

TEAM CODE: BLCRL04

BEFORE THE HON'BLE HIGH COURT OF BANGLA, INDICA

IN THE MATTERS OF:

PEOPLES' CONSCIENCE

...PETITIONER

V.

UNION OF INDICA AND ANR.

...RESPONDENT

WRIT PETITION (CRL.) No. 124/2015

ON SUBMISSION TO THE HON'BLE HIGH COURT OF BANGLA, INDICA

UNDER ARTICLE 226 OF THE CONSTITUTION OF INDICA, 1950

WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT

COUNSEL ON BEHALF OF RESPONDENT

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LIST OF ABBREVIATIONS

%	Percentage
&	And
¶	Paragraph
AIR	All India Reporter
Anr.	Another
Cr. LJ	Criminal Law Journal
CRC	Convention of the Rights of the Child
F.I.R	First Information Report
Govt.	Government
Hon'ble	Honourable
i.e	That is
JJ	Juvenile Justice
LR	Law Report
Ltd.	Limited
N.C.T	National Capital Territory

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NCRB	National Crime Report Bureau
Ors.	Others
SC	Supreme Court
SCC	Supreme Court Cases
Supp.	Supplementary Volume
U.O.I.	Union of India
v.	Versus

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STATEMENT OF JURISDICTION

The Petitioners have approached the Hon'ble High Court of Bangla under Article 226 of the Constitution of Indica, 1950.¹ The Respondent humbly submits to the jurisdiction of this Hon'ble Court.

¹ 226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32

STATEMENT OF FACTS

- I.** On the First day of March 2015, a young girl, aged about nineteen (19) years was returning from her tuition classes was forcibly stopped by a group of five (5) persons. The persons took advantage of the fact that the road was deserted at that point of time, and forcibly dragged the girl to the barn. The girl was brutally assaulted sexually, and thereafter was bathed in country liquor and set ablaze and succumbed to her wounds on March 3rd, 2015. All five (5) persons were apprehended in connection with the crime. One of them, identified for the purpose of the present case as Rana, was below eighteen (18) years of age on the date of commission of the crime, and is still a Juvenile as per the meaning given in Juvenile Justice Act, 2000.
- II.** The learned trial court has sentenced all the accused to death under Section 376D and 302 of Indian Penal Code. Their appeal against the aforesaid conviction and the sentence imposed has since been dismissed and the High Court of Bangla has confirmed the death penalty.
- III.** Peoples' Conscience (hereafter referred as "the group" or the petitioners, both being referred to the same person/group of persons) claimed that, on a proper interpretation of the Act, the juvenile was not entitled to the benefits under the Act but was liable to be tried under the penal law of the land in a regular criminal court along with the other accused.
- IV.** They instituted a writ proceeding before the Hon'ble High Court of Bangla, which was registered as Writ Petition (Crl.) No. 124 of 2015, seeking the following reliefs:-
- a) Laying down an authoritative interpretation of Sections 2(I) and 2(k) of the Act that the criterion of eighteen (18) years set out therein does not comprehend cases grave offences in general and of heinous crimes against women in particular that shake the root of humanity.
 - b) That the definition of offences under Section 2(p) of the Act be categorised as per grievousness of the crime committed and the threat of public safety and order.
 - c) That Section 28 of the Act be interpreted in terms of its definition, i.e., alternative punishment and serious offences having a minimum punishment of seven years imprisonment and above be brought outside its purview and the same should be tried by an ordinary criminal court.

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- d) Direction striking down as unconstitutional and void the Juvenile Justice (Care and Protection of Children) Act, 2000 (Act No. 56 of 2000) to the extent it puts a blanket ban on the power of the criminal courts to try a Juvenile offender for offences committed under the Indian Penal Code, 1860; and
 - e) Incorporating the International concept of age of criminal responsibility and diluting the blanket immunity provided to the juvenile offender on the basis of age along with the Direction that the Respondent be tried forthwith by the competent criminal court.
- V.** The group at the outset, clarified that they are neither challenging the provisions of Section 2(k) and 2(l) of the Act nor is he invoking the jurisdiction of the Court to strike down any other provision of the Act or for interference of the Court to reduce the minimum age of Juveniles fixed under the Act as eighteen (18) years.
- VI.** The group has contended is that having regard to the object behind the enactment, the Act has to be read down to understand that the true test of “juvency” is not in the age but in the level of mental maturity of the offender..
- VII.** The provisions of Sections 82 and 83 of the Indian Penal Code have been placed to contend that while a child below seven (7) cannot be held to be criminally liable, the criminality of those between seven (7) and twelve (12) years has to be judged by the level of their mental maturity.
- VIII.** The provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules); the Convention on the Rights of the Child, 1990 (CRC) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (Havana Rules), SCALE 1 International Commitments entered into by India obliges it to set up a particular framework to deal with Juvenile offenders and such obligations can be more comprehensively met.
- IX.** The group has also suggested that Section 28 of the Act be read together with Section 15 to enable the alternatively higher punishment under other State/Central enactments.
- X.** Based on these facts the case rests in the Hon’ble High Court of Bangla.

ISSUES RAISED

- 1) WHETHER THE WRIT PETITION FILED BEFORE THE HIGH COURT IS MAINTAINABLE?

- 2) CAN THE CONSTITUTIONAL SANCTION OF AN ENACTMENT HAVE AN OVERRIDING EFFECT TO AN INTERNATIONAL CONVENTION AND/OR STATUTE, OF WHICH INDICA IS A SIGNATORY?

- 3) WHETHER THE JUVENILITY WILL DEPEND UPON THE NATURE OF OFFENCE COMMITTED AS IN THE EXISTING SCENARIO MOST OF THE JUVENILES ARE ENGAGED IN HORRENDOUS AND HEINOUS CRIMES LIKE RAPE, MURDER AND DRUG – PEDDLING, ETC?

- 4) WHETHER OSSIFICATION TEST SHALL BE PREFERRED OVER MATRICULATION CERTIFICATE AS AN APPROPRIATE METHOD TO DETERMINE THE AGE OF A JUVENILE?

SUMMARY OF PLEADINGS

1) WHETHER THE WRIT PETITION FILED BEFORE THE HIGH COURT IS MAINTAINABLE?

The writ petition filed in the High Court is not maintainable as: firstly, there existed an efficacious alternative remedy and secondly, the writ is not maintainable on account of non-contravention of any fundamental right.

2) WHETHER THE CONSTITUTIONAL SANCTION OF AN ENACTMENT HAS AN OVERRIDING EFFECT TO AN INTERNATIONAL CONVENTION AND/OR STATUTE, OF WHICH INDIA IS A SIGNATORY?

Punishing the child in conflict with law is the failure of the society at large in providing the child with adequate care and protection, and by creating a fictional classification between the children belonging to age group of 12-18 years on the basis of degree of crime "allegedly" committed by them would abandon the conventions entered by India instead of sticking to it.

The act is in consonance with the UN Convention on the Rights of the Child which is a comprehensive and internationally binding agreement on the rights of children. It was adopted by the United Nations General Assembly in 1989.

3) WHETHER THE JUVENILITY WILL DEPEND UPON THE NATURE OF OFFENCE COMMITTED AS IN THE EXISTING SCENARIO MOST OF THE JUVENILES ARE ENGAGED IN HORRENDOUS AND HEINOUS CRIMES LIKE RAPE, MURDER AND DRUG – PEDDLING, ETC.?

The juvenility should not depend on the nature of offence committed as in the present case: firstly, there is no ambiguous meaning in the different provisions of the Juvenile Justice Act, 2000 (hereinafter the act), secondly, the act is not violative of any Constitutional or Criminal Law Provisions and thirdly, the Minimum Age of Criminal Responsibility is fixed and is in consonance with the International Commitments.

4) WHETHER OSSIFICATION TEST SHALL BE PREFERRED OVER MATRICULATION CERTIFICATE AS AN APPROPRIATE METHOD TO DETERMINE THE AGE OF A JUVENILE?

Ossification test or bone ossification test is not reliable and accurate. It is a guess work based on the fusion of joints in the human body between birth and age 25.

The real test to determine the age of juvenile is primarily the Matriculation Certificate and not the Ossification test as: firstly, the ossification test is uncertain and inaccurate and secondly, other documents can be relied upon before opting for the Ossification test under The Indian Evidence Act, 1872.

WRITTEN PLEADINGS

1. WHETHER THE WRIT PETITION FILED BEFORE THE HIGH COURT IS MAINTAINABLE?

1.1) Existence of an efficacious alternative remedy would bar the institution of the writ

I. It is submitted before this Hon'ble court that a HC does not ordinarily issue a writ when an alternative efficacious remedy is available.² Under article 226, the HC does not decide disputes for which remedy is available under general law. The principle has been stated by SC as follows:³

“It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the HC to issue a prerogative writ. The existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs...”

II. Furthermore, it is submitted that when a right or liability is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy and not the discretionary remedy under Article 226 of the Constitution.⁴ In the case of *Madhya Pradesh v. Income Tax Officer*⁵ the Supreme Court has held that, when there existed an adequate alternative remedy, then the writ petition would be dismissed by the court in limine. The petitioners, in the case at hand, did not exercise the proper course of action provided by the alternative remedies before filing the writ petition.

III. It is humbly submitted that the constitutional validity of Juvenile Justice (Care and Protection of Children) Act, 2000 was upheld in the case of *Salil bali v. Union of India*⁶, therefore the act is well within the ambit of constitution and is not violative of any Fundamental right. Hence, the writ petition to this regard cannot be maintainable.

²M.P. Jain, Indian Constitutional Law, 412(7th ed., 2014).

³Union of India v. T.R. Varma, AIR 1957 SC 882.

⁴Seth Chand Ratan v. Pandit Durga Prasad, (2003) 5 SCC 399.

⁵Madhya Pradesh v. Income Tax Officer, (1965) 57 ITR 637 SC.

⁶Salil Bali v. Union of India, (2013) 7 SCC 705.

- IV. Lastly, it is submitted that a statutory forum or tribunal is specially created by a statute for redressal of specified grievances of persons on certain matters and the HC should not normally permit such persons to ventilate their specified grievances before it by entertaining petitions under Article 226 of the Constitution.⁷

1.2) No substantive question of law arises in the present case

- I. It is contended by the respondents that no substantial question of law is involved in the present case and the interference is based on pure question of fact which is entitled to be dismissed.⁸ This court had laid down the test which says if the general principles to be applied in determining the question of those principles the question would not be a substantial question of law.
- II. It might involve question of law but not ‘substantial’ question of law. The present case does not involve such ‘substantial’ question of law⁹. In *Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai*¹⁰ the court emphasized that,

“The very conferment of the discretionary power defies any attempt at exhaustive definition of power. The power is permitted to be invoked not in a routine fashion but in very exceptional circumstances as when a question of law of general public importance arises or a decision sought to be impugned before the High Court shocks the conscience. This overriding and exceptional power has been vested in the High Court to be exercised sparingly and only in the furtherance of cause of justice in the High Court in exceptional cases only when special circumstances are shown to exist”.

⁷ Secretary, Minor Irrigation and Rural Engineering Services v. Sahngoo Ram Arya, (2002) 5 SCC 521.

⁸ Maqsoodan v. State of UP, AIR 1983 SC 126.

⁹ State of MP v. Desh Raj, (2004) 13 SCC 199.

¹⁰ Jamshed Hormusji Wadia v. Board of Trustees, Port of Mumbai, AIR 2004 SC 1815.

2. WHETHER THE CONSTITUTIONAL SANCTION OF AN ENACTMENT HAS AN OVERRIDING EFFECT TO AN INTERNATIONAL CONVENTION AND/OR STATUTE, OF WHICH INDICA IS A SIGNATORY?

2.1) JJ Act of 2000 is in consonance to the International conventions signed by Indica.

- I.** It is humbly submitted before this Hon'ble Court that Indica is not only a signatory to the Convention of the Rights of the Child but has also ratified the same. Ratification is defined under Article 2 of Vienna Convention , as "Ratification", "acceptance", "approval" and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.
- II.** It is humbly submitted before this Hon'ble Court that treaty provisions may form the basis of an international custom in certain circumstances, provided that the provision in question is capable of such generalization or is "of a fundamentally norm-creating character."¹¹ In the case of *Ram Jethmalani v. Union of India*¹², the SC recognized that the Vienna Convention codifies many principles of customary international law. The rule of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law¹³. Hence, Vienna Convention being a customary law its provision ought to be adhered by the Indian Courts and it binding because of the principle of *pacta sunt servanda*.
- III.** The counsel humbly submits that the JJ Act is in consonance to the UN Convention on the Rights of the Child which is a comprehensive and internationally binding agreement on the rights of children. It was adopted by the United Nations General Assembly in 1989. The definition of child as envisaged in Article 1 states:
"For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

¹¹ North Sea Continental Shelf cases, (1969) ICJ 1.

¹² *Ram Jethmalani v. Union of India*, (2011) 8 SCC 1.

¹³ *A.D.M. Jabalpur v. Shivakant Shukla*, AIR 1976 SC 1207.

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The object clause of the present act states thus:

"And whereas, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of United Nations which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of child."

- IV.** Moreover, Article 37(a) of the CRC prohibits the imposition of capital punishment and life imprisonment without possibility of release on offenders below 18 years of age. The CRC further obliges State Parties to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law (Article 40(3) (a)). Hence, the JJ act is in consonance with the CRC.
- V.** It is humbly submitted before this Hon'ble Court that India is a signatory of Beijing Rules and Havana Rules which creates an obligation upon it not to defeat the scope and purpose of a treaty.¹⁴ Rule 2.2(a)¹⁵ defines a juvenile as a child or young person who, under the respective legal system, may be dealt with for an offence differently than an adult. Rule 4.1¹⁶ set out below mandates Member States to refrain from fixing a minimum age of criminal responsibility that is too low, bearing in mind the facts of emotional, mental and intellectual maturity.
- VI.** The Justice Verma Committee had warned that reducing the age of juveniles below 18 would violate various Indian guarantees under international institutions.¹⁷ It is urged that the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 or the Beijing Rules, requires a child or a young person, accused of an offence, to be treated differently from an adult. Similarly, Rule 11(a) of the Havana Rules, 1990 define a juvenile as every person under the age of 18, and allow national laws to determine a minimum age below which such person will not be detained. Therefore, it is humbly submitted before this Hon'ble Court that the present act is in tunes with the International Commitments entered by India.

¹⁴ Article 18 of the Vienna Convention on the Law of Treaties.

¹⁵ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

¹⁶ Ibid.

¹⁷ Justice J.S Verma, Justice Leila Seth, Gopal Subramaniam, Report of the Committee on Amendments to Criminal Law, 2013 available at

<http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf> last seen on 2/1/2017.

2.2) The Constitution empowers the legislature to enter into International obligations

- I.** It is urged before this Hon'ble Court that Article 253 of Indian Constitution gives the Parliament of India to make treaties for the whole or any part of India and the conventions entered by India are entered under Article 253 of the Constitution which states that:

“Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body”

- II.** In *P.B Samant v. UOI*¹⁸, it was observed that the effect of Article 253 is that if a treaty, agreement or convention with a foreign State deals with a subject within the competence of the State Legislature, the Parliament alone has, notwithstanding Article 246(3), the power to make laws to implement the treaty, agreement or convention or any decision made at any international conference, association or other body. In terms, the Article deals with legislative power; thereby power is conferred upon the Parliament which it may not otherwise possess.
- III.** The counsel submits that our country accepts the international convention of keeping 18 years as the age of the child and the same is reflected in various laws where the age of child was kept at 18 years such as Contract Act, Motor Vehicles Act, etc. It is further held that the domestic courts are under an obligation to give due regard to international conventions and norms for construing domestic laws when there is no inconsistency between them.¹⁹
- IV.** In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.²⁰
- V.** The age of eighteen has been fixed on account of the understanding of experts in child psychology and behavioural patterns that till such an age the children in conflict with law could still be redeemed and restored to mainstream society, instead of becoming hardened criminals in future. There are, of course, exceptions where a child in the age

¹⁸ P.B Samant v. U.O.I., AIR 1994 Bom 323.

¹⁹ Geeta Hariharan v. Reserve Bank of India, (1999) 2 SCC 228.

²⁰ Subramanian Swamy v. Raju, (2014) 8 SCC 390.

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group of sixteen to eighteen may have developed criminal propensities, which would make it virtually impossible for him/her to be re-integrated into mainstream society, but such examples are not of such proportions as to warrant any change in thinking, since it is probably better to try and re-integrate children with criminal propensities into mainstream society, rather than to allow them to develop into hardened criminals, which does not augur well for the future.²¹

- VI.** Further, the Child if forced to face trial will have a negative effect on his psychology. Under this law, if a child, in conflict with law, between the ages of 16-18 years is found to have committed an offence by the Juvenile Justice Board, there is a range of rehabilitative dispositions that could be passed by the Juvenile Justice Board. These rehabilitative dispositions includes admonition, community service, imposition of a fine, probation, group counseling and an extreme measure of deprivation of liberty by way of placement of the child in a special home for three years.²²

²¹ Supra 5.

²² Section 15, Juvenile Justice Act. 2000- Order that may be passed against a Juvenile.

3. WHETHER THE JUVENILITY WILL DEPEND UPON THE NATURE OF OFFENCE COMMITTED AS IN THE EXISTING SCENARIO MOST OF THE JUVENILES ARE ENGAGED IN HORRENDOUS AND HEINOUS CRIMES LIKE RAPE, MURDER AND DRUG – PEDDLING, ETC.?

3.1) There is no ambiguous meaning in the different provisions of the Juvenile Justice Act, 2000 (hereinafter the act)

- I.** It is submitted that the legislature has adopted the age of 18 as the dividing line between juveniles and adults and such a decision is constitutionally permissible, so the enquiry from courts must come to an end²³. The juvenile here has an undisputed age of 18 years. This age of 18 years has constitutional relevance to protect the interest of juveniles from the Criminal liability under the Indian Penal Code, 1860.
- II.** It is further submitted that in the case *State of Tamil Nadu v. Shyam Sunder*²⁴, the court opined that it is the duty of the legislature to make laws and court must not interfere in the work of legislature. Further it was held that, to make an act as Ultra Vires or to make any amendment in it the relevant act or provision as the case maybe must be proved violative of the fundamental rights²⁵ and since, in the present case the petitioners have not questioned any provision of the act as unconstitutional, then the question amending the must not arise. It is urged that laws are considered and studied instruments of justice; they cannot be based on a specific instance alone, and it is the duty of the court to ask itself whether good law and good justice can ever be born out of an impulsive reaction.
- III.** In the Justice Verma committee report it was rightly pointed out that our jails are not well equipped to keep juveniles. It was stated that:

“Our jails do not have reformatory and rehabilitation policies. We do not engage with inmates as human beings. We do not bring about transformation. We, therefore, breed more criminals including juveniles) in our prison and reformatory system by

²³ Supra 16 .

²⁴ State of Tamil Nadu v. Shyam Sunder, (2011) 8 SCC 737.

²⁵ Ajay Hasia v. Khalid Mujib Sehravardi (1981) 1 SCC 722.

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*ghettoing them in juvenile homes and protective homes where they are told that the State will protect and provide for them, but which promise is a fruitless one.*²⁶

- IV. In furtherance to above arguments it is humbly submitted that as per the maxim *expressio unius est exclusio alterius* where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere. What guidance should be given, and to what extent and whether guidance has been given at all depends on the consideration of the provisions of the particular act with which the court has to deal with including its preamble.²⁷ So to strike out or amend any provision of the act, the opposition must prove substantive unreasonableness a mere hardship is not enough.²⁸ It is therefore urged that entire laws, which apply to the cases of all juveniles across the board, cannot and should not be determined on the basis of one bad example, no matter how horrifying or terrible it might be.
- V. Moreover it is submitted that out of the 472 million children in our country, only 1.2 % actually committed crimes in 2012 and 2013. The number of children who committed serious and heinous crimes was miniscule. In 2013, of all the children apprehended for crimes under the Indian Penal Code, 2.17% were accused of murder and 3.5% were accused of rape. That is 2% of 1.2%.²⁹ These figures of the NCRB, account for the FIRs registered and not the children who were actually found guilty. Therefore, it is not justified to treat a juvenile at par with an adult based on one bad incident.

3.2) The act is not violative of any Constitutional or Criminal Law Provisions

- I. It is duly submitted that inclusion of all under 18's into a class called juvenile under the act is valid as it provides separate scheme of investigation, trial and punishment for offences committed by them but there may exist differences inter se and within the under-18 category but such categorization must be identifiable, distinguishable and

²⁶ Justice J.S Verma, Justice Leila Seth, Gopal Subramaniam, Report of the Committee on Amendments to Criminal Law, 2013:Page 276 ¶ 45 available at <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>, last seen on 2/1/2017.

²⁷ Basant Kumar Sarkar v. Eagle Rolling Mills Ltd., AIR 1964 SC 1260.

²⁸ Bangalore Wollen, Cotton and Silk Mills, Co. Ltd. v. Corporation. of City of Bangalore, AIR 1962 SC 1263.

²⁹ National Crime Record Bureau, Crime in India 2013 Statistics, available at <http://ncrb.nic.in/StatPublications/CII/CII2013/Statistics-2013.pdf> , last seen on 2/1/2017.

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reasonable. So this separate scheme for juveniles is totally in lines with the Article 14.³⁰ This is the reason as to why the act is also in lines with section 82 and 83 of the Indian Penal Code, 1860.³¹

- II. By treating Rana as an adult, and the proposed system will incorrectly treat two distinct categories equally. This strikes at the very core of Article 14. The Supreme Court has repeatedly endorsed as part of the Article 14 mandate the principle that injustice arises not only when equals are treated unequally, but also when unequals are treated equally.³²
- III. Further it is humbly submitted before the court that the constitutional validity of the act is upheld in *Salil Bali v. Union of India*³³, so in the field of constitutional law where issues or matters of high public interest are involved, the principle of res judicata would still apply as article 141 says that the Law declared by Supreme Court is to be binding on all courts, so it also applies to courts other than the Supreme Court³⁴ and that court should normally follow past precedents.³⁵
- IV. Furthermore it is submitted that, the main objective of the act is to provide for care, protection, treatment, development and rehabilitation of the neglected or the delinquent juveniles.³⁶ So, the essence of the act is restorative and not retributive, providing for rehabilitation and integration of children in conflict with law back into the mainstream society.³⁷ Therefore, the act cannot be said to be against Right to Life as it aims at providing better living conditions to the Juveniles, hence providing for the society as well.³⁸
- V. It is most submitted that the age so decided in the act cannot be seen as unconstitutional even in case of serious offences because this age has been fixed on account of the understanding of the experts in child psychology and behavioral patterns that till such age the children in conflict with law could still be redeemed and restored to the mainstream society³⁹ instead of becoming hardened criminals in future, there may be exceptions to this, where child between 16 – 18 years of age has become

³⁰Roop Chand Adlakha v. DDA, 1989 Supp (1) SCC 116.

³¹Supra 7.

³²M. Nagaraj v. Union of India, AIR 2007 SC 71.

³³Supra 5.

³⁴In Re Cauvery Water Dispute Tribunal 1993 Supp (1) SCC 96 (2).

³⁵Bengal Immunity Ltd. v. State of Bihar, AIR 1956 SC 661.

³⁶Avishek Goenka v. Union of India (2012) 5 SCC 321.

³⁷Abuzar Hussain v. State of West Bengal, (2012) 10 SCC 489.

³⁸Essa v. State of Maharashtra, 2013 (4) SCALE 1.

³⁹Balco Employees Union v. Union of India (2002) 2 SCC 333.

a hardened criminal but this doesn't mean as of now to change the status quo⁴⁰. Merely because the law causes hardships or sometimes results in adverse consequences, it cannot be held to be ultra vires the Constitution, nor can it be struck down.⁴¹

3.3) The Minimum Age of Criminal Responsibility is fixed and is in consonance with the International Commitments

- I.** It is submitted that under the Indian law a person under the age of 18 is not allowed to vote⁴², is considered minor for entering into a contract⁴³, a girl of age less than 18 cannot give consent for sexual relationships⁴⁴, a child of age less than 18 cannot marry⁴⁵, yet, by acceding to the petition, that child can be tried as an adult and after a preliminary assessment, the child shall be presumed to have the knowledge and understanding of the alleged crime he has committed. The Respondent submits that such a scenario would be travesty of Justice.
- II.** It is most humbly submitted that in order to meet the international commitments like the Beijing Rules which indicated that efforts should be made by member countries to establish within their own national jurisdiction, a set of laws and rules especially applicable to juvenile offenders. The Respondent submits that our country accepts the international convention of keeping 18 years as the age of the child and the same is reflected in various laws where the age of child was kept at 18 years such as Contract Act, Motor Vehicles Act, etc. It was stated that the age of criminal responsibility in legal systems that recognize the concept of the age of criminal responsibility for juveniles should not be fixed at too low an age level, keeping in mind the emotional, mental and intellectual maturity of children⁴⁶ and hence the age was decided by the Indian Legislature as 18 years.

⁴⁰ Supra 5.

⁴¹ Ibid.

⁴² Article 326, The Constitution of India, 1950.

⁴³ Section 11, The Indian Contract Act, 1872.

⁴⁴ Section 375, The Indian Penal Code, 1860.

⁴⁵ Section 5, The Hindu Marriage Act, 1955.

⁴⁶ Age of criminal responsibility, Section 4 of United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Page 5.

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- III. It is submitted before this Hon'ble Court that Article 37 of CRC specifically states that a child below the age of eighteen years should not be punished in a cruel or harmful way and should not be held behind the bars along with adults and the present act duly follows the same.
- IV. It is humbly submitted before this Hon'ble Court that the brain of the teenager is not completely developed and he/ she is incapable of fully understanding the consequences of his actions or omissions. It is submitted that in 2007, a study conducted at the National Institute of Mental Health (NIMH), U.S., scanned children between ages 3 and 18 and conducted the Magnetic Resonance Imaging (MRI) scans and followed the actual physical changes in the adolescent brain, believes that brain maturation peaks around the age of 25.
- V. In a 2005 paper on "*Adolescence, Brain Development and Legal Culpability*", Dr. Giedd was quoted as saying :

*"Part of the brain that is helping organisation, planning and strategising is not done being built yet... It's sort of unfair to expect [adolescents] to have adult levels of organisational skills or decision-making before their brain is finished being built."*⁴⁷

Emotionally, an adolescent "is really both part child and part adult."⁴⁸ According to available neuro-scientific data, the frontal lobe, especially the prefrontal cortex, is among the last parts of the brain to fully mature. The frontal lobes are responsible for impulse control, in charge of decision-making, judgment and emotions and therefore crucial when fixing "culpability" in the case of juvenile delinquency.⁴⁹ Further, we now know conclusively that teenagers tend to be impulsive and prone to mood swings because the limbic system which processes emotions is still developing.⁵⁰ The finding herein has been affirmed in a research paper titled published by the Juvenile Justice Centre of the American Bar Association.

- VI. It is humbly submitted before this Hon'ble Court that section 16 of the Act of 2000 (the existing Act) has a specific provision to deal with children between 16-18 years

⁴⁷PBS Frontline, Inside the Teen Brain. See Interview with Jay Giedd, available on www.pbs.org/wgbh/pages/frontline/shows/teenbrain/ last seen on 09/01/2017.

⁴⁸ Lewis, Melvin. Child and Adolescent Psychiatry: A comprehensive textbook, Lippincott Williams and Wilkins (2002).

⁴⁹ Id, at Interview with Deborah Yurgelun-Todd.

⁵⁰ American Bar Association. Cruel and Unusual Punishment: The Juvenile Death Penalty Adolescence, Brain Development and Legal Culpability, available at

http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_juvjus_Adolescence.authcheckdam.pdf , last seen on 09/01/2017.

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who had committed serious offences which was well within the existing juvenile system and that there was no need to push juvenile offenders into adult criminal system. The Respondent submits that our country accepts the international convention of keeping 18 years as the age of the child and the same is reflected in various laws where the age of child was kept at 18 years such as Contract Act, Motor Vehicles Act, etc.

4. WHETHER OSSIFICATION TEST SHALL BE PREFERRED OVER MATRICULATION CERTIFICATE AS AN APPROPRIATE METHOD TO DETERMINE THE AGE OF A JUVENILE?

4.1) The ossification test is uncertain and inaccurate.

- I.** It is submitted before the Hon'ble court that, the ossification test do not yields absolute result there is always a margin of error and so the courts have taken judicial notice of this fact and have always held that the evidence afforded by radiological examination is no doubt a useful guiding factor for determining the age of a person⁵¹ but the evidence is not of a conclusive and incontrovertible nature and it is subject to a margin of error.⁵² Medical evidence as to the age of a person though a very useful guiding factor is not conclusive and has to be considered along with other circumstances.⁵³
- II.** Moreover it is submitted that, the courts need to be aware of the fact that age determination of the concerned persons cannot be certainly ascertained in the absence of original and valid documentary proof and there would always lay a possibility that the age of the concerned person may vary plus or minus two years.⁵⁴ Even in the presence of medical opinion, the Court showed a tilt towards the juvenility of the accused.⁵⁵
- III.** Further it is submitted that the court has to base its conclusions upon all the facts and circumstances disclosed examining of the physical features of the person whose age is in question, in conjunction with such oral testimony as may be available. An X-ray I ossification' may provide a surer basis for determining the age of an individual than the opinion of a medical expert but it can by no means be so infallible and accurate a test as to indicate the exact date of birth of the person concerned.⁵⁶ Too much of reliance cannot be placed upon textbooks on medical jurisprudence and toxicology while determining the age of an accused. In this vast country with varied latitudes,

⁵¹ Mukarrab v. State of U.P., AIR 2016 SC 1413.

⁵² Babloo Pasi v. State of Jharkhand, (2008) 13 SCC 133.

⁵³ State of M.P v. Anoop Singh, (2015) 7 SCC 773.

⁵⁴ Ibid.

⁵⁵ Babloo Pasi v. State of Jharkhand (2008) 13 SCC 133.

⁵⁶ Tara Devi v. Sudesh Chaudhary AIR 1998 Raj 59.

heights, environment, vegetation and nutrition, height and weight cannot be accepted to be uniform.⁵⁷

- IV.** It is most humbly submitted that while dealing with the question of determination of the age of the accused for the purpose of finding out whether he is a juvenile or not, a hypertechnical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea,⁵⁸ that he was a juvenile and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases,⁵⁹ as the standard of proof for age determination is the degree of probability and not proof beyond reasonable doubt.⁶⁰ The law, so laid down by this Court, squarely applies to the facts of the present case.

4.2) Other documents can be relied upon before opting for the Ossification test under the Indian Evidence Act, 1872.

- I.** It is most respectfully submitted to the Hon'ble court that, to render a document admissible under Section 35 of the Evidence Act, three conditions have to be satisfied, namely: (i) entry that is relied on must be one in a public or other official book, register or record; (ii) it must be an entry stating a fact in issue or a relevant fact, and (iii) it must be made by a public servant in discharge of his official duties, or in performance of his duty especially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act.⁶¹
- II.** It is further submitted that in the absence of birth or matriculation certificates, in order to record a finding in respect of age of a person, the Board is required to obtain the opinion of a duly constituted Medical Board.⁶² It is clear from the Rule that although the Board is bound to obtain the opinion of the Medical Board but the opinion per se

⁵⁷ *Jaya Mala v. Home Secy. Govt. of J&K* (1982) 2 SCC 538.

⁵⁸ *Rajinder Chandra v. State of Chhattisgarh and Anr.* (2002) 2 SCC 287.

⁵⁹ *Arnit Das v. State of Bihar*, (2000) 5 SCC 488.

⁶⁰ *Shah Nawaz v. State of U.P.*, (2011) 13 SCC 751.

⁶¹ *Birad Mal Singhvi v. Anand Purohit*, 1988 Supp SCC 604.

⁶² Rule 22 of Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003.

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is not a conclusive proof of the age of the person concerned. It is no more than an opinion.⁶³

- III.** It is submitted to the Hon'ble court that, it is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused⁶⁴ and there is no need of any Medical Examination or the use of ossification test.⁶⁵
- IV.** It is most humbly submitted that, since the ossification test is conducted by a medical expert so absolute should not be placed upon it as Section 45 of the Indian Evidence Act, 1872 clearly explains that this medical report can be accepted as a relevant fact but it need to be corroborated with other sources to be considered as a valid evidence in the court of law.⁶⁶ Hence the evidence of an expert is a rather weak type of evidence and the courts do not generally consider it as offering 'conclusive' proof and therefore safe to rely upon the same with the corroboration of an independent and reliable piece of evidence.⁶⁷

⁶³ Babloo Parsi v. State of Jharkhand and Another (2008)13 SCC 133.

⁶⁴ Abuzar Hossain alias Gulam Hossain v. State of West Bengal (2012) 10 SCC 489.

⁶⁵ Amit Singh v. State of Maharashtra, (2011) 13 SCC 744.

⁶⁶ Section 45 of the Indian Evidence Act, 1872.

⁶⁷ S. Gopal Reddy v. State of A.P., (1996) 4 SCC 596.

PRAYER

Wherefore in the light of the issues raised, arguments advanced and authorities cited, it is humbly requested that this Hon'ble Court may be pleased to adjudge and declare:

- The following petition filed by the petitioners is not maintainable,
- The constitutional sanction of an enactment has an overriding effect to an international convention of which India is a signatory,
- The Juvenility should not depend upon the nature of the offence committed, and
- Matriculation certificate should be used to determine the age of a juvenile in conflict with law.

And pass any such order, other order that it deems fit in the interest of Justice, Equity and Good Conscience.

And for this, Respondent as in duty bound, shall humbly pray.

COUNSEL ON BEHALF OF THE RESPONDENT