

**The 1<sup>st</sup> Mrinalini Devi Memorial National Moot Court Competition, 2017**

*Organised by*

**Bengal Law College, Shantiniketan**

*In association with*

**RostrumLegal**

*On*

**January 27<sup>th</sup> to 29<sup>th</sup>, 2017**

**MOOT PROPOSITION**

PEOPLES' CONSCIENCE .....APPELLANT

VERSUS

UNION OF INDICA AND ANR. ....RESPONDENTS

**BEFORE THE HIGH COURT OF BANGLA, INDICA**

1. On the First day of March 2015, a young girl, aged about nineteen (19) years was returning from her tuition classes, situated around three (3) kilometers away from her parental home, in Golpur District of State Bangla. She was riding her bicycle back home, and was forcibly stopped by a group of five (5) persons, adjacent to a barn which happens to be deserted by the owners and falls in the way home of the girl. The persons took advantage of the fact that the road was deserted at point of time, and forcibly dragged the girl to the barn, after gagging her mouth, so that the girl could not even shout for help.
2. The girl was brutally assaulted sexually, and thereafter was bathed in country liquor and set ablaze.
3. The girl received fatal burns of the third degree, and succumbed to her wounds on March 3<sup>rd</sup>, 2015. Based on her dying declaration, all five (5) persons were apprehended in connection with the crime. One of them, identified for the purpose of the present case as Rana, was below eighteen (18) years of age on the date of commission of the crime, and is still a Juvenile as per meaning given in Juvenile Justice Act, 2000.

4. Accordingly, in compliance with the provisions of the Juvenile Justice Act, 2000 (as amended and hereinafter referred to as ‘the Act’) his case was referred for inquiry to the Juvenile Justice Board. The other accused were tried in a regular sessions court and have been found guilty, *inter alia*, of the offences under Section 376D and Section 302 of the Indian Penal Code, 1860 (for short “the Penal Code”). The learned trial court has sentenced them to death. Their appeal against the aforesaid conviction and the sentence imposed has since been dismissed and the High Court of Bangla has confirmed the death penalty.
5. Peoples’ Conscience (hereafter referred as “the group” or the petitioners, both being referred to the same person/group of persons) is a Non-Profit Organization working for the socio-legal rights of the women and children in the geographical areas in Indica, where limited means both in terms of economic and knowledge impede the residents of such in their demand for natural justice.
6. Before the Juvenile Justice Board to whom the case of Rana was referred for inquiry, the petitioners had filed applications for their impleadment to enable them to ‘prosecute’ the juvenile alongside the public prosecutor. The petitioners also claimed that, on a proper interpretation of the Act, the juvenile was not entitled to the benefits under the Act but was liable to be tried under the penal law of the land in a regular criminal court along with the other accused.
7. According to the petitioners, after an elaborate hearing, the Board had fixed the case on July 25<sup>th</sup>, 2015 for pronouncement of order on the question of maintainability of the application filed by the petitioners and also on their prayer for impleadment. However, insofar as the interpretation of the provisions of the Act for determination of the question whether the offence(s) allegedly committed by the juvenile is to be inquired into by the Board or the Juvenile is required to be tried in a regular criminal court is concerned, the Board had expressed its inability to decide the same and had directed the petitioners to seek an authoritative pronouncement on the said issue(s) from the Hon’ble High Court.
8. Accordingly, the petitioners instituted a writ proceeding before the Hon’ble High Court of Bangla, which was registered as Writ Petition (Crl.) No. 124 of 2015, seeking the following reliefs:-

- a. Laying down an authoritative interpretation of Sections 2(I) and 2(k) of the Act that the criterion of eighteen (18) years set out therein does not comprehend cases grave offences in general and of heinous crimes against women in particular that shakes the root of humanity in general.
  - b. That the definition of offences under Section 2(p) of the Act be categorized as per grievousness of the crime committed and the threat of public safety and order.
  - c. That Section 28 of the Act be interpreted in terms of its definition, i.e., alternative punishment and serious offences having minimum punishment of seven years imprisonment and above be brought outside its purview and the same should be tried by an ordinary criminal court.
  - d. Direction striking down as unconstitutional and void the Juvenile Justice (Care and Protection of Children) Act, 2000 (Act No. 56 of 2000) to the extent it puts a blanket ban on the power of the criminal courts to try a Juvenile offender for offences committed under the Indian Penal Code, 1860; and
  - e. Incorporating the International concept of age of criminal responsibility and diluting the blanket immunity provided to the juvenile offender on the basis of age along with the Direction that the Respondent be tried forthwith by the competent criminal court
9. The group at the outset, clarified that they are neither challenging the provisions of Section 2(k) and 2(l) of the Act nor is he invoking the jurisdiction of the Court to strike down any other provision of the Act or for interference of the Court to reduce the minimum age of Juveniles fixed under the Act as eighteen (18) years.
10. What The group has contended is that having regard to the object behind the enactment, the Act has to be read down to understand that the true test of “juvility” is not in the age but in the level of mental maturity of the offender. This, it is contended, would save the Act from unconstitutionality and also further its purpose. The Act is not intended to apply to serious or heinous crimes committed by a Juvenile.
11. The provisions of Sections 82 and 83 of the Indian Penal Code have been placed to contend that while a child below seven (7) cannot be held to be criminally liable, **the criminality of those between seven (7) and twelve (12) years has to be judged by the level of their mental maturity.**

12. The same principle would apply to all children beyond twelve (12) and up-to eighteen (18) years also, it is contended.
13. The provisions of Section 1(4) of the Act, which makes the provisions of the Act applicable to all cases of detention, prosecution and punishment of Juveniles in conflict with law, to the exclusion of all other laws, would be unconstitutional if the Act is not read down. Specifically, the group contends that in that event the Act will offend Article 14 of the Constitution of India as all offenders below the age of eighteen (18) years irrespective of the degree/level of mental maturity and irrespective of the gravity of the crime committed would be treated at par. Such a blanket treatment of all offenders below the age of committing any offence, regardless of the seriousness and depravity, is wholly impermissible under our constitutional scheme. The non-obstante provisions contained in Section 1(4) of the Act as well as the bar imposed by Section 7 on the jurisdiction of the criminal court to try juvenile offenders cannot apply to serious and heinous crime committed by juveniles who have reached the requisite degree of mental maturity, if the Act is to maintain its constitutionality.
14. The provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules); the Convention of the Rights of the Child, 1990 (CRC) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (Havana Rules), SCALE 1 International Commitments entered into by India obliges it to set up a particular framework to deal with Juvenile offenders and such obligations can be more comprehensively met.
15. The practice in vogue in several foreign jurisdictions, particularly, in the U.K., USA and Canada for adjudicating criminal liability of young offenders has also been placed before the Court. Specifically, it is pointed out that the practice of statutory exclusion which ensures that perpetrators of certain grave offences are prosecuted as adults; ‘judicial waiver’, granting discretion to special Juvenile Courts to waive jurisdiction and transfer the Juvenile’s case to an ordinary court of law and also the policy of concurrent jurisdiction of both the ordinary and juvenile courts giving discretion to the prosecutor to initiate proceedings in the more suitable court are followed in such jurisdictions.
16. The group has also suggested that Section 28 of the Act be read together with Section 15 to enable the alternatively higher punishment under other State/Central enactments, such

as the Penal Code to be awarded to a juvenile offender. It is argued that this would incorporate the policy of concurrent jurisdiction of both ordinary criminal courts and Juvenile Justice Boards.

17. Accordingly, the Hon'ble High Court of Bangla framed the issues as under:

- Can the Constitutional sanction of an enactment have an overriding effect to an International convention and/or statute, of which Indica is a signatory? (See Note for Clarifications on the Statutes that Indica is a signatory).
- Whether the juvenility will depend upon the nature of offence committed as in the existing scenario most of the juveniles are engaged in horrendous and heinous crimes like rape, murder and drug – peddling, etc.?
- Whether Ossification test shall be preferred over Matriculation Certificate as an appropriate method to determine the age of a juvenile.

**NOTE:**

1. The Laws and Constitution of Indica, as well as the courts and the Judicial System are in *parimateria* to the laws and Constitution, Courts and Judicial System of India. Any law, legislation, amendments of any law and/or judgments by any courts, shall be *paripassu* with the laws, amendments and judgments in India.
2. Though the Juvenile Justice Act (Care and Protection of Children) 2015, have received the Presidential Ascent in India and have come in force from the 1<sup>st</sup> day of January 2016, However the Rules for the act are still in draft state. Thus for all purposes the previous act shall have to be referred and/or argued.
3. Indica is a signatory to
  - a. United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules);
  - b. The Convention of the Rights of the Child, 1990 (CRC); &
  - c. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (Havana Rules).

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