

Before M.M. S. Bedi, J. ✓

SHAMSHER SINGH,—Petitioner

versus

STATE OF HARYANA AND ANOTHER,—Respondents

Crl.W.P. No. 1470 of 2009

29th July, 2010

Constitution of India, 1950—Arts. 226 & 227—Juvenile Justice (Care and Protection of Children) Act, 2000—Ss. 15, 16 & 64—Juvenile Justice (Care and Protection of Children) Rules, 2007—Rls. 97 & 98—Petitioner convicted & sentenced to undergo imprisonment for life—Petitioner more than 16 years but less than 18 years of age at time of commission of offence—Whether entitled to be granted benefit as juvenile under provisions of 2000 Act and 2007 Rules—Held, yes—Petitioner already undergoing substantive sentence of 10 years held entitled to be released from jail.

Held, that since the petitioner has already undergone substantive sentence of 10 years as such he deserves the benefit of statutory right accrued to him on the basis of the subsequent legislation in the shape of the Act, as Section 64 of the Act requires the case of the petitioner who is a juvenile in conflict with law undergoing sentence of imprisonment for an appropriate beneficial order in the interest of petitioner being juvenile.

(Para 18)

Further held, that advancing juvenile justice policy would also require careful analysis of just punishment for juvenile offenders. The provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 were formulated with an objective to promote the reformatory approach, to give a fair opportunity to the youngsters who have not attained the age of maturity. The Act was made applicable to all the juveniles who are less than 18 years at the time of commission of crime. The provisions of the Act were made applicable even to the juveniles who had committed crime prior to the commencement of the Act and after the commencement of the Act. The utility of the statutes has to be tested by the society, Courts and

the legislation. An important aspect of the modern age is, the enhancement of mental maturity and intelligent quotient of the modern adolescent persons with the advancement of technology and science. The age of understanding, reasoning and appreciation has decreased. The said factors seem to have been ignored. A juvenile at the age of 16 is mature enough to understand various factors which perpetuate the commission of crime. With the enhancement of mental maturity at a comparatively lower age, the provisions of the Act deserve to be reassessed and re-examined by the Legislators taking into consideration the facts and figures of enhancement of crime by the juveniles. The misuse of the Act is also a well known phenomenon in the Society. The deterrent affect of the punishment in the field of crime seems to have decreased resulting in the increase rate of crime.

(Para 19)

V. K. Jindal, Advocate, *for the petitioner.*

S. S. Mann, Sr. DAG, Haryana.

M.M.S. BEDI, J.

(1) Shamsher Singh, petitioner has filed this petition for issuance of a writ in the nature of *habeas corpus* holding that the petitioner is entitled to be released forthwith under Section 64 read with Sections 15 and 16 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the Act') read with Rules 97 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short 'the Rules'), claiming that the detention of the petitioner has become violative of Article 21 of the Constitution of India as he has undergone the maximum period of detention under the *ibid* Act.

(2) Brief facts of the case are that the petitioner was tried in FIR No. 360, dated 15th July, 1992 registered at Police Station, Sadar Panipat, under Sections 302, 307, 34 IPC and was convicted and sentenced to undergo imprisonment for life with fine of Rs. 5000 under Section 302/34 IPC and imprisonment for 5 years alongwith fine of Rs. 1000 under Section 307/34 IPC. Both the substantive sentences were ordered to run concurrently,—*vide* judgment dated 21st January, 1995. Appeal filed by the petitioner against the conviction and sentence was dismissed by the High

Court. The petitioner at present is confined in District Jail, Karnal and is undergoing life imprisonment. The total period spent by the petitioner in detention before conviction and after conviction including the remissions granted by the jail authorities and Government deducting the period of parole comes to 14 years 2 months and 26 days. The petitioner has now undergone more than 10 years of actual sentence. The petitioner claims that he was born on 13th July, 1976 as per the certificate issued by the Board of School Education, Haryana. The petitioner had allegedly committed murder of one Vijender Singh on 15th July, 1992 as such as 15th July, 1992 he was 16 years 2 days old as his date of birth is 13th July, 1976. The petitioner was convicted on 21st January, 1995. The Additional Sessions Judge, Panipat found the age of the petitioner as 18 years on the date of conviction and sentenced in FIR No. 360 dated 15th July, 1992. The trial was conducted on the basis of the age certificate of Board of School of Education, annexure P-2, indicating that the petitioner was more than 16 years at the time of commission of offence. The petitioner claims that he was below 18 years of age at the time of commission of the offence i.e. on 15th July, 1992 as such he has become entitled to the benefit of the Act and the Rules made thereunder. A strong reliance has been placed on the judgment of the Apex Court in **Hari Ram versus State of Rajasthan & another, (1)** in which it has been observed that all the accused between the age group of 16 to 18 years convicted or still facing trial under Juvenile Act, 1986 would be treated as 'juvenile' under the Act and the provisions of Rules framed under the said Act in 2007 would have retrospective effect by virtue of Rule 12 of the Rules, read with sections 64 and 15 of the Act.

(3) The short question which is required to be determined in the present case is whether the petitioner who was admittedly more than 16 years of age and less than 18 years of age at the time of commission of the offence can be granted the benefit of his juvenility for the purpose of his release as per Section 15 of the Act which lays down that the maximum period of detention of the child is 3 years. Rule 98 of the Rules provide that in disposed of cases of juvenile in conflict with law, the State Government is authorized to review of the case of a person or a juvenile : determine his juvenility in terms of the provisions contained in the Act and Rule 12 and pass an appropriate order in the interest of the juvenile under Section

64 of the Act for immediate release of the juvenile in conflict with law whose period of detention or imprisonment has exceeded the maximum period provided in Section 15 of the Act. The stand taken by the respondents is that the petitioner is not entitled to the benefit of the Act as he is 16 years of age as per the judgment of the convicting court and as per the State policy dated 13th August, 2008, he has not undergone the requisite sentence of life imprisonment under Section 433-A Cr.P.C. i.e. 14 years of actual sentence and 20 years of total sentence. In additional affidavit filed by the Special Secretary to Government of Haryana, Women and Child Development Department, it has been stated that the life convicts who were lodged in different jails in the State of Haryana after conclusion of the criminal cases are being dealt with by Home and Jails and Judicial Department for their premature release. As notification dated 13th August, 2008, the premature release of life convicts of various categories shall be considered by the State Legal Committee comprising the following :—

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| (i) Minister of Jails | Chairman |
| (ii) Financial Commissioner &
Principal Secretary to Government,
Haryana, Jails Department | Member |
| (iii) Legal Remembrancer | Member |
| (iv) Director General of Prisons,
Haryana | Member Secretary |

(4) It is clarified in the affidavit that the case of the petitioner is required to be considered by Home and Jails and Judicial Department, Haryana, according to the prescribed procedure and that a request has been sent to the said Department to consider the case of the petitioner according to the provisions of the Act and Rules framed thereunder *vide* U.O. No. 969-SW(4)2009, dated 17th December, 2009 (annexure R-2). The case of the petitioner has been forwarded by the Special Secretary for Financial Commissioner, and Principal Secretary to Government of Haryana, Women and Child Development Department to the Financial Commissioner and Financial Secretary to the Government of Haryana, Home, Jails and Judicial Department, Chandigarh, on 17th December, 2009 to be considered in context to the provisions of Section 15, 16 and 64 of the Act read with

Rule 94 of the Rules. A perusal of the minutes of the meeting dated 18th February, 2010 attached with the reply indicates that the Committee had constituted of the following officers :—

1. Shri Krishan Mohan, I.A.S.,
F.C. & P.S. Home and J & J
2. Smt. Shakuntla Jakhu, I.A.S.,
F.C.W.C.D.
3. Smt. Anuradha Gupta, I.A.S.,
A.P.S.C.M.
4. Shri P. L. Ahuja, L.R.
5. Shri Sudhir Mohan, I.P.S., I.G. Prison
6. Shri M. P. Bansal, I.A.S.,
D.W.C.D.
7. Shri Ashok Kumar Sharma, D.A. Home
8. Shri R. K. Singal, D.A. (C.S. Office)
9. Shri Dinesh Kumar, ADA (Home)
10. Shri Jaswinder Singh Gill, ADA
11. Smt. Mamta Garg, J.D. W.C.D. Deptt.
12. Shri Kulwinder Pal singh, ADA, W.C.D. Deptt.

The committed arrived at the following conclusion :

“The petitions of Shri Shamsher Singh and Shri Balwant Singh were considered at length in the meeting. After detailed discussions, it was concluded that the case of the petitioner Shri Shamsher Singh be forwarded to concerned J. J. Board by the Prison Department in accordance with the directions passed by Hon’ble Supreme Court in the case of Shri Hari Ram *versus* State of Rajasthan and another 2009 (2) Recent Criminal Reports (Crl.) 878, and as per parameters laid down in Juvenile Justice Act, 2000 as amended in 2006. The case of Shri Balwant Singh be referred to the J. J. Board, Bhiwani by the Prison Department.

Meeting was ended with the vote of thanks to the Chair.”

(5) I have considered the right of the petitioner to be considered as juvenile in view of the provisions of the Act and Rules and his rights in the light of judgment of **Hari Ram's** case (supra) for the purpose of his release from the jail, in view of the applicability of Section 15 of the Act on consideration of his case under Rule 94 of the Rules.

(6) The petitioner was admittedly less than 18 years of age at the time of commission of offence of 15th July, 1992 when the occurrence had taken place. On the day of conviction he was certainly more than 18 years as per Section 4 of the Act which was a consolidated amending the law relating to children in conflict with law and children in need of care and protection. The Act is applicable in all cases of detention, prosecutions and sentence of imprisonment of Juveniles in conflict with law. Section 1(4) of the Act reads as follows :—

“Section 1(4) : Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under such other law.”

(7) The petitioner falls within the definition of Juvenile under Section 2 (k) (1) which reads as follows :—

“Section 2 (k) : ‘Juvenile’ or ‘child’ means a person who has not completed eighteen year of age ;

“(1) “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 ;”

(8) Section 7A incorporated in the Act deals with the procedure which is required to be followed when claim of juvenility is raised before any Court. Section 7(A) (1) provides that the claim of juvenility shall be recognized at any stage even if the final disposal of the case and claim shall be determined in terms of provisions contained in the Act and the Rules made thereunder even if the juvenile has ceased to be so on or before the date of commencement of this Act. Section 7(A) of the Act reads as follows :—

“Section 7-A : (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence ; the

court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be :

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a Court shall be deemed to have no effect."

(9) Section 15 deals with various orders which may be passed regarding a juvenile. Section 15(1) (f) of the Act reads as follows :—

“Section 15(1) (f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years”.

(10) Section 20 of the Act makes special provision in respect of pending cases, thus reads as follows :—

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

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

Explanation : In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (1) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.”

(11) According to Section 68 of the Act the State Governments have been given powers to frame rules. Exercising powers under Section 68 of the Act of 2000, Rules titled The Juvenile Justice (Care and Protection of Children) Rules, 2007 have been framed. Rule 12 deals with the procedure which is to be followed in determining the age of a juvenile in conflict with law. Rule 97 deals with pending cases and Rule 98 is relevant regarding the disposal of cases of juvenile in conflict with law. Rule 12, 97 and 98 read as follows :—

“Rule 12. Procedure to be followed in determination of Age.—

- (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.
- (2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.
- (3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—
 - (a)(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 ;
 - (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.
- (4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.
- (5) Save and except where, further inquiry or otherwise is required, *inter alia*, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (4) of this rule.

- (6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.

Rule 97 : 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) of this rule, and it is hereby clarified that such benefits shall be made available to all those accused who were juvenile or a child at the time of commission of an offence, even if they cease to be a juvenile or a child during the pendency of any inquiry or trial.
- (4) While computing the period of detention or stay or sentence 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, stay or sentence of imprisonment shall be counted as a part of the period of stay or detention or sentence of imprisonment contained in the final order of the court or the Board.

Rule 98 : Disposed off cases of juveniles in conflict with law :

The State Government or as the case may be the Board may, either *suo motu* or on an application made for the purpose, review the case of a person or a juvenile in conflict with law, determine his juvenility in terms of the provisions contained in the Act and rule 12 of these rules and pass an appropriate order in the interest of the juvenile in conflict with law under section 64 of the Act, for the immediate release of the juvenile in conflict with law whose period of detention or imprisonment has exceeded the maximum period provided in section 15 of the said Act,"

(12) The provisions of Juvenile Justice Act came up for consideration in the judgment of **Hari Ram's** case (supra). The relevant part of the judgment reads as follows :—

- “37. Of the two main questions decided in Pratap Singh's case (supra), one point is now well established that the juvenility of a person in conflict with law has to be reckoned from the date of the incident and not from the date on which cognizance was taken by the Magistrate. The effect of the other part of the decision was, however, neutralised by virtue of the amendments to the Juvenile Justice Act, 2000, by Act 33 of 2006, whereunder the provisions of the Act were also made applicable to juveniles who had not completed eighteen years of age on the date of commission of the offence. The law as now crystallized on a conjoint reading of Sections 2(k), 2(1), 7A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1st April, 2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted.
38. The instant case is covered by the amended provisions of Sections 2(k), 2(1), 7A and 20 of the Juvenile Justice Act, 2000. However, inasmuch as, the appellant was found to have completed the age of 16 years and 13 days on the date of alleged occurrence, the High Court was of the view that the provisions of the Juvenile Justice Act, 1986, would not apply to the appellant's case. Of course, the High Court, while deciding the matter, did not have the benefit of either the amendment of the Act or the introduction of the Juvenile Justice Rules, 2007. Even otherwise, the matter was covered by the decision of this Court in the case of Rajinder Chandra's case (supra), wherein this Court, *inter-alia*, held that when a claim of juvenility is raised and on the evidence available two views are possible, the Court should lean in favour of holding the offender to be a juvenile in borderline cases. In any event, the

statutory provisions have been altered since then and we are not required to consider the question of the claim of the appellant that his date of birth was Kartik Sudi 1, Samvat Year 2039, though no basis has been provided for the fixation of the said date itself in the light of the amended provisions. Often, parents of children, who come from rural backgrounds, are not aware of the actual date of birth of a child, but relate the same to some event which may have taken place simultaneously. In such a situation, the Board and the Courts will have to take recourse to the procedure laid down in Rule 12, but such an exercise is not required to be undertaken in the present case since even according to the determination of the appellant's age by the High Court the appellant was below eighteen years of age when the offence was alleged to have been committed."

(13) In **Saheb Sopan Kale versus The State of Maharashtra**, (2), the Division Bench of Bombay High Court held that the claim of juvenility could be raised by a juvenile who was admittedly less than 18 years of age on the day of commission of offence even after the disposal of the case as per provisions of Section 7-A of the Act. In view of the provisions of Section 64, the juvenile who had already undergone sentence of imprisonment for more than 3 years was ordered to be released as he has already undergone sentence of imprisonment for 3 years. Instead of issuing direction for production of the petitioner before Board, the Bombay High Court had ordered the release of a convict/petitioner on receipt of application for bail by the convict.

(14) In CrI. W.P. No. 2137 of 2008, **Vijay Naryana Patil versus The State of Maharashtra and others**, decided on 18th August, 2009, taking into consideration the provisions of Section 7(A) (1) and Section 15(g) of the Act providing maximum sentence of 3 years in the case of a juvenile, who is found to be guilty of offence punishable under the IPC and following the observations in **Hari Ram's** case (supra) the Superintendent of Central Prison at Yerwada, Pune, was directed to set the petitioner, in the said case, free as he had undergone sentence of more than three years.

(15) Similar question had arisen before Delhi High Court in Crl. Appeal No. 169 of 2003, **Ravinder Kumar @ Ravi versus State**, before a Division Bench in case of a juvenile, who was convicted to undergo imprisonment by the Sessions Court in a murder case, taking into consideration the provisions of Juvenile Justice Act, 2000 and the Rules 2007, framed thereunder and taking into consideration the principles of correctional and reformation approach, while sustaining the conviction of juvenile, the sentence of imprisonment beyond 3 years was quashed despite the fact that he had already undergone sentence of 5 years and 9 months, Relevant portion of the judgment reads as under :—

“25. The above being the legal position with the coming into force of Juvenile Justice (Care and Protection of Children) Act, 2000 as amended by the Amendment Act, 2006, there is no manner of doubt in our minds that the appellants in both the appeals are entitled to avail the beneficial provisions thereof. In both the appeals are entitled to avail the beneficial provisions thereof, being in the range of 15 to 16 years of age on the date of commission of the offence in terms of Clause 1 of Section 2 of the Act. Accordingly, while affirming the order of conviction passed by the learned trial Judge, we hold that the appellants cannot be sentenced to imprisonment for life or imprisonment for any term whatsoever. Ordinarily, we would have directed the appellants to be sent to the special home or to a fit institution. But we find that as per the nominal roll of the appellant Amit, he has already undergone more than 5 years and 9 months of actual sentence, while as per the nominal roll of the appellant Ravinder, he has undergone 9 years and 4 months of actual sentence imposed upon him and, therefore, we do not deem it expedient to send them to the Juvenile Justice Board. Moreso, as proviso to sub-section (2) of Section 15 provides that the period of detention of a juvenile in a special home shall not exceed, in any case, the maximum period provided under Section 15 (g) of the Act, which is a period of three years.

26. We are persuaded in coming to this conclusion by the judgments of the Hon'ble Supreme Court in *Jayendra versus State of U.P.* (1981) 4 SCC 149, *Bhoop Ram versus State of U.P.*

(1989) 3 SCC 1, Pradeep Kumar *versus* State of U.P. 1995 (Suppl.) 4 SCC 419 and Bhola Bhagat *versus* State of Bihar, (1997) 8 SCC 720. In all the aforesaid cases, the Apex Court has held that the course to be followed in such cases as the present one is to quash the sentence awarded to the appellant. Accordingly, while sustaining the conviction of the appellants on all the charges framed against them, we quash the sentences awarded to them by the Additional Sessions Judge as we have already found that they have completed in a normal prison the period of more than three years.”

(16) Similar approach was adopted by Gujarat High Court in **Gaurav Pradip Verma *versus* State of Gujarat, (3)**. The conviction was upheld and instead of referring the matter again to the Juvenile Court, the sentence of imprisonment beyond 3 years was quashed.

(17) In a recent decision of the Apex Court in **Mohan Mali and another *versus* State of M.P. (4)** when a juvenile had been tried along with adults and had been convicted for offence under Sections 302/34 IPC and was sentenced to life imprisonment out of which he had already undergone about 9 years of sentence, the Apex Court taking into consideration the provisions of Section 7-A and 64 of the Act and Rule 98 of the Rules directed that the juvenile be released immediately while considering his bail application.

(18) Following the abovesaid judgments, I am of the opinion since the petitioner has already undergone substantive sentence of 10 years as such he deserves the benefit of statutory right accrued to him on the basis of the subsequent legislation in the shape of the Act, as Section 64 of the Act requires the case of the petitioner who is a juvenile in conflict with law undergoing sentence of imprisonment for an appropriate beneficial order in the interest of petitioner being juvenile.

(19) But before parting with the judgment it is pertinent to observe here that the Juvenile Justice Act, 2000 enhancing the age of an adolescent from 16 to 18 years has not proved to be a device to curb juvenile crime.

(3) 2008 CrI. L.J. 4009

(4) (2010-3) 159 P.L.R. 304 = AIR 2010 S.C. 1790

The crime committed by minors was 1.7% of total crime in the country in the year 2005. It increased to 1.9% and 2% in 2006 and 2007 respectively according to the "Crime in 2007" report of the "National Crime Record Bureau". As per the said report the highest number of juveniles apprehended in 2007 was 18015 who were in the age group of 16 to 18 years which was 16.3% higher compared to 2006. Deciding the fate of a youthful offender involves weighing several factors i.e. public safety, fair and just punishment and fostering the development of productive and moral citizens. We see these goals through the lens of our ideas and often not clearly articulated of what an adolescent growing up is all about. The concept of "adult time for adult crime" has been followed for young offenders and in few States of U.S.A. initiatives have been taken to shift the boundary of childhood to a shorter time feeling that the young offenders today do cause more harm than their predecessors, largely because, with the ready availability of fire arms. [*Roper versus Simmons* (5)]. Extending the analysis of "adult punishment" to "youthful offenders" has yet to be done by the legislation examining the results of Juvenile Justice Act, 2000 for the purpose of judicial reforms. I am of the considered opinion that advancing juvenile justice policy would also require careful analysis of just punishment for juvenile offenders. The provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 were formulated with an objective to promote the reformatory approach, to give a fair opportunity to the youngsters who have not attained the age of maturity. The Act was made applicable to all the juveniles who are less than 18 years at the time of commission of crime. The provisions of the Act were made applicable even to the juveniles who had committed crime prior to the commencement of the Act and after the commencement of the Act. The utility of the statutes has to be tested by the society, Courts and the legislation. An important aspect of the modern age is, the enhancement of mental maturity and intelligent quotient of the modern adolescent persons with the advancement of technology and science. The age of understanding, reasoning and appreciation has decreased. The said factors seem to have been ignored. A juvenile at the age of 16 is mature enough to understand various factors which perpetuate the commission of crime. With the enhancement of mental maturity at a comparatively lower age, the provisions of the Act deserve to be reassessed and re-examined by the Legislators taking into consideration the facts and figures of enhancement of crime by

the juveniles. The misuse of the Act is also a well known phenomenon in the Society. The deterrent affect of the punishment in the field of crime seems to have decreased resulting in the increase rate of crime.

(20) Extensive studies have been conducted in United States for studying the “developmental capacities” of youth charged with crimes, to participate effectively in their trials. Adjudicative competence of a youth i.e. competence to stand trial (CST) has to be looked into in each individual by a competent agency or Court for determining whether an adolescent delinquent is to be tried by a juvenile Court or by an ordinary criminal Court. The punishment is also required to be assessed on the basis of adjudicative competence of juvenile. A trend which has recently been followed is that current reforms seek to make the severity of determinate penalties for adolescent violent offenders more like those for adults who are convicted for offences. [Idea taken from writing “Juveniles Competence to Stand Trial : A comparison of Adolescents and Adults capacities as trial defendants : Source Law and Human Behaviour, Vol. 27, No. 4 (August 2003 pp 333—363) and Article of Thomas Grisso Society’s Retributive Responses to Juvenile Violence : A Developmental Perspective].

(21) No such studies seem to have been undertaken by Legal Scholars in India.

(22) The classification of all the adolescents till age of 18 years as juveniles for the purpose of trial and punishment and the absence of any discretion with any agency of the State or the Courts under the statutory mandate to treat all the juveniles at par, irrespective of the nature of the crime and “individual adjudicative competence,” seems to be inappropriate, as it appears that the unequals are being treated equals for the purpose of trial and punishment under the Act, irrespective of CST of each individual. In-depth study of various factors prevailing in our society is required to be made by Legal experts, sociologists, psychologists and law makers before incorporating international treaties to give global dimension to juveniles in conflict with law.

(23) It is suggested that a provision of ‘**judicial waiver**’ should be made in the Act giving a jurisdiction to juvenile Court, appropriate forum or High Court to use its discretionary authority to decide to **waive jurisdiction** basing the decision on the individualized review of circumstances (adjudicative

competence) of juvenile falling between the age of 15 to 18 years changed with serious crimes of murder, rape, robbery and drugs and to refer him for trial to ordinary criminal Court for trial and punishment.

(24) Coming back to the merits of the petition, as the petitioner was a juvenile at the time of commission of crime he, on the basis of the discussion made above, is entitled to be released from the jail, on account of the retrospective applicability of the Act.

(25) It is ordered that a committee constituted for consultation of release cases would take up the matter and pass a speaking order regarding the release of the petitioner in view of his status as a juvenile on the date of commission of crime, within a period of two months after the receipt of this order.

(26) Disposed of.
