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NOTES AND COMMENTS

JUVENILE AT EIGHTY!

I Introduction

CHILDREN, ARE 'supremely important national assets'[1] and are 'the greatest gift to humanity.'[2] These juridical eulogies are not hollow claims: their imprints may be found in the Constitution. Drafted in the background of unprecedented civic turbulence, the Constitution framers were not oblivious to the importance of protecting children from the vulnerability that is constitutive of childhood. And they, therefore, declared that the 'State shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.'[3] The aim is two fold – the state has an obligation to provide ideal conditions for development but must also act to protect them against exploitation and against moral and material abandonment. The Juvenile Justice (Care and Protection) Act, 2000,[4] marked a new beginning: it mirrored a sincere desire to realise the two fold constitutional aspirations.[5]

The JJ Act legislated to provide children with 'proper care, protection and treatment by catering to their development needs' and for 'adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children.'[6] Both constitutional concerns and

1. *Laxmi Kant Pandey* v. *Union of India,* (1984) 2 SCC 244, 249.
2. *Bandhua Mukti Morcha* v. *Union of India,* (1997) 10 SCC 551, 553.
3. *Constitution of India* Art. 39(f).
4. 56 of 2000 (hereinafter JJ Act).
5. It is novel in the sense that it radically changes the ways in which it proposes to deal with 'criminal' children. The JJ Act repealed the Juvenile Justice Act 1986 (Act 53 of 1986) which had been enacted to 'provide for the care, protection, treatment, development and rehabilitation of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' (hereinafter 1986 Act.)
6. The 1986 Act had been enacted for not very different reasons. The Objects and Reasons of the 1986 Act stated that the Act was being legislated, *inter alia*, 'to lay down a uniform frame work for juvenile justice in the country,' 'to provide for a specialised approach towards the prevention and treatment of juvenile delinquency' and 'to spell out the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of children coming

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international commitments motivated the legislation of the Act. The preamble recites constitutional provisions[7] and international rules including the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) as its guiding light.[8] The Act breaks new ground about the ways in which to understand the relationship between vulnerability and criminal tendencies in children and appropriate mechanisms to deal with such situations.[9] Broadly construed, the JJ Act proposes a framework that prescribes the appropriate ways in which law may engage with vulnerable and 'criminal' children. This article, however, is not concerned with a critical analysis of terms of this engagement. Rather, it has a much more narrow scope: what conditions trigger jurisdiction under the JJ Act. In other words, what conditions must be met before the terms of engagement that the Act proposes become operative in particular cases?

The jurisdictional issue, the concern of this article, may be explained as thus. Under the JJ Act, any person who has not completed eighteen years of age is a juvenile or child.[10] The Act deals with two categories of children: 'juvenile in conflict with law' and 'child in need of care and protection.'[11] 'Juveniles in conflict with law' means a juvenile who

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within the purview of the juvenile justice system, 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.'

7. The Preamble to the Act referred to the following constitutional provisions: Art. 15 (3), Art. 39(e), Art. 39 (f), Art 45 and Art. 47.

8. These are some of the international rules and conventions that have been ratified by India.

9. See Juvenile Justice (Care and Protection) Act, 2000, ss.14, 15, 30, 33, 39.

10. *Id*., s. 2(k). The uniformity with reference to age in the definition of a juvenile is an innovation of the JJ Act. Under the 1986 Act, 'Juvenile' under s. 2(h) meant 'a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.'

11. The categories under the 1986 Act, in contrast, were different: 'delinquent juvenile' and 'neglected juvenile.' A 'delinquent juvenile' under s. 2(e) meant a 'juvenile who has been found to have committed an offence' while a 'neglected juvenile' under s. 2(l) meant a juvenile who 'is found begging, or is found without having any home or settled place of abode …; or has a parent or guardian who is unfit or incapacitated to exercise control over the juvenile; or lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution,...; or who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain.' Broadly, 'delinquent juvenile' in the 1986 Act has been referred to as a 'juvenile in conflict with law' under the JJ Act and similarly a 'neglected juvenile' has been referred to as a 'child in need of care and protection.'

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is alleged to have committed an offence.[12] In contrast, 'child in need of care and protection' is a malleable category and broadly refers to any child suffering from social or physical vulnerability.[13] The definition of a juvenile, *i.e.*, a 'person who has not completed eighteen years of age and is alleged to have committed an offence' on the face of it seems clear and satisfactory. The clarity, however, is only apparent and the definition has posed persistent problems in its application. What is the relevant date for determining whether a person is a juvenile or not? Is the relevant date that on which the alleged commission was committed? Or is the relevant date that on which the alleged offender is produced before a competent authority under the Act? This is the core issue that is proposed to be discussed in this article. The issue may be clarified with the following example. "X," currently sixteen years old, commits an offence of theft: he steals money from his friend. "X," however, conceals himself and remains untraced. Let us assume, purely for sake of its dramatic effect, that "X" is apprehended by authorities nearly sixty four years later. "X" is now eighty and is sought to be prosecuted for the offence of theft committed when he was sixteen years old.[14] Do the provisions of the JJ Act apply to the now eighty year old "X"?

This matter has been agitated in the Supreme Court on three different occasions and the court has vacillated in its opinion. *Umesh Sharma* v. *State of Rajasthan,*[15] *Arnit Das* v. *State of Bihar*[16] and more recently in *Pratap Singh* v. *State of Jharkhand and Another*,[17] the court was called upon to put its mind to the matter. On each occasion a different view was suggested. Understood in the context of the hypothetical example, for the *Umesh Sharma* and the *Pratap Singh* Court, the JJ Act applies to "X" even though he is eighty. *Arnit Das,* now overruled, would have, however, held otherwise: the JJ Act would have been inapplicable to "X" because he is eighty. It is, however, important to note that these cases involved interpretation of different statutes though broadly dealing with the same subject matter.[18] If a statutory basis could be found, both

12. *Supra* note 9, s. 2(l).

13. *Id.* s. 2(d).

14. It must be noted that the provisions relating to limitation of offences prescribed in Chapter XXXVI of the Code of Criminal Procedure, 1973 would not apply. Under s. 470(4) (b) of the Code, in computing the period of limitation, the time during which the offender, 'has avoided arrest by absconding or *concealing* himself, shall be excluded. (Emphasis supplied.)

15. 1982 SCR (3) 583.

16. 2001 SCCL.COM 621.

17. 2005 SCCL.COM 76.

18. In *Umesh Sharma*, ss. 3 & 26 of the Rajasthan Children Act, 1970 were under consideration. While in *Arnit Das,* the court considered the effect of ss. 3 & 32 of the 1986 Act, in *Pratap Singh* the Supreme Court was called upon to interpret the effect of ss. 3 & 49 of the JJ Act. The effect of the provisions, however, is not very different.

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views could in principle be correct: the decision of the Supreme Court in *Pratap Singh* is erroneous and that *Arnit Das* lays down the correct position of law. The JJ Act has specific purposes and the court's erroneous conclusion in *Pratap Singh* was abetted by its inadequate understanding of the JJ Act.

The issue may be of limited interest but its effects are drastic and have far reaching implications. The JJ Act has instituted a procedure that is *significantly* different from the ordinary criminal law in India. Trial, procedure during trial and matters relating to finding of guilt, punishment on finding of guilt are considerably different from what has been prescribed in the Code of Criminal Procedure, 1973, (hereinafter Criminal Code). And in this sense, there is a lot at stake, a declaration of a 'juvenile' status would radically alter the nature of rights an accused may claim. What then is precisely at stake is discussed in section II. Sections III, IV and V. discuss the three decisions in some detail. Finally, section VI illustrates why "X" cannot be prosecuted under the JJ Act in a way that is consistent with its provisions.

II Salient features of the JJ Act: Why is jurisdiction relevant?

The JJ Act, as noted earlier, was enacted for providing children with 'proper care, protection and treatment by catering to their development needs' and for 'adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children.' But it is important to emphasise the *precise* purpose of law. Rather than adjudication of guilt, the JJ Act emphasises on the 'social reintegration of child victims' as its core concern. And in this sense, it purports to create a legal fiction under the Act that the offender child is also a victim. The commission of an offence, impliedly, is attributed to a child's social circumstances or in the image of the 1986 Act to 'situation(s) of social maladjustment'. The JJ Act provides a legislative basis for this implication: it is not the guilty but existential conditions that make a child a criminal. The criminal child, in this sense, is also a victim; a victim of its social circumstances. It followed therefore, that the proper course of action was not a strict determination of guilt but 'ultimate rehabilitation through various institutions established under (the) enactment.' Two broad objectives of the JJ Act may thus be restated. One, it purports to create a legal fiction by attributing offences by children to situations of social maladjustment. And secondly, it proposes a child–friendly scheme of adjudication with particular emphasis on rehabilitation and reintegration. It follows that the Act is 'post criminal': it attributes the criminality of a juvenile to his social conditions and proposes a machinery to rehabilitate him.

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The JJ Act, as has been already mentioned, deals with two categories of children, namely juveniles and children. Apart from definitional differences, the Act deals with juveniles and children in substantially different ways. Juveniles are to be dealt with by a Juvenile Justice Board[19] (hereinafter board) consisting of a magistrate[20] and two social workers, one of whom must be a woman.[21] The magistrate presiding over the bench must have 'special knowledge or training in child psychology' while the social workers must have atleast seven years of experience in 'health, education, or welfare activities pertaining to children.'[22] In contrast, a Child Welfare Committee is the competent authority to deal with a 'child in need of care and protection.'[23] (Hereafter the treatment of a 'child in need of care and protection' under the Act shall not be discussed). First briefly the procedure that must be adopted under the JJ Act after the commission of an offence may be set out, the objective is to highlight the relevance of the issue under consideration.

The provisions of the JJ Act are activated immediately after a juvenile commits an offence, that is to say, immediately after 'a person who has not completed eighteen years of age' commits an offence. Under section 10, once apprehended by the police, the juvenile shall be placed under the charge of the special juvenile police unit[24] who shall *immediately* report the matter to a member of the board.[25] When a person is produced before the board who is '*apparently* a juvenile,' the board must grant bail to the accused person whether or not the alleged offence was bailable or non-bailable in nature.[26] The board may refuse to grant bail only if it has reasonable grounds to believe that his release is 'likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.'[27] It is important to note that the proceedings concerning bail

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19. Under *supra* note 9, s. 4(1), state governments have been empowered to establish juvenile justice boards for dealing with juveniles. In contrast, under the 1986 Act, juvenile courts had been established under s.5 to deal with 'delinquent juveniles.'

20. *Ibid*. A magistrate in s.4(1) may be a metropolitan magistrate or 'Judicial Magistrate of the first class' in ways that have been defined under the Code of Criminal Procedure, 1973.

21. *Id*., s. 4(2).

22. *Id*., s. 4(3).

23. *Id*., under s. 29, state governments have been empowered to establish child welfare committees for dealing with children. In contrast, under the 1986 Act, Juvenile Welfare Boards had been established under s. 4 to deal with 'neglected juveniles.'

24. *Id*., s. 63.

25. *Id*., s. 10(1).

26. *Id*., s. 12(1).

27. *Ibid*.

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do not depend on conclusive evidence that the person so produced before the board is a juvenile. If it *appears* to the board that the person is a juvenile, he is entitled to the benefit of bail conferred under section 12. Also note that the appearance of being a juvenile, under section 12, is in relation to the time when such a juvenile is produced before the board, *i.e.*, does the person *when he is produced* appear to be a juvenile? The board, at this stage, is not concerned with whether the person was a juvenile *when the alleged crime was committed*.[28] If he does appear to be a juvenile at the time he is produced, the beneficial provisions of bail apply and must be released on bail unless conditions laid down follow.

This aspect of the matter is crucial, it emphasises why the issue is important. The JJ Act creates a parallel 'criminal' justice system for the juveniles and provisions relating to bail highlight the first difference.[29] The Act disregards ordinary distinction between bailable and non-bailable offences and purports to make bail a matter of right for every person who appears to be a juvenile unless extenuating conditions apply. Provisions relating to bail under the Criminal Code may be thus summarized: bail is a matter of right only for bailable offences.[30] For non-bailable offences, the accused may be released on bail on the discretion of the competent authority but shall not be released if there are 'reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life.'[31] The JJ Act obviates this distinction between bailable and non-bailable offences and makes bail a right of the accused juvenile unless it is in the interest of the juvenile not to be granted bail. If the person is not granted bail on the basis that extenuating conditions apply to him, the board 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.'[32]

After bail has been granted or withheld, the board shall hold an inquiry into the alleged charges against the juvenile.[33] The inquiry must be completed within a period of four months 'unless the period is

28. This is so presumably because 'when he is produced' is logically later in time then 'when the alleged act was committed.' And if a person is 'apparently' a juvenile when he is produced, he *must* have atleast 'apparently' been a juvenile when the alleged act was committed.

29. This is a difference that has been carried over from the 1986 Act. Even under the earlier law, ordinary distinctions between bailable and non-bailable offences were irrelevant and every 'delinquent juvenile' had a right to bail unless extenuating conditions applied.

30. *Supra* note 14, s. 436(1). The first schedule appended to the Criminal Code lists out the offences that are bailable and offences that are non-bailable.

31. *Id*., s. 437(1).

32. *Supra* note 9, s. 12(3).

33. *Id.,* s. 14.

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extended by the board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.'[34] If the inquiry under section 14 leads to the conclusion that the juvenile has committed an offence, the board may let the juvenile go home after advice or admonition,[35] direct participation in group counselling,[36] order performance of community service,[37] order payment of fine if the juvenile is above fourteen years and currently engaged in employment,[38] release on probation of good conduct and place him under the care of his parent, guardian, any other person or any other institution[39] or direct the juvenile to a special home for a specified period.[40] These being the *only* punishment that may be awarded to a juvenile, the differences of the JJ Act with ordinary criminal law immediately become manifest.

Punishment under the Indian Penal Code includes death, imprisonment for life, imprisonment other than for life (including rigorous and simple), forfeiture of property and fine.[41] None of these punishments except fine apply to the JJ Act. Unlike under ordinary criminal law, irrespective of the monstrosity of the offence committed, a juvenile cannot be awarded death sentence or life imprisonment or even committed to prison in default of payment of fine.[42] Nor is the board empowered to order forfeiture of property. Fines may be imposed only in cases where the juvenile is over fourteen years of age and is engaged in gainful employment. While it is true that the board may order detention, such detention does not include detention in prisons.[43] Only in exceptionally serious cases and where a juvenile has attained the age of sixteen, the board may order that he may be kept in a 'place of safety' because it would not be in the interest of other juveniles to have him in a special home.[44] Such a special detention cannot, however, exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed.[45] The underlying motivation

34. *Id.*, s. 14 (Proviso).
35. *Id.*, s. 15(a).
36. *Id.*, s. 15(b).
37. *Id.*, s. 15(c).
38. *Id.*, s. 15(d).
39. *Id.*, s. 15(e).
40. *Id.*, s. 15(g).
41. Indian Penal Code 1872, s. 53 (hereinafter IPC).
42. *Supra* note 9, s. 16.
43. *Id.*, s. 16 (Proviso).
44. Special homes have been established - an institution established by a State Government or by a voluntary organisation and certified by that Government under *supra* note 9, s. 9.

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of the Act is to provide an efficacious rehabilitative mechanism, it is not surprising that the JJ Act does away with punishment in the way it is understood in ordinary criminal law. The purpose is neither to punish nor penalise, rather, it is to provide ideal conditions in which the juvenile may achieve his fullest potential. Juvenile rehabilitation is clearly an innovation of the JJ Act.[46]

There are two other significant benefits that the Act proposes to confer on 'convicted' juveniles. Under section 19, no juvenile who has been convicted of an offence under the JJ Act shall 'suffer disqualifications if any, attaching to a conviction of an offence under such law.'[47] All relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period.[48] In other words, a conviction under the JJ Act is not a conviction for the purposes of law and the juvenile shall not have any criminal antecedents in official records. This is a crucial departure from ordinary criminal law where the disqualifications arising from the commission of an offence continue even after the sentence of punishment has been served.

Finally, section 21 places an embargo on the disclosure of the name, address or school or any other particulars calculated to lead to the identification of the juvenile in any newspaper, magazine, news–sheet or visual media.[49] The identity may be revealed if the competent authority so permits provided that the disclosure is in the interest of the juvenile.[50] A fine of one thousand rupees may be imposed for unlawfully disclosing the identity of a juvenile or such feature that may lead to his identification.[51] This is a disqualification that has been imposed on the freedom of press but is inapplicable under ordinary criminal law. The media, print or electronic, is not proscribed from publishing information identifying an alleged accused with the commission of an offence.

These four aspects capture the true relevance of the issue under consideration. The JJ Act, to reiterate the earlier assertion, proposes to establish a parallel 'criminal' justice system for juvenile offenders with

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45. *Id.*, s. 16(2) Proviso.

46. 'Innovative,' does not mean that it has been introduced for the first time. 'Innovation,' in this context, emphasises its differences with the ordinary law of crimes. 'Punishment' under s. 20 of the 1986 Act was substantially similar to what has been provided under the JJ Act.

47. *Supra* note 9, s. 19(1). For a similar provision under the 1986 Act see s. 25.

48. *Id.*, s. 19(2).

49. Surprisingly a reference to an audio media has been omitted under *supra* note 9, s. 21(1). While it is true that pictures cannot be published in such media because it is audio by definition, it is obvious that news identifying the juvenile can be read out in such media.

50. *Id.*, s. 21(1) Proviso.

51. *Id.,* s. 21(2).

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considerable emphasis on rehabilitation. It radically departs from ordinary criminal law in four crucial aspects as has been discussed above. Now to focus on the issue currently under consideration. What conditions trigger jurisdiction under the JJ Act? It is not in dispute that the offence must have been committed by a juvenile, *i.e,*. by a person who has not completed eighteen years of age. But is it necessary that the person being 'tried' under the Act also be a juvenile? In other words, does the JJ Act apply to cases where the offence was committed by a juvenile but has since then *ceased* to be a juvenile? Given that the JJ Act confers considerable benefits on a 'criminal' juvenile, it is clearly in the interest of accused persons to argue that the Act applies even in cases where the accused has ceased to be a juvenile before the commencement of the inquiry. What then is the correct position of law?

III *Umesh Sharma* v. *State of Rajasthan*: Unclear clarity.

Under the provisions of the Rajasthan Children Act, 1970 (hereinafter Rajasthan Act), 'any person below the age of sixteen would be presumed to be a child and the trial of a delinquent child was to be conducted in accordance with the procedure laid down therein.'[52] Umesh Sharma, the appellant, was accused of having committed offences punishable under sections 364 and 302 of the IPC.[53] On being produced before the additional sessions judge in accordance with the law laid down in the Criminal Code, Sharma claimed that he was below the age of sixteen when the alleged offence was committed. Accordingly, he submitted that the ordinary law of crimes was inapplicable to him and that the sessions court did not have competence to try the matter. The sessions judge overruled the objection and the Rajasthan High Court upheld the decision of the trial court on two grounds: - the Rajasthan Act had not been brought into force in Tonk (the jurisdiction where the accused had allegedly committed the offence) at the time of the offence, and that it was not proved by the accused that he was below the age of 16 on 12.3.1973, the date of the occurrence.[54] It is important to bear in mind that the high court decided against the accused *purely on factual grounds*. The Act, according to the high court, did not apply to the accused because he could not prove that he had not attained the age of sixteen on the date of the occurrence of the crime. Impliedly, had the accused proven that he was less than sixteen years old, the Act (atleast on this ground) could have been applied to him. This would suggest that the

52. 1982 SCR (3) 583 at 585.
53. *Id.* at 586.
54. *Ibid*.

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high court had interpreted the relevant provisions of law to mean that the relevant date was the date on which the offence was committed.

During the pendency of the appeal in the Supreme Court, the Act was made applicable to the whole of Rajasthan and consequently the first basis for the high court's decision became irrelevant.[55] The court reviewed at length both oral and documentary evidence adduced by the accused and concluded that the accused was indeed less than sixteen years old when the alleged offence was committed.[56] The respondent, however, submitted that the relevant date was not the date on which the offence had been committed but the date on which the accused is brought to trial. In other words, given that Umesh Sharma had ceased to be less than sixteen years of age before the commencement of 'trial,' the provisions of Rajasthan Act did not apply to him. The submission was rejected. The court's reasoning, it is submitted, is both strange and specious.

The only conclusion that had been reached by the review of documentary evidence was that the accused had not attained the age of sixteen on the date the offence had been committed. This conclusion was apparently sufficient to disregard the possibility of an alternative relevant date: 'in view of our finding that at the time of the occurrence the appellant was undoubtedly a child within the provisions of the Act, the further question if he could be tried as a child if he had become more than 16 years by the time the case went up to the court, does not survive because the Act itself takes care of such a contingency.'[57] For the court, there was only one relevant date – *i.e.*, the age of the accused when the alleged offence was committed – and given that the accused in this case had not attained the age of sixteen, he was entitled to the beneficial provisions of the Rajasthan Act. Fazal Ali J found a statutory basis for this conclusion. In his opinion, sections 3 and 26 of the Act led to this conclusion. Section 3 relates to the continuance of inquiry *pending* before competent authority under the Act: 'where an inquiry has been initiated against a child and during the course of such inquiry 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 child.' Section 26, on the other hand, deals with cases *pending* in ordinary criminal courts at the time of the commencement of the Act: 'notwithstanding anything contained in this Act, all proceedings in respect of a child pending in any court in any

55. *Id.* at 586-87.
56. *Id.* at 592.
57. *Ibid*.

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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 child has committed an offence, it shall record such finding and, instead of passing any sentence in respect of the child, forward the child to the children's court which shall pass orders in respect of that child in accordance with the provision of this Act as if it has been satisfied on inquiry under this Act that the child has committed the offence.'

A plain reading of both these provisions suggests that they apply in different circumstances but have one thing in common. They refer to matters pending before competent authorities. In other words, both sections assume that the person standing 'trial' was a child when the trial had commenced but ceased to be a child thereafter. These provisions, therefore, satisfy both conditions, *i.e.*, the condition that a child committed the offence and that the 'trial' had commenced while the accused was still a child. In this sense, both sections 3 and 26 are wholly irrelevant to the question at hand. The question may be reformulated as thus: do the provisions of the Rajasthan Act apply to cases where inquiry is initiated *after a person has ceased to be of less than sixteen years of age*? Clearly, sections 3 and 26 do not address the question, they refer to matters that are already pending before different authorities. Reading section 3 and 26 together, the court concluded, 'A combined reading of these two sections would clearly show that the statute takes care of contingencies where proceedings in respect of a child were pending in any court in any area on the date on which the Act came into force.' It is correct to say that even if a person ceases to be a child during the pendency of proceedings, he continues to enjoy the beneficial provisions of the Act. But the general conclusion that the court suggests is both irrelevant and erroneous, the court did not address the real issue posed before it. Do the provisions of the Rajasthan Act apply even to cases that are initiated *after* the person has ceased to be of sixteen years of age? Neither section 3 nor section 26 provides an answer.

While the Supreme Court employed sections 3 and 26 to ostensibly justify its assertions, the real reasons for concluding that the relevant date is the date on which the offence was committed may be found in the following claim: '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.'[58] According to the

58. *Id.* at 593-94.

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court, the purpose of the Rajasthan Act was to *protect* children from the consequences of their criminal act, *i.e.*, to protect children from the consequences of acts for which they could not have sufficient intention. And it logically followed from this construction that even persons who have ceased to be juveniles under the Act be entitled to its benefits. Therefore, understood in the light of the hypothetical example, the Rajasthan Act applies to 'X' irrespective of his current age: *mens rea* cannot be imputed to him for acts done when he was a child. This purposive construction constituted the core basis of the claim that the relevant date is the date of the alleged offence. But that this purposive construction is wrong will be subsequently argued, that the intendment of the Act is *not* only '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*'. The *Umesh Sharma* court committed two significant errors: it did not address the real issue and also misconstrued the purpose of the Rajasthan Act.

IV *Arnit Das* v. *State of Bihar*: Better clarity?

Arnit Das was accused of an offence punishable under section 302 of the IPC.[59] When produced before the additional chief judicial magistrate in accordance with the provisions of the Criminal Code, he contended that he was less than sixteen years of age when the alleged offence was committed and, therefore, entitled to the protection of the beneficial provisions of the 1986 Act.[60] The magistrate concluded that the accused had exceeded sixteen years of age and, therefore, not entitled to the protection of the 1986 Act.[61] This finding was upheld in appeal by the sessions court and thereafter by the high court.[62]

In the Supreme Court, the counsel for the appellant contended that the relevant date under the 1986 Act was the date on which the offence was committed. Responding to the counsel's submission, Lahoti CJ drew attention to the purpose of the Act: it was, as we have already seen, 'an Act to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juvenile and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles.'[63] Reproducing the text of the Objects and Reasons of the Act, he emphasised that there was 'need for larger involvement of informal

59. 2001 SCCL.COM 621 para 1.
60. *Ibid*.
61. *Ibid*.
62. *Ibid*.
63. *Id*., para 2.

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systems and community based welfare agencies in the care, protection, treatment, development and rehabilitation of such juveniles.'[64] Lahoti CJ laid down the broad scheme of the Act but noted that the issue under challenge had not been found directly answered by the provisions of the law.[65] The court, however, agreed with the submission of the Solicitor General that section 32 of the Act provided a vital clue and it could be the basis for arguing that the relevant date must be the date on which the accused person is brought before the competent authority.[66] According to the court, 'the scheme of the Act contemplates its applicability coming into play only when the person may appear or be brought before the competent authority.'[67] It referred to sections 8, 18, and 20 of the 1986 Act and concluded that 'a reading of all these provisions referred to herein above make it very clear that an enquiry as to the age of the juvenile has to be made only when he is brought or appears before the competent authority.'[68] The court added: [69]

> The competent authority shall proceed to hold enquiry as to the age of that person for determining the same by reference to the date of the appearance of the person before it or by reference to the date when person was brought before it under any of the provisions of the Act. *It is irrelevant what was the age of the person on the date of commission of the offence.* Any other interpretation would not fit in the scheme and phraseology employed by the Parliament in drafting the Act.

This construction of the 1986 Act is clearly correct. The 1986 Act, according to the court, provides for justice *after* the onset of delinquency.[70] The societal factors leading to birth of delinquency and the preventive measures which would check juvenile delinquency legitimately fall within the scope of social justice.[71] The Act, the court rightly concluded, 'aims at laying down a uniform juvenile justice system in the country avoiding lodging in jail or police lock-up of child and providing for prevention and treatment of juvenile delinquency, for care, protection, etc. post-juvenility.'[72] This reference to 'post–juvenility' is apposite, it squares with the article's earlier assertion that the JJ Act, properly understood, is post–criminal in nature. The term is best

64. *Ibid*.
65. *Id*., para 5.
66. *Id.,* para 7.
67. *Ibid*.
68. *Id.,* para 9.
69. *Ibid*.
70. *Ibid*.
71. *Ibid*.
72. *Id.,* para 15.

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explained in the words of Lahoti CJ,'the field sought to be covered by the Act is *not the one which had led to juvenile delinquency* but the field when juvenile having committed a delinquency is placed for being taken care of post-delinquency.' It may be argued that the construction applied to the 1986 Act applies with greater force to the JJ Act. This also explains the error of the *Umesh Sharma* court. In *Umesh Sharma*, the court interpreted the provisions of the Rajasthan Act to imply that the purpose of the law was to protect the child from the consequences of criminal acts that it could not have intended. Children are in any case protected from the consequences of criminal acts for which they did not have adequate *mens rea* even under ordinary criminal law.[73] The real purpose of the Rajasthan Act was *not* to protect children from the consequences of criminal acts but to provide a scheme for rehabilitation on the assumption that conditions of social maladjustment lead children to commit offences.

In reassuring itself, that its conclusion was correct, the Supreme Court also took the aid of a hypothetical example not very different from one that has been considered in this article. It posed the following question to the counsel for the appellant: 'what happens if a boy or a girl of just less than 16 or 18 years of age commits an offence and then leaves the country or for any reasons neither appears nor is brought before the competent authority until he or she attains the age of say 50 years?'[74] Emphasising that the counsel with all wits at his command had no answer to this query, Lahoti CJ added, 'we are clearly of the opinion that the procedure prescribed by the provisions of the Act has to be adopted only when the competent authority finds the person brought before it or appearing before it is found to be under 16 years of age if a boy and under 18 years of age if a girl on the date of being so brought or such appearance first before the competent authority.'[75] The court rightly rejected its earlier decisions in *Santanu Mitra* v. *State of W.B.,*[76] *Bhola Bhagat* v. *State of Bihar*[77] and *Gopinath Ghosh* v. *State of W.B.*[78] on the ground that each of these cases had proceeded on the assumption that the relevant date was the date on which the offence was committed.[79] Given that these decisions did not consciously address the issue under

73. *Supra* note 41, ss. 82, 83. It is true that the character of protection under the Penal Code was qualitatively different from what was provided under the Rajasthan Act. Yet, it is undeniable that protecting children from the consequences of criminal acts was *not* an innovation of the Rajasthan Act.

74. *Supra* note 59, para 7.

75. *Ibid*.

76. 1998 (5) SCC 697.

77. 1997 (8) SCC 720.

78. 1984 Supp. SCC 228.

79. *Supra* note 59, para 23.

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consideration, it could not be regarded as valid law under article 141.[80] The court also correctly overruled the decision of the Calcutta High Court in *Dilip Saha* v. *State of West Bengal*[81] and the decision of the Patna High Court in *Krishna Bhagwan* v. *State of Bihar.*[82]

The judgment, however, inexplicably omits any reference to the *Umesh Sharma* judgment where the court had addressed this precise question. By deciding that the relevant date is the date on which the accused is produced before the relevant authority, the *Arnit Das* decision had the effect of overruling the law laid down in *Umesh Sharma*. But this has a fatal effect on the judgment, it cannot be regarded as valid law under article 141.[83] *Umesh Sharma* was been decided by bench of three judges and *Arnit Das,* decided by two judges and admittedly a smaller bench could not have overruled the decision of a larger bench. Though correct, it is clear that the decision of the court in *Arnit Das* is not valid law at all.

V *Pratap Singh* v. *State of Jharkhand and Another*: Is more always better?

In *Pratap Singh,* the appellant was alleged as one of the conspirators who caused the death of the deceased by poisoning.[84] The juvenile court released Singh on bail but the high court cancelled the order on the ground that the accused had attained the age of sixteen before the commencement of inquiry. In the Supreme Court, the two different opinions earlier suggested in *Umesh Sharma* and *Arnit Das* were taken note of. Accordingly, it was suggested that the matter be placed before a larger bench: '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, … the matter deserves to be heard by the Constitution Bench of this Court. Be placed before the Hon. Chief Justice of India, soliciting directions.'[85]

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80. The court said: 'A decision not expressed, not accompanied by reasons and not proceeding on conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Art. 141. That which has escaped in the judgment is not *ratio decidendi*.'

81. AIR 1978 Cal 529. The *Arnit Das* court rejected the contention by noting that 'the High Court has overlooked that Article 20 (1) of the Constitution would be attracted only if the applicability of the Act was determined by reference to the date of the offence but if it was determined by reference to the date of the commencement of the inquiry or trial then Article 20 (1) would not apply.'

82. AIR 1989 Pat 217.

83. *Supra* note 3, Art. 141. ("The law declared by the Supreme Court shall be binding on all courts within the territory of India.")

84. 2005 SCCL.COM 76 para 1.

85. *Id.,* para 3.

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Predictably counsel for the appellant submitted that the law laid in *Umesh Sharma* was correct. *Arnit Das*, decided by two judges, could not have differed from a decision rendered by three judges.[86] He argued that the 'whole object of the law is to reform and rehabilitate the juvenile for the offence he is alleged to have committed' but strangely concluded from this proposition that 'if the date of offence is not taken as reckoning the age of the juvenile, the purpose of the Act itself would be defeated.' The submission is plainly contradictory but the court did find it reasonable. Sema J delivering the majority opinion of the court extensively quoted from the Statement of Objects and Reasons of the 1986 Act. From a review of the Statement of Objects and Reasons, he concluded that 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.'[87] The notable distinction, according to the court, "between the definitions of 1986 Act and 2000 Act is that in 1986 Act 'juvenile in conflict with law' was absent."[88] The court added: [89]

> 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 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.

The language is ambiguous and it is difficult to understand what it intended to say. The court, it appears, was trying to highlight the significance of the term 'in conflict with law' in the JJ Act. According to the court, 'in conflict with law' was itself suggestive of the fact that the relevant date was the date on which the offence was committed. While it is true that a person becomes a juvenile on the date on which the offence is committed (because he comes into conflict with law on that date), it does *not* follow that the jurisdiction of the board must be understood with reference to the same date. Under the JJ Act there can be two categories of persons who are in conflict with law: offences committed by juveniles and who are *still* juveniles (*i.e.* persons who have not completed the age of eighteen) and offences committed by

86. *Id.,* para 4.
87. *Id.,* para 7.
88. *Ibid*.
89. *Ibid*.

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juveniles but have *ceased* to be juveniles. While both categories admittedly became juveniles when they committed the criminal act, it is not necessarily true that the board also has jurisdiction over both categories. 'In conflict with law' in the definition of a juvenile refers to the date on which a person becomes a juvenile, that has no relevance in understanding persons over whom the board may exercise jurisdiction. The two are unrelated issues and the court has clearly confused them, treating them as one and the same.

Similarly, the argument based on section 32 of the 1986 Act was also rejected. Under section 32 'where it appears to a competent authority that a person brought before it under any of the provisions of this Act *is* a juvenile, the competent authority shall make due inquiry as to the age of that person.' The 'is' in section 32 was interpreted as a reference to the time when the offence was committed.[90] In other words, 'is a juvenile' according to the court in *Pratap Singh* did not refer to *in presenti,* it referred to a time that has already passed. In arriving at this conclusion, Sema J also referred to section 18: '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, … be released on bail with or without surety.' Both these provisions, according to the court leads to a conclusion that 'juvenile' before a competent authority must be understood as a juvenile on the date of the offence. He offered the following reasoning: '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.'[91] But what if an offender is *not* arrested immediately but sixty–four years as in the case of 'X' that the article is currently considering. The judgment only uses examples that satisfy its conclusion but does not consider examples that, on this reasoning, leads to gravely absurd results. The construction is, to say the least, destructive of the ordinary meaning of the words used in the provisions. 'Is a juvenile' in sections 32 and 18 are preceded by reference to the appearance of the juvenile before a competent authority, *i.e.*, 'when a person appears before a competent authority … is a juvenile.' The question that section 32 answers may be formulated as thus: does the person who has been produced before the authority appear to be a juvenile? 'Is' is always used as a reference to the present tense and must be understood as thus in section 32 too. There is nothing in section 32 that compels one to impute a reference to the time when the offence

90. *Id.,* para 8.
91. *Id.,* para 9.

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was committed. It is an imputation that follows from the confusion that has been earlier explained.

Finally, the court cited with approval the reasoning of the *Umesh Sharma* court while interpreting sections 3 and 26 of the 1986 Act.[92] Inadequacy of this reasoning has already been referred to. Suffice to say here that both sections 3 and 26 assume that proceedings have already been initiated against persons who have not attained the age of eighteen. The question currently in consideration is a very different one: do the provisions of the 1986 Act (or the JJ Act as the case may be) apply to instances where proceedings have been initiated *after* a person has ceased to be of eighteen years of age? Indeed, it is arguable that section 3 leads to the unavoidable conclusion that 'juvenile' must be understood as a juvenile when produced before the competent authority.

Sinha J in his concurring opinion extensively referred to United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 in arriving at the same conclusion. It is difficult to understand the gains that may have accrued from such lengthy references. While it is true that the Beijing Rules in part motivated the enactment of the 1986 Act, there is nothing in the Beijing Rules that addresses the issue under consideration. He recites in length the provisions of the 1986 Act and the 2000 Act only to conclude that '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.' This conclusion could have been arrived at even without such extended reproduction of the statutory text. And not much seems to have been achieved by the comparative methodology that was adopted.[93] The opinion, it is submitted, does not really add *any* clarity to the majority opinion nor gives any additional reasons for the conclusions.

However, Sinha J does treat with some seriousness the 'absurd' result that seems to follow if the relevant date is construed as the date on which a juvenile is produced before the competent authority. He notes: 'Only because his (the juvenile's) age is to be determined in a

92. *Id.,* para 10.

93. Sinha J cites the following decisions as authority for various propositions to which he refers to: *Regina (Daly)* v. *Secretary of State for the Home Department* [2001] 2 AC 532; *S.* v. *Makwanyane* 1995 (3) SA 391; *Reference re Public Service Employee Relations Act (Alberta)* [1987] 1 SCR 313; *Tavita* v. *Minister of Immigration* [1994] 2 NZLR 257; *Pratt* v. *Attorney-General for Jamaica* [1994] 2 AC; *Atkins* v. *Virginia* (2002) 536 US 304; *Lawrence* v. *Texas* (2003) 539 US 558, *Hamdi* v. *Rumsfeld* (2004) 72 USLW 4607; *Russel* v. *Bush* (2004) 72 USLW 4596; *Rumsfield* v. *Padila* (2004) 72 USLW 4584, *In re Frank C.,* 70 N.Y.2d 408, *Alfredo* v. *Superior Court* 849 P.2d 1330 (Cal. 1993), *Robinson* v. *Texas* 707 S.W.2d 47, *Illinois* v. *Stufflebean* 392 N.E. 2d 414.

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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 therefore would be the one on which he is produced before the board. If such an argument were 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 a juvenile. If he is produced after he ceases to be a 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.'[94] In acknowledging this absurdity, he quoted with approval the decision of the Calcutta High Court in *Dilip Singh*.[95] He added: 'It is incorrect to say that the preamble speaks of the things of post-delinquency only… Once the law relates to delinquent juveniles or juveniles in conflict with law, the same would mean both pre and post-delinquency… The field covered by the Act includes a situation leading to juvenile delinquency vis-à-vis commission of an offence.'[96]

Both reasonings leave much to be desired. The argument of Sinha J presumes a gross violation of both the Constitution and the JJ Act. Under section 10 of the JJ Act, once apprehended by the police, the juvenile shall be placed under the charge of the special juvenile police unit who shall *immediately* report the matter to a member of the board.[97] To argue that police authorities may not produce a juvenile before the board until he ceases to be eighteen is contradictory, it is precisely because of this possibility that the law requires that a juvenile be immediately produced before the board. To keep a juvenile in custody without immediately producing him before the board is a gross violation of the juvenile's fundamental[98] and statutory rights. It is difficult to understand how a law may be interpreted on the assumption that authorities *will* act unconstitutionally or illegally. The absurdity that Sinha J spoke of is not an absurdity that follows from the interpretation of section 26 of the 1986 Act. It is an absurdity that follows from the violation of a juvenile's fundamental and statutory rights.

If anything, the interpretation that has been proposed has a distinct advantage over what Sinha J forces in his judgment. Given that juveniles refer only to persons who are still juveniles at the commencement of inquiry, it is in the juvenile's interest to offer himself before the authorities. By surrendering before competent authorities, the juvenile

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94. *Supra* note 84, para 50.
95. AIR 1978 Cal 529.
96. *Supra* note 84, para 56.
97. S.10(1) JJ Act.
98. *Supra* note 3, Art. 22(2).

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stands to benefit from the provisions of the JJ Act and avoid punishment under the IPC or any other criminal law. On the other hand, by concealing himself or absconding, he runs the risk of suffering punishment under ordinary criminal law if 'inquiry' is delayed until he ceases to be a juvenile. While Sinha J emphasises the incentive police authorities would have not to produce the juvenile before competent authorities, he, however, forgets that the same interpretation is also an incentive for the juvenile to surrender. The JJ Act refers *only* to conditions of 'post juvenility:' there is nothing in the JJ Act that refers to a juvenile before he becomes a juvenile. It is only after a person has become a juvenile by committing an offence that the provisions of the JJ Act become operative. The JJ Act, therefore, does not apply to all children, it applies only to those children who have become a juvenile or a child, *i.e.*, a child in conflict with law. Unlike the *Arnit Das* decision, a bench of five judges decided *Pratap Singh*. Admittedly, they were more in number than the two judges who decided *Arnit Das*. But do more judges necessarily produce better judgements?

VI Not a juvenile at eighty: The correct position

Three decisions of the Supreme Court have been considerably discussed that are in some way or the other deeply dissatisfying. The *Arnit Das* decision was correct, it's reasoning, however, could have been better. In any case, the law laid down cannot be regarded as valid, it is *per incurium.*

The JJ Act, to invoke the image of its long title, is an Act providing 'for proper care, protection and treatment (of children) by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.' It must be noticed at the outset that the Act does *not* cater to all children, it is for two categories of children only, *i.e.*, 'juveniles in conflict with law' and 'children in need of care and protection.' In other words, something must happen to children before they come within the purview of the Act. In the case of juveniles, they come within the purview of the law when they commit an offence and in case of children when any of the conditions mentioned in section 2(d) occurs. For example, when a child is without any home, or living with a person who threatens to kill or injure, or whose parents are not willing to take care of the child and so on. Children who are living happily with their parents or such other persons *do not* come within the purview of the Act. This is probably obvious. And this is sufficient to counter the argument that 'it is incorrect to say that the preamble speaks

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of the things of post-delinquency only.'[99] Indeed it is totally incorrect to say that the JJ Act applies to things pre-delinquency. Secondly, the core purpose of the JJ Act is to 'ultimately rehabilitate' the two categories of children to which it applies. The Act creates various institutions where such children can be provided conditions in which to achieve their fullest development.[100] Nor is it correct to say that the JJ Act has been enacted only to protect juveniles from the consequences of criminal acts. The Act undoubtedly builds on existing criminal law to protect juveniles from the consequences of offences but that is *not* the core purpose of the law. It provides protection of a specific kind, *i.e.*, protection by rehabilitating the juvenile. If a juvenile cannot be protected in the way it has been contemplated under the law, then it is oxymoronic to suggest that the Act can be applied to such juveniles. From an analysis of the long title, two conditions necessarily follow. First, the JJ Act is applicable only if a person below the age of eighteen has committed the offence. And secondly, it is applicable only if the offender is capable of being rehabilitated or reintegrated in ways provided by the Act. The two conditions are necessary and inseparable, one without the other is meaningless.

It is obvious that the legal fiction under the JJ Act cannot be attributed to a person unless the offence was committed while he was below the age of eighteen. Similarly, the end of rehabilitation and reintegration becomes irrelevant once a person ceases to be eighteen. The legal fiction, in this sense, is purposive in nature: it seeks to confer benefits on the minor such that he can be rehabilitated by institutions created under the Act. The fiction is not an end in itself but has been designed to reach a specific end, *i.e.,* of rehabilitation and reintegration. If the child ceases to be a child under the provisions of the JJ Act, by definition, the ends of rehabilitation and reintegration would not apply to him. While it is true that various kinds of rehabilitation and reintegration may apply even to persons who have ceased to be children (e.g. alcoholics, AIDS victims), it is important to note that such rehabilitation is not within the scope of the JJ Act. The Act aims to rehabilitate children *only*. And therefore, if the second objective of rehabilitation and reintegration do not apply to a person, he is clearly outside the purview of the Act.

But this non-applicability of the JJ Act to persons who have ceased to be minors is subject to a statutory exception. It shall continue to apply to persons who, during the pendency of inquiry, cease to be a minor. Section 3 of the Act provides for this exception: 'where an inquiry has been initiated against a juvenile in conflict with law or a

99. *Supra* note 84, para 56.
100. *Supra* note 9, ss. 2 (o); 2 (q); 2 (v).

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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.' But the provision is itself a basis for an argument that the JJ Act applies only to persons who have not attained the age of eighteen at the commencement of inquiry. It shows that a person must be a juvenile to begin with but may cease to be a juvenile during the pendency of the inquiry. And in cases where persons cease to be juveniles during the inquiry, section 3 postulates that the Act shall apply notwithstanding the change in status. If the Act was indeed applicable to a person whether or not he remained a minor at the commencement of inquiry, then section 3 was plainly irrelevant. Section 3 itself shows that every inquiry by a board *must* commence when a person is a minor and thereafter states that even in cases where a person has ceased to be a minor during the pendency of inquiry, remains subject to the Act. It is difficult to understand how section 3 may be used to advance the contrary argument as the court attempted in *Umesh Sharma* and *Pratap Singh*.

After apprehension by the police, the juvenile under section 11 may be placed in the custody of any person. Such person 'shall be responsible for his maintenance, and the juvenile shall continue in his charge for the period stated by competent authority, notwithstanding that he is claimed by his parents or any other person.' If a juvenile includes a person who has attained eighteen years of age, what purpose does section 11 serve? Section 11 makes sense only when juveniles are *still* juveniles: their maintenance may be the responsibility of some other person and such person has control over the juvenile. The law provides for maintenance because it presumes that juveniles would not be able to (or expected to) maintain themselves. And it provides for 'control over the juvenile' because it assumes that juveniles are not sufficiently mature to take care of their wellbeing. None of these considerations apply to persons who have ceased to be juveniles, they can be expected to be able to maintain themselves and also sufficiently mature to take care of their well being. If the Act is interpreted to include even persons who have ceased to be juveniles, section 11 becomes plainly irrelevant.

Similar considerations apply to the provisions regarding bail. When a person is produced before the board who is '*apparently* a juvenile,' under section 12 the board must grant bail to the accused person whether or not the alleged offence was bailable or non-bailable in nature. It has already been argued that appearance of being a juvenile, under section 12, is in relation to the time when such a juvenile is produced before the board, *i.e.*, does the person *when he is produced* appear to be a juvenile. The board must, however, deny bail to the accused if there are 'reasonable

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grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.'[101] The provision reiterates the assumption of immaturity. The provision becomes patently contradictory if it is interpreted as being applicable even to persons who are no more juveniles. For a person who is sufficiently mature to protect his own interest, it makes little sense to suggest that bail must be denied if his release 'is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger.' After arrest, the office-in-charge is required to inform the 'parent or guardian of the juvenile, if he can be found, of such arrest and direct him to be present at the board before which the juvenile will appear.'[102] What sense does it make to say that the parent or guardian of an eighty year old must be informed as soon as possible of the arrest of the person and direct that they be present during inquiry?

Interestingly, it is *impossible* to interpret section 15(g) to impute any meaning like what the Supreme Court attempted in *Pratap Singh*. The board, under section 15(g) is empowered to order that a juvenile be sent to a special home. There are two kinds of orders that may be passed under the said provision: (a) in the case of a juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years and (b) in case of any other juvenile for the period until he ceases to be a juvenile. Section 15(g) in the author's submission conclusively suggests that every person being inquired by a board must be a juvenile and not merely a juvenile when the offence was committed. The very purpose of the special institutions that have been established under the Act is to avoid juveniles being in contact with adult criminals even when they have been detained by the order of a board. If juveniles include persons who have ceased to be juveniles, the very purpose of these special institutions would be defeated. If a board order an 'adult' juvenile to be detained in such a special or observation home, it leads to precisely what the Act had sought to avoid, contact of juvenile with adult during the period of detainment.

Further, under section 18, no juvenile shall be charged with or tried for any offence together with a person who is not a juvenile. If a juvenile includes a person who is no more a juvenile, section 18 becomes absolutely meaningless. Let us assume that 'X' had committed the offence of theft along with his friend who was not a juvenile. If the Supreme Court is correct, then under section 18 'X' must now be tried separately from his friend. Why so? What would a separate trial achieve when none of the accused is anymore a juvenile? Section 18 makes sense only

101. *Id*., s. 12.
102. *Id*., s. 13.

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in cases where a person, currently being inquired against, is still a juvenile but has allegedly committed an offence with another person who is not a juvenile. Finally, sections 23, 24 and 25 create special offences relating to a juvenile or child: these offences make no sense if interpreted as being applicable even to persons who have ceased to be juveniles. The offences relate to cruelty to juveniles, use of juveniles for begging or giving a juvenile intoxicating liquor narcotic drug or psychotropic substance except upon the order of duly qualified medical practitioner. These provisions of law make sense only when they are understood as offences against persons who are immature to take care of themselves and susceptible to corrupting influence. The provisions make sense when interpreted as being applicable to persons incapable of giving valid consent because of their immaturity. These provisions unerringly lead us to the conclusion that the JJ Act is incapable of being interpreted so as to include persons who have ceased to be persons before the commencement of inquiry.

VII Conclusion

JJ Act confers considerable benefits on accused persons. But it does not follow from its beneficial character that the provisions must be interpreted to include even persons who cannot be meaningfully brought within its fold. By emphasizing on this beneficial nature, one must not however lose sight of the core purpose of the Act. The Act confers benefits not as an end in itself but for a definite purpose–*i.e.*, for the purpose of rehabilitating and reintegrating the juvenile. It is plainly absurd to argue that even persons who cannot be rehabilitated in ways in which the Act proposes to do are included within its fold. Juveniles who have ceased to be juveniles cannot be rehabilitated in ways in which the Act proposes to do so. In the context of the hypothetical example, it will probably not be disputed that 'X' at eighty years of age cannot be rehabilitated and reintegrated using the institutions established under the JJ Act. And to argue otherwise produces irreconcilable contradictions and the effort in this article has been to highlight the systematic incongruities that would be introduced into the provisions of the JJ Act if the court's interpretation in *Pratap Singh* is understood as the correct law. Indeed much of this heartburn could have been avoided if Parliament had taken its task of drafting somewhat more seriously. Given that such seriousness is unlikely in the near future, one must probably reconcile to judicial logic in understanding the laws. By the same token, it also emphasises why courts must get their logic correct. It is clear that the JJ Act applies to persons who have not attained eighteen years of age. If the Supreme Court in *Pratap Singh* is correct in its interpretation, it seems that the JJ Act may also apply to eighty

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year olds. Not many of us will sincerely consider an eighty year old to be a juvenile. But the possibilities of applying the JJ Act to an eighty year old must make us atleast rethink the nature of law, conferring juvenile status to eighty year old man!

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