378866
19.	पश्चिमी सिंहभूम	जरायकेला थाना	पन्नालाल महथा	स0अ0नि0	08895785069
20.	पश्चिमी सिंहभूम	चिड़िया ओ0पी0	जयकिशोर शर्मा	स0अ0नि0	9939302205
21.	पश्चिमी सिंहभूम	गोईलकेरा थाना	वाल्टर होरो	अ0नि0	9771324465
22.	पश्चिमी सिंहभूम	सेनुआ थाना	प्रकाश सिंह रवैया	अ0नि0	9934393155
23.	पश्चिमी सिंहभूम	चकधरपुर थाना	देवेन्द्र सिंह	अ0नि0	9470501395
24.	पश्चिमी सिंहभूम	टोकलो थाना	राजेन्द्र प्रसाद	स0ह0नि0	9471335976, 919996945
25.	पश्चिमी सिंहभूम	करायकेला थाना	लक्ष्मण ओझा	अ0नि0	8521916795
26.	पश्चिमी सिंहभूम	टेबो थाना	रविन्द्र चौधारी	स0अ0नि0	9798285003, 943134067
27.	पश्चिमी सिंहभूम	बंदगांव थाना	मारवाडी उरॉव	स0अ0नि0	9931133764

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला जामताड़ा)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	जामताड़ा	जामताड़ा थाना	नागेन्द्र सिंह	अ0नि0	9431314853
2.	जामताड़ा	मिहिजाम थाना	श्रीकान्त यादव	स0अ0नि0	9431735826
3.	जामताड़ा	करमाटांड थाना	ललेश्वर पासवान	स0अ0नि0	9934779868
4.	जामताड़ा	नरायणपुर थाना	चम्बुरू बानरा	स0अ0नि0	8969507771
5.	जामताड़ा	कुण्डहित थाना	सतीश चन्द्र चौधारी	अ0नि0	8873712200
6.	जामताड़ा	बागडेहरी थाना	नारायण झा	स0अ0नि0	9576848376
7.	जामताड़ा	फतेहपुर थाना	राजकुमार सिंह	स0अ0नि0	9905703137
8.	जामताड़ा	नाला थाना	रामनाथ प्रसाद	अ0नि0	9955952096
9.	जामताड़ा	बिन्दापाथर थाना	कमलेश्वरी थाना	अ0नि0	9939105491
10.	जामताड़ा	महिला थाना	मीरा पाल	म0स0अ0नि0	9431396844
11.	जामताड़ा	अनु0जा0/जनजा0 थाना	मीरा पाल	म0स0अ0नि0	9431396844
13.	गिरिडीह	गावां थाना	संदीप कुजूर	स0ह0नि0	8873564718
14.	गिरिडीह	देवरी थाना	नवल किशोर मिश्रा	पु0अ0नि0	8986611784
15.	गिरिडीह	तिसरी थाना	ललन प्रताप सिंह	स0अ0नि0	9431187104

16.	गिरिडीह	मेलवाघटी थाना	नागेन्द्र कुमार सिंह	स0अ0नि0	9835113578
17.	गिरिडीह	लोकायनयनपुर थाना	रमेश उरांव	स0अ0नि0	9835599320
18.	गिरिडीह	बगोदर थाना	गरीब दास	पु0अ0नि0	9162971483
19.	गिरिडीह	सरियथाना	चन्द्रिका पासवान	पु0अ0नि0	9006452717
20.	गिरिडीह	बिरनी थाना	योगेन्द्र प्रसाद सिंह	पु0अ0नि0	9430149350

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला पूर्वी सिंहभूम)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	पूर्वी सिंहभूम	मानगो थाना	राजेन्द्र महतो	स0अ0नि0	0657-2461571
2.	पूर्वी सिंहभूम	कदमो थाना	ललीत कुमार पाण्डेय	स0अ0नि0	0657-2221670
3.	पूर्वी सिंहभूम	बागबेडा थाना	भरत नारायण राम	स0अ0नि0	0657-2297297
4.	पूर्वी सिंहभूम	पोटका थाना	दीन बन्धु सिंह	स0अ0नि0	0657-2788206
5.	पूर्वी सिंहभूम	सीतारामडेरा थाना	मोतीलाल प्रसाद	स0अ0नि0	0657-2431578
6.	पूर्वी सिंहभूम	परशुडीह थाना	छोटेनारायण सिंह	स0अ0नि0	0657-2299811
7.	पूर्वी सिंहभूम	उलीडीह थाना	शिवजतन सोरेन	स0अ0नि0	0657-2651360
8.	पूर्वी सिंहभूम	बर्मामार्न्ईस थाना	रमेन्त कुमार पान	स0अ0नि0	0657-2345681
9.	पूर्वी सिंहभूम	बिष्टुपुर थाना	कासुमिउद्दीन अहमद	स0अ0नि0	0657-2431029
10.	पूर्वी सिंहभूम	डुमरिया थाना	महिराम महतो	स0अ0नि0	06585-279027
11.	पूर्वी सिंहभूम	गुड़ाबन्धाा थाना	दीनानाथ चौधारी	स0अ0नि0	06585-290304
12.	पूर्वी सिंहभूम	एम0जी0एम0 थाना	रत्नेश कुमार मिश्रा	स0अ0नि0	0657-2460593
13.	पूर्वी सिंहभूम	गोलमुरी थाना	महेन्द्र प्रसाद सिंह	स0अ0नि0	0657-2271570
14.	पूर्वी सिंहभूम	घाटशिला थाना	अब्दुल राजीक खॉ	स0अ0नि0	06585-225409
15.	पूर्वी सिंहभूम	साकची थाना	बासुदेव महतो	स0अ0नि0	0657-2431034
16.	पूर्वी सिंहभूम	सिदगोडा थाना	सुरेन्द्र प्रसाद सिंह - 02	स0अ0नि0	0657-2212582
17.	पूर्वी सिंहभूम	सोनारी थाना	म0स0अ0नि0 मकसीना सोरेन	स0अ0नि0	0657-2231579
18.	पूर्वी सिंहभूम	टेल्को थाना	महेन्द्र प्रसाद	स0अ0नि0	0657-2286041
19.	पूर्वी सिंहभूम	चक्कुलिया थाना	मुरली साह	स0अ0नि0	06594-233334
20.	पूर्वी सिंहभूम	धालभूगढ थाना	चन्द्रशेखर चौबे	स0अ0नि0	06585-235644
21.	पूर्वी सिंहभूम	बहरागोडा थाना	यमुना चौधरी	स0अ0नि0	06594-224229
22.	पूर्वी सिंहभूम	बोडाम थाना	बिजय कुमार	स0अ0नि0	------
23.	पूर्वी सिंहभूम	आजादनगर थाना	सुरेश कुमार शर्मा	स0अ0नि0	0657-2462572
24.	पूर्वी सिंहभूम	गोबिन्दपुर थाना	बच्चा तिवारी	स0अ0नि0	0657-2277164
25.	पूर्वी सिंहभूम	श्यामसुन्दर थाना	रंजन कुमार सिंह	स0अ0नि0	06585-232124
26.	पूर्वी सिंहभूम	जुगसलाई थाना	अशोक कुमार महतो	स0अ0नि0	0657-2431395
27.	पूर्वी सिंहभूम	गालुडीह थाना	रंजीत नारायण झा	स0अ0नि0	-----
28.	पूर्वी सिंहभूम	जादुगोडा थाना	सुशील डहंगा	स0अ0नि0	0657-2730345
29.	पूर्वी सिंहभूम	मुसाबनी थाना	उदित नारायण सिंह	स0अ0नि0	06585-275729

30.	पूर्वी सिंहभूम	बरसोल थाना	सुरजमल तिवारी	स0अ0नि0	06594-242110
31.	पूर्वी सिंहभूम	पटमदा थाना	अनुज कुमार	स0अ0नि0	0657-2755315
32.	पूर्वी सिंहभूम	कोवाली थाना	सत्येन्द्र कुमार सिंह	स0अ0नि0	------
33.	पूर्वी सिंहभूम	सुन्दरनगर थाना	बिजय कुमार सिंह	स0अ0नि0	0657-2299822
34.	पूर्वी सिंहभूम	बिरसानगर थाना	मुन्द्रिका सिंह	स0अ0नि0	0657-2282800
35.	पूर्वी सिंहभूम	मउभण्डार ओ0पी0	केदार प्रसाद सिंह	स0अ0नि0	06585-227171
36.	पूर्वी सिंहभूम	कमलपुर थाना	रविन्द्र शर्मा	स0अ0नि0	0657-2765225

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला राँची)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	रांची	सिकीदरी	हरिलाल मांझी	अ0नि0	8674864984
2.	रांची	टाटीसिलवे	बालेश्वर प्रसाद	अ0नि0	8274864984
3.	रांची	ओरमांझी	योगेन्द्र शुक्ला	अ0नि0	9204574630
4.	रांची	रातु	मधेश्वर राय	सअनि0	9431797442
5.	रांची	कांके	सखराम उरांव	अ0नि0	9199480964
6.	रांची	पिठोरिया	बिनोद ठाकुर	सनि0	9334841023
7.	रांची	बुण्डु	जयशंकर प्रसाद सिंह	अ0नि0	9693644091
8.	रांची	तमाड़	पैतुक एक्का	अ0नि0	9122800096
9.	रांची	चान्हो	छठु राम बौड़	अ0नि0	8757285540
10.	रांची	बेड़ो	बिरन्द्रे कुमार	सअनि0	9955029015
11.	रांची	ईटकी	अशोक कुमार सिन्हा	सअनि0	7739839074
12.	रांची	नगरी	शिवपुकार सिंह	सअनि0	9931737391
13.	रांची	नरकोपी	ईमिल एक्का	सअनि0	8809215533
14.	रांची	मैक्लुक्सी गंज	डी0 एन0 सिंह	सअनि0	9955392970
15.	रांची	अनगड़ा	उपेन्द्र राय	सअनि0	9955176511
16.	रांची	राहे ओ0	नित्यान्रद कु0 रमण	अ0नि0	9931228647
17.	रांची	नामकुम	सायेब अख्तर	सअनि0	7631166283
18.	रांची	सिल्ली	दुखा दास	अ0नि0	9905113422
19.	रांची	लापुंग	प्रमरंजन सिंह	सअनि0	8084880316
20.	रांची	बुढमू	राम बलिराम	अ0नि0	8969604321
21.	रांची	खलारी थाना	जीना बालमोचू	सअनि0	9661510911
22.	रांची	सोनाहातु थाना	शिवशंकर पाण्डेय	अ0नि0	9204250350
23.	रांची	मुरी ओ0पी0	विभुति राम	अ0नि0	9572641312
24.	रांची	माण्डर थाना	कामेश्वर प्रसाद सिंह	सअनि0	9234871844
25.	रांची	कोतवाली	आनन्द कुमार सिंह	अ0नि0	9304837769
26.	रांची	सुखदेवनगर	पुष्कर सिंह	अ0नि0	9162165773
27.	रांची	लालपुर	जगदीश प्रसाद सिंह	सअनि0	9939633373

28.	रांची	डेलीमार्केट	टी0पी0 शर्मा	सअनि0	9771359269
29.	रांची	पण्डरा	दिवाकर प्रसाद सिंह	अ0नि0	9939669765
30.	रांची	अरगोड़ा	जयकृष्णा सिंह	सअनि0	9835781285
31.	रांची	टिपुदाना	अरविन्द कुमार	सअनि0	9934189761
32.	रांची	धुर्वा थाना	रामवतार	अ0नि0	7654657099
33.	रांची	गोन्दा	रामेश्वर राम	अ0नि0	9939205672
34.	रांची	बी0आई0टी0 मेसरा	नोरेन सोरेन	अ0नि0	9939141907
35.	रांची	चुटिया थाना	बालेश्वर यादव	सअनि0	9934118902
36.	रांची	बरियातु	पंचानन्द सिंह	सअनि0	9431672331
37.	रांची	सदर थाना	बि0 के0 सिंह	सअनि0	9431326314
38.	रांची	लोअर बाजार	लालन प्रसाद	अ0नि0	9934502014
39.	रांची	डोरण्डा	रामदेवराम रवि	अ0नि0	9471504070
40.	रांची	जगरनाथपुर	रामशंकर दूबे	अ0नि0	9835928205
41.	रांची	पुन्दाग ओ0पी0	देवशंकर प्रसाद	सअनि0	9471581827
42.	रांची	महिला थाना	मार्ग्रेट तिर्की	सअनि0	9431176296
43.	रॉची	हिन्दपीढ़ी थाना	–	अ0नि0	0651-2205409
44.	रॉची	एस.सी./एस.टी. थाना	–		

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला रेल जमशेदपुर)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	रेल जमशेदपुर	रेल थाना टाटानगर	विनोद कु0 सिंह	पु0अ0नि0	9006023647
2.	रेल जमशेदपुर	रेल थाना बोकारो	शराफत अली	पु0अ0नि0	9199730451
3.	रेल जमशेदपुर	रेल थाना चक्रधारपुर	विजय कुमार	पु0अ0नि0	9504745777
4.	रेल जमशेदपुर	रेल थाना डंगवापौसी	सीताराम सिंह	पु0अ0नि0	9006789584
5.	रेल जमशेदपुर	रेल थाना रांची	सुरेश कुमार सिंह	स0अ0नि0	9470523526
6.	रेल जमशेदपुर	रेल थाना हटिया	शीतल उरांव	स0अ0नि0	9608852084
7.	रेल जमशेदपुर	रेल थाना मुरी	गोबरा उरांव	स0अ0नि0	9430138984
8.	रेल जमशेदपुर	रेल थाना चांडिल	उमेश पासवान	स0अ0नि0	9955207180

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला सिमडेगा)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	सिमडेगा	सिमडेगा थाना	विमल सिंह	स0अ0नि0	9771225140
2.	सिमडेगा	महिला थाना	बबन प्रसाद	स0अ0नि0	9939579341
3.	सिमडेगा	अनु0जाति/जनजाति थाना	विद्यानन्द पासवान	स0अ0नि0	8757748312
4.	सिमडेगा	टी0 टांगर थाना	सतन राम	स0अ0नि0	8521610745
5.	सिमडेगा	कुरडेग थाना	पंचलाल राम	स0अ0नि0	7677221970

6.	सिमडेगा	केरसई थाना	पृथ्वी हरिजन	स0अ0नि0	8083003587
7.	सिमडेगा	बोलबा थाना	रतन लाल यादव	स0अ0नि0	9931956772
8.	सिमडेगा	बानो थाना	सुरेन्द्र राम	स0अ0नि0	9798999002
9.	सिमडेगा	कोलेबिरा थाना	सुदेनारायण मांझी	स0अ0नि0	9430734761
10.	सिमडेगा	जलडेगा थाना	शम्भु शरण सहाय	स0अ0नि0	9431725481
11.	सिमडेगा	बांसजोर ओ0पी0	भैया सजंय कुमार नाथ शाह	स0अ0नि0	9431365673
12.	सिमडेगा	ओडगा ओ0पी0	मिथिलेश पासवान	स0अ0नि0	9905555172
13.	सिमडेगा	गिरदा ओ0पी0	सुनाराम बेसरा	स0अ0नि0	9162156240

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला चतरा)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	चतरा	सदर थाना	सियाराम मिश्रा	पु0अ0नि0	9122157907
2.	चतरा	गि)ौर थाना	नन्द किज़ ाोर सिंह	स0अ0नि0	9631170612
3.	चतरा	ईटखोरी थाना	देवनाथ सिंह	स0अ0नि0	8002027711
4.	चतरा	मयुरहण्ड थाना	राजघन सिंह	स0अ0नि0	9431163559
5.	चतरा	हंटरगंज थाना	विरजू उरांव	स0अ0नि0	9031736619
6.	चतरा	लावालौंग थाना	मन सिंह मुण्डा	पु0अ0नि0	7781964422
7.	चतरा	टण्डवा थाना	पीटर किण्डो	पु0अ0नि0	9431513735
8.	चतरा	पत्थलगढा थाना	प्रमोद कुमार सिंह	स0अ0नि0	8969840145
9.	चतरा	पिपरवाल थाना	उपेन्द्र सिंह	पु0अ0नि0	9931128115
10.	चतरा	राजपुर थाना	विनोद कुमार	स0अ0नि0	8102693654 9431179515
11.	चतरा	सिमरिया थाना	अनिल कुमार गुप्ता	पु0अ0नि0	9504125318
12.	चतरा	बशिष्ठट नगर	हरिशंकर प्रसाद	स0अ0नि0	7631109406 9431781798
13.	चतरा	प्रतापपुर थाना	लखीराम मुण्डा	स0अ0नि0	9909188178
14.	चतरा	कुन्दा थाना	राजेश टोप्पो	स0अ0नि0	8873128449

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला गोड्डा)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	गोड्डा	गोड्डा नगर प्रभारी	अरून कुमार राय	पु0अ0नि0	9431134794
2.	गोड्डा	गोड्डा नगर थाना	योगेन्द्र सिंह	पु0अ0नि0	9431134781
3.	गोड्डा	मुफस्सिल थाना	रतन कुमार सिंह	पु0अ0नि0	9431134782
4.	गोड्डा	पोडैयाहाट थाना	राजेश कुमार	पु0अ0नि0	9431134783
5.	गोड्डा	देवडांड़ थाना	पीर मुहमद	पु0अ0नि0	9431134784
6.	गोड्डा	सुन्दरपहाडी थाना	रामहरीश निराला	पु0अ0नि0	9431134785

7.	गोड्डा	पथरगामा थाना	सुधीर प्रसाद	पु0अ0नि0	9431134786
8.	गोड्डा	बसंतराय थाना	सुबोधा कुमार यादव	पु0अ0नि0	9835324635
9.	गोड्डा	महागामा थाना	पास्कल टोप्पो	पु0अ0नि0	9431134787
10.	गोड्डा	हनवारा थाना	जे0 एफ0 तिकी	पु0अ0नि0	9905112693
11.	गोड्डा	ललमटिया थाना	संजय कुमार	पु0अ0नि0	9431134788
12.	गोड्डा	बेआरीजोरा थाना	नन्दकिशोर प्रसाद सिंह	पु0अ0नि0	9430702815
13.	गोड्डा	मेहरमा थाना	भरत राम	पु0अ0नि0	8521476464
14.	गोड्डा	ठाकुरगंगटी थाना	योगेन्द्र प्रसाद	पु0अ0नि0	9798484516
15.	गोड्डा	बलबड्डा थाना	एच0 एन0 सिंह	पु0अ0नि0	735279198
16.	गोड्डा	राजाभीठा थाना	विजय उरांव	पु0अ0नि0	8969125746

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला पलामू)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	पलामू	सतबरवा ओ0 पी0	काली चरण बोदरा	पु0अ0नि0	9801358345
2.	पलामू	पड़वा थाना	महेन्द्र ठाकुर	पु0अ0नि0	9934669924
3.	पलामू	छतरपुर थाना	प्रमोद कुमार	पु0अ0नि0	9431150200
4.	पलामू	सदर थाना	नेमहंस गिद्धी	पु0अ0नि0	9472788154
5.	पलामू	विश्रामपुर थाना	भयाम नन्दन सिंह	पु0अ0नि0	9470149758 7739028500
6.	पलामू	पाण्डू थाना	निरंजन बाड़ा	पु0अ0नि0	9771323347
7.	पलामू	पाटन थाना	लक्ष्मण बान सिंह	पु0अ0नि0	8292953314
8.	पलामू	लेस्लीगंज थाना	पोलिकर कुजूर	पु0अ0नि0	9572642946
9.	पलामू	पाकी थाना	सत्यनारायण ठाकुर	पु0अ0नि0	9430724066
10.	पलामू	चैनपुर थाना	बेंजामिन पूर्ति	पु0अ0नि0	9631464241
11.	पलामू	भाहर थाना	पारसनाथ पासवन	पु0अ0नि0	9430331482
12.	पलामू	हैदरगगर थाना	उमाकांत तिवारी	स0अ0नि0	9572562463
13.	पलामू	रेहला थाना	शिवाकांत चौबे	स0अ0नि0	9199298002
14.	पलामू	हुसैनाबाद थाना	भादो सोरेन	स0अ0नि0	9929173795
15.	पलामू	तरहसी थाना	हरि राम पासवन	स0अ0नि0	9470385231
16.	पलामू	मनातु थाना	राम विनोद सिंह	स0अ0नि0	8809120061
17.	पलामू	पिपराटांड़ थाना	गंदरू उरांव	स0अ0नि0	7761831331
18.	पलामू	मोहम्दगंज थाना	रविंद प्रसाद	स0अ0नि0	9934732540
19.	पलामू	देवरी ओ0 पी0	अजय कुमार सिन्हा	स0अ0नि0	9006181145
20.	पलामू	महिला थाना	जयमंती सांगा	स0अ0नि0	9798333219
21	पलामू	हरिहरगंज थाना	रामचन्द कुमार	पु0अ0नि0	9905323627
22.	पलामू	रामगढ़ थाना	नागेन्द सिंह	स0अ0नि0	9572690069
23	पलामू	नौडीहा बाजार थाना	सुखनाथ लोहरा	स0अ0नि0	9798527591

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला खूँटी)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	खूँटी	खूँटी थाना	अराघना सिंह	अ0नि0	06528-220528
2.	खूँटी	मुरहू थाना	जगदीश चन्द मुर्मू	स0अ0नि0	06528-271188
3.	खूँटी	अड़की थाना	भगवान प्रसाद झा	अ0नि0	06528-256139
4.	खूँटी	तोरपा थाना	कविता	अ0नि0	06528-233385
5.	खूँटी	कर्रा थाना	विरेन्द बाखला	स0अ0नि0	06528-271149
6.	खूँटी	रनिया थाना	जितेन्द कुमार	पु0अ0नि0	06528-278011
7.	खूँटी	त्पकारा ओ0 पी0	बृजा राम	पु0अ0नि0	06528-278375

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला सरायकेला)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	सरायकेला	सरायकेला थाना	अराघना सिंह	अ0नि0	06528-220528
2.	सरायकेला	खरसॉवा थाना	विश्णु शंकर शुकला	स0अ0नि0	9931220161
3.	सरायकेला	राजनगर थाना	जतैन मिंज	स0अ0नि0	7677123836
4.	सरायकेला	कुचाई थाना	प्रेम नारायण सिंह	स0अ0नि0	9470134896
5.	सरायकेला	गम्हरीया थाना	राजघन सिंह	स0अ0नि0	7250001636
6.	सरायकेला	काण्ड्रा थाना	राजेश डे	स0अ0नि0	9905197940
7.	सरायकेला	आर0 आई0 थाना	दिनेशे राय	स0अ0नि0	9570199400
8.	सरायकेला	अदित्यपुर थाना	भगवान पाण्डे	स0अ0नि0	9470576207
9.	सरायकेला	चण्डिल थाना	दिनश्वर प्रसाद	स0अ0नि0	9534188699
10.	सरायकेला	नीमडीह थाना	अरविन्द शर्मा	स0अ0नि0	7549094779
11.	सरायकेला	चौका थाना	विजय बहादुर	स0अ0नि0	9572103359
12.	सरायकेला	तिरूलडीह थाना	नितेश्वर प्रसाद सिंह	स0अ0नि0	9470133249
13.	सरायकेला	ईचागढ़ थाना	भगवान सिंह	स0अ0नि0	9470308591
14.	सरायकेला	महिला थाना	क्रांति देवी	स0अ0नि0	9430727567

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला पाकुड)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1-	Pakur	Pakur Twon ps	Mohan Das	A.S.I.	06435-220401
2-	Pakur	Mufficek ps	Bhagwat Singh	S.I.	06435-222070
3-	Pakur	Hiranpur Ps	Dhanpatilohara	S.I.	06435-268329
4-	Pakur	Littapara Ps	Shivajee Sardar	A.S.I.	06435-227005
5-	Pakur	Amrapara Ps	Ananad Sharma	A.S.I.	06435-262667
6-	Pakur	Maheshpur Ps	Mithlesh Kumar	A.S.I.	06435-228088

7-	Pakur	Pakuria Ps	Shiv Kumar Tudu	S.I.	06435-250244
8-	Pakur	Pakur Mahila ps	Fuldeo Oraon	S.I.	06435-223420

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला देवघर)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	देवघर	नगर थाना	देवेन्द पासवान	अ0नि0	9931334614
2.	देवघर	जसिडीह थाना	सागर हेम्बम	अ0नि0	9801977818
3.	देवघर	मोहनपुर थाना	सेबेस्टियर बारला	अ0नि0	9931152004
4.	देवघर	कुण्डा थाना	छाउद हेरेंज	अ0नि0	9955802189
5.	देवघर	सारवॉ थाना	जगदिष्ठा सिंह	अ0नि0	9430708446
6.	देवघर	सोनारायठाढ़ी थाना	मोहन लाल मेहतो	अ0नि0	9955329045
7.	देवघर	सारठ थाना	प्रेम शंकर पाण्डे	अ0नि0	9304963495
8.	देवघर	पालाजोरी थाना	ब्रहमेश्वर पाठक	अ0नि0	7654196678
9.	देवघर	चितरा थाना	सुलेमान देमता	अ0नि0	8294053140
10.	देवघर	मधुपुर थाना	नुरैन खॉ	अ0नि0	9431940248
11.	देवघर	करौं थाना	राजकुमार पासवन	अ0नि0	9934571284
12.	देवघर	मार्गोमुण्डा थाना	सुबास्टियर मुर्मू	अ0नि0	9431978856
13.	देवघर	देवीपुर थाना	विशवनाथ राय	स0अ0नि0	9801346805
14.	देवघर	बबा मंदिर थाना	सुशमा तिर्की	स0अ0नि0	9431905030
15.	देवघर	महिला थाना	विनोद सिन्हा	स0अ0नि0	9608719044

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला सादेबगंज)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	साहेबगंज	नगर थाना	ईबरार अहमद	पु0अ0नि0	9430816218
2.	सहेबगंज	मुफसिल थाना	ब्रजेवर चतुवेदी	पु0अ0नि0	9931346457
3.	सहेबगंज	मिर्जाचौक थाना	मदन लाल मंडल	पु0अ0नि0	9835534938
4.	सहेबगंज	राजमहल थाना	अशोक प्रसाद सिंह	पु0अ0नि0	9480654499
5.	सहेबगंज	तलझारी थाना	प्रधान हेम्ब्रम	स0अ0नि0	9939339132
6.	सहेबगंज	राधानगर थाना	निलेश कुमार	पु0अ0नि0	9939537566
7.	सहेबगंज	कोटालपोखर थाना	अजय राम	स0अ0नि0	9973752350
8.	सहेबगंज	रांगा थाना	चन्दशेखर सिंह	पु0अ0नि0	9431556272
9.	सहेबगंज	बड़हरवा थाना	विजय सिंह	स0अ0नि0	8102747148
10.	सहेबगंज	बेरियो थाना	विशेवर सिंह	पु0अ0नि0	9835885051
11.	सहेबगंज	बरहेट थाना	धीरेश मोहन प्रसाद	स0अ0नि0	8102747148
12.	सहेबगंज	जिरवाबाड़ी थाना	राधोश्याम राम	पु0अ0नि0	9199513406

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला दुमका)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	दुमका	नगर थाना	देवब्रत पोददार	अ0नि0	9431363036 8292366966
2.	दुमका	मुस्सिल थाना	सरोज सिंह	अ0नि0	9470591021 9334557090
3.	दमका	जरमुण्डा थाना	शलैन्द पाण्डेय	अ0नि0	9470591013 9934115456
4.	दुमका	जामा थाना	मो0 फरीद आलम	अ0नि0	9431396402 9470591014 9006981383
5.	दुमका	तालझारी थाना	महेश प्रसाद सिंह	अ0नि0	9470591015 9431380967 8292917192
6.	दुमका	सरैयाहाट थाना	नयनसुख दादेल	अ0नि0	9470591016 9431664248 9661463543
7.	दुमका	हॅसडीह थाना	उदय शंकर सिंह	अ0नि0	9470591017
8.	दुमका	रामगढ़ थाना	रामचरित्र पाल	अ0नि0	9470591018 8235002252
9.	दुमका	काठीकुण्ड थाना	निरथोर केरकेट्टा	अ0नि0	9470591019 9835701972
10.	दुमका	गापीकांदर थाना	कामत राम	अ0नि0	9470591020 9787508176 8002068400
11.	दुमका	मसलिया थाना	फगुनी पासवन	अ0नि0	9470591011 9931335200 8102444256
12.	दुमका	टोंगर थाना	बलश्वेर राम	अ0नि0	9470591012 9835419381 8084799381
13.	दुमका	मसानजोर थाना	सत्यनारायण शर्मा	अ0नि0	9470591022 9778148712
14.	दुमका	राणेश्वर थाना	यदु साव	अ0नि0	9470591010 9661139757
15.	दुमका	शिकारीपाड़ा थाना	सुमन कुमार सुमन	अ0नि0	9470591009 8969903330
16.	दुमका	अनुसूचित जाति एवं अनुसूचित थाना	कन्हैया दास	अ0नि0	9431840531 8674846297
17.	दुमका	महिला थाना	कन्हैया दास	अ0नि0	

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला धनबाद)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1-	Dhanbad	Dhanbad	Ahhileshwar Chobey	Inspector	9431706386
2-	Dhanbad	Mahil ps	Agusitna Lakra	Sub.Inspector	9431706380
3-	Dhanbad	Bankmore ps	Ashok Singh -2	Sub.Inspector	9431706392
4-	Dhanbad	Dhansar ps	Munna Gupta	Sub.Inspector	9431706393
5-	Dhanbad	Saridhela ps	Rena Gupta	Sub.Inspector	9431706398
6-	Dhanbad	Bhuli ps	Pradip Choudhari	Sub.Inspector	9431322663
7-	Dhanbad	Kenduadih ps	Ram Kisun yadav	Sub.Inspector	9431706394
8-	Dhanbad	Putki ps	Jai Prakash Toppo	Sub.Inspector	9431706395
9-	Dhanbad	Jogta ps	Ram Chandra Ra	Sub.Inspector	9431706396

10-	Dhanbad	Loyabad ps	Kishor Kumar	Sub.Inspector	9431706397
11-	Dhanbad	Mounidih OP	Narendra Kumar	Sub.Inspector	8298094676
12-	Dhanbad	Gongudih OP	Aditya Singh	Sub.Inspector	8102618289
13	Dhanbad	BhagabandhOP	Mangru Oraon	Sub.Inspector	9939576629
14	Dhanbad	Govindpur PS	Shalendra Kumar Singh	Sub.Inspector	9431195378
15	Dhanbad	Tundi PS	Dinesh Kumar	Sub.Inspector	9431706400
16	Dhanbad	Barwadda PS	Maheshwar Pd. Ranjan	Sub.Inspector	9431706401
17	Dhanbad	Nirsa PS	Ram Pravesh Kumar	Sub.Inspector	9431115950
18	Dhanbad	Chirkunda PS	Parmeshwar Prasad	Sub.Inspector	9431706403
19	Dhanbad	Maithon OP	Hari Kishor Mandal	Sub.Inspector	9431275415
20	Dhanbad	Panchet OP	Sunil Kumar Singh	Sub.Inspector	9934385912
21	Dhanbad	Galpherbari OP	Shankar Kumar	Sub.Inspector	9431147153
22	Dhanbad	Kumardhobi OP	Ram Sagar Kumar	Sub.Inspector	930355505
23	Dhanbad	Kalubathan OP	Parmeshwar Dayal Mehra	Sub.Inspector	9471725524
24	Dhanbad	Sindri PS	Ramesh Prased	Sub.Inspector	9431706413
25	Dhanbad	Goushala OP	Sukhdev Oraon	Sub.Inspector	8102402922
26	Dhanbad	Baliapur PS	Sachidanand Sahu (Chare 0/c Tisra)	Sub.Inspector	9431706414
27	Dhanbad	Jorapokhar PS	Rakesh Kumar	Sub.Inspector	9431706415
28	Dhanbad	Sudamdih PS	Kanhaiya Ram	Sub.Inspector	9431706416
29	Dhanbad	Patherdih PS	Vidya Sagar Paswan	Sub.Inspector	9431706417
30	Dhanbad	Tisra PS	Sachidanand Sahu	Sub.Inspector	9546298129
31	Dhanbad	Bhonwra OP	Jai Misha Kujur	Sub.Inspector	9471555944
32	Dhanbad	Alakhdiha OP	Andriyas Lomga	Sub.Inspector	9471290143
33	Dhanbad	Lodna OP	Surju Todu	Sub.Inspector	9931657545
34	Dhanbad	Ghanuadih OP	Hari Narrayan Ram	Sub.Inspector	9470967570
35	Dhanbad	Jharia OP	Vishnu Rajak	Sub.Inspector	9431706384
36	Dhanbad	Borrargarh OP	Arjun Bhagat	Sub.Inspector	9430768761
37	Dhanbad	Katras PS	Satish Kumar Singh	Sub.Inspector	9431706407
38	Dhanbad	Rajganj ps	Rajdev Sharma	Sub.Inspector	9431706408
39	Dhanbad	Tetulmari PS	Pradip Kumar Mahto	Sub.Inspector	9431706409
40	Dhanbad	East Basuria OP	Michrai Padiay	Sub.Inspector	9471338610
41	Dhanbad	Ramkanali OP	Baidyanath Sardar	Sub.Inspector	9931326689
42	Dhanbad	Angarpathere OP	Sri Niwas Paswan	Sub.Inspector	9431945889
43	Dhanbad	Kapuria OP	Dinesh Kumar Gupta	Sub.Inspector	8521774792
44	Dhanbad	Barora PS	Sri Niwas Singh	Sub.Inspector	9431706410
45	Dhanbad	Topchanchi PS	Darmdev Ram	Sub.Inspector	9431706405
46	Dhanbad	Hariharpur PS	Filip Minz	Sub.Inspector	9431706406
47	Dhanbad	Baghmara PS	Nehna Toppo	Sub.Inspector	9431706404
48	Dhanbad	Mahuda PS	Jai Govind Nath Munda	Sub.Inspector	9431706411

49	Dhanbad	Madhuban PS	Girish Pandey	Sub.Inspector	9431706412
50	Dhanbad	Sonardih OP	Yugul Kishor Oraon	Sub.Inspector	7250501453
51	Dhanbad	Dharmabandh OP	Ramashis Ram	Sub.Inspector	9470584577
52	Dhanbad	Kherkheri OP	Ram Deni Ram	A.S.I	9431247990
53	Dhanbad	Bhatdih OP	Manhi Murmu	A.S.I	8051194954

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला हजारीबाग)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	हजारीबाग	सदर	महेन्द्र राम	पु0अ0नि0	9470137926
2.	हजारीबाग	मुफ्फसिल	श्री राम राम	पु0अ0नि0	8809967041
3.	हजारीबाग	पेलावल	विजय कुमार केरकेट्टा	पु0अ0नि0	9431396617
4.	हजारीबाग	बड़कागाँव	यदु टुडु	पु0अ0नि0	8102742320
5.	हजारीबाग	गिद्दी	सामदेव उराँव	पु0अ0नि0	9431386652
6.	हजारीबाग	टाटीझरिया	अनिल सिंग	पु0अ0नि0	9835117360
7.	हजारीबाग	चरही	राजदेव प्रसाद	पु0अ0नि0	9470197390
8.	हजारीबाग	चौपारण	अब्दुल रसीद	पु0अ0नि0	8084994616
9.	हजारीबाग	उरीमारी	बिरसा गुण्डी	पु0अ0नि0	7250812078
10.	हजारीबाग	पद्मा	हरेन्द्र सिंह	पु0अ0नि0	9934218936
11.	हजारीबाग	बरही	महेन्द्र कुमार	पु0अ0नि0	9570097019
12.	हजारीबाग	गोरहर	बिपिन बिहारी शर्मा	पु0अ0नि0	9431706317
13.	हजारीबाग	बरकट्टा	राम किनकर सिंह	पु0अ0नि0	9162067885
14.	हजारीबाग	विष्णुगढ़	क्रिस्टोर टोप्पो	पु0अ0नि0	9631944488
15.	हजारीबाग	चुरचु	अवधेश कुमार सिह	पु0अ0नि0	9431706303
16.	हजारीबाग	ईचाक	स्लाउद्दीन खान	पु0अ0नि0	9431380854
17.	हजारीबाग	कटकमसांडी	गोर लाल सिंह	पु0अ0नि0	9386694418
18.	हजारीबाग	केरेडारी	आर.सी लोहरा	पु0अ0नि0	9835946495

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला रामगढ़)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	रामगढ़	रामगढ़	ज्वाहर लाल गुप्ता	पु0अ0नि0	8809646767
2.	रामगढ़	राजरप्पा	नगिना पासवान	पु0अ0नि0	7677438487
3.	रामगढ़	गोला	जितेन्द्र सिंह	स0अ0नि0	9431573001
4.	रामगढ़	बरलंगा	बिरेन्द्र कुजूर	स0अ0नि0	9122320157
5.	रामगढ़	मांडू	सुनील कुजूर	स0अ0नि0	9693615754
6.	रामगढ़	कुज्जू	मोख्तार अहमद खान	पु0अ0नि0	9955953000
7.	रामगढ़	डब्लयू. बी.	तिलक बहादुर	स0अ0नि0	9955137245

8.	रामगढ़	पतरातू	बिपिन कुमार सिन्हा	स0अ0नि0	9491397939
9.	रामगढ़	भूरकुण्डा	कृष्णा सिंह	स0अ0नि0	9431334006
10.	रामगढ़	बरकाकाना	मे0 असलम खान	स0अ0नि0	9431374621
11.	रामगढ़	भदानीनगर	राम बिनोद सिंह	स0अ0नि0	9661288507
12.	रामगढ़	बसल	राजेश कुमार कुजूर	स0अ0नि0	8809292556

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला गढ़वा)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	गढ़वा	जर्नादन राम	अ0नि0	8271574556	9470137926
2.	महिला थाना	बन्दे उराँव	स0अ0नि0	7250875715	8809967041
3.	रंका	भगवान चौबे	स0अ0	8294131149	9431396617
4.	भंडरिया	मंगल मुर्मू	पु0अ0नि0	8757423242	8102742320
5.	चिनियाँ	रामलखन यादव	स0अ0नि0	8102027349	9431386652
6.	मेराल	उदय कुमार राम	अ0नि0	9308004663	9835117360
7.	नगर उँटारी	आनन्द मोहन सिंह	अ0नि0	9708594050	9470197390
8.	डंडई	स मो0 सईद आलम	0अ0नि0	9570094548	8084994616
9.	रमना	धनुषधारी रवि	स0अ0नि0	9570129330	7250812078
10.	रमकण्डा	विजय चौधरी	अ0नि0	9835109723	9934218936
11.	खरौधी	नविन पासवान	अ0नि0	7550602870	9570097019
12.	भवनाथपुर	बन्धाना मुण्डा	अ0नि0	9430753078	9431706317
13.	विशुनपुरा	स अमर दयाल राम	0अ0नि0	9934567421	9162067885
14.	धुरकी	बुद्धदेव खड़िया	अ0नि0	9535707755	9631944488
15.	काण्डी	विश्वनाथ ओझा	स0अ0नि0	96314910890	9431706303
16.	मझिआँव	बादशाह खाँ	अ0नि0	7870917114	9431380854
17.	हरिहरपुर (ओ0पी0)	परमेश्वर सिंह	स0अ0नि0	7677278795	9386694418

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला लोहरदगा)

क्र. सं.	नाम एवं पदनाम	मोबाईल नं0
1.	श्री नरेन्द्र मोहन सिन्हा, पुलिस निरीक्षक, लोहरदगा अंचल	9431706220
2.	श्री राजीव रंजन कुमार, पुलिस निरीक्षक, किसको अंचल	9431706219
3.	पु0अ0नि0बिनोद कुमार, कुडू थाना	9431706221
4.	अनिल कुमार मिश्रा, किसको थाना	9431706223
5.	रामजी प्रसाद, सेन्हा थाना	9431706224
6.	नन्द किशोर प्रसाद, भंडरा थाना	9431706225
7.	खन्तर हरिजन, महिला थाना	9431960788
8.	राम प्यारे राम, कैरो थाना	9431221224

9.	दयावन्त शर्मा, जोबांग थाना	9905688821
10.	सुधीर प्रसाद साहु, लोहरदगा थाना	9431969146

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला गुमला)

क्र. सं.	जिला का नाम	थाना का नाम	बाल कल्याण पदाधिकारी	पदनाम	मोबाईल संख्या
1.	गुमला	भरत कुमार राय	पु0अ0नि0	9431392677	9470137926
2.	पालकोट	धर्मपाल कुमार	पु0अ0नि0	9431585500	8809967041
3.	चैनपुर	नीरज कुमार मिश्रा	पु0अ0नि0	8809665757	9431396617
4.	घाघरा	सोसेफ मिंज	पु0अ0नि0	9934138949	8102742320
5.	विष्णुनपुर	संजय कुमार बर्मन	पु0अ0नि0	931374279	9431386652
6.	बसिया	योगेन्द्र पाण्डये	पु0अ0नि0	8002093385	9835117360
7.	रायडीह	सिंह राय टुडू	पु0अ0नि0	9006175184	9470197390
8.	भरनो	तीर्थराज तिवारी	पु0अ0नि0	9470117880	8084994616
9.	कामडारा	रामसागर सिंह	पु0अ0नि0	9006047071	7250812078
10.	गुरदरी	परमानन्द बिरूआ	पु0अ0नि0	9431147169	9934218936
11.	सिसई	भगवान प्रसाद गौड़	पु0अ0नि0	9631811103	9570097019
12.	जारी	रतन लाल मुर्मू	पु0अ0नि0	7856065345	9431706317
13.	डुमरी	रामप्रवेश कुँवर	पु0अ0नि0	9798626166	9162067885

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला रेल धनबाद)

क्र. सं.	थाना का नाम	वर्तनाम पदा0 का नाम	पदनाम	मो0 नं0
1.	रेल थाना धनबाद	रामसागर तिवारी	पु0अ0नि0	9431519963
2.	रेल थाना कुसुण्डा	सुग्रीव राम	स0पु0अ0नि0	9006350657
3.	रेल थाना कतरासगढ़	कन्हाई राम	पु0अ0नि0	9661821685
4.	रेल थाना चन्द्रपुरा	उपमावती तिर्की	स0पु0अ0नि0	8102856503
5.	रेल थाना गोमो	बैजू उरॉव	पु0अ0नि0	9431958525
6.	रेल थाना कोडरमा	बेचन सिंह	स0पु0अ0नि0	9430303909
7.	रेल थाना भोजूडीह	शमशेर अली	स0पु0अ0नि0	9507506642
8.	रेल थाना पाथरडीह	नारद गहलौत	स0पु0अ0नि0	8092035370
9.	रेल थाना बरकाकाना	शिवदयाल पासवान	पु0अ0नि0	9572366355
10.	रेल थाना डालटनगंज	विजय कुमा सिंह	पु0अ0नि0	9931527841
11.	रेल थाना मधुपुर	डेविड एलेक्जेन्डर किण्डो	स0पु0अ0नि0	9534206596
12.	रेल थाना जसीडीह	मधुसुदन डे	पु0अ0नि0	9470984142
13.	रेल थाना बड़हरवा	उपेन्द्र पाठक	पु0अ0नि0	7549110425
14.	रेल थाना साहेबगंज	सुधीर कुमार	पु0अ0नि0	9471855607
15.	रेल थाना गोमियॉ	अकबर खॉ	पु0अ0नि0	9835196827

16.	रेल पी0पी0 गढ़वा रोड	तिलकेष्ठवर ष्ठार्मा	स0पु0अ0नि0	9431374292
17.	रेल पी0पी0 कुमारधुबी	बी0पी0 देमता	पु0अ0नि0	9939134650
18.	रेल पी0पी0 चितरंजन	सी0 उराँव	पु0अ0नि0	9955418140
19.	रेल	पी0पी0देवघर	सी0बी0 मुमूँ	स0पु0अ0नि0
20.	रेल पी0पी0 पाकुड़	त्रिभूवन भगत	पु0अ0नि0	7739934479
21.	रेल पी0पी0 गिरिडीह	सी0बी0 सिंह-2	पु0अ0नि0	9430751066
22.	रेल ओ0पी0 भागा	विमल टोप्पो	स0पु0अ0नि0	9431345374

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला लातेहार)

क्र. सं.	थाना का नाम	वर्तनाम पदा0 का नाम	पदनाम	मो0 नं0
1.	लातेहार	उपेन्द्र कुमार मंडल	पु0अ0नि0	9431549464
2.	मनिका	मनोज कुमार महतो	पु0अ0नि0	9939356551
3.	चन्दवा	नागेन्द्र कुमार सिन्हा	पु0अ0नि0	9431490451
4.	बालूमाथ	सुरेश प्रसाद	पु0अ0नि0	9431459147
5.	हेरहंज	वाल्टर कुजूर	पु0अ0नि0	9693420618
6.	बरवाडीह	हरनारायण साह	पु0अ0नि0	9431164160
7.	गारू	बिरेन मिंज	पु0अ0नि0	9934357262
8.	महुआडॉड़	दिवाकर प्रसाद सिंह	स0अ0नि0	9431706279
9.	नेतरहाट	अशोक पासवान	स0अ0नि0	9472726566
10.	बारेसाढ़	दीपक कुमार	पु0अ0नि0	9471714757
11.	छीपादोहर	मनोज कुमार गुप्ता	पु0अ0नि0	9801732823
12.	महिला थाना, लातेहार	राम बदन सिंह	स0अ0नि0	9472726473

बाल कल्याण पदाधिकारी (CWO) की सूची (जिला कोडरमा)

क्र. सं.	थाना का नाम	वर्तनाम पदा0 का नाम	पदनाम	मो0 नं0
1.	कोडरमा	अब्दुल रब्बानी	पु0अ0नि0	9931801880
2.	तिलैया	अर्जुन सिंह यादव	पु0अ0नि0	9939221782
3.	मरकच्चो	विश्राम उराँव	पु0अ0नि0	9546261054
4.	सतगावाँ	पटवारी हाँसदा	स0अ0नि0	9955934755
5.	नवलशाही	सुरेन्द्र झा	स0अ0नि0	9471741493
6.	डोमचाँच	रामस्वरूप यादव	स0अ0नि0	9431870019
7.	चन्दवारा	धर्मेन्द्र गगराई	स0अ0नि0	9431961553
8.	जयनगर	नारायण तुबिद	स0अ0नि0	9199197618
9.	तिलैया डैम ओ0पी0	अजय कुमार सिंह	स0अ0नि0	9304473131
10.	महिला थाना	उपेन्द्र शर्मा	स0अ0नि0	9471741956

Juvenile Justice Board (as on 13 Aug. 2015)

Name of Judgeship	Name of Principal Magistrate and Members	
Bokaro	Principal Magistrate	Miss Rajshree Aparna Kujur
	Members	Smt. Mamta Mishra
		Sri Vinay Kumar Singh
Chaibasa	Principal Magistrate	Miss Lucy Susen Tigga
	Members	Sri Bhudeo Bhagat
		VACANT
Chatra	Principal Magistrate	Smt. Shweta Kumari
	Members	Smt. Sandhya Pradhan
		Smt. Shweta Jaiswal
Deoghar	Principal Magistrate	Sri Devashish Mohapatra (Under order of transfer)
		Smt. Vaishali Srivastava (awaiting for taking charge)
	Members	Dr. A. P. Singh
		Smt. Suchitra Jha
Dhanbad	Principal Magistrate	Smt. Kalpana Hazarika
	Members	Kumar Vidhotma Bansal
		VACANT
Dumka	Principal Magistrate	Sri Sacchindra Birua
	Members	Sri Bani Sen Gupta
		Sri Jyotish Prasad Yadav
Garhwa	Principal Magistrate	Md. Naeem Ansari
	Members	Sri Sanjay Bharti
		Ms. Ranju Kumari
Giridih	Principal Magistrate	Md. Aasif Eqbal
	Members	Ms. Sulekha Kumari Gupta
		VACANT
Godda	Principal Magistrate	Sri Anand Singh
	Members	Sri Ramanand Gupta
		Smt Sanju Jha
Gumla	Principal Magistrate	Sri Piyush Srivastava
	Members	Sri Shambhu Singh
		VACANT
Hazaribagh	Principal Magistrate	Smt. Garima Mishra
	Members	Smt. Priti Sinha
		Smt. Vineeta Sinha
Jamshedpur	Principal Magistrate	Sri Nirupam Kumar
	Members	Smt. E. Suman Toppo
		VACANT

Jamtara	Principal Magistrate	Sri Manoranjan Kumar-I
	Members	Sri Subhojit Mukherjee
		Miss Mukta Mandal
Koderma	Principal Magistrate	Sri Arvind Kumar No.2
	Members	Ms. Ruma Samanta
		VACANT
Latehar	Principal Magistrate	Sri Sandeep Nishit Bara
	Members	Sri Kamleshwar Prasad Kamlesh
		VACANT
Lohardagga	Principal Magistrate	Sri Shekhar Kumar
	Members	Mrs. Pratima Kumari Tiwari
		VACANT
Pakur	Principal Magistrate	Sri Durgesh Chandra Awasthi
	Members	Smt. Ritu Pandey
		Sri Gopi Prasad Gupta
Palamau	Principal Magistrate	Miss Archana Kumari
	Members	Sri Ashok Kumar
		VACANT
Ranchi	Principal Magistrate	Md. Fahin Kirmani
	Members	Smt. Soni Rani Verma
		Sri Ganauri Ram
Sahebganj	Principal Magistrate	Sri Abhash Verma
	Members	Sri Shiv Shankar Dubey
		Ms. Sudha Kumari
Seraikella	Principal Magistrate	Sri Dinesh Kumar
	Members	VACANT
		VACANT
Simdega	Principal Magistrate	Sri Vikram Anand
	Members	Sri Shambhu Singh
		VACANT
Khunti	Principal Magistrate	Sri D. R. Tirkey
	Members	Dr. Sunita Kumari
		VACANT

Child Welfare Committee (as on 13 Aug. 2015)

Name of Judgeship	Name of Chairperson and Members

Bokaro	Chairperson	Sri J. P. Choudhary
	Members	Prahbhakar Kumar
		Ashwini Kumar
		S. Kumar
		Vacant - Lady Member
Chaibasa	Chairperson	Sri Vikas Dodrajka
	Members	Sri Sanjay Birua
		Sri Sumit Kr. Vishwakarma
		Smt. Bimla Hembrom
		Smt. Jotsna Tirkey
Chatra	Chairperson	Md. Minhajul Aaque
	Members	Mr. Narmadeshwar Singh
		Mr. Mahabir Sahu
		Ms Jyoti Jha
		Mr. Hari Shanker Jha
Deoghar	Chairperson	Smt. Kavita Jha
	Members	Ms Arpana Mishra
		Ms. Vijaya Laxmi
		Sri Sanjay Kr. Upadhyai
		Dr. Santosh Kumar
Dhanbad	Chairperson	Ms. Nita Sinha
	Members	Sri Sudip Kr. Gupta
		Sri Devendra Sharma
		Sri Shankar Rawani
		Ms. Dimmy Khatoon
Dumka	Chairperson	Sri Amrendra Kumar
	Members	Sri Sikander Mandal
		Smt. Nutan Bala
		Smt. Annu
		Smt. Sakuntala Dubey
Garhwa	Chairperson	Sri R. K. Tripathi
	Members	Smt. Swapna Mukharji
		Sri R. K. Shukla
		Smt. Neera Tiwari
		Sri Anant Prakash
Giridih	Chairperson	Smt. Renu Verma
	Members	Smt. Sunita Prasad
		Smt. Beena Jha
		Smt. Bibha Jha
		Sri Suresh Prasad

Godda	Chairperson	Sri Pradeep Kumar Singh
	Members	Mosrat Ziya Tara
		Sri Vijay Kumar Mandal
		Sri Muzzaffar Alam
		VACANT
Gumla	Chairperson	Smt. Tagren Panna
	Members	Sri Alakh Narayan Singh
		Sri Dhananjay Mishra
		Sri Ashok Kumar Mishra
		Sri Sanjay Kumar Bhagat
Hazaribagh	Chairperson	Ms. Rajni Kiran
	Members	Sri Bablu Kumar
		Ms. Swapna Sabnam Nandi
		Ms. Swapna Manna
		VACANT
Jamshedpur	Chairperson	Smt. Prabha Jaiswal
	Members	Sri Ranjan Prasad
		Sri Mahesh Kumar
		VACANT
		VACANT
Jamtara	Chairperson	Sri Kali Kumar Ghosh
	Members	Mrs. Bebi Mustafi Sarkar
		Dr. Ashwani Kr. Yadav
		Sri Bijay Kr. Ojha
		Sri Manoranjan Kunwer
Koderma	Chairperson	Smt. Mamta Singh
	Members	Sri Satyendra Narayan Singh
		Sri Rajkumar Sinha
		Sri Manoj Kumar
		VACANT
Latehar	Chairperson	VACANT
	Members	Dr. Murari Jha
		Khadim Ansari
		Md. Ibrar Khan
		VACANT
Lohardagga	Chairperson	Mrs. Malti Verma
	Members	Mr. Bal Krishna Singh
		Miss Manorama Ekka
		Mr. Laxmikant Prasad
		VACANT

Pakur	Chairperson	Dr. Shambhu Kumar Yadav
	Members	Dr. Subhendu Bikash Mandal
		Dr. Ashok Kumar Yadav
		Md. Sabiruddin
		Smt. Saleha Naaz
Palamau	Chairperson	Smt. Anjum Parveen
	Members	Sri Pankaj Lochan
		Sri Pramod Kumar Singh
		Smt. Poonam Kumari
		Sri Ramesh Kumar Mistri
Ranchi	Chairperson	Smt. Jahan Ara
	Members	Smt. Meera Mishra
		Sri Yogendra Prasad
		VACANT
		VACANT
Sahebganj	Chairperson	Ms. Munita Kumari
	Members	Sri Dinesh Sharma
		Sri Krishna Kumar Pandey
		Ms. Babita Kumari
		VACANT
Seraikella	Chairperson	Sri Mahaveer Mahato
	Members	Shankuntala Kumari Munda
		Mira Singh
		Bhavani Rani Mahato
		Banshidhar Mahato
Simdega	Chairperson	Sri Sheetal Prasad
	Members	Mrs. Kanchan Rani Ekka
		Mrs. Pushpa Kumari
		Sri Ved Prakash
		VACANT
Khunti	Chairperson	Manoj Rai
	Members	Bindeshwar Bindiya
		Lina Kartetta
		Radha Rani
		Basanti Kumari Munda

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APPENDIX

Free Legal Aid : A to Z
LEGAL AID

Legal Service includes the rendering of any service i.e. the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter. (Sec. 2 (c) of LSA Act 1987

Which Authority provides Legal Aid

SDLSC/TLSC	-	Sub division/Taluk level- contact Secretary
DLSA	-	District level- contact Secretary
SLSA/HCLSC	-	High Court level- Member Secretary/Secretary HCLSC
SCLSC	-	Supreme Court level- Secretary

Who is entitled to free Legal Aid

Every person who has to file or defend a case is entitled to free Legal Aid if he/she is:

- Person belonging to Scheduled Caste community
- Person belonging to Scheduled Tribe community
- Women
- Children (below 18 years)
- Prisoners/Persons in custody
- Person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster
- Victim of trafficking
- Industrial workmen
- Mentally ill or otherwise disabled person
- Any person whose annual income is under Rs. 100,000/- per year

What is available in Free Legal Aid

Court fees, competent lawyer, Typing cost, witness cost and certified copy of order/judgment

What to do to get Legal Aid

Regulation 3 of NALSA (Free and competent Legal Services) Regulation 2010 provides-

- An application for legal services may be presented in Form-I in the local language or English

Form-I
National Legal Services Authority (Free and competent legal services) Regulation-2010
The form of Application for Legal Services
(this may be prepared in the regional language)

Registration No. :

1. Name:
2. Permanent Address :
3. Contact Address with phone no. if any, e mail Id, if any :

4. Whether the applicant belongs to the category of persons mentioned in Section-12 of the Act :

5. Monthly income of the applicant :

6. Whether affidavit/proof has been produced in support of income/eligibility u/s 12 of the Act :

7. Nature of Legal Aid or advice required :

8. A brief statement of the case, if court based legal services is required :

Place :

Date : Signature of the applicant

- An application may not be in form-I and still same can be entertained if it reasonably explains the facts to enable the applicant to seek legal aid.
- Oral requests for legal services may also be entertained in the same manner like application in form-I
- An applicant advised by PLV, Legal Aid Clinics and voluntary social service Institutions shall also be considered for free legal services
- Requests received through email and online may also be considered after verification of identity of the person and cause

Proof of entitlement of free Legal Aid

- An affidavit of the applicant that he falls under the categories of persons entitled to free legal services under section 12 is sufficient.
- The affidavit may be signed before a Judge, Magistrate, Notary Public, Advocate, M.P., MLA, Gazetted Officer, Teacher of any school/college, elected representative of Local Bodies etc.

Scrutiny and evaluation of free Legal Aid application

- Three member committee constituted by Chairman of DLSA or Executive Chairman of SLSA (Member Secretary/Secretary of Legal Services Institutions as its Chairman and two members out of whom one may be a Judicial Officer with legal services experience) decides within eight week of the date of receipt of application as to whether applicant is entitled to get free legal Aid or not.
- Any person aggrieved by decision of District Legal Aid Committee may file appeal before the Chairman DLSA or Executive Chairman SLSA and their decision on appeal will be final

Legal Services by way of legal advice, consultation, drafting and conveyancing

The Executive Chairman or Chairman of the Legal Services Institution shall maintain a separate panel of senior lawyer, law firms, retired judicial officers, mediators, conciliators and law Professors for providing legal advice and other legal services like drafting and conveyancing.

Monitoring of Legal Services

- Monitoring Committee- under regulation 10 of NALSA (Free and Competent Legal Services) Regulation, 2010, a Monitoring Committee is set up for close monitoring of the court based legal services rendered and the progress of the cases in legal aided matters.
- Monitoring Committee at SC/HC level consists of :
  - (i) Chairman of SCLSC or Chairman of HCLSC.
  - (ii) The Member Secretary or Secretary of the Legal Services Institution.

(iii) A senior advocate to be nominated by the Patron-in-Chief of SLSA

- Monitoring Committee at District/Sub-division level consists of :

(i) The senior most member of the Higher Judicial Services posted in that district- as its Chairman

(ii) The Secretary DLSA/SDLSC

(iii) A legal practioner having more than 15 years experience at local Bar to be nominated in consultation with local Bar Association

How to assess the progress of court based legal services rendered

Whenever legal services is provided to an applicant, the Member Secretary or Secretary shall send the details in form-II to the monitoring committee at the earliest.

Form-II

NALSA (free and competent legal services) Regulation 2010

Information furnished to the Monitoring Committee about the legal services provided

(i) Name of the legal services Institution :-

(ii) Legal Aid application No. and date on which legal Aid was given-

(iii) Name of the Legal Aid applicant-

(iv) Nature of case (civil, criminal, constitutional law etc.)

(v) Name and roll number of the lawyer assigned to the applicant :-

(vi) Name of the court in which the case is to be filed/defended –

(vii) The date of engaging the panel lawyer –

(viii) Whether any monetary assistance like court fees, advocate commission, copying charges etc. has been given in advance? –

(ix) Whether the case requires any interim orders or appointment of commission –

(x) Approximate expenditure for producing records, summoning of witnesses etc. –

(xi) The expected time for conclusion of the proceedings in the court –

Dated: Member Secretary/Secretary

Important Links

1. http://wcd.nic.in/icpsmis/home.aspx (ICPS)
2. http://wcd.nic.in/ (Ministry of women and child development)
3. http://www.childlineindia.Qrg.in/rights.htm (ICDS)- Integrated Child Development Services Scheme
4. http://www.childlineindia.org.in/ (childline India Foundation)
5. http://www.childlineindia.org.in/rights.htm (Child protection and child rights)
6. http://www.cara.nic.in/ (CARA)- central Adoption and research Authority)
7. http://www.missingindiankids.com/ (National centre for missing Children)
8. http://khoyapaya.gov.in/mpp/home (a government managed site for missing children) {IMP}
9. http ://www.trackthemissing child, go v. in/trackchild/index.php (National tracking system for missing children)
10. http://wcd.nic.in/cwnew.htm (child welfare) {WI}
11. http://ncpcr.gov.in/ (National Commission for protection of child rights) {WI} Judgments are available.
12. http://nipccd.nic.in/ (NATIONAL INSTITUTE OF PUBLIC COOPERATION AND CHILD DEVELOPMENT)
13. http://www.cara.nic.in/writereaddata/uploadedfile/NTESCL 635563370803237200 SARA list.PDF (List of State Adoption Resource Agencies (as on 29.09.2014)

"every child is unique and a supremely important national asset"

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