BLCRL 27

THE 1st MRINALINI DEVI MEMORIAL NATIONAL MOOT COURT COMPETITION, 2017

BEFORE THE HONOURABLE HIGH COURT OF BANGLA

WRIT JURISDICTION UNDER ARTICLE 226

W.P. (Crl.) No. 124 of 2015

In the Matter of

PEOPLES' CONSCIENCE..... PETITIONER

V.

UNION OF INDICA & ANR..... RESPONDENT

MOST RESPECTFULLY SUBMITTED BEFORE THE HONOURABLE CHIEF JUSTICE AND HIS COMPANION JUSTICES OF THE HIGH COURT OF BANGLA

MEMORANDUM ON BEHALF OF RESPONDENTS

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AIR	All India Report
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Govt.	Government
Hon'ble	Honourable
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IPC	Indican Penal Code
JJA	Juvenile Justice (Care and Protection of Children) Act 2015
Ker	Kerala
MACR	Minimum Age of Criminal Responsibility
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Pun.	Punjab
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reports
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UDHR	Universal Declaration of Human Rights
UOI	Union of India
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2. United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules);
3. The Convention of the Rights of the Child, 1990 (CRC); &
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STATEMENT OF JURISDICTION

The Petitioner has filed this writ petition under Article 226 of the Constitution of Indica. The Hon'ble High Court of Bangla has the jurisdiction to adjudicate the instant case under Art.226 of the Constitution of Indica as there are questions of great significance of the Constitution involved.

STATEMENT OF FACTS

1. On the First day of March 2015, a young girl, aged about nineteen (19) years was returning from her tuition classes, situated around three (3) kilometers away from her parental home, in Golpur District of State Bangla. She was forcibly stopped by a group of five (5) persons, and was brutally assaulted sexually, and thereafter was bathed in country liquor and set ablaze.

2. The girl received fatal burns of the third degree, and succumbed to her wounds on March 3rd, 2015. Based on her dying declaration, 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 meaning given in Juvenile Justice Act, 2000.

3. The juvenile's case was referred for inquiry to the Juvenile Justice Board. The other accused were tried in a regular sessions court and have been found guilty, inter alia, of the offences under Section 376D and Section 302 of the Indican Penal Code, 1860 (for short "the Penal Code"). The learned trial court has sentenced them to death. 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.

4. Before the Juvenile Justice Board to whom the case of Rana was referred for inquiry, the Petitioners (Peoples' Conscience - a Non-Profit Organization) had filed applications for their impleadment to enable them to 'prosecute' the juvenile alongside the public prosecutor. The petitioners also claimed that, on a proper interpretation of the Act, the juvenile was not entitled to the benefits under the Act but was liable to be tried under the penal law of the land in a regular criminal court along with the other accused.

5. According to the petitioners, after an elaborate hearing, the Board had fixed the case on July 25th, 2015 for pronouncement of order on the question of maintainability of the application filed by the petitioners and also on their prayer for impleadment. However, the Board had expressed its inability to decide the same and had directed the petitioners to seek an authoritative pronouncement on the said issue(s) from the Hon'ble High Court.

6. Accordingly, the petitioners instituted a writ proceeding before the Hon'ble High Court of Bangla, which was registered as Writ Petition (Crl.) No. 124 of 2015, seeking reliefs

regarding the interpretation of certain provisions of the Act and also the constitutionality of the blanket immunity to Juveniles and the blanket ban upon the Criminal courts to try Juveniles. The petitioners also pray that the Constitutional sanction of an enactment shall override the International Convention to which Indica is signatory.

7. 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.

8. The provisions of the International Commitments entered into by Indica obliges it to set up a particular framework to deal with Juvenile offenders and such obligations can be more comprehensively met.

9. Accordingly, the High Court framed the issues and the case is put for hearings before the Hon'ble High Court of Bangla .

ISSUES FOR CONSIDERATION

ISSUE 1

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.?

ISSUE 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?

ISSUE 3

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

SUMMARY OF ARGUMENTS

ISSUE 1: 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.?

It is humbly submitted before this Hon'ble Court that the juvenility will not depend upon the nature of offence committed as the statute clearly states that a person has to be treated as juvenile who is under 18 years of age. Indica's international obligation also mandates the fixation of age of juvenility as 18 years of age. It is proven scientifically, that the brain of a person below 18 years of age is under developing stage, he/she should be treated as juvenile and not as adult.

ISSUE 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?

It is humbly submitted before this Hon'ble High Court of Bangla that the Country has to fulfil its International obligations and the Juvenile Justice (Care and Protection) Act, 2000 is enacted under Article 253 of the Constitution. The Act which fixes the age of a Juvenile as 18 years is in accordance with the Country's International obligations and as per the International conventions to which Indica is signatory and does not violate Article 14 and 21 of the constitution. Where there is a International convention which is incorporated into the domestic laws, it is binding. Similarly fixing of age of Juveniles as 18 years is a policy decision of the Govt. And cannot be challenged

ISSUE 3: WHETHER OSSIFICATION TEST SHALL BE PREFERRED OVER MATRICULATION CERTIFICATE AS AN APPROPRIATE METHOD TO DETERMINE THE AGE OF A JUVENILE?

It is humbly submitted before this Hon'ble court that ossification tests as well as other medical examination methods shall not be validated over the matriculation certificates to determine the age of a juvenile offender. The documentary evidences must be given primacy as the medical evidences prove to be erroneous. Taking in to consideration the laws of the country too, matriculation certificate should be preferred as an appropriate method to determine the age of a juvenile.

WRITTEN SUBMISSIONS

ISSUE 1: 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.?

It is humbly submitted before the Hon'ble Court of Bangla that the juvenility will not depend upon the nature of offence committed as the Juvenility under Juvenile Justice (Care and Protection of Children) Act, 2000 is fixed as 18 years of age and the international commitments obliges Indica to fix the age of juvenility as 18 years of age.

1.1. JUVENILITY DOES NOT DEPEND UPON THE NATURE OF OFFENCE COMMITTED.

1.1.1. Juvenility under Juvenile Justice (Care and Protection of Children) Act, 2000.

A person is considered to be a juvenile, if he is below 18 years of age, and juvenility cannot be determined on any other factors such as nature of offence committed or mental age of a juvenile.

Sec.2 (k)[1] states that "juvenile" or "child" means a person who has not completed eighteenth year of age; **Sec. 2(l)**[2] states "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. Thus it is very clear and unambiguous that juvenility is determined on the basis of age of a person.

Interpretation of the relevant provisions of the said Act in any manner, if made, will not be confined to the respondent alone but will have an effect on all juveniles who may come into conflict with law both in the immediate and distant future. The *legislative wisdom* inherent in the Act must be accepted and respected.

The Act does not provide blanket immunity to juvenile offenders, as contended. What the Act contemplates is a different procedure to deal with such offenders. Should they be found guilty, they will be subject to different schemes of punishment.[3]

[1] Juvenile Justice (Care and Protection of Children) Act, 2000.
[2] Ibid.
[3] Sec.15, Juvenile Justice (Care and Protection of Children) Act, 2000.

The objective of the Act is to provide a special approach to the protection and treatment of juveniles. The preamble itself signifies the need of childcare by providing, that it is an Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of the children, and for their ultimate rehabilitation, through various institutions established under this enactment.[4]

Juvenile delinquents have been looked upon differently by different persons.

- To a lawyer, they are minors who are accused of offences from which they are immune to the punishments that are usually administered to adults
- To psychologists, they are youngsters whose social behavior patterns show deviations from acceptable norms.
- Judges take a different view by stating that they are neglected children who have been brought into the world by parents who have turned their back on their offspring and let them shift for themselves.

Juvenile delinquency is indeed a social problem. Economic insecurity, under-nourishment, inadequate clothing and lack of necessary medical-care may lead to delinquency. Therefore, taking into consideration the nature of offence committed, but leaving the juvenile's background, circumstances, and magnitude of the problem, issues involved, socio-economic and psychological reasons will be against the justice and conscience.

The juvenile justice system emphasizes the well being of the juvenile offender which is in proportion to the circumstances of both the offender and the offence. There are two major objectives of juvenile justice, namely:

1. The well being of the juvenile.

2. 'The principle of proportionality', which is intended to curb ' punitive sanctions expressed in just deserts in relation to the gravity of the offence', and to ensure that the response to the younger offender be based on the consideration not only of the gravity of the offence but also of the personal circumstances'.

[4] W.G. Daniel, "Juvenile Delinquency" in Roucek (Ed), Sociology of Crime, London.

The Justice *J.S. Justice Varma [Retd.] Committee*, constituted by the then government of India to examine the law regarding sexual assault against women, declined to recommend reduction of the age of juvenility to 16 years. While arriving at its conclusion, the Committee referred to the decreasing rates of recidivism, as also to "the neurological state of the adolescent brain".

In ***BALCO Employees Union vs. Union of India,***[5] it was observed that the Courts were reluctant to strike down a policy at the behest of a Petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

In ***State of Tamil Nadu vs. K. Shyam Sunder,***[6] wherein it had been observed that merely because the law causes hardships or sometimes results in adverse consequences, it cannot be held to be ultra vires the Constitution, nor can it be struck down. It is now well settled that reasonable classification is permissible so long as such classification has a rational nexus with the object sought to be achieved.

1.1.2. Determination of juvenility on the basis of age.

"If every saint has a past then every criminal has a future"...Mahatma Gandhi.

A juvenile of below 18 years of age is not responsible for any criminal act committed by him because of his emotional, mental and intellectual immaturity and sufficient incapacity to distinguish between right and wrong.

As *Justice Bhagwati* has rightly quoted "the child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into the maturity, into fullness on physical and vital energy and most breadth, depth and height of its emotional, intellectual and spiritual being".

There are two facts that are very typical of adolescents.

- The brain functions differently for an adult and an adolescent,
- The adolescents are open to the influence from peer and groups.

According to the experts, adolescents involve in risk seeking behavior without looking for the long term consequences. *Prefrontal cortex* is the last to develop which is responsible for impulsive control, (i.e.,) judgment, decision making, reasoning, etc. The cells and the neural

[5] BALCO Employees Union Vs. Union of India (2002) 2 SCC 333.
[6] State of Tamil Nadu Vs. K. Shyam Sunder (2011) 8 SCC 737.

developments in the brain provide an anatomical basis for concluding that youth up to age 18 are less responsible for criminal acts than adults. The frontal lobe functions poorly because adolescents tend to use a part of brain called *Amygdala* during decision making which is locus for impulsive aggressive behavior, it dominates over frontal lobe which makes adolescents more prone to react with gut instincts[7]. Thus the teenagers are prone to be impulsive as the organs that are responsible for controlling their emotions are still developing.

A juvenile offender is a product of unfavorable environment and is entitled to a fresh chance under better surroundings; the prospect of reformation is hopeful; such child does not have the same full knowledge and realization of the nature and consequences of his act, as does an adult, hence, is less culpable. The Committee on the Rights of the Child, constituted under the United Nations Convention on the Rights of the Child, which Indica has acceded to in 1992, in its General Comment No.10, Children's rights in juvenile justice (2007), observes that children differ from adults in their physical and psychological development and their emotional and educational needs, which constitute the foundation for their lesser culpability[8].

The apex court in public interest litigation [9] refused to read down the provisions of the JJ Act, 2000, in order to account for the mental and intellectual competence of a juvenile offender and refused to interfere with the age of a juvenile accused, in cases where juveniles were found guilty of heinous crimes.

1.1.3. Jurisdiction on juvenile cases.

The ruling in ***Raghubir v. State of Haryana***[10] unreservedly rejects the idea of subjecting juvenile delinquents to the adult criminal justice system even for rare offence categories. Such a rejection is given legal effect to by recognizing the juvenile delinquents right to appropriate forum. In this sense the ruling marks the swing of the pendulum to the opposite side, namely from the position of general criminal court or the special court jurisdiction to the exclusive juvenile courts jurisdiction position.

[7] Human Resource Watch, The rest of their lives 'life without parole for child offenders in U.S, Chapter V; The difference between youth and adults, New York: HRW.2005.
[8] A Dislocation of the Juvenile Justice System, Maharukh Adenwall.
[9] Dr. Subramanian Swamy And Ors vs Raju (2014) 8 SCC 390.
[10] Raghubir v. State of Haryana (1981) 4 S.C.C.210.

The Supreme Court ruling goes a long way in the direction of juvenile justice system which is ideal. It accepts in principle the idea of separate and distinct juvenile justice system[11].

However, the Hon'ble apex court on 17th of July, 2013[12] dismissed a batch of petitions seeking a direction to the Centre to take steps to make changes in the Juvenile Justice (Care and Protection of Children) Act 2000 to ensure that juveniles be tried under normal law in offences like rape and murder.

The Parliamentary Standing Committee that examined the Bill has also submitted its detailed objections to waiver of juveniles into the adult system.

In ***Salil Bali vs Union Of India***[13] a coordinate Bench did not consider it necessary to answer the specific issues raised before it, and had based its conclusion on the principle of judicial restraint that must be exercised while examining conscious decisions that emanate from collective legislative wisdom like the age of a juvenile.

Section 16[14] deals with children between 16 –18 years who have committed serious crime which was within the juvenile system and there was no need to push those children into adult criminal system, a move which could be described as retributive only."

Transferring juveniles to adult court does not deter the criminals but has only a negative impact by obstructing any future education, employment and social opportunities, but only encourages future criminal activity[15].

1.2. INTERNATIONAL PERSPECTIVE ON DETERMINATION OF JUVENILITY

Lexicon meaning of the term Juvenile is 'a young person, not fully developed who displays or suggests lack of maturity'. On the similar conceptual line the term has been legally defined under Section 2(k) of Juvenile Justice (Care and Protection) Act, 2000 as any person below the age of eighteen years. It was held that the provisions of the Act are in compliance with Constitutional directives and international conventions.[16]

[11] B.B.Pandey, Commentary on Raghubir ruling for juveniles right to exclusive treatment.
[12] Salil Bali vs Union Of India (2013) 7 SCC 705.
[13] Ibid.
[14] Juvenile Justice (Care and Protection of Children) Act, 2000.
[15] Adult sentencing does not deter juveniles from crime Enrico Panganelli, Juveniles should be tried as adults, Christine Watkins, Green haven Press,2008.
[16] Dr. Subramanian Swamy And Ors vs Raju (2014) 8 SCC 390.

The **Convention on the Rights of the Child, 1990 ("CRC"), in Article 1**, adopts a chronological definition of a "child", viz. less than 18 years old, unless majority under national legislation is attained earlier. As majority is attained in 18 years according to the law of the land in Indica, the age of juvenility cannot be challenged.

Indica is a signatory to the **UNCRC**[17] which mandates the age of a child to be below 18 years. Countries all over the world use this definition. Indica too, defines a child between the ages of 0-18 years. By law, he/she is not allowed to vote, sign a contract or engage a lawyer because he /she is not considered mature enough to make such decisions. Neuroscience proves in more ways than one, that an adolescent is at an age where he/she is not mature enough to understand the consequences of his/her actions.

According to the statistics made available to the *UN Secretary general's report*, 'we, the children', India has a long way to go in meeting the needs of the children. The figures state that 63% of children born in India today would not be registered at all., 25% will not be immunized against any disease, 26% will not have access to clean water, 47% will suffer from malnutrition in first 3 years of their life, 65 will be born with weight less than 2500 grams, 15% will never go to school and only 52% of children who begin at the first class will reach the fifth[18]. Making good to the above mentioned phenomenal backlogs, will reduce the juvenile delinquency in Indica.

U.S.A: Most States in the U.S. have enacted a juvenile code of which the main objective is rehabilitation and not punishment. Juveniles appear in juvenile court and not in adult court. Juvenile courts do not have the power to impose punishment and can impose only rehabilitative measures or assistance by government programmes.

U.K: Similarly, in the U.K., persons under 18 are tried by a "Youth Court" which is a special type of magistrate's court for those aged 10-18 years. The Youth Court can issue community sentences, behavioural programmes, reparation orders, youth detention and rehabilitation programmes which last three years.

According to Article 40 of the U.N. Convention the state can establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. Therefore, in accordance with the U.N. Convention, the Act has established the age limit.

[17] The United Nations Convention on the Rights of the Child.
[18] 'UN Child meet may expose Indian Record', The times of India. 19 April 2002 P.8 cols 3-4.

Indica is a signatory to the **Convention on the Rights of the Child (CRC), 1989**, **Article 1,** which clearly states a child means every human being below the age of 18 years. Thus it is the international obligation of Indica to fix the age limit in order to determine the juvenility.

Therefore, we should not rush into a decision under pressure of the societal outrage resulting from a single incident, but should give into more thoughts before actually making the amendment which may have unprecedented consequences.

UN Standard Minimum Rules for the Administration of Juvenile Justice 1985 (The Beijing Rules) emphasize on the accountability of exercise of discretion relating to children[19] and observance of basic procedural safeguards at all stages of proceedings[20], along with the aim of 'promoting juvenile welfare to the greatest possible extent[21]' The basic Principle under **Beijing Rules** and **The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (Havana Rules)** is that, the reaction of juveniles offenders should always be in proportion to the circumstances of both the offenders and offences.

The highest point on the quest for ensuring rights to juveniles without undermining the welfare principles has been reached by the **UN Convention on the Rights of Child (CRC).** The convention recognizes not only the right to be processed according to the principles of justice but also right to participation, name survival, identity, and right against exploitation. According to **Art.3**[22], the states parties have undertaken to ensure the child such protection and care as is necessary for his or her well being and in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative or legislative bodies, the best interests of the child shall be primary considerations.

Article 37(a)[23] nevertheless stipulates that "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Principle of last resort, principle of repatriation and rehabilitation and principle of fresh start as stated in **The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (Havana Rules)** should be strictly adhered.

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[19] Rule 6.
[20] Rules 7.1, 14.1.
[21] Rule 1 Commentary, Rules 5.1, 17.
[22] UN Convention on the Rights of Child (CRC).
[23] Ibid.

In ***Potosi Correctional Centre V. Christopher Simmons***[24], it was held that, the court should not group all juveniles in to a single class instead; juveniles should be given individual consideration and evaluated on their particular maturity level, intelligence, life experience and feelings of moral responsibility.

Dr. W.C. Reckless, made his recommendations for progressive prison administration in India. He suggested giving top priority to the removal of juvenile delinquents from adult jails, adult courts, and police lock ups, as well as to the provision for juvenile courts, remand homes, probation, certified schools and after care[25]. Further impetus to enact special law for children was provided by the UN Declaration of the Rights of the Child in 1958.

Underlying the above international principles and constitutional mandates, it is humbly submitted before the High Court of Bangla that juvenility is to be determined based upon the age of the juvenile and not on the nature of offence committed.

[24] Potosi Correctional Centre V. Christopher Simmons 543 U.S. 551 (2005).
[25] Jail Administration in India, UN Technical Assistance Programme, 1953, P.35.

ISSUE 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?

The respondent humbly submits that the international convention law and domestic law must be construed harmoniously. The doctrine of transformation stipulates that a special legislation must be enacted subsequently in municipal law so as to give effect to the concerned International law. The Juvenile Justice Act, 2000 is in furtherance of the country's obligation arising from a series of International Conventions to which Indica is a signatory body. The provision of International Covenant to which Indica is a signatory body becomes corpus juris when Indica enacts a special legislation for the concerned subject. The Provisions of the Act are also in consonance with the Contitutional Provisions of Indica.

2.1 INTERNATIONAL CONVENTION LAW AND DOMESTIC LAW MUST BE CONSTRUED HARMONIOUSLY:

It is humbly submitted before this Hon'ble High Court of Bangla that there are many cases where the Indican courts have adopted a harmonious construction between International law and Domestic law. In case of ambiguity in the statute the court will look into International treaties concerned. And also in cases where there is no specific legislation concerned the courts have taken the International treaties to interpret the case and pronounce the judgement.

It is well-established in Indica that in case of conflict between International treaties and clear and unambiguous statute law, courts will give effect to statute law. If statute law is ambiguous, the courts adopt the doctrine of harmonious construction so as to avoid conflict between International treaties and statute law. In other words, Indica courts construe ambiguous statute law in the context of International treaties.

In ***Kubic Dariusz v. Union of India***[26], the Supreme Court held that, "it is generally a well recognized principle in national legal system that in event of doubt the national rule is to be interpreted in accordance with the state's international obligations. There is need for harmonization whenever possible bearing in mind the spirit of the covenants."

In ***Entertainment Network (India) ltd v. super cassette Industries***[27], the Supreme Court observed that the court has in number of cases applied the norms of international law, in

[26] Kubic Dariusz v. Union of India 1990 AIR 605.
[27] Entertainment Network (India) ltd v. super cassette Industries 2008(37) PTC 353(SC).

particular, the international covenants to interpret domestic legislation if by reason therefore the tenor of domestic law is not breached and in case of any inconsistency the domestic/municipal laws, the courts has extensively made use of international law, inter alia, for the following purposes:

i. As a means of interpretation
ii. Justification or fortification obligation which Indica has entered into, when they are not in conflict with the existing domestic law:
iii. To reflect international changes and reflect the wider civilization:
iv. To provide a relief contained in a covenant ,but not in a national law;
v. To fill gaps in law.

The basic provision of the Constitution of Indica, by the Virtue of which international law becomes implementable through municipal laws of Indica is **Article 51(c). Article 51(c)** of the Constitution enjoins the state to endeavor to foster respect for international law and treaty obligation in the dealings of organized peoples with one another. Relying upon the said Article, *Sikri C.J* in ***Keshavananda Bharati V. State of Kerala***[28] observed by citing from the case ***People's union for Civil Liberties v. UOI*** [29]: "… It seems to me that, in Article 51 of the Directive Principles, this court must interpret the language of the Constitution, if not intractable, which is after all a municipal law, in the light of the United Nations Charter and the solemn declaration subscribed to by India"

In ***ADM Jabalpur v. Shivkanth Shukla***[30], *Khanna J* observed, "Equally well-established is the rule of Construction that if there be a conflict between the Municipal Law on one side and the International Law or the provisions of any treaty obligations on the other, the courts would give effect to Municipal Law. If however, two constructions of the municipal law are possible, the courts should lean in favour of adopting such construction as would make the provisions of the municipal law to be in harmony with the international law on treaty obligations. Every statute, according to this rule is interpreted, so far as its language permits, so as not to be inconsistent with the Comity of Nations on the established rules of International law, and the Court will avoid a construction which would give rise to such inconsistency unless compelled to adopt it by plain and unambiguous language."

[28] KeshavanandaBharati V. State of Kerala (1973) 4 SCC 225.
[29] People's union for Civil Liberties v. UOI (1997) 1 SCC 301 at para 23.
[30] ADM Jabalpur v. Shivkanth Shukla AIR 1976 SC 1207.

In ***Vishakha V. State of Rajasthan***[31], the Supreme Court held 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. 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 of **Article 253** read with Entry 14 of the Union List. Under **Article 73**, the executive power of the Union is available till the Parliament enacts legislation. The Supreme Court invoked the '**Convention on the Elimination of All Forms of Discrimination against Women' (CEDAW)**, **Articles 11 and 24**, in laying down the guidelines on the subject.

From the above case laws it is clear that there is presumption of harmonious interpretation between International laws and Municipal laws. It was Lord Denning who stated that it is the duty of courts to construe legislation so as to be in conformity with International law and not in conflict with it.In the present case also the court must harmoniously construe the juvenile justice Act with that of relevant international convention to know the objective behind it.

2.2. THE JUVENILE JUSTICE ACT, 2000 IS IN FURTHERANCE OF THE COUNTRY'S OBLIGATION ARISING FROM A SERIES INTERNATIONAL CONVENTION TO WHICH INDIA IS A SIGNATORY BODY

It is humbly submitted before this Hon'ble court that the Act has been enacted in furtherance of Indica's International Obligations and thus have to abide by the International Conventions to which Indica is a signatory.

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

[31] Vishaka v. State of Rajasthan AIR 1997 SC 3011.

Anr[32]. In other words, the Act must be interpreted and understood to advance the cause of the legislation and to confer the benefits of the provisions thereof to the category of persons for whom the legislation has been made.

In ***Sheela Barse v. Secretary Children's Aid Society***,[33] while issuing directions to the State of Maharashtra, the Supreme Court held that the conventions which had been ratified by India, and elucidate norms for the protection of children, cast an obligation on the state to implement their principles. Thus the court in a break from its earlier judgments came to the conclusion that treaties, even if unincorporated into national law, have binding effect.

In ***Pratap Singh v. State of Jharkhand***[34], the Supreme Court observed that the courts can refer to and follow international treaties, covenants and conventions to which India is a party although they may not be a part of our municipal law. A contextual meaning to a statute is required to be assigned having regard to not only the Constitution but also international law operating in the field. The Court held that the Juvenile Justice (Care and Protection of Children) Act, 2000 should be interpreted in the light of the Universal Declaration of Human Rights as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules).

What is contemplated by the Act[35] is in furtherance of the country's obligations arising from a series of international conventions to which Indica is a signatory. The Act[36] is an expression of legislative wisdom to treat all persons below 18 as juveniles and to have an alternate system of dealing with such juveniles who come into conflict with law. It is submitted that the constitutional validity of the Act[37] has been upheld by a Coordinate Bench in ***Salil Bali v. UOI*** [38]. It has also submitted that psychological/mental, intellectual and emotional maturity of a person below 18 years cannot be objectively determined on an individual or case to case basis and the fixation of the Minimum Age of Criminal Responsibility (MACR) under the Act is a policy decision taken to give effect to the country's international commitments.

India passed its first central legislation namely, The Children Act, 1960 applicable to Union Territories. After series of amendments and repeals, The Juvenile Justice Act, 2000 was

[32] Pratap Singh v. State of Jharkhand (2005) 3 SCC 551.
[33] Sheela Barse v. Secretary Children's Aid Society 1987 AIR 656, 1990 SC1480 (52).
[34] Supra 32, pg. 578-579.
[35] Juvenile Justice(Care and Protection) Act, 2000.
[36] Ibid.
[37] Ibid.
[38] Supra 13

enacted fulfilling the obligation of United Nation Convention on Rights of the Child, 1990 by raising the age limit for both boys and girls as 18 years.

The **United Nations Convention on the Rights of the Child, 1990** read with the concluding Resolution of the Committee on Child Rights (constituted under the UN Convention) of the year 2000 qua India and the General Resolution of the year 2007 clearly contemplate the MACR as 18 years and mandates member States to act accordingly.

Statistics of the crimes (Crime rate) committed by juvenile offenders have also been brought on record to contend that the beneficial nature of the legislation does not call for any relook, even on the touchstone of Constitutional permissibility.

Thus, the Juvenile Justice Act, 2000 is in Furtherance of the Country's Obligation Arising from a Series International Conventions to Which India Is a Signatory Body. The Act is a special legislation enacted to give effect to those Conventions. Hence both the Juvenile Justice Act and the relevant International Convention have binding value and the Court must enforce it.

2.3. THE PROVISIONS OF THE ACT ARE CONSTITUTIONALLY VALID.

It is humbly submitted before this Hon'ble Court that fixing of the age when a child ceases to be a child at 18 years is a matter of policy which could not be questioned in a court of law, unless the same could be shown to have violated any of the fundamental rights, and in particular **Articles 14 and 21** of the Constitution.

Referring to the decision of this Court in ***BALCO Employees Union Vs. Union of India***[39], at paragraph 46 of the said judgment it had been observed that it is neither within the domain of the Courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy was wise or whether something better could be evolved. It was further observed that the Courts were reluctant to strike down a policy at the behest of a Petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

It is further urged that **Article 15(3)** of the Constitution empowers the State to enact special provisions for women and children, which reveals that the Juvenile Justice (Care and Protection of Children) Act, 2000, was in conformity with the provisions of the Constitution.

[39] Supra 5.

In ***State of Tamil Nadu Vs. K. Shyam Sunder***[40] it has been observed that, the Court has always held in many cases that the presumption is always in favour of the constitutionality of an enactment, since it has to be assumed that the legislature understands and correctly appreciates the needs of its own people and its discriminations are based on adequate grounds.

The Apex court in ***Salil Bali vs Union Of India &Anr***[41] held, "38. Having regard to the serious nature of the issues raised before us, we have given serious thought to the submissions advanced on behalf of the respective parties and also those advanced on behalf of certain Non- Government Organizations and have also considered the relevant extracts from the Report of *Justice J.S. Varma Committee* on "Amendments to the Criminal Law" and are convinced that the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006, and the Juvenile Justice (Care and Protection of Children) Rules, 2007, are based on sound principles recognized internationally and contained in the provisions of the Indian Constitution."

Observations of *Justice Krishna Iyer* in ***Murthy Match Works and Ors vs. TheAsstt. Collector of Central Excise and Anr.***[42]as the present issues seem to be adequately taken care of by the same: "unconstitutionality and not un-wisdom of legislation is the narrow area of judicial review. In the present case unconstitutionality is alleged as springing from lugging together two dissimilar categories of match manufacturers into one compartment for like treatment."

In the words of *Justice Krishna Iyer* in ***Murthy Match Works***[43]:

"15. Certain principles which bear upon classification may be mentioned here. It is true that a State may classify persons and objects for the purpose of legislation and pass laws for the purpose of obtaining revenue or other objects. Every differentiation is not discrimination. But classification can be sustained only if it is founded on pertinent and real differences as distinguished from irrelevant and artificial ones. The constitutional standard, by which the sufficiency of the differentia which forms a valid basis for classification may be measured, has been repeatedly stated by the Courts. If it rests on a difference which bears a fair and just relation to the object for which it is proposed, it is constitutional. To put it differently, the

[40]Supra 6.
[41] Supra 13.
[42] Murthy Match Works and Ors vs. TheAsstt. Collector of Central Excise and Anr (1974) 4 SCC 428.
[43] Ibid.

means must have nexus with the ends. Even so, large latitude is allowed to the State for classification upon a reasonable basis and what is reasonable is a question of practical details and a variety of factors which the Court will be reluctant and perhaps ill-equipped to investigate. In this imperfect world perfection even in grouping is an ambition hardly ever accomplished. In this context, we have to remember the relationship between the legislative and judicial departments of Government in the determination of the validity of classification. Of course, in the last analysis Courts possess the power to pronounce on the constitutionality of the acts of the other branches whether a classification is based upon substantial differences or is arbitrary, fanciful and consequently illegal. At the same time, the question of classification is primarily for legislative judgment and ordinarily does not become a judicial question. A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the Judicature cannot rush in where even the Legislature warily treads. All these operational restraints on judicial power must weigh more emphatically where the subject is taxation."

The avowed object of the Juvenile Justice Act, 2000 is to ensure their rehabilitation in society and to enable the young offenders to become useful members of the society in later years. Indica has accepted the above position and legislative wisdom has led to the enactment of the JJ Act in its present form. If the Act has treated all under 18 as a separate category for the purposes of differential treatment so far as the commission of offences are concerned, we do not see how the contentions advanced by the petitioners to the contrary on the strength of the thinking and practices in other jurisdictions can have any relevance.[44]

It is therefore humbly submitted before this Hon'ble Court that the constitutional validity of the Act has been upheld in ***Salil Bali v. UOI*** [45] and it is not necessary to revisit the said decision even if it be by way of a reference to a larger Bench, and that the recommendations of the *Justice J.S. Varma Committee* following which recommendations, the Criminal Law Amendment Act, 2013 has been enacted by the legislature fundamentally altering the jurisprudential norms so far as offences against women/sexual offences are concerned.

Thus it is humbly submitted before this Honorable Court that when a country is a signatory to an International Convention and also has ratified it according to the Constitutional Provisions it shall become binding and thus adhere to such statute and the constitutional sanction of an enactment cannot be questioned in order to invalidate such law.

[44] Supra 9.
[45] Supra 13.

ISSUE 3: WHETHER OSSIFICATION TEST SHALL BE PREFERRED OVER MATRICULATION CERTIFICATE AS AN APPROPRIATE METHOD TO DETERMINE THE AGE OF A JUVENILE?

It is humbly submitted before this Honorable Court that Matriculation certificate shall be preferred over the Ossification test as an appropriate method to determine the age of a juvenile. The liberal interpretation of the provisions of the JJ Act, 2000 and The JJ Rules, 2007 reveals that Matriculation Certificates be given importance in determination of age of a Juvenile. Further there are plethora of cases which prove that the matriculation certificate has primacy over medical test report.

3.1. DETERMINATION OF AGE UNDER JUVENILE JUSTICE LAWS OF INDICA EXPLICITLY PLACES RELIANCE UPON SCHOOL RECORDS.

Juvenile Justice (Care and Protection of Children) Act, 2000 does not lay down any fixed criteria for determining the age of the person. **Section 49(1)** of the Juvenile Justice (Care and Protection of Children) Act, 2000 provides for presumption and determination of age. According to the Provision, where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.

From a reading of the above provision, it is clear that it provides that when it appears to the competent authority namely, the Board that the person brought before it is a juvenile, the Board is obliged to make it clear as to the age of that person and for that purpose the Board shall take such evidence as may be necessary and then record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be.

The JJ Rules 2007, through **Rule 12** lay down categorically procedure and principles to be followed in age determination. It requires the competent authority to determine age by seeking:

(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat.

It further provides that "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." **Rule 12** clearly provides that finding of age recorded following the above procedure "shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law."

Medical Evidence regarding the age can be considered only if the date of birth mentioned in the school record is not available and could not be relied upon.[46]A medical report cannot prevail up on school leaving certificate for the purpose of determination of age under any circumstances.[47] When the law itself prescribes a procedure for determination of age of juveniles, no other procedure should be followed.[48] The Supreme Court in ***Amit Das v. State of Bihar***[49] clarified that the review of judicial opinion shows that the court should not take a hyper technical approach while appreciating evidence for determination of age of the accused. If two views are possible, the court should lean in favor of holding the accused to be a juvenile in borderline cases. This approach was further confirmed by the Supreme Court in ***Rajendra Chandra v. State of Chattisgarh,***[50] wherein it was held that the High Court has not erred in arriving at a conclusion that the accused was a juvenile as it has not followed any hyper technical approach. Even after the presence of over writing in the mark-sheets produced, the court completely relied upon the school certificates on the grounds of it being attested by the competent authority. This case thus reveals the fact that the apex judicial body itself is of the opinion that school certificates prevail over the hyper technical methods of age determination.

3.2. ADMISSIBILITY OF SCHOOL CERTIFICATES AS EVIDENCE.

It is a non-ignorable fact that the JJ Act, 2000 in itself explicitly provides for placing reliance upon the school certificates instead of medical evidences and opinions. The provisions under the Indican Evidence Act further substantiate the evidentiary value of such documents produced before the court to prove age of the accused as well as victims. **Section 45**[51] deals

[46] Ram Suresh Singh v. Prabhat Singh (2009) 6 SCC 681
[47] Kali Prasad Patwa v. state of Uttar Pradesh 2002 (44) ACC 840 (All)
[48] Mukesh Jagadish Vasava v. State of Gujarat 2009 (76) AIC 878 (Guj)
[49] Amit Das v. State of Bihar AIR 2000 SC 2264.
[50] Rajinder Chandra v. State of Chhatisgarh, (2002) 2 SCC 287.
[51] Indian Evidence Act, 1872.

with relevancy of opinion of experts. But on considering the general rule of law, the court always sees towards and weighs only direct evidences on the grounds that opinion differs from person to person and changes from time to time and place to place. The provision providing relevancy of opinions of experts is not absolute and will be taken only when the court is unable to form an opinion on its own. It can thus be construed that court seeks the medical opinion only when the documentary evidences fails to provide a satisfactory conclusion. In ***Purna Palai v. State***[52] it has been held that where direct evidence is found to be satisfactory and reliable, it cannot be rejected in view of hypothetical expert medical evidence. In ***Dinesh Kumar v. State***[53] only on the record of other evidences, the testimony of medical witness was accepted. Even though the opinion of a doctor as to the age is valued under the law, it is not sufficient to fix the exact age.[54] The estimate of a medical officer does not amount to proof and it is merely an opinion.[55]

Section 35 of Indican Evidence Act states that an entry in any public book, register or record or an electronic record is a relevant fact. This provision whose liberal interpretation reveals the evidentiary value of public records. Entry in general register of a school maintained in the ordinary cause of its business cannot be doubted.[56] Unless and otherwise there is material evidence indicating doubts as to genuineness, trustfulness and reliability or to suspect it of any tampering, the public documents cannot be ignored from being treated as *prima facie* evidence.[57] The evidentiary value of School certificates was further recognized in the judicial pronouncements of ***Liladhar v. Mabibi***[58] and ***Hrishikesh v. Sushil***[59] respectively. The entries in the school records are considered *Ante Liten Mortam*[60] and thus elevate its evidentiary value. Under the Education Rules too every school whether Government or Private is obligated to maintain register of admissions with the prescribed particulars and such records are considered official records and are admissible under **Sec.35 of IEA**.[61]

[52] Purana Palai v. State 1987 CrLJ 1406 (Orissa).
[53] Dinesh Kumar v. State of Madhya Pradesh 1987 CrLJ 212.
[54] Bishwanth Prasad v. Emperor AIR 1948 Oudh 1.
[55] Mohammed Syedol Arrifin v. Yeoh Got Gark AIR 1916 PC 242.
[56] Ashok Kumar Amritlal Patil v. State of Gujarat 2003 (4) Guj LR 3164.
[57] Ibid.
[58] Liladhar v. Mabibi A 1934 N 44.
[59] Hrishikesh v. Sushil A 1957 C 211.
[60] Sumithra Bai v. State of Madhya Pradesh 1999 CrLJ 2541 (2544) (MP).
[61] Vijaya Kari v. K Swarnalatha A 1893 AP 181, 189.

In ***Hema Ram and Ors.*** **v.** ***State of Raj. and Anr***,[62] issue was whether school record is admissible under Section 35 of the Evidence Act for age determination of a juvenile? The Court gave primacy to matriculation certificate and held admissible. Where the documents like school leaving certificate, Matriculation certificate or the entry made in the different records of the school are available, they should be accepted as reliable and genuine. It is because the entries definitely having been made several years before cannot be challenged or attacked on the ground that subsequent to the occurrence any record has been created for the advantage of an accused. [63] The court in the case of ***Birad Mal Singhvi*** **v.** ***Anand Puroh*** held that school records are admissible as evidence provided genuineness of the document is proved by the officials. Further the documents need to be maintained in due course of business.

Along with the school records, the Indican Evidence Act also validates the relevancy of Birth Certificates issued by the Public Authority. Apart from the school records, the JJ Act also places reliance upon the Birth Certificates in determination of age of Juveniles. The Birth Register extract obtained from municipality is a public record and is also admissible as evidence. [64] In ***Buddha v. State of M.P***[65] entry in Birth Register held by the Katwar in the discharge of his duty was held admissible under Sec.35 over the ossification test report.

3.3 OSSIFICATION TEST IS NOT CONCLUSIVE TEST.

There is numerous cases and views of Medical experts which buttress the fact that ossification test is not conclusive test it leaves at least a margin of about six months on either side even if ossification test of multiple joints is conducted. It sometimes shows a variation of even four years.[66]

It is not right to prefer the opinion of a radiologist over the positive evidence furnished by the birth register or school register as it cannot formulate a uniform standard for the determination of the age by the extent of ossification and the union of epiphysis in bones.[67] If ossification test is done for a single bone the error may be two years either way.[68] But if the test is done for multiple joints with overlapping age of fusion the margin of error may be

[62] Hema Ram and Ors. v. State of Rajasthan. and Anr RLW 2006(l) Raj 476.
[63] Kumar Satyanand V. State of Bihar, 2000 Cri. L J 1532.
[64] Gehimmal v. karummal 10 SLR 38; Chitru Devi v. Ram Dei AIR 2002 HP 59.
[65] Buddha v. State of Madhya Pradesh 1999 (1) MPLJ 492.
[66] Modi's Medical Jurisprudence. (24th Edn 2013).
[67] Chathu v. P. Govindan A 1958 Ker 21.
[68] Chidder Ram v. State 1992 CriLJ 4073 (Del).

reduced. Sometimes this margin is reduced to six months on either side.[69] Still the error persists. In ***State of Madhya Pradesh v. Anoop Singh***[70], it was held that the ossification test is not the sole criteria for age determination. A blind and mechanical view regarding the age of a person cannot be adopted solely on the basis of the medical opinion by the radiological examination.[71] The Supreme Court in ***Babloo Pasi v. sate of Jharkhand***,[72] referring to ***Ramdeo Chauhan v. State of Assam***,[73] held that the medical evidence was not conclusive proof of age. It is now well settled that it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. The date of birth is to be determined on the basis of material on record and on appreciation of evidence adduced by the parties. The Medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered only along with other cogent evidence.[74]

A doctors' opinion as to age is never certain.[75] For the determination of age by physical signs, radiology examination etc a wide margin of error is always admitted.[76] Medical evidences are based on averages and cannot be correct to the day where the opinion of the doctors on medical evidences will be 'the accused is between 16 and 18 years.[77]

Hence it is clear that ossification test is not conclusive and documentary evidence must be given primacy. It is thus humbly submitted before this Honorable Court Presumption and determination of age according to **Sec. 49 r/w Rule 12** must be taken in to consideration and age of the juveniles must be determined accordingly.

[69] Jhala and Raju's Medical Jurisprudence, (6th Edn 1997).
[70] State of Madhya Pradesh v. Anoop Singh (2015) 7 SCC 773.
[71] Modi's Text Book of Medical Jurisprudence and Toxicology, 20th Edn, P.31.
[72] Babloo Pasi v. State of Jharkhand (2008) 13 SCC 113.
[73] Ramdeo Chauhan v. State of Assam (2001) 5 SCC 714.
[74] Mukkarab V. State of U.P, 2014.
[75] Nathu v. Emperor AIR 1931 Lah 40 I.
[76] Kartar Singh v. State 1964 Cur 204 (Punj).
[77] Khanna v. State 1961 JabLJ 76.

PRAYER

In the light of the issues raised, arguments advanced and authorities cited, may this Hon'ble court be pleased to:

1. Dismiss the above Writ Petition filed by the Petitioner.
2. Declare and hold that, the classification between juveniles based on nature of offence is unconstitutional.
3. Declare the immunity granted to juveniles from criminal courts under JJ Act, 2000, valid and constitutional in accordance with Indica's international obligations.
4. Uphold the validity of Matriculation Certificate over Ossification Test in determining the age of the Juvenile.
5. Pass an order to try the juvenile offender Rana under the Juvenile Justice Board.

AND /OR

Pass any order that it deems fit in the interest of Justice, Equity and Good Conscience. And for this, the respondents as in duty bound, shall humbly pray.

COUNSELS FOR THE RESPONDENTS