CASE NO.:
Appeal (crl.) 210 of 2005

PETITIONER:
Pratap Singh

RESPONDENT:
State of Jharkhand & Anr.

DATE OF JUDGMENT: 02/02/2005

BENCH:
N.SANTOSH HEGDE & S.N.VARIAVA & BISHESHWAR P.SINGH & HOTOI KHETOHO SEMA & S.B.SINHA

JUDGMENT:
JUDGMENT

DELIVERED BY:

HOTOI KHETOHO SEMA,J
S.B.SINHA, J

(Arising out of Special Leave Petition (Crl.) NO. 3749 OF 2001)

H.K.SEMA,J.

Leave granted.

This appeal is directed against the judgment and order dated 10.9.2001 passed by the High Court of Jharkhand at Ranchi in Criminal Revision No. 98 of 2001.

Briefly stated the facts giving rise to the filing of the present appeal are as follows:-

First Information Report was lodged before the police in Bokaro city registered as P.S. case No.1/99 dated 1.1.1999 for the offence under Sections 364A, 302/201 IPC read with Section 120B IPC to the effect that on 31.12.1998 the appellant was alleged as one of the conspirators to have caused the death of the deceased by poisoning. On the basis of the FIR the appellant was arrested and produced before the C.J.M. Chas on 22.11.1999. On production, the learned CJM assessed the age of the appellant to be around 18 years old. On 28.2.2000, a petition was filed on behalf of the appellant claiming that he was a minor on the date of occurrence i.e. 31.12.1998, whereupon the learned CJM transmitted the case to the Juvenile Court. The appellant was produced in the Juvenile Court on 3.3.2000. On his production the Juvenile Court assessed the age of the appellant by appearance to be between 15 and 16 years and directed the Civil Surgeon to constitute a Medical Board for the purpose of assessing the age of the appellant by scientific examination and submit a report. No such Medical Board was constituted. Thus, the learned ACJM asked the parties to adduce evidence and on examining the school leaving certificate and mark sheet of Central Board of Secondary Education came to the finding that the appellant was below 16 years of age as on 31.12.1998 taking the date of birth of the appellant as 18.12.1983 recorded in the aforesaid certificate. The appellant was then released on bail.

Aggrieved thereby the informant filed an appeal before the 1st Additional Sessions Judge, who after referring to the judgment of this

Court
rendered in Arnit Das vs. State of Bihar, (2000) 5 SCC 488 disposed of the appeal on 19.2.2001 holding that the Juvenile Court had erred in not taking note of the fact that the date of production before the Juvenile Court
was the date relevant for deciding whether the appellant was juvenile or not
for the purpose of trial and directed a fresh inquiry to assess the age of the
appellant. Aggrieved thereby the appellant moved the High Court by filing Criminal Revision Petition. The High Court while disposing of the Revision has followed the decision rendered by this Court in Arnit Das (supra) and held that reckoning date is the date of production of the accused before the
Court and not the date of the occurrence of the offence.

The High Court held that for determining the age of juvenile, the provisions of 1986 Act would apply and not 2000 Act. The High Court, however, took the view that the date of birth, as recorded in the school and
the school certificate, should be the best evidence for fixing the age of the
appellant. High Court was also of the view that any other evidence in proof
of age would be of much inferior quality. As the enquiry is pending, we need not delve into this question.

Having noticed the conflicting views in Arnit Das vs. State of Bihar (2000) 5 SCC 488 and Umesh Chandra Vs. State of Rajasthan (1982) 2 SCC 202, this matter has been referred to the Constitution Bench by an order dated 7.2.2003. It reads:-

"The High Court in its impugned judgment has relied on a two-Judge bench decision of this Court in Arnit Das vs. State of Bihar, 2000(5) SCC 488. The submission of the learned counsel for the petitioner is that in Arnit Das (supra), the decision of this Court in Umesh Chandra vs. State of Rajashtan, 1982(2) SCC 202, was not considered. The point arising is one of the frequent recurrence and view of the law taken in this case is likely to have a bearing on the new Act, that is, Juvenile Justice (Care and Protection) Act, 2000 also, the matter deserves to be heard by the Constitution Bench of this Court. Be placed before the Hon.Chief Justice of India, soliciting directions."

This is how the matter has been placed before us.

The dual questions which require authoritative decision are:

(a) Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as Juvenile offender or the date when he is produced in the Court/competent authority.

(b) Whether the Act of 2000 will be applicable in the case a proceeding initiated under 1986 Act and pending when the Act of 2000 was enforced with effect from 1.4.2001.

Question (a)
Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as Juvenile offender or the date when he is produced in the Court/competent authority.

Mr. Mishra submits that the decision in Umesh Chandra (supra) rendered by a three-Judge Bench of this Court has laid down the correct law and a two-Judge Bench decision in Arnit Das (supra) cannot be said to have laid down a correct law. Mr. Mishra also submits that the decision in Arnit Das (supra) has not noticed the decision of a three-Judge Bench in Umesh

Chandra (supra). Mr. Mishra also referred to the aims and objects of the Juvenile Justice Act, 1986 (hereinafter referred to as the 1986 Act) and submits that the whole object is to reform and rehabilitate the juvenile for
the offence he is alleged to have committed and if the date of offence is not
taken as reckoning the age of the juvenile, the purpose of the Act itself would be defeated. In this connection, he has referred to Sections 18, 20,
26 and 32 of the Act. Per contra Mr. Sharan refers to the aims and objects of
the Act and various Sections of the Act and particularly emphasized the word is employed in Section 32 of the Act and submits that cumulative reading of the provisions as well as of the scheme of the Act would show that the reckoning date for determining the date of juvenile would come into
play only when a juvenile appears or is brought before the authority/court and not the date of an offence.

We may at this stage notice the preamble as well as object of the 1986
Act:

"An Act to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles.

Be it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:-

Prefatory Note-Statement of Objects and Reasons.- A review of the working of the existing Children Acts would indicate that much greater attention is required to be given to children who may be found in situations of social maladjustment, delinquency or neglect. The justice system as available for adults is not considered suitable for being applied to juveniles. It is also necessary that a uniform juvenile justice system should be available throughout the country which should make adequate provision for dealing with all aspects in the changing social, cultural and economic situation in the country. There is also need for larger involvement of informal systems and community based welfare agencies in the care, protection, treatment, development and rehabilitation of such juveniles.

2. In this context, the proposed legislation aims at achieving the following objectives:-

(i) to lay down a uniform legal framework for juvenile justice in the country so as to ensure that no child under any circumstances is lodged in jail or police lock-up. This is being ensured by establishing Juvenile Welfare Boards and Juvenile Courts;

(ii) to provide for a specialized approach towards the prevention and treatment of juvenile delinquency in its full range in keeping with the developmental needs of the child found in any situation of social maladjustment;

(iii) to spell out the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of children coming within the purview of the juvenile justice system. This is proposed to be achieved by establishing observation homes, juvenile homes for neglected juveniles and special homes for delinquent juveniles;

(iv) to establish norms and standards for the administration of juvenile justice in terms of investigation and prosecution,

adjudication and disposition, and care, treatment and rehabilitation;

(v) to develop appropriate linkages and co-ordination between the formal system of juvenile justice and voluntary agencies engaged in the welfare of neglected or socially maladjusted children and to specifically define the areas of their responsibilities and roles;

(vi) to constitute special offences in relation to juveniles and provide for punishments therefor;

(vii) to bring the operation of the juvenile justice system in the country in conformity with the United Nations Standard Minimum Rule for the Administration of Juvenile Justice.

3. As its various provisions come into force in different parts of the country they would replace the corresponding laws on the subject such as the Children Act, 1960 and other State enactments on the subject."

Thus, the whole object of the Act is to provide for the care, protection, treatment, development and rehabilitation of neglected delinquent juveniles. It is a beneficial legislation aimed at to make available the benefit of the Act to the neglected or delinquent juveniles. It is settled law that the interpretation of the Statute of beneficial legislation must be to advance the cause of legislation to the benefit for whom it is made and not to frustrate the intendment of the legislation.

We may also, at this stage, notice the definition of delinquent juvenile. Sub-section (e) of Section 2 of the 1986 Act defines the delinquent juvenile as:

(e) "delinquent juvenile" means a juvenile who has been found to have committed an offence;"

Sub-section (l) of Section 2 of 2000 Act defines "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence. The notable distinction between the definitions of 1986 Act and 2000 Act is that in 1986 Act "juvenile in conflict with law" is absent. The definition of delinquent juvenile in 1986 Act as noticed above is referable to an offence said to have been committed by him. It is the date of offence that he was in conflict with law. When a juvenile is produced before the competent authority and or court he has not committed an offence on that date, but he was brought before the authority for the alleged offence which he has been found to have committed. In our view, therefore, what was implicit in 1986 Act has been made explicit in 2000 Act.

Section 32 of the 1986 Act deals with the presumption and determination of age, which reads:

"32. Presumption and determination of age.-(1) Where it appears to a competent authority that a person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile, the competent authority shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be necessary and shall record a finding whether the person is a juvenile or not, stating his age as nearly as may be.

(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person

in respect of whom the order has been made is not a juvenile,
and the age recorded by the competent authority to be the age of
the person so brought before it shall, for the purposes of this
Act, be deemed to be the true age of that person."

Mr. Sharan stressed heavily on the word is used in two places of the
Section and contended that the word is suggests that for determination of age
of juvenile the date of production would be reckoning date as the inquiry
with regard to his age begins from the date he is brought before the Court
and not otherwise. We are unable to countenance this submission. We have
already noticed that the definition of delinquent juvenile means a juvenile
who has been found to have committed an offence. The word is employed
in Section 32 is referable to a juvenile who is said to have committed an
offence on the date of the occurrence. We may also notice the provisions of
Section 18 of the 1986 Act. Section 18 provides for bail and custody of
juveniles. It reads:-
18. BAIL AND CUSTODY OF JUVENILES.(1) When any
person accused of a bailable or non-bailable offence and
apparently a juvenile is arrested or detained or appears or is
brought before a Juvenile Court, such person shall,
notwithstanding anything contained in the Code of Criminal
Procedure, 1973 (2 of 1974), or in any other law for the time
being in force, be released on bail with or without surety but he
shall not be so released if there appear reasonable grounds for
believing that the release is likely to bring him into association
with any known criminal or expose him to moral danger or that
his release would defeat the ends of justice.

(2) When such person having been arrested is not released on
bail under sub-section (1) by the officer-in-charge of the police
station, such officer shall cause him to be kept in an observation
home or a place of safety in the prescribed manner (but not in a
police station or jail) until he can be brought before a Juvenile
Court.

(3) When such person is not released on bail under sub-section
(1) by the Juvenile Court it shall, instead of committing him to
prison, make an order sending him to an observation home or a
place of safety for such period during the pendency of the
inquiry regarding him as may be specified in the order."

It will be noticed that the word is has been used in more than one
place in this Section also. Often than not, an offender is arrested
immediately after an offence is alleged to have been committed or some
time even arrested on the spot.
This would also show that the arrest and release on bail and custody
of juveniles, the reckoning date of a juvenile is the date of an offence and
not the date of production.

Furthermore, Section 32 of the Act heavily relied upon by the counsel
for the respondent does not envisage the production of a juvenile in the
Court.

We may also usefully refer to Sections 3 and 26 of the Act 1986.
Sections 3 and 26 of the Act reads:-
"3. Continuation of inquiry in respect of juvenile who has
ceased to be a juvenile.- Where an inquiry has been initiated
against a juvenile and during the course of such inquiry the
juvenile ceases to be such, then, notwithstanding anything
contained in this Act or in any other law for the time being in
force, the inquiry may be continued and orders may be made in
respect of such person as if such person had continued to be a

juvenile".

"26. Special provision in respect of pending cases.- Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Juvenile Court which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that the juvenile has committed the offence."

The legislative intendment underlying Sections 3 and 26 read with the preamble, aims and objects of the Act is clearly discernible. A conjoint reading of the Sections, preamble, aims and objects of the Act leaves no matter of doubt that the legislature intended to provide protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication thereof. Interpretation of Sections 3 and 26 of the Act are no more res-integra. Sections 3 and 26 of the 1986 Act as quoted above are in pari materia with Sections 3 and 26 of the Rajasthan Children Act, 1970 (Raj. Act 16 of 1970). A three-Judge bench of this Court in Umesh Chandra (supra) after considering the preamble, aims and objects and Sections 3 and 26 of the Rajasthan Act, held that the Act being a piece of social legislation is meant for the protection of infants who commit criminal offences and, therefore, such provisions should be liberally and meaningfully construed so as to advance the object of the Act. This Court then said in paragraph 28 at 210 SCC:-

"28. As regards the general applicability of the Act, we are clearly of the view that the relevant date for the applicability of the Act is the date on which the offence takes place. Children Act was enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that age could not be said to be mature for imputing mens rea as in the case of an adult. This being the intendment of the Act, a clear finding has to be recorded that the relevant date for applicability of the Act is the date on which the offence takes place. It is quite possible that by the time the case comes up for trial, growing in age being an involuntary factor, the child may have ceased to be a child. Therefore, Sections 3 and 26 became necessary. Both the sections clearly point in the direction of the relevant date for the applicability of the Act as the date of occurrence. We are clearly of the view that the relevant date for applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial."

(emphasis supplied)

As already noticed the decision rendered by a three-Judge bench of this Court in Umesh Chandra (supra) was not noticed by a two-Judge bench of this Court in Arnit Das (supra). We are clearly of the view that the law laid down in Umesh Chandra (supra) is the correct law and that the decision rendered by a two-Judge bench of this Court in Arnit Das (supra) cannot be said to have laid down a good law. We, accordingly, hold that the law laid down by a three-Judge bench of this Court in Umesh Chandra (supra) is the correct law.

Question No.(b):

Whether the Act of 2000 will be applicable in the case a

proceeding is initiated under 1986 Act and pending when the Act
of 2000 was enforced with effect from 1.4.2001.

On this point, we have heard Mr. P.S.Mishra, learned senior counsel for the appellant, Ms. Maharukh Adenwala, counsel for the intervener and Mr. Amarendra Sharan, learned ASG for the State of Jharkhand. In fact counsel for the intervener has adopted the arguments of Mr. Mishra. Mr. Mishra would submit that any proceeding against any person pending under the 1986 Act would be covered by the 2000 Act and would extend the benefit of being a juvenile as defined under the 2000 Act, if at the time of
the commission of the offence he was below the age of 18 years. To buttress his point counsel heavily relied upon the provisions contained in Section 20 of the Act and Rules 61 and 62 framed by the Central Government. Per contra Mr. Sharan counsel for the respondent would contend that the 1986 Act has been repealed by Section 69(1) of the 2000 Act and, therefore, the provisions of 2000 Act would not be extended to a case/inquiry initiated and pending under the provisions of 1986 Act, the Act
of 2000 being not retrospective.

To answer the aforesaid question, it would be necessary to make a quick survey of the definitions and Sections of 2000 Act, relevant for the purpose of disposing of the case at hand.

As stated hereinabove the whole object of the Acts is to provide for
the care, protection, treatment, development and rehabilitation of juveniles.
The Acts being benevolent legislations, an interpretation must be given which would advance the cause of the legislation i.e. to give benefit to the
juveniles.
The 1986 Act was holding the field till it was eclipsed by the emergence of 2000 Act w.e.f. 1.4.2001, the date on which the said Act came into force by the Notification dated 28.2.2001 in the Official Gazette issued
by the Central Government in exercise of the powers conferred by Sub-Section (3) of Section 1 of the Act. Section 69(1) of the Act repealed the
1986 Act. It reads:-
69. Repeal and savings.-(1) The Juvenile Justice Act, 1986 (53
of 1986) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action
taken under the said Act shall be deemed to have been done or
taken under the corresponding provisions of this Act."

(emphasis supplied)

Sub-Section (2) postulates that anything done or any action taken under the 1986 Act shall be deemed to have been done or taken under the corresponding provisions of the 2000 Act. Thus, although the 1986 Act was repealed by the 2000 Act, anything done or any action taken under the 1986 Act is saved by sub-section (2), as if the action has been taken under the provisions of the 2000 Act.
Section 20 on which reliance has been placed heavily by the counsel for the appellant deals with the special provision in respect of pending cases.
It reads:-
"20. Special provision in respect of pending cases.-
Notwithstanding anything contained in this Act, all proceedings
in respect of a juvenile pending in any Court in any area on the
date on which this Act comes into force in that area, shall be
continued in that Court as if this Act had not been passed and if
the Court finds that the juvenile has committed an offence, it

shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence."

The striking distinction between the 1986 Act and 2000 Act is with regard to the definition of juvenile. Section 2(h) of the 1986 Act defines juvenile as under:-
"2(h) "juvenile" means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years;"

Section 2(k) of 2000 Act defines juvenile as under:-

"2(k) "juvenile" or "child" means a person who has not completed eighteenth year of age;"

Thus, the striking distinction between the 1986 Act and 2000 Act is that under the 1986 Act a juvenile means a male juvenile who has not attained the age of 16 years and a female juvenile who has not attained the age of 18 years. In the 2000 Act no distinction has been drawn between the male and female juvenile. The limit of 16 years in 1986 Act has been raised
to 18 years in 2000 Act. In the 2000 Act wherever the word "juvenile" appears the same will now have to be taken to mean a person who has not completed 18 years of age.

Section 3 provides as follows:

"3. Continuation of inquiry in respect of juvenile who has ceased to be a juvenile.- Where an inquiry has been initiated against a juvenile in conflict with law or a child in need of care and protection and during the course of such inquiry the juvenile or the child ceases to be such, then notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a juvenile or a child."

Thus, even where an inquiry has been initiated and the juvenile ceases to be
a juvenile i.e. crosses the age of 18 years, the inquiry must be continued and
orders made in respect of such person as if such person had continued to be a
juvenile.

Similarly, under Section 64 where a juvenile is undergoing a sentence of imprisonment at the commencement of the 2000 Act he would, in lieu of undergoing such sentence, be sent to a special home or be kept in a
fit institution. These provisions show that even in cases where a mere inquiry has commenced or even where a juvenile has been sentenced the provisions of the 2000 Act would apply. Therefore, Section 20 is to be appreciated in the context of the aforesaid provisions.

Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with non-obstante clause. The sentence "Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any Court in any area on date
of which this Act came into force" has great significance. The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the
Act is relatable to proceedings initiated before the 2000 Act came into force
and which are pending when the 2000 Act came into force. The term "any court" would include even ordinary criminal courts. If the person was a

"juvenile" under the 1986 Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or girl had crossed 18 years. This shows that Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act but had not yet crossed the age of 18 years then the pending case shall continue in that Court as if the 2000 Act has not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, shall forward the juvenile to the Board which shall pass orders in respect of that juvenile.

In this connection it is pertinent to note that Section 16 of the 2000 Act is identical to Section 22 of the 1986 Act. Similarly Section 15 of the 2000 Act is in pari materia with Section 21 of the 1986 Act. Thus, such an interpretation does not offend Article 20(1) of the Constitution of India and the juvenile is not subjected to any penalty greater than that which might have been inflicted on him under the 1986 Act.

Mr. Mishra placed reliance on Rules 61 and 62 framed by the Central Government. According to him, particularly Rule 62 of the Rules covers the pending cases and the appellant is entitled to the benefit of Rule 62. Rule 62 reads:-

"62. Pending Cases.-(1) No juvenile in conflict with law or a child shall be denied the benefits of the Act and the rules made thereunder.

(2) All pending cases which have not received a finality shall be dealt with and disposed of in terms of the provisions of the Act and the rules made thereunder.

(3) Any juvenile in conflict with law, or a child shall be given the benefits under sub-rule (1), and it is hereby clarified that such benefits shall be made available not only to those accused who was juvenile or a child at the time of commission of an offence, but also to those who ceased to be a juvenile or a child during the pendency of any enquiry or trial.

(4) While computing the period of detention of stay of a juvenile in conflict with law or of a child, all such period which the juvenile or the child has already spent in custody, detention or stay shall be counted as part of the period of stay or detention contained in the final order of the competent authority."

This Rule also indicates that the intention of the Legislature was that the provisions of the 2000 Act were to apply to pending cases provided, on 1.4.2001 i.e. the date on which the 2000 Act came into force, the person was a "juvenile" within the meaning of the term as defined in the 2000 Act i.e. he/she had not crossed 18 years of age.

Mr. Mishra referred to the decision of the two-Judge Bench of this Court in Criminal Appeal No. 370 of 2003 decided on 31.3.2004 in the case of Upendra Kumar Vs. State of Bihar, wherein this Court referred to the earlier decisions of this Court rendered in Bhola Bhagat vs. State of Bihar (1997) 8 SCC 720, Gopinath Ghosh vs. State of W.B. 1984 (Supp). SCC 228, Bhoop Ram Vs. State of U.P.(1989) 3 SCC 1 and Pradeep Kuamr vs. State of U.P. 1995 Supp (4) SCC 419 where this

Court came to the conclusion that the accused who were juvenile could not be denied the benefit of the provisions of the Act then in force.
We, therefore, hold that the provisions of 2000 Act would be applicable to those cases initiated and pending trial/inquiry for the offences
committed under the 1986 Act provided that the person had not completed 18 years of age as on 1.4.2001.

The net result is:-

(a) The reckoning date for the determination of the age of the juvenile is the date of an offence and not the date when he is produced before the authority or in the Court.

(b) The 2000 Act would be applicable in a pending proceeding in any court/authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 1.4.2001.

The appeal stands disposed of in the above terms.

S.B. SINHA, J:

INTRODUCTION :

Juvenile Justice Act in its present form has been enacted in discharge
of the obligation of our country to follow the United National Standard Minimum Rules for the Administration of Juvenile Justice, 1985 also known as Beijing Rules (the Rules).

THE RULES :

Part I of the said Rules provides for the general principles which are
said to be of fundamental perspectives referring to comprehensive social policy in general and aiming at promoting juvenile welfare to the greatest possible extent, which would minimize the necessity of intervention by the juvenile justice system and, in turn, will reduce the harm that was caused by
any intervention. The important role that a constructive social policy for juvenile is to play has been pointed out in Rules 1.1 to 1.13 inter alia in the
mater of prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of the national development process of each country, within a comprehensive framework of social justice from all juveniles, and, thus, at the same time, contributing to the protection of the
young and maintenance of a peaceful order in the society. While Rule 1.6 refers to the necessity of the juvenile justice system being systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services including their methods, approaches and attitudes, Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States. Rule 2.1 provides for application of the rules without distinction of any kind. Rule 2.2 provides for the definitions

which are as follows:

"(a) A juvenile is a child or young person who, under the
respective legal systems, may be dealt with for an
offence in a manner which is different from an adult;

(b) An offence is any behaviour (act or omission) that is
punishable by law under the respective legal systems;

(c) A juvenile offender is a child or young person who is
alleged to have commited or who has been found to have
committed an offence."

Rule 2.3 inter alia provides for making a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and
bodies entrusted with the functions of the administration of juvenile justice
and designed:

"(a) To meet the varying needs of juvenile offenders,
while protecting their basic rights;

(b) To meet the needs of society;

(c) To implement the following rules thoroughly and
fairly."

The age of a juvenile is to be determined by the Member Countries having regard to its legal system, thus fully respecting the economic, social
political, cultural and legal systems. This has made a wide variety of ages
coming under the definition of "juvenile", ranging from 7 years to 18 years or above. Rule 3 provides for extension of the Rules covering (a) status offences; (b) juvenile welfare and care proceedings and (c) proceedings dealing with young adult offenders, depending of course on each given age limit. Rule 4 provides that the minimum age of criminal responsibility should not be fixed at too low an age level bearing in mind the facts of emotional, mental and intellectual maturity. Rule 5 provides that the juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence. Rule
6 provides for scope of discretion. Rule 7.1 provides for the rights of juvenile which is as under:

"Basic procedural safeguards such as the presumption of
innocence, the right to be notified of the charges, the
right to remain silent, the right to counsel, the right to the
presence of a parent or guardian, the right to confront and
cross-examine witnesses and the right to appeal to a
higher authority shall be guaranteed at all stages of
proceedings."

Rule 8 provides for the protection of privacy. Rule 9 provides that the
said rules shall not be interpreted as precluding the application of the Standard Minimum Rules for the treatment of prisoners adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the

young. Rule 27 also provides for application of the Standard Minimum Rules for the treatment of prisoners adopted by the United Nations.

Part II of the said Rules provides for investigation and prosecution,
diversion, specialization within the police, detention pending trial. Rule 13
reads as under:

"13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.

13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance \026 social, educational, vocational, psychological, medical and physical \026 that they may require in view of their age, sex and personality."

Part III provides for adjudication and disposition in terms whereof competent authorities prescribed were competent to adjudicate. Rule 15 provides for legal counsel, parents and guardians. Rule 16 provides for Social Inquiry Reports. Rule 16.1 reads as under:

"In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority."

Rule 17 provides for guiding principles in adjudication and disposition which reads as under:

"17.1 The disposition of the competent authority shall be guided by the following principles:

(a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;

(b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

(c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of

persistence in committing other serious offences and
unless there is no other appropriate response;
(d) The well-being of the juvenile shall be the guiding
factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any
crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal
punishment.

17.4 The competent authority shall have the power to
discontinue the proceedings at any time."

It has been pointed out that the main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following:

(a) Rehabilitation versus just result;
(b) Assistance versus repression and punishment;
(c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;
(d) General deterrence versus individual incapacitation.

OBJECTS OF JUVENILE JUSTICE LEGISLATION :

The purpose of the Juvenile Justice Legislation is to provide succour to the children who were being incarcerated along with adults and were subjected to various abuses. It would be in the fitness of things that appreciation of the very object and purpose of the legislation is seen with a clear understanding which sought to bring relief to juvenile delinquents.

The problem of Juvenile Justice is, no doubt, one of tragic human interest so much so in fact that it is not confined to this country alone but cuts across national boundaries. In 1966 at the second United Nations Congress on the Prevention of Crime and Treatment of Offenders at London this issue was discussed and several therapeutic recommendations were adopted. To bring the operations of the juvenile justice system in the country in conformity with the UN Standard Minimum Rule for the Administration of juvenile justice, the Juvenile Justice Act came into existence in 1986. A review of the working of the then existing Acts both State and Parliamentary would indicate that much greater attention was found necessary to be given to children who may be found in situations of social maladjustment, delinquency or neglect. The justice system as available for adults could not be considered suitable for being applied to juvenile. There is also need for larger involvement of informal system and community based welfare agencies in the case, protection, treatment, development and rehabilitation of such juveniles.

The provisions of the Juvenile Justice Act, 1986 (hereinafter referred to as "the 1986 Act") and the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) (hereinafter referred to as "the 2000 Act") are required to be construed having regard to the aforementioned Minimum Standards as the same are specifically referred to therein.

The Juvenile Justice Act, 1986 is aimed at achieving the following objects :

(i) To lay down an uniform legal frame-work for juvenile

justice in
the country so as to ensure that no child under any circumstances is
lodged
in jail or police lock-up. This is being ensured by establishing Juvenile
Welfare Boards and Juvenile Courts;
(ii) To provide for a specialized approach towards the
prevention
and treatment of juvenile delinquency in its full range in keeping with the
development needs of the child found in any situation of social
maladjustment;
(iii) To spell out the machinery and infrastructure required for
the
case, protection, treatment, developments and rehabilitations of various
categories of children coming within the purview of the Juvenile Justice
system. This is proposed to be achieved by establishing observation homes,
juvenile homes for neglected juveniles and special homes for delinquent
juveniles;
(iv) To establish norms and standard for the administration of
juvenile justice in terms of investigation and prosecution, adjudication
and
disposition and case, treatment and rehabilitation;
(v) To develop appropriate linkages and coordination between
the
formal system of juvenile justice and voluntary agencies engaged in the
welfare of neglected or society maladjusted children and to specifically
define the areas of their responsibilities and roles;
(vi) To constitute special offences in relation to juveniles and
provide for punishment therefor;
(vii) To bring the operation of the juvenile justice system in
the
country in conformity with the United Nations Standard Minimum Rules for
the Administration of Juvenile Justice.

The various provisions of the 1986 Act provide for a scheme of
uniform juvenile justice system in the country so that a juvenile may not
have to be lodged in jail or police lock-up as well as for prevention and
treatment of juvenile delinquency for care, protection etc.
Section 3 provides that where an inquiry has been initiated against a
juvenile even, during the course of such inquiry a juvenile ceased to be
such,
then, notwithstanding anything contained therein or any other law for the
time being in force, the inquiry may be continued and orders may be made in
respect of such persons as if such person had continued to be a juvenile.
Chapter II of the Act speaks of competent authorities and institutions for
juveniles such as Juvenile Welfare Boards, Juvenile Courts, Juvenile Homes,
special homes, observation homes and aftercare organisations. Chapter III
makes provision for neglected juveniles. Section 17 makes provision for
uncontrollable juveniles. Chapter IV deals with delinquent juveniles.
Sections 18 to 26 provide for bail and custody of juveniles, accused of a
bailable or non-bailable offence, the manner of dealing with them and the
orders that may be passed regarding or against delinquent juveniles.
Proceedings as laid down in Chapter VIII of the Code of Criminal
Procedure are not competent against a juvenile. A juvenile and a person who
is not a juvenile cannot be jointly tried. No disqualification attaches to
conviction of a juvenile for any offence under any law. Special provisions
are contained in Section 26 as regard the proceedings in respect of
juveniles
pending in any court on the date of the coming into force of the Act.
Chapter
V (Sections 27 to 40) lay down the procedure of competent authorities
generally under the Act and appeals and revisions from orders of such
authorities. Chapter VI (Sections 41 to 45) provides for special offences
in
respect of juveniles. Chapter VII (Sections 46 to 63) contains
miscellaneous

provisions.

Section 32 of the 1986 Act mandates the competent authority to hold enquiry as to the age of the delinquent brought before it.

The 1986 Act has been repealed and replaced by the 2000 Act.

The 2000 Act has brought about certain changes vis-`-vis the 1986 Act. It has obliterated the distinction between a male juvenile and female juvenile. In contrast with the definition of delinquent juvenile in the 1986 Act who was found guilty of commission of an offence, a juvenile in conflict with law is defined in the 2000 Act to mean a person who is of below 18 years of age and is alleged to have committed an offence. Section 3 provides for continuation of inquiry in respect of juvenile who has ceased to be a juvenile.

By reason of the aforementioned provisions a legal fiction has been created to treat a juvenile who has ceased to be a juvenile as a person as if he had continued to be a juvenile. Chapter II provides for constitution of a Juvenile Justice Board. Its power had been outlined in Section 6. Section 7 mandates that a Magistrate before whom a juvenile is produced must without any delay record his opinion, and if it is found that a person brought before him is a juvenile, he shall record the same and forward him with the record of the proceeding to the competent authority having jurisdiction over the proceeding. Sections 8 and 9 provide for observation homes and special homes. Section 10 provides that on apprehension of a juvenile in conflict with law; he shall be placed under the charge of a special juvenile police unit or the designated police officer who shall immediately report the matter to a member of the Board. Section 12 provides for bail. In no circumstances, a person who appears to be juvenile is to be placed in a police lock-up. He is to be kept in an observation home in the prescribed manner until he can be brought before the court. Sub-section (3) of Section 12 mandates the Board to make an order sending a juvenile to the observation home instead of committing him to prison. Section 14 provides for holding of an inquiry by the Board regarding a juvenile within a period of four months. Section 15 provides for an order that may be passed regarding juvenile, clause (g) of sub-section (1) whereof reads, thus:

"15. Order that may be passed regarding juvenile \026 (1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit, -

(g) make an order directing the juvenile to be sent to a special home \026

(i) in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;

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

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances

of the case it is expedient so to do, for reasons to be
recorded, reduce the period of stay to such period as it
thinks fit."

Section 16 mandates that no juvenile shall be sentenced to death or
life imprisonment or committed to prison in default of payment of fine or
in
default of furnishing security. Sections 20 and 64 which are relevant for
our
purpose read as under:

"20. Special provision in respect of pending cases \026
Notwithstanding anything contained in this Act, all
proceedings in respect of a juvenile pending in any Court
in any area on the date on which this Act comes into
force in that area, shall be continued in that Court as if
this Act had not been passed and if the Court finds that
the juvenile has committed an offence, it shall record
such finding and instead of passing any sentence in
respect of the juvenile, forward the juvenile to the Board
which shall pass orders in respect of that juvenile in
accordance with the provisions of this Act as if it had
been satisfied on inquiry under this Act that a juvenile
has committed the offence.

64. Juveniles in conflict with law undergoing sentence at
commencement of this Act \026 In any area in which this
Act is brought into force, the State Government or the
local authority may direct that a juvenile in conflict with
law who is undergoing any sentence of imprisonment at
the commencement of this Act, shall, in lieu of
undergoing such sentence, be sent to a special home or be
kept in fit institution in such manner as the State
Government or the local authority thinks fit for the
remainder of the period of the sentence; and the
provisions of this Act shall apply to the juvenile as if he
had been ordered by the Board to be sent to such special
home or institution or, as the case may be, ordered to be
kept under protective care under sub-section (2) of
section 16 of this Act."

Sections 4 to 28 occur in Chapter II which deal with juvenile in
conflict with law and Section 64 occurs in Chapter V dealing with
miscellaneous provisions. It is interesting to note that all the
provisions
occurring in Chapter II or Section 20 do not use the expression juvenile in
conflict with law whereas Section 64 specifically uses that expression.

Section 20 of the Act permits continuation of proceedings of a
juvenile court in any area on the date on which the Act came into force by
providing "it shall record such finding and instead of passing any sentence
in
respect of that juvenile, shall forward him to the board which shall pass
orders in respect of that juvenile in accordance with the provision of this
Act
as if it has been satisfied on inquiry under this Act that juvenile had
committed the offence".

Section 68 provides for rule making power of the State Government.
No State unfortunately has framed any rule in exercise thereof. The
Central
Government, however, in purported exercise of its power under Section 70
of the Act published the principles which are fundamental to the
development of strategies, interpretation and implementation of the Act of
2000 and the model rules which the State Governments are required to

frame. Rule 61of the said Model Rule is as under:

"61. Temporary application of model rules \026 It is hereby
declared that until the new rules are framed by the State
Government concerned under section 68 of the Act, these
rules shall mutatis mutandis apply in that State."

Rule 62 deals with pending cases and sub-rule (3) thereof reads as
under:
"\005It is hereby clarified that such benefits shall be made
available not only to those accused, who was juvenile or
a child at the time of commission of an offence but also
to those who ceased to be a juvenile or a child during the
pendency of any enquiry of trial."

The legislation relating to juvenile justice should be construed as a
step for resolution of the problem of the juvenile justice which was one of
tragic human interest which cuts across national boundaries. The said Act
has not only to be read in terms of the Rules but also the Universal
Declaration of Human Rights and the United Nations Standard Minimum
Rules for the protection of juveniles.

INTERNATIONAL LAW :
The Juvenile Justice Act specially refers to international law.
The
relevant provisions of the Rules are incorporated therein. The
international
treatises, covenants and conventions although may not be a part of our
municipal law, the same can be referred to and followed by the courts
having regard to the fact that India is a party to the said treatises. A
right to
a speedy trial is not a new right. It is embedded in our Constitution in
terms
of Articles 14 and 21 thereof. The international treaties recognize the
same.
It is now trite that any violation of human rights would be looked down
upon. Some provisions of the international law although may not be a part
of our municipal law but the courts are not hesitant in referring thereto
so as
to find new rights in the context of the Constitution. Constitution of
India
and other ongoing statutes have been read consistently with the rules of
international law. Constitution is a source of, and not an exercise of,
legislative power. The principles of International Law whenever applicable
operate as a statutory implication but the Legislature in the instant case
held
itself bound thereby and, thus, did not legislate in disregard of the
constitutional provisions or the international law as also in the context
of
Articles 20 and 21 of the Constitution of India. The law has to be
understood, therefore, in accordance with the international law. Part III
of
our Constitution protects substantive as well as procedural rights.
Implications which arise therefrom must effectively be protected by the
judiciary. A contextual meaning to the statute is required to be assigned
having regard to the Constitutional as well as International Law operating
in
the field.
[See Liverpool & London S.P. & I Association Ltd. vs M.V. Sea
Success I & Another (2004) 9 SCC 512]

In Regina (Daly) Vs. Secretary of State for the Home Department
[2001] 2 AC 532, Lord Stein observed that in the law context is everything

in the following terms:

"28. The differences in approach between the traditional grounds of review and the proportionality approach may therefore sometimes yield different results. It is therefore important that cases involving Convnetion rights must be analysed in the correct way. This does not mean that there has been a shift to merits review. On the contrary, as Professor Jowell [2000] PL 671, 681 has pointed out the respective roles of judges and administrators are fundamentally distinct and will remain so. To this extent the general tenor of the observations in Mahmood [2001] 1 WLR 840 are correct. And Laws LJ rightly emphasized in Mahmood, at p 847, para 18, "that the intensity of review in a public law case will depend on the subject matter in hand". That is so even in cases involving Convention rights. In law context is everything."

Constitution of India and the Juvenile Justice Legislations must necessarily be understood in the context of present days scenario and having regard to the international treaties and conventions. Our Constitution takes note of the institutions of the world community which had been created. Some legal instruments that have declared the human rights and fundamental freedoms of humanity had been adopted but over the time even new rights had been found in several countries, as for example, South Africa (S. Vs. Makwanyane 1995 (3) SA 391), Canada (Reference re Public Service Employee Relations Act (Alberta) [1987] 1 SCR 313 at 348), Germany (Presumption of Innocence and the European Convention on Human Rights (1987) BverfGE 74, 358), New Zealand (Tavita Vs. Minister of Immigration, [1994] 2 NZLR 257 at 266), United Kingdom (Pratt Vs. Attorney-General for Jamaica [1994] 2 AC 1) and United States (Atkins Vs. Virginia, (2002) 536 US 304 and Lawrence Vs. Texas (2003) 539 US 558). New ideas had occupied the human mind as regard protection of Human Rights. (See Hamdi Vs. Rumsfeld, (2004) 72 USLW 4607, Russel Vs. Bush (2004) 72 USLW 4596 and Rumsfield Vs. Padila (2004) 72 USLW 4584).

Now, the Constitution speaks not only "to the people of India who made it and accepted it for their governance but also to the international community as the basic law of the Indian nation which is a member of that community". Inevitably, its meaning is influenced by the legal context in which it must operate.

The legal instruments that have declared legal rights and fundamental freedoms, founded in the nations of human dignity and Charter of United Nations were not known earlier which is manifest today. [Charter of the United Nations, signed at San Fransisco on 26.6.1945. Preamble]. Political, social and economic development can throw light on the meaning of Constitution.

In Lawrence (supra), Kennedy J., for the Supreme Court, after references to international human rights law, concluded:

"Had those who drew and ratified the Due Process Clauses of the Fifth Amendment or the Fourteenth Amendment known the components of liberty in its manifold possibilities, they might have been more specific. They did not presume of have this insight. They knew times can blind us to certain truths and later generations can see that laws once thought necessary and proper in fact serve only to oppress. As the Constitution

endures, persons in every generation can invoke its
principles in their own search for greater freedom."

The questions, therefore, in our opinion, should be determined having
regard to the aforementioned principles.

EXPEDITIOUS PROCEEDINGS :

In terms of Rule 20.1 of the Rules we may notice that some statutes, as for example, the Family Court Act of some States of U.S.A. contains provisions establishing time limitations governing each stage of juvenile proceedings, the purpose whereof is to assure swift and certain adjudication at all phases of the proceeding. (See In re Frank C., 70 N.Y.2d 408)

A similar issue was examined by the Supreme Court of California in Alfredo Vs. Superior Court, 849 P.2d 1330 (Cal. 1993) wherein a juvenile sought habeus corpus to obtain release. The court held that the Fourth Amendment provides the authority for the promptness required for a juvenile hearing. It was further held that a minor must be released upon expiration of the statutory time limit for detention due to the juvenile's interest in freedom from institutional restrains. The court implied that the time allowed to have the hearing shall stand extended once the juvenile is released, and that dismissal is not the only necessary remedy.

In Robinson Vs. Texas, 707 S.W.2d 47, the Texas Court of Appeals held that in calculating the time for a speedy trial continuances should not be included. In that case, the court found that continuances based on reset forms signed by appellant's attorney were excludable from the statutory time limits for a speedy trial.

In Illinois Vs. Stufflebean, 392 N.E. 2d 414, the Appellate Court of Illinois held that the remedy for detention of a juvenile beyond the statutory limit was immediate release, not dismissal. In Stufflebean, the court denied a probationer's request for dismissal based on incarceration exceeding statutory limits.

QUESTIONS :

The questions which arise for consideration in this reference are:

(i) What would be reckoning date in determining the age of offender, viz., date when produced in a Court, as has been held by this Court in Arnit Das Vs. State of Bihar [(2000) 5 SCC 488] or the date on which the offence was committed as has been held in Umesh Chandra Vs. State of Rajasthan [(1982) 2 SCC 202].

(ii) Whether the 2000 Act will be applicable in cases which were pending before the enforcement thereof.

RE.: QUESTION NO. 1 :

We have noticed hereinbefore that the decisions in Umesh Chandra (supra) and Arnit Das (supra) are in conflict with each other. Whereas in Umesh Chandra (supra), a clear finding has been recorded by this Court that the relevant date for applicability of the Act is the date on which the offence takes place; in Arnit Das (supra), Lahoti, J. (as the learned Chief Justice then was) speaking for a Division Bench held that Section 8(a) of the Act

and the Scheme as also the phraseology employed by the Parliament in drafting the Act suggests that the relevant date for finding out the age of juvenile is the date when he is produced before the Board. It was observed that indisputably the definition of juvenile or any other provisions contained
in the Act does not specifically provide the date for reference to which a crime has to be determined so as to find out whether he is or she is a juvenile
or not.

In support of the view taken in Arnit Das (supra), the learned Additional Solicitor General appearing for the Respondent submitted that the
Act aims at protection of a juvenile in the sense that he is to be kept in the
protective custody and dealt with separately by not sending him to prison or
police lock-up which is possible to be directed only when a juvenile is arrested or produced in court and not prior thereto. Similarly, on conviction, he cannot be sentenced and may be directed to be housed in a protective home and, thus, the relevant date would be the one on which the delinquent juvenile is produced before the Board..

This argument cannot be accepted for more than one reason. The said
Act is not only a beneficient legislation, but also a remedial one. The Act
aims at grant of care, protection and rehabilitation of a juvenile vis-'-vis the
adult criminals. Having regard to Rule 4 of United Nations Standard Minimum Rules for the Administration of Juvenile Justice, it must also be borne in mind that the moral and psychological components of criminal responsibility was also one of the factors in defining a juvenile. The first
objective, therefore, is the promotion of the well-being of the juvenile and
the second objective bring about the principle of proportionality whereby and whereunder the proportionality of the reaction to the circumstances of both the offender and the offence including the victim should be safeguarded. In essence, Rule 5 calls for no less and no more than a fair reaction in any given case of juvenile delinquency and crime. The meaning of the expression 'Juvenile' used in a statute by reason of its very nature has
to be assigned with reference to a definite date. The term 'Juvenile' must be
given a definite connotation. A person cannot be a juvenile for one purpose
and an adult for other purpose. It was, having regard to the constitutional
and statutory scheme, not necessary for the Parliament to specifically state
that the age of juvenile must be determined as on the date of commission of the offence. The same is in-built in the statutory scheme. The statute must
be construed having regard to the Scheme and the ordinary state of affairs and consequences flowing therefrom. The modern approach is to consider whether a child can live up to the moral and psychological components of criminal responsibility, that is, whether a child, by virtue of his or her individual discernment and understanding can be held responsible for essentially anti-social behaviour.

In construing a penal statute, the object of the law must be clearly borne in mind. The importance of time-bound investigation and a trial in relation to an offence allegedly committed by a juvenile is explicit as has been dealt with in some details hereinbefore. While making investigation

it
is expected that the accused would be arrested forthwith. He, upon his
arrest; if he appears to be a juvenile, cannot be kept in police custody
and
may be released on bail. If he is not released on bail by the arresting
authority, he has to be produced before the competent Court or Board. Once
he appears to be juvenile, the competent court and/ or board may pass an
appropriate order upon releasing him for bail or send him to a protective
custody. An inquiry for the purpose of determination of age of the
juvenile
need not be resorted to if the person produced is admitted to be a
juvenile.
An inquiry would be necessary only if a dispute is raised in that behalf.
A
decision thence is required to be taken by the competent court and /or
board
having regard to the status of the accused as to whether he is to be
released
on bail or sent to a protective custody or remanded to police or judicial
custody. For the said purpose what is necessary would be to find out as
to
whether on the date of commission of the offence he was a juvenile or not
as
otherwise the purpose for which the Act was enacted would be defeated.
The provisions of the said Act, as indicated hereinbefore, clearly
postulate
that the necessary steps in the proceedings are required to be taken not
only
for the purpose of adopting a special procedure at the initial stage but
also
for the intermediary and final stage of the proceedings. If the person
concerned is a juvenile, he cannot be tried along with other adult accused.
His trial must be held by the Board separately. Having regard to Rule 20.1
of
the Rules his case is required to be determined, without any unnecessary
delay. In the trial, the right of the juvenile as regard his privacy must
be
protected. He is entitled to be represented by a legal adviser and for
free
legal aid, if he applies therefor. His parents and/or guardian are also
entitled
to participate in the proceedings. The Court would be entitled to take
into
consideration the Social Inquiry Reports wherein the background and the
circumstances in which the juvenile was living and the condition in which
the offence had been created may be properly investigated so as to
facilitate
juvenile adjudication of the case by the competent authority. At all
stages,
the Court/Board is required to pass an appropriate order expeditiously.
Right of a juvenile to get his case disposed of expeditiously is a
statutory as
also a constitutional right.

Even at the final stage, viz., after he is found to be guilty of
commission of an offence, he must be dealt with differently vis-a-vis adult
prisoners. Only because his age is to be determined in a case of dispute
by
the competent court or the board in terms of Section 26 of the Act, the
same
would not mean that the relevant date therefor would be the one on which he
is produced before the Board. If such an argument is accepted, the same
would result in absurdity as, in a given case, it would be open to the
police
authorities not to produce him before the Board before he ceases to be

juvenile. If he is produced after he ceases to be juvenile, it may not be necessary for the Board to send him in the protective custody or release him
on bail as a result whereof he would be sent to the judicial or police custody
which would defeat the very purpose for which the Act had been enacted. Law cannot be applied in an uncertain position. Furthermore, the right to have a fair trial strictly in terms of the Act which would include procedural
safeguard is a fundamental right of the juvenile. A proceeding against a juvenile must conform to the provisions of the Act.

In Dilip Saha Vs. State of West Bengal [AIR 1978 Calcutta 529] a Full Bench of the Calcutta High Court in arriving at the conclusion that the
date of reckoning shall be the one on which the offence has been committed referred to Article 20 of Constitution of India in the following terms:

"22. If we interpret S. 28 to mean that it prohibits a joint trial of a child and an adult only when the child is a 'child' at the time of trial, that interpretation would go against the provisions of Art. 20(1) of the Constitution which prescribes that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

We, with respect, agree with the said observation.

The statute, it is well known, must be construed in such a manner so
as to make it effective and operative on the principle of Ut res magis valeat
quam pereat. The courts lean strongly against any constructions which tend to reduce a statute to a futility. When two meanings, one making the statute
absolutely vague, wholly intractable and absolutely meaningless and the other leading to certainty and meaningful are given, in such an event the latter should be followed. [See Tinsukhia Electric Supply Co. Ltd. vs. State
of Assam and Others (1989) 3 SCC 709 [See Andhra Bank vs. B. Satyanarayana and Others \026 (2004) 2 SCC 657] and Indian Handicrafts Emporium and Others vs. Union of India and Others \026 (2003) 7 SCC 589].

The submission of the learned Addl. Solicitor General that this Court
in Umesh Chandra (supra) has wrongly applied the test of imputing mens rea in holding that Children Act was enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that age
cannot be said to be mature as in the case of adult, may have some substance
but the said statement of law must be read and understood in the context of Rule 4.1 of the Rules. So read, the Act would be understood in its proper perspective.

The question raised in paragraph 17 of Arnit Das (supra) is not apposite. A hypothetical question would only lead to a hypothetical answer.
The court in an appropriate case is not powerless to pass an order as is contemplated under the statute if the situation so demands but only because a person is produced before the Court after he attains majority either on his

own volition or by reason of machinations adopted by the investigating agency, the same would not be determinative of the fact that the said person
is to be differently dealt with. Law favours strict adherence of the procedures subject to just exceptions. The Court in Arnit Das (supra) observed:

"16\005The Preamble speaks for the Act making provisions for the things post-delinquency. Several expressions employed in the Statement of Objects and Reasons vocally support this view. The Act aims at laying down a uniform juvenile justice system in the country avoiding lodging in jail or police lock-up of the child; and providing for prevention and treatment of juvenile delinquency, for care, protection, etc. post-juvenility. In short the field sought to be covered by the Act is not the one which had led to juvenile delinquency but the field when a juvenile having committed a delinquency is placed for being taken care of post-delinquency."

With great respect, we cannot agree to the said statement of law. It is
incorrect to say that the preamble speaks of the things of post-delinquency only. The Act not only refers to the obligations of the country to re-enact
the existing law relating to juveniles bearing in the mind, the standards prescribed in various conventions but also all other international instruments. It states that the said Act was enacted inter alia to consolidate
and amend the law relating to juveniles. Once the law relates to delinquent
juveniles or juveniles in conflict with law, the same would mean both pre and post-delinquency.

The definition of 'Juvenile' under the 1986 Act, of course refers to a person who has been found to have committed offence but the same has been clarified in the 2000 Act. The provisions of 1986 Act, as noticed hereinbefore, sought to protect not only those juveniles who have been found to have committed an offence but also those who had been charged therefor. In terms of Section 3 of the 1986 Act as well as 2000 Act when an
enquiry has been initiated even if the juvenile has ceased to be so as he has
crossed the age of 16 and 18 as the case may be, the same must be continued in respect of such person as if he had continued to be a juvenile. Section 3
of the 1986 Act therefore cannot be given effect to if it is held that the same
only applied to post delinquency of the juvenile.

The field covered by the Act includes a situation leading to juvenile
delinquency vis-'-vis commission of an offence. In such an event he is to be provided the post delinquency care and for the said purpose the date when
delinquency took place would be the relevant date. It must, therefore, be held that the relevant date for determining the age of the juvenile would be
one on which the offence has been committed and not when he is produced in court.

RE: QUESTION NO.2 :

The salient features of the Act of 2000 may be noticed at the outset.

Section 1(3) of the Act of 2000 states that it would come into force
on such date as the Central Government may, by notification in the Official
Gazette, appoint. The Central Government had issued an appropriate
notification in terms whereof; 1.4.2001 has been specified as the 'appointed
date' from which the provisions of the said Act will come into force. The
Act, thus, is prospective in its operation. However, the Act of 2000 has
repealed the Act of 1986. It has obliterated the distinction between juvenile
of different sex by reason whereof, a male juvenile would also be juvenile if
he has not crossed the age of 18.

A person above 16 years in terms of the 1986 Act was not a juvenile.
In that view of the matter the question whether a person above 16 years
becomes 'juvenile' within the purview of the Act of 2000 must be answered
having regard to the object and purport thereof .

In terms of the 1986 Act, a person who was not juvenile could be tried
in any court. Section 20 of the Act of 2000 takes care of such a situation
stating that despite the same the trial shall continue in that court as if that
Act has not been passed and in the event, he is found to be guilty of
commission of an offence, a finding to that effect shall be recorded in the
judgment of conviction, if any, but instead of passing any sentence in
relation to the juvenile, he would be forwarded to the Board which shall pass
orders in accordance with the provisions of the Act as if he has been
satisfied on inquiry that a juvenile has committed the offence. A legal
fiction has, thus, been created in the said provision. A legal fiction as is
well-known must be given its full effect although it has its limitations. [See
Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. and Others [(2003) 2
SCC 111] ITW Signode India Ltd. vs. Collector of Central Excise - 2003 (9)
SCALE 720 and See Ashok Leyland Ltd. Vs. State of Tamil Nadu & Anr.,
(2004) 3 SCC 1]

The effect of the expression "as if" has recently been considered in
M/s Maruti Udyog Ltd. vs Ram Lal (C.A. No.2946 of 2002 disposed of on
25.1.2005)

Thus, by reason of legal fiction, a person, although not a juvenile, has
to be treated to be one by the Board for the purpose of sentencing which
takes care of a situation that the person although not a juvenile in terms of
the 1986 Act but still would be treated as such under the 2000 Act for the
said limited purpose. The Act provides for a beneficent consequences and,
thus, it is required to be construed liberally.

We are not oblivious of the proposition that a beneficent legislation
should not be construed so liberally so as to bring within its fore a person
who does not answer the statutory scheme. [See Deepal Girishbhai Soni and
Others Vs. United India Insurance Co. Ltd. Baroda, (2004) 5 SCC 385].

However, as would appear from the provisions of the Act of 2000 that
the Scheme of the 2000 Act is such that such a construction is possible. The
same would also be evident from Section 64 which deals with a case where a
person has been undergoing a sentence but if he is a juvenile within the
meaning of the 2000 Act having not crossed the age of 18, the provisions
thereof would apply as if he had been ordered by the Board to be sent to a
special home or the institution, as the case may be.

Section 20 of the Act of 2000 would, therefore, be applicable when a
person is below the age of 18 years as on 1.4.2001. For the purpose of
attracting Section 20 of the Act, it must be established that : (i) on the date of
coming into force the proceedings in which the petitioner was accused was
pending; and (ii) on that day he was below the age of 18 years. For the
purpose of the said Act, both the aforementioned conditions are required to
be fulfilled. By reason of the provisions of the said Act of 2000, the
protection granted to a juvenile has only been extended but such extension
is not absolute but only a limited one. It would apply strictly when the
conditions precedent therefor as contained in Section 20 or Section 64 are
fulfilled. The said provisions repeatedly refer to the words 'juvenile' or
'delinquent juveniles' specifically. This appears to be the object of the Act
and for ascertaining the true intent of the Parliament, the rule of purposive
construction must be adopted. The purpose of the Act would stand defeated
if a child continues to be in the company of an adult. Thus, the Act of 2000
intends to give the protection only to a juvenile within the meaning of the
said Act and not an adult. In other words, although it would apply to a
person who is still a juvenile having not attained the age of 18 years but shall
not apply to a person who has already attained the age of 18 years on the
date of coming into force thereof or who had not attained the age of 18 years
on the date of commission of the offence but has since ceased to be a
juvenile.

The embargo of giving a retrospective effect to a statute arises only
when it takes away vested right of a person. By reasons of Section 20 of the
Act no vested right in a person has been taken away, but thereby only an
additional protection has been provided to a juvenile.

In Rattan Lal Vs. State of Punjab [(1964) 7 SCR 676], this Court has
held:
"\005Under Art. 20 of the Constitution, no person shall be
convicted of any offence except for violation of a law in
force at the time of the commission of the act charged as
an offence, nor be subjected to a penalty greater than that
which might have been inflicted under the law in force at
the time of the commission of the offence. But an ex post
facto law which only mollifies the rigour of a criminal
law does not fall within the said prohibition. If a
particular law makes a provision to that effect, though
retrospective in operation, it will be valid. The question
whether such a law is retrospective and if so, to what
extent depends upon the interpretation of a particular
statute, having regard to the well settled rules of
construction\005."

Referring to Maxwell on Interpretation of Statutes, Subba Rao, J.(as
His Lordship then was) opined:

"\005This is not a case where an act, which was not an offence before the Act, is made an offence under the Act; nor is this a case where under the Act a punishment higher than that obtaining for an offence before the Act is imposed. This is an instance where neither the ingredients of the offence nor the limits of the sentence are disturbed, but a provision is made to help the reformation of an accused through the agency of the court. Even so the statute affects an offence committed before it was extended to the area in question. It is, therefore, a post facto law and has retrospective operation. In considering the scope of such a provision we must adopt the rule of beneficial construction as enunciated by the modern trend of judicial opinion without doing violence to the provisions of the relevant section\005."

Yet again in Basheer alias N.P. Basheer vs. State of Kerala [(2004) 3
SCC 609], this Court held :

"If the Act had contained any provisions to the detriment of the accused, then undoubtedly, it would have been hit by the rule against post facto legislation contained in Article 20(1). However, we find that the amendments (at least the ones rationalizing the sentencing structure) are more beneficial to the accused and amount to mollification of the rigour of the law. Consequently, despite retrospectivity, they ought to be applied to the cases pending before the Court or even to cases pending investigation on the date on which the amending Act came into force. Such application would not be hit by Article 20(1) of the Constitution."

Section 6(1) and Section 8 of the Human Rights Act, 1998 of United Kingdom also provide for expeditious disposal of cases. The effect of non-
fulfillment of requirement that the a criminal charge be heard within a reasonable time came up for consideration recently before the House of Lords in Attorney General's Reference (No.2 of 2001) [(2004) 2 AC 72) wherein it was held that the remedy as regard breach of reasonable time guarantee would depend upon the fact involved in each case. While holding such a right exists in an accused, it was observed :

"This reasoning depends, as I have said, on categorizing the within a reasonable time obligation as referring to a characteristic of the hearing or determination just as are the fair,, "public", "independent", "impartial" and "tribunal established by law" requirements. It is this categorization which I suggest is fundamentally wrong. A within a reasonable time obligation relates to a quality of the performance, not to the attributes of the service or article \026 here the hearing or determination \026 to be provided by the person under the obligation. This may all sound over-sophisticated but it can be simply demonstrated both as a matter of the ordinary use of language and by reference to basic principles of the law of obligations."

In India such a right of expeditious disposal is contained in Article 21
of the Constitution, the relevance whereof for the purpose of interpretation
of the Act cannot be minimized.

In Zile Singh vs. State of Haryana & Ors. [JT 2004 (8) SC 589], Lahoti, CJ, opined that rule against retrospectivity cannot be applied to legislations which are explanatory and declaranatory in nature. [See also R.
(on the application of Uttley) vs. Secretary of State for the Home Department - (2004) 4 All ER 1]

Yet again in Dayal Singh vs. State of Rajasthan [JT 2004 (Supp.1) SC
37], this Court upon referring Rattan Lal (supra) held :

"11. The decision approves of the principle that ex post facto law which only mollifies the rigour of the criminal law, though retrospective in operation, will be valid. After enunciating this principle the court interpreted section 11 of the Probation of Offenders Act and came to the conclusion that on a true interpretation of the provision the High Court had jurisdiction to exercise the power at the appellate stage, and this power was not confined to a case where the trial court could have made that order. The phraseology of the section was wide enough to enable the appellate court or the High Court when the case came before it, to make such an order. We, therefore, do not find that Rattan Lal made a departure from the well settled principle that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than with which he might have been inflicted under the law in force at the time of the commission of the offence. This Court only laid down the principle that an ex post facto law which only mollifies the rigour of a criminal law did not fall within the said prohibition, and if a particular law made a provision to that effect, though retrospective in operation, it will be valid\005"

Interpretation of a statute depends upon the text and context thereof
and having regard and object with which the same was made.

The aforementioned provision of the 2000 Act is furthermore a remedial statute. (See discussions of G.P. Singh's Principles of Statutory Interpretation, Ninth Edition, 2004, page 733) They are, thus, required to
be given liberal construction.

A remedial statute applied in a pending proceeding would not mean that thereby a retrospective effect and retroactive operation is being given
thereto.

We do not intend to say that no other view is possible. But in a case
of this nature where an additional protection had been granted pursuant to or
in furtherance of the international treaties and keeping in view of the experience which had been gathered by the Parliament after coming into force of the 1986 Act, we think that it should be read in such a fashion so

that the extended benefit can be granted even to the juvenile under the 2000
Act. Furthermore, sub-section (2) of Section 69 provides that all proceedings
shall be deemed to have been held under the new Act. This is also
suggestive of the fact that the new Act would, to the aforementioned extent,
apply to a pending proceeding which was initiated under the 1986 Act.

MODEL RULES :
We, however, do not agree that the model rules have been framed in
terms of the provisions of the Act so as to attract the principles that rules
validly framed are to be treated as part of the Act. It is one thing
that the rules validly framed are to be treated as part of the Act as has been
held in Chief Forest Conservator (Wildlife) and Others Vs. Nisar Khan
[(2003) 4 SCC 595] and National Insurance Co. Ltd. Vs. Swaran Singh and
Others [(2004) 3 SCC 297] but the said principle has no application herein
as in terms of the provisions of the said Act, the Central Government does
not have any authority to make any rules. In absence of any rule making
power it cannot refer to the omnibus clause of power to remove difficulty
inasmuch as it has not been stated that framing of any model rule is
permissible if a difficulty arises in giving effect to the provision of the Act.
The Central Government is a statutory functionary. Its functions are
circumscribed by Section 70 of the Act only. It has not been authorized to
make any rule. Such rule making power has been entrusted only to the
State. The Central Government has, thus, no say in the matter nor can it
exercise such power by resorting to its power 'to remove difficulties'. Rule
making power is a separate power which has got nothing to do with the
power to remove difficulty. By reason of the power to remove difficulty or
doubt, the Central Government has not been conferred with any legislative
power. The power to remove doubt or difficulty although is a statutory
power but the same is not akin to a legislative power and, thus, thereby the
provisions of the Act cannot be altered. [See M/s Jalan Trading Co. Private
Ltd. vs. Mill Mazdoor Sabha \026 AIR 1967 SC 691 at 703]

The age of the delinquent juvenile, therefore, cannot be determined in
terms of the model rules 62. Any law mandating the court to take into
consideration certain documents over others in determining an issue, must be
provided for only by law. Only a validly made law can take away the
power of the court to appreciate evidence for the purpose of determination of
such a question in the light of Section 35 of the Indian Evidence Act. It
cannot be done by the Central Government in exercise of the executive
power. (See Union of India Vs. Naveen Jindal, (2004) 2 SCC 510 and State
of U.P. Vs. Johri Mal, (2004) 4 SCC 714)

In Birad Mal Singhvi vs. Anand Purohit [AIR 1988 SC 1796] , this
Court held :
"...To render a document admissible under Section 35,
three conditions must be satisfied, firstly, entry that is
relied on must be one in a public or other official book,
register or record, secondly, it must be an entry stating a
fact in issue or relevant fact, and thirdly, it must be made
by a public servant in discharge of his official duty, or
any other person in performance of a duty specially
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 but the entry regarding to the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of material on which the age was recorded..."

In Sushil Kumar vs. Rakesh Kumar [(2003) 8 SCC 673], this Court as regard determination of age of a candidate in terms of Section 36(2) of the Representation of the People Act, 1951 observed :

"32. The age of a person in an election petition has to be determined not only on the basis of the materials placed on record but also upon taking into consideration the circumstances attending thereto. The initial burden to prove the allegations made in the election petition although was upon the election petitioner but for proving the facts which were within the special knowledge of the respondent, the burden was upon him in terms of Section 106 of the Evidence Act. It is also trite that when both parties have adduced evidence the question of the onus of proof becomes academic [See Union of India vs. Sugauli Sugar Works (P) Ltd. [(1976) 3 SCC 32] and Cox and Kings (Agents) Ltd. vs. Workmen [(1977) 2 SCC 705]. Furthermore, an admission on the part of a party to the lis shall be binding on him and in any event a presumption must be made that the same is taken to be established."

This Court therein followed, inter alia, Birad Mal Singhvi vs. Anand Purohit [AIR 1988 SC 1796] and several other decisions.

The Court, therefore, must determine the age of the appellant herein keeping in view our aforementioned findings that the relevant date for reckoning the age of the juvenile would be the date of occurrence and not the date on which he was produced before the Board.

The upshot of the aforementioned discussions is :

(i) In terms of the 1986 Act, the age of the offender must be reckoned from the date when the alleged offence was committed;
(ii) The 2002 Act will have a limited application in the cases pending under the 1986 Act;
(iii) The model rules framed by the Central Government having no legal force cannot be given effect to.
(iv) The court, thus, would be entitled to apply the ordinary rules of evidence for the purpose of determining the age of the juvenile taking into consideration the provisions of Section 35 of the Indian Evidence Act.

Subject to the aforementioned, I, with respect, agree with the conclusions arrived at by Brother Sema, J.