Madras High Court
Madras High Court
Prabakaran vs State Of Tamilnadu on 18 March, 2003
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/03/2003

CORAM

THE HONOURABLE MR. JUSTICE K. SAMPATH

W.P.No. 4511 of 2003

Prabakaran .. Petitioner rep by his maternal aunt Nagammal.

-Vs-

1. State of Tamilnadu

rep by its Secretary to Government

Home Department

Fort St. George

Chennai 9.

2. The Deputy Superintendent of Police

'Q' Branch C.I.D.,

Coimbatore.

3. The Inspector of Police

Uthangarai Police Station

Dharmapuri District. .. Respondents

!For Petitioner .. Mr. K. Chandru, S.C.

^For Respondents .. Mr. I. Subramaniam, P.P.

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Prohibition as stated therein.

:O R D E R

Mr. I. Subramaniam, State Public Prosecutor, took notice for the respondents.

2. By consent, the main writ petition itself was taken up.

3. The prayer is for a writ, prohibiting the Special Court, Poonamallee, Chennai 56, for trial of cases under the Prevention of Terrorism Act (hereinafter referred to as 'POTA'), from proceeding with the enquiry with regard to Crl.M.P.No.17 of 2003 in Crime No.1004 of 200 2 of Uthangarai Police Station, and all future proceedings in so far as the petitioner is concerned.

4. The petitioner is stated to be a minor aged 15+ years and represented by his maternal aunt Nagammal. The circumstances, leading to the proceedings as set out in the affidavit in support of the writ petition, are as follows: The petitioner was arrested on 24.1.2002 and a case was registered in Cr.No.1004 of 2002, on the file of the Inspector of Police, Uthangarai Police Station, Dharmapuri District, for the alleged offences under Sections 120(B) r/w. 9(B)(1)(b) of the Indian Explosives Act, Sec. 25(1)(a) of the Indian Arms Act, and Sections 4 and 5 of the Explosive Substances Act. The date of birth of the petitioner, as per the School Transfer Certificate, is 11.5.1987. At the time of arrest, he was studying in standard 'X'. On 23.11.2002 and 24.11.2002, the Special Task Force and 'Q' Branch CID made a joint combing operation to nab naxalites in Dharmapuri District. In connection with the same, they entered the petitioner's house in search of his father. As his father was not available, they arrested the petitioner, who was sitting in the house, and foisted a case against him. They produced the petitioner before the Judicial Magistrate, Uthangarai on 25.11.2002 . The Magistrate, without enquiring whether he was a juvenile or not, mechanically remanded him to judicial custody. The petitioner was placed along with other alleged naxalite prisoners. A bail petition was moved before the Sessions Judge, Krishnagiri, in Crl.M.P.No.68 of 2002. Regarding his age, the petitioner was subjected to Radiological Examination. His original School Transfer Certificate was also produced. The learned Principal Sessions Judge granted bail observing that the School Certificate would prevail over the results of the Radiological Examination. The petitioner could not be entrusted to custody with his mother for various reasons. An application praying for modification was moved on 7.2.2003 before the Sessions Court to entrust the petitioner to the custody of his maternal aunt. The learned Sessions Judge granted the prayer. While the maternal aunt was taking steps to execute the surety bonds, a petition for cancellation of bail was filed before the POTA Special Court, Poonamallee, and notice, dt.10.2.2003 intimating the production of the petitioner on 14.2.2003 was served directly on one of the counsel for the petitioner on 11.2.2 003. An order passed by the Special Court, Poonamallee requiring the production of the juvenile petitioner on 19.2.2003 was also enclosed. The POTA Special Court does not have jurisdiction to try a juvenile, when there is an Act, viz. Juvenile Justice (Care and Protection) Act, 2000 (hereinafter referred to as the JJ (C&PC) Act) to deal with juveniles. The provisions of the JJ (C&PC) Act deal with what is to be done with regard to juvenile when arrested. The petitioner, being a juvenile, should have been granted bail even at the time of arrest on 24.11.2002 by the Inspector of Police, Uthangarai. If the Officer had opined not to release the petitioner on bail, the petitioner, being juvenile, should have been kept in an Observation Home and produced before the Juvenile Justice Board (hereinafter referred to as 'the Board'). Till the filing of the writ petition, the petitioner was neither released on bail nor produced before the Board. The Special Court has no jurisdiction to try the juvenile, as there is a specific Act to deal with juveniles. The Special Court had exercised 'excess of jurisdiction'. The Principal Sessions Judge, Krishnagiri, after satisfying himself that the petitioner is a juvenile, granted bail. The Special Court has no power to canc el or revise the bail order, and further go into the question whether the petitioner is a juvenile, which has already been determined by the Sessions Court. The petitioner's initial remand on 25.11.2002 itself was illegal. Consequently, his confinement, along with other alleged naxalites in Central Prison, Salem, from 25.11.2002, is unlawful. The Special Court, ex facie, has no jurisdiction to initiate any proceedings against the petitioner. In these circumstances, the present petition has been filed.

5. During the course of hearing an additional affidavit has been filed on behalf of the petitioner. Its contents are as under: After the order, dt.7.2.2003 by the learned Sessions Judge, Krishnagiri, directing the custody of the petitioner to be entrusted to the maternal aunt, the petitioner's grand father one Raju and his uncle one Annamalai, both residents of Gurugupatti Village, Krishnagiri Taluk, executed two bonds each for a sum of Rs.5,000/- before the Judicial Magistrate, Uthangarai, on 10.2.2003. The learned Magistrate accepted the sureties produced on behalf of the petitioner and ordered his release from the Central Prison, Salem. The grandfather and the deponent were waiting in front of the Central Prison, Salem on that date till 6.00 p.m.

Later, the Superintendent of Police, Central Prison, Salem, informed that the petitioner could not be released in view of the Order, dt.10.2.2003, of the Special court for trial of offences under POTA which required the production of the petitioner before the Special Court on 14.2.2003 for the purpose of determining his age and for adjudication of petition for cancellation of bail. The Special Court, by order dt.14.2.2003, directed the petitioner to be kept in the Observation Home, Purasawalkam, Poonamallee High Road, Chennai, the date fixed for the hearing being 20.2.2003. In spite of the fact that bail had been granted, the petitioner has been detained in the Observation Home. The deponent is willing to take

care of the petitioner so as to enable him to pursue his studies. In these circumstances, there must be a direction to the respondents to release the petitioner.

6. Heard Mr. K. Chandru, learned Senior Counsel for the petitioner and the State Public Prosecutor Mr. I. Subramaniam for the respondents.

7. The learned Senior Counsel for the petitioner submitted that the Principal Sessions Judge, Krishnagiri, had satisfied himself that the petitioner was a juvenile, and granted bail. As regards the age of the petitioner, the School Certificate would prevail over the opinion expressed as a result of Radiological Examination. In this connection, the learned Senior Counsel relied on the judgment of the Supreme Court in BHOOP RAM vs STATE OF U.P.[(1989) 3 SCC 1]. Counsel further submitted that JJ (C & PC) Act would override POTA and that the proceedings in the present case under the latter Act was absolutely without jurisdiction.

8. On the contrary, Mr. I.Subramaniam, learned Public Prosecutor, submitted that POTA would prevail over the other Act, viz. JJ (C& PC) Act, and at the time POTA was passed, the other Act had already been passed in 2000 and there was no provision exempting children or juvenile from being proceeded against under POTA. The learned Public Prosecutor relied on the provisions of POTA and in particular Section 56 containing non obstante clause and some pronouncements of this Court and other Courts.

9. In the above factual background two questions pose themselves? (1) Whether the petitioner is a juvenile in conflict with law? Depending on the answer to this, the further question (2) Which of the Acts, POTA or the JJ (C&PC) Act will have to be invoked? Will have to be answered. (1) Whether the petitioner is a juvenile in conflict with law? (i) A "juvenile" is defined as a person who has not completed eighteenth year of age. "juvenile in conflict with law" means a person who has not completed eighteen years of age. Section 49 of the JJ (C&PC) Act provides that the order of a competent authority regarding the age of a child or juvenile shall be deemed to be the true age irrespective of any subsequent proof. (ii) In BHOLA BHAGAT v.. STATE OF BIHAR [(1997) 8 SCC 720] the Supreme Court held as follows: "When a plea is raised on behalf of an accused that he was a "child" within the meaning of the definition of the expression under the Act, it becomes obligatory for the court, in case it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the question of age of the accused or cause an enquiry to be held and seek a report regarding the same, if necessary, by asking the parties to lead evidence in that regard. Keeping in view the beneficial nature of the socially-oriented legislation, it is an obligation of the court where such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefit of the provisions to an accused."

(iii) The learned Principal Sessions Judge relied on the School Certificate and held that the petitioner was aged less than 16 years at the time of his arrest. There was no doubt a Radiological examination done which gave the age as 19 years. The question is which of the two is to be preferred? (iv) In JAYAMALA v.. HOME SECRETARY, GOVERNMENT OF JAMMU & KASHMIR & OTHERS (A.I.R. 1982 SC 1297), the detenu was detained on 18.10.198 1; the doctor conducted radiological test and gave his report. The detenu claimed she was 17 years of age and therefore could not be detained. Expressing its opinion on the evidentiary value of the doctor's evidence, the Supreme Court observed "It is notorious and one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either

side."

(v) In BHOOP RAM v.. STATE OF U.P. [(1989) 3 SCC 1] it has been held that the date of birth in the school certificate showing accused aged less than 16 years at the relevant time should be accepted in the absence of anything showing that the entries in the Certificate did not relate to the accused or were incorrect, and that it could not be rejected on the basis of surmise that generally parents understated the age of their children at the time of admission to school. The Supreme Court further held that there is possibility of error existing in medical opinion regarding age which is based on estimation of the doctor, and in the absence of any other independent material, such medical opinion should not prevail over the entries in school certificate. (vi) In SANTENU MITRA v.. STATE OF W.B. [1998 (5) SCC 697] a three judges Bench of the Supreme Court accepted the entry in the Register of Births and Deaths as genuine on the premise that once that entry was recorded by an official in performance of his duties, it could not be doubted. The Supreme Court further observed that it could not have been expected on the date the entry was made that the appellant would claim benefit thereof on the commission of some offence. There were, no doubt, other documents in that case like LIC policy and matriculation certificate like wise mentioning the date of birth in conformity with the birth certificate. (vii) In MATADIN v.. STATE OF M.P. [1994 (3) CRIMES 510] the school certificate prima facie showing the petitioner to be juvenile, was accepted. (viii) In ARNIT DAS v.. STATE OF BIHAR [AIR 2000 SC 2264 : (20 00) 5 SCC 488 : 2000 Crl.LJ 2971] the Supreme Court on a review of judicial opinions held that while dealing with the question of determination of the age of the accused for the purpose of finding out whether he is a juvenile or not, a hyper-technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the Court should lean in favour of holding the accused to be a juvenile in borderline cases. (ix) In RAM DEO CHAUHAN @ RAJ NATH CHAUHAN v. STATE OF ASSAM [AIR 2001 SC 2231 : 2001 (5) SCC 714] - as regards the determination of the age of the accused, this is what the Supreme Court has said "The statement of the doctor is no more than an opinion. The court has to base its conclusions upon all the facts and circumstances disclosed on examining of the physical features of the person whose age is in question, in conjunction with such oral testimony as may be available. An X-ray ossification test may provide a surer basis for determining the age of an individual than the opinion of a medical expert but it can by no means be so infallible and accurate a test as to indicate the exact date of birth of the person concerned. Too much of reliance cannot be placed upon text books, on medical jurisprudence and toxicology while determining the age of an accused. In this vast country with varied latitude, heights, environment, vegetation and nutrition, the height and weight cannot be expected to be uniform." Entry in the school register remains away from the range of acceptability as proof positive regarding the date of birth of the petitioner.

In that case it was not shown that the school register was maintained by a public servant in the discharge of his official duty or by any other person in the performance of a duty specially enjoined by the law of the country in which such register is kept. (x) As pointed out by the Supreme Court in ARNIT DAS's case (supra), there should not be any hyper-technical approach and when two views of possible one should lean in favour of holding the accused to be a juvenile. In CHANDRAN @ KUTTIPAYAN v.. STATE, REP. BY INSPECTOR OF POLICE [2003 (1) LW 131], a Division Bench of this Court, after referring to the several authorities on this question, has observed that "the law on the subject shows that if there is a doubt as regards the age of the accused, the Court should lean in favour of the accused". The facts in that case showed that the doctor was not definite about the age of the accused since in cross examination he had admitted that on the date of incident, the accused could have been running 16, which meant that there was not conclusive evidence that on the date of occurrence he had completed 16 years of age; the accused was questioned under Section 313 Cr.P.C. on 9.10.1998; he had given his age as 16 years on that day; if so, on the date of occurrence he should have been less than 16 years of age. So holding, the Bench applied the provisions of JJ Act, 1986 and released him.

(xi) It has to be held on the materials available that the petitioner was a juvenile at the time of the alleged offence and continues to be so.

The next question is which of the Acts will apply? (i) Both the Acts are replete with non obstante clauses. (ii) In POTA some of the Sections containing non obstante clause are Sections 14, 25, 30, 32, 33, 34,43, 45, 49, 51 & 51. So far as Section 14 is concerned, that relates to obligation to furnish information. Section 14(3) provides that failure to furnish information will be an offence and be tried as a summary case and the procedure prescribed in Chapter XXI of the Code of Criminal Procedure [except subsection (2) of Section 262] shall apply, and this is notwithstanding anything contained in the Code. Section 25 provides for jurisdiction of Special Courts. It states that notwithstanding anything contained in the Code, every offence punishable under any provision of this Act (POTA) shall be triable only by the Special Court. Section 30 gives protection to witnesses and states that the proceedings under POTA may, for reasons to be recorded in writing, be held in camera if the Special Court so desires. Section 32 relates to confession made to Police Officers being taken to consideration, that is notwithstanding anything in the Code or in the Evidence Act, 1872, but subject to provisions of Section 32. Section 33 provides for power to transfer cases to regular courts when the Special Court finds that the offence is not triable by it. Section 34(1) provides for appeal from the sentence or order not being an interlocutory order of a Special Court to the High Court on facts and on law, and this is notwithstanding anything contained in the Code. Section 34(4) provides for that notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail. Section 43 provides for interception of communication in emergency. Section 45 provides for admissibility of evidence collected through interception of communications. Section 49 relates to modified application of certain provisions of the code, that is notwithstanding anything contained in the Code or any other law. Section 49(5) provides that nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act. Section 49(6) states that notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless the Court gives the Public Prosecutor an opportunity of being heard. Section 49(9) deals with granting of bail to non-citizens. Section 51 deals with officers competent to investigate offences under this Act. Section 56 is the most crucial Section for the purpose of our discussion and it runs as follows: "The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act."

In JJ (C&PC) Act, Sections 3, 4, 6, 11, 12, 16, 17, 18, 22 & 28 contain non obstante clauses and will be referred to in more detail later on.

(iii) It may be necessary to trace the origin of JJ (C&PC) Act.

(iv) The Geneva Declaration of 1924 on the rights of the child, was the first convention adopted by the League of nations in which children's rights were considered. The U.N. General Assembly in 1948 while adopting the universal declaration of human rights, incorporated certain basic rights of children. However, it was in 1959 that for the first time, the U.N. passed an independent "Declaration on the Rights of the Child". The U.N. Declaration apart there are certain (constitutional) safeguards in our Constitution prohibiting abuse of children and protecting them from being forced by economic necessity to enter avocations unsuited by virtue of Constitution (42nd Amendment Act) 1976, which clearly provide 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. (v) The international year of the child (1979) helped to draw the attention of the

people to the multifarious problems associated with exploitation of the rights of the child. The U.N. Declaration on the rights of a child categorically envisaged special protection of children against all forms of exploitation.

(vi) Article 25(2) of THE UNIVERSAL DECLARATION OF HUMAN RIGHTS states that motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall

enjoy the same social protection.

The Convention on the Rights of the Child provides for the following rights: (i) the right to life and to protection from capital punishment; (ii) the right to acquire a nationality; (iii) protection from separation from parents;

(iv) the right to leave any country and enter his or her own country; (v) the right to enter or leave another State Party for the purpose of family reunification; (vi) protection from being illicitly taken abroad and prevented from returning to his or her own country; (vii) protection of the child's interests in adoption cases; (viii) freedom of thought, conscience and religion; (ix) the right of access to health-care services, with States aiming to reduce infant and child mortality and abolish traditional practices prejudicial to health; (x) the right to an adequate standard of living and social security; (xi) the right to education, with States making primary education compulsory and free;

(xii)protection from economic exploitation, with a minimum age for admission to employment; (xiii)protection from involvement in the illicit production, trafficking and use of narcotic drugs & psychotropic substances; (xiv) protection from sexual exploitation and abuse.

(vii) International conventions and norms were read into fundamental rights in the absence of domestic law occupying the field.

(viii) Even prior to the introduction of clause (e) in Article 39, every state except Nagaland had a Children's Act. But the Children' s Acts were only in statute book and in some States they had not been brought into force. In that context the Supreme Court in SHEELA BARSE v.. UNION OF INDIA [AIR 1986 SC 1773 : (1986) 3 SCC 596] on 5.8.1986 observed "This piece of legislation is for the fulfilment of a constitutional obligation and is a beneficial statute. Obviously the State legislatures have enacted the law on being satisfied that the same is necessary in the interest of the society, particularly of children. There is hardly any justification for not enforcing the statute. For instance, in the case of Orissa though the Act is of 1982, for four years it has not been brought into force. Ordinarily it is a matter for the State Government to decide as to when a particular statute should be brought into force but in the present setting we think that it is appropriate that without delay every State should ensure that the Act is brought into force and administered in accordance with the provisions contained therein. Such of the States where the Act exists but has not been brought into force should indicate by filing a proper affidavit by August 31, 1986, as to why the Act is not being brought into force in case by then the Act is still not in force."

(ix) The need for a uniform legislation arose but then it could not be done as the subject matter of such a legislation fell in the State List of the Constitution.

(x) The UN Standard Minimum Rules, called Beijing Rules, adopted by the General Assembly in 1985 vide Chapters 2 and 5 of Part-I provide as under: "2. Scope of the Rules and definitions used 2.1 The following Standard Minimum Rules shall be applied to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social

origin, property, birth or other status. 2.2 For purposes of these Rules, the following definitions shall be applied by Member States in a manner which is compatible with their respective legal systems and concepts:

(a) A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult. (b) An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems; (c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence. 2.3 Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and

designed: (a) to meet the varying needs of juvenile offenders while protecting their basic rights; (b) to meet the needs of society; and (c) to implement the following rules thoroughly and fairly. xxx xxx xxx xxx xxx xxx 5. Aims of juvenile justice. 5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence." (Source - Juvenile Justice Act by Asutosh Mookerjee Published by S. C. Sarkar and Sons. Pp.20-21) [ARNIT DAS v.. STATE OF BIHAR, 2000 (5) SCC 488] (xi) The Juvenile Justice Act, 1986 came to be passed

on 1.12.1986.

CONVENTION ON THE RIGHTS OF THE CHILD, NEW YORK, 20 NOVEMBER, 1989. Objectives: The Convention is the principal children's treaty encompassing a full range of civil, political, economic, social and cultural rights. The Convention aims at protecting children from discrimination, neglect and abuse. It grants and provides for the implementation of rights for children both in times of peace and during armed conflict. The Convention constitutes a rallying point and a useful tool for civil society and individuals, working for the protection and promotion of the rights of the child. In many respects, it is an innovative instrument.

RIGHTS OF THE CHILD Convention on the Rights of the Child came into force in 1990. The States Parties undertake to protect the child (defined as 'every human being under 18 years of age unless, under the law applicable to the child, majority is attained earlier') from all forms of discrimination and to provide appropriate care. Rights to be ensured include: 1. The right to life and to protection from capital punishment. 2. The right to acquire a nationality. 3. Protection from separation from parents. 4. The right to leave any country and enter his or her own country. 5. The right to enter or leave another State party for the purpose of family reunification. 6. Protection from being illicitly taken abroad and prevented from returning to his or her own country. 7. Protection of the child's interests in adoption cases. 8. Freedom of thought, conscience and religion. 9. the right of access to health-care services, with States aiming to reduce infant and child mortality and abolish traditional practices prejudicial to health. 10. The right to an adequate standard of living and social security. 11. The right to education, with States making primary education compulsory and free. 12. Protection from economic exploitation, with a minimum age for admission to employment. 13. Protection from involvement in the illicit production, trafficking and use of narcotic drugs and psychotropic substances. 14. Protection from sexual exploitation and abuse.

(xii) The Delhi Juvenile Welfare Board challenged the 1986 Act on the ground that it gave the police the power to send missing children to the welfare homes, including those run by private organisations, without producing them before the Board or searching for their parents, and in those circumstances, there was every likelihood of the provisions of the Act being exploited by certain unscrupulous organisations. A working committee reviewed the 1986 Act. The review indicated that the justice system as available for adults was not considered suitable for being applied to a juvenile or child. Further the Act did not provide for differential approach to children in conflict with law and those in need of care and protection. It was found necessary that a uniform juvenile system should be available throughout the country which should make adquate provision for dealing with all aspects in the changing social, cultural and economic situation in the country, and for larger involvement of informal systems and community based welfare agencies, in the care, protection and treatment, development and rehabilitation of such juveniles.

(xiv) The Statement of Objects and Reasons provided in the Bill to re-enact the juvenile Justice Act, 1986 states to achieve the following proposals: (i) to lay down the basic principles of administering justice to a juvenile or the child in the Bill; (ii) to make the juvenile justice system meant for a juvenile or the child more appreciative of the developmental needs in comparison to criminal justice system as applicable to adults; (iii) to bring the juvenile law in conformity with the United nations Convention on the rights of the Child; (iv) to prescribe a uniform age of eighteen years for both boys and girls; (v) to ensure speedy disposal of cases by the authorities envisaged under this Bill regarding juvenile or the child within a time limit of four months; (vi) to spell out the role of the State as a facilitator rather than doer by involving voluntary organizations and local

bodies in the implementation of the proposed legislation; (vii) to create special juvenile police units with a humane approach through sensitisation and training of police personnel; (viii) to enable increased accessibility to a juvenile or the child by establishing Juvenile Justice Boards and Child Welfare Committees and Homes in each district or group of districts; (ix) to minimise the stigma and in keeping with the development needs of the juvenile or the child, to separate the Bill into two parts - one for juveniles in conflict with law and the other for the juvenile or the child in need of care and protection; and (x) to provide for effective provisions and various alternatives for rehabilitation and social reintegration such as adoption, foster care, sponsorship and aftercare of abandoned, destitute, neglected and delinquent juvenile and child.

10. Let us now refer to the provisions of the JJ (C&PC) Act, 2000. It is stated that the Act is to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a childfriendly 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.

The preamble runs as follows: Whereas the Constitution has, in several provisions, including clause (3) of Article 15, clauses (e) and (f) of Article 39, Articles 45 and 47, imposed on the State a primary responsibility of ensuring that all the needs, of children are met and that their basic human rights are fully protected; And whereas, the General Assembly of the United nations has adopted the Convention on the rights of the Child on the 20th November, 1989; And whereas, the Convention on the Rights of the Child has prescribed a set of standards to be adhered to by all State parties in securing the best interests of the child; And whereas, the Convention on the rights of the Child emphasises social reintegration of child victims, to the extent possible, without resorting to judicial proceedings; And whereas, the government of India has ratified the Convention on the 11th December, 1992; And whereas, it is expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations rules for the Protection of juveniles Deprived of their Liberty (1990), and all other relevant international instruments. The Act came into force w.e.f. 1.4.2001 vide G.S.R.117(E), dt.28.2.2 001.

Section 2(c) says that the "Board" means a Juvenile Justice Board constituted under Section 4. Section 2(g) defines "competent authority", in relation to children in need of care and protection, a Committee and in relation to juveniles in conflict with law a Board. Section 2(j) defines "guardian", in relation to a child, means his natural guardian or any other person having the actual charge or control over the child and recognised by the competent authority as a guardian in course of proceedings before that authority. Section 2(k) says that "juvenile" or "child" means a person who has not completed eighteenth year of age. Section 2(l) says that "juvenile in conflict with law" means a juvenile who is alleged to have committed an offence. Section 2(p) says that "offence" means an offence punishable under any law for the time being in force. Section 2(q) says that "place of safety" means any place or institution (not being a police lock-up or jail), the person in-charge of which is willing temporarily to receive and take care of the juvenile and which, in the opinion of the competent authority, may be a place of safety for the juvenile. Section 2(v) defines "special home" as an institution established by a State Government or by a voluntary organisation and certified by that Government under Section 9. Section 2(w) defines "special juvenile police unit" as a unit of the police force of a State designated for handling of juveniles or children under Section 63. Section 2(y) states that all words and expressions used but not defined in the Act and defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

Section 3 deals with non obstante clause and the terms are as follows: "Continuation of inquiry in respect of juvenile who has ceased to be a juvenile Where any inquiry has been initiated against a juvenile on conflict with law or a child in need of care and protection and during the course of such inquiry the juvenile or the child ceases to be such, then, notwithstanding anything contained in this Act or in any other law for the

time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a juvenile or a child."

Section 4 deals with Juvenile Justice Board and it runs as follows: (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may, by notification in the Official Gazette, constitute for a district or a group of districts specified in the notification, one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law under this Act. (2) A Board shall consist of a metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman, forming a bench and every such bench shall have the powers conferred by the Code of Criminal Procedure, 1973 92 of 1974), or a metropolitan Magistrate or, as the case maybe, a Judicial Magistrate of the first class and the Magistrate on the Board shall be designated as the principal Magistrate. (3) No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health, education, or welfare activities pertaining to children for at least seven years. (4) The term of office of the members of the Board and the manner in which such member may resign shall be such as may be prescribed. (5) The appointment of any member of the Board may be terminated after holding inquiry, by the State Government, if (i) he has been found guilty of misuse of power vested under this Act, (ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence, (iii) he fails to attend the proceedings of the Board for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.

It should be commented at this stage that according to Section 2(l) "Juvenile in conflict with law" means a juvenile who is alleged to have committed an offence. Section 4 deals with constitution of Juvenile Justice Boards, notwithstanding any thing contained in the Code of Criminal Procedure, 1973. The State Government may constitute such Boards for a district or a group of districts specified in the notification for exercising the powers and discharged the duties conferred or imposed on them. The Board consists of a Metropolitan Magistrate or a Judicial Magistrate of the first class and two social workers of whom at least one, a woman, forming a Bench. Such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 on Metropolitan or a Judicial Magistrate who would be designated as Principal Magistrate. The prerequisites for a Principal Magistrate shall be special knowledge in child psychology or child welfare and for a social worker, with the seven years of active experience in health, education, or welfare activities pertaining to children.

Section 5 deals with "Procedure, etc., in relation to Board". It runs as follows: (1) The Board shall meet at such times and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed. (2) A child in conflict with law maybe produced before an individual member of the Board, when the Board is not sitting. (3) A Board may act notwithstanding the absence of any member of the Board, and no order made by the Board shall be invalid by reason only of the absence of any member during any stage of proceedings: PROVIDED that there shall be at least two members including the principal magistrate present at the time of final disposal of the case. (4) In the event of any difference of opinion among the members of the Board in the interim or final disposition, the opinion of the majority shall prevail but where there is no such majority, the opinion of the principal Magistrate shall prevail.

Section 6 provides for "Powers of Juvenile Justice Board". It runs as follows: (1) Where a Board has been constituted for any district or a group of districts, such Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law. (2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.

Mr. Chandru, learned Senior Counsel, justifies the action taken by the Principal Sessions Judge, Krishnagiri, in dealing with the matter by referring to Section 6(2). The learned Senior Counsel particularly relies on the word "otherwise". We will have occasion to consider that point later on. Section 7 provides for "Procedure to be followed by a Magistrate not empowered under the Act". It runs as follows: (1) When any Magistrate not empowered to exercise the powers of a Board under this Act is of the opinion that a person brought before him under any of the provisions of this Act (other than for the purpose of giving evidence), is a juvenile or the child, he shall without any delay record such opinion and forward the juvenile or the child and the record of the proceeding to the competent authority having jurisdiction over the proceeding. (2) The competent authority to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the juvenile or the child had originally been brought before it. It is the duty of such Magistrate to forward the juvenile or the child to the competent authority. [MATADIN v.. STATE OF M.P., 1994 (3) CRIMES 510, ARNIT DAS v.. STATE OF BIHAR, AIR 2000 SC 2264 : 200 1 (7) SCC 657].

Section 8 deals with Observation Homes. Section 9 deals with Special Homes. Section 10 runs as follows: "Apprehension of juvenile in conflict with law (1) As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer who shall immediately report the matter to a member of the Board. (2) The State Government may make rules consistent with this Act, (i) to provide for persons through whom (including registered voluntary organisations) any juvenile in conflict with law may be produced before the Board; (ii) to provide the manner in which such juvenile may be sent to an observation home. It requires that an apprehended juvenile in conflict with law shall be notified to a member of the Board and as per rules should be produced before the Board and sent to observation home.

Section 11 deals with Control of custodian over juvenile. The custodian shall be responsible for the juvenile maintenance. 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.

Section 12 deals with Bail of juvenile and it runs as follows: (1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. (2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board. (3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order. The non obstante clause in Section (1) is significant.

It has been held in KAMIL v. STATE OF UTTAR PRADESH, 1994 Cri.LJ 1491, as follows: "A juvenile in conflict with law may be released on bail with or without surety but such release shall not be possible if there appear to be reasonable grounds for believing that such release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice. Welfare of the juvenile or child is the need of the day and the provisions contemplate a judicial officer with more sensitive approach oriented out look."

Section 13 deals with information to parent, guardian or probation officer. It runs as follows: Where a juvenile is arrested, the officer incharge of the police station or the special juvenile police unit to which the juvenile is brought shall, as soon as may be after the arrest, inform (a) 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; and (b)

the probation officer of such arrest to enable him to obtain information regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry.

Section 14 deals with inquiry by Board regarding juvenile. The Board is to hold the inquiry in accordance with the provisions of the Act and may make such order in relation to the juvenile as it deems fit. The inquiry, under this Section, to be completed within a period of four months from the date of its commencement, unless the period is 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.

Section 15 deals with the order that may be passed regarding juvenile. It runs as follows: "(1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit, (a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile; (b) direct the juvenile to participate in group counselling and similar activities; (c) order the juvenile to perform community service; (d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money; (e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well being of the juvenile for any period not exceeding three years; (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; (g) make an order directing the juvenile to be sent to a special home, (i) in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years; (ii) in case of any other juvenile for the period until he ceases to be a juvenile: PROVIDED that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period s it thinks fit. (2) The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order. (3) Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law: PROVIDED that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home. (4) The Board shall while making a supervision order under subsection (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order and shall forthwith furnish one coy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer."

Section 16 provides for order that may not be passed against juvenile. It runs as follows: "(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or life imprisonment, or committed to prison in default of payment of fine or in default of furnishing security: PROVIDED that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is of so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with

law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government. (2) On receipt of a report from a Board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit: PROVIDED that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed."

Section 17 provides that the proceeding under Chapter VIII of the Code of Criminal Procedure is not competent against juvenile. No proceeding shall be instituted and no order shall be passed against the juvenile under the said Chapter.

Section 18 provides that there shall be no joint proceeding of juvenile and person not a juvenile. This was held under the Bihar Children's Act in KUMAR SATYANAND v. STATE OF BIHAR, 1983 CRI.LJ 1532.

Section 19 provides for removal of disqualification attaching to conviction.

Section 20 provides for continuation of the proceedings pending in any court in any area on the date on which this Act comes into force in that area as if the 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.

Under Section 21 publication of name, etc., of juvenile involved in any proceeding under the Act is prohibited. Any person contravening the said mandate shall be punishable with fine, which may extend to one thousand rupees. The idea in this Section is to provide for secrecy regarding identification of a juvenile by barring publicity, except for special reasons.

Section 22 provides for the procedure in respect of escaped juvenile. It contains a non obstante clause.

Section 23 deals with punishment for cruelty to juvenile or child

Section 24 relates to employment of juvenile or child for begging.

Section 25 deals with penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child.

Section 26 deals with exploitation of juvenile or child employee.

Section 27 provides for the offences punishable under Sections 23, 24, 25 and 26 shall be congnizable.

Section 28 states that where an act or omission constitute an offence punishable under this Act and also under any other Central or State Act, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offences shall be liable to punishment only under such Act as provides for punishment which is greater in degree.

The offender in the context cannot refer to juvenile, but, only to persons committing offence against the juvenile.

CHAPTER III consists of Sections 29 to 39 and deals with CHILD IN NEED OF CARE AND PROTECTION. It is not necessary for us to deal with the same in the present context.

CHAPTER IV deals with REHABILITTION AND SOCIAL REINTEGRATION. The relevant sections are 40 to 45. Section 40 deals with the process of rehabilitation and social reintegration.

Section 41 deals with adoption.

Section 42 deals with foster care.

Section 43 deals with sponsorship.

Section 44 deals with after-care organisation.

Section 45 provides for linkages and co-ordination between various governmental, non-governmental, corporate and other community agencies for facilitating the rehabilitation and social reintegration of the child.

CHAPTER V deals with MISCELLANEOUS matters. The relevant Sections are 46 to

70. Section 49, as already noted, provides that the order of a competent authority regarding the age of a child or juvenile shall be deemed to be the true age irrespective of any subsequent proof.

Section 52 provides for appeal to the Court of Sessions.

Section 53 provides for revision to the High Court. Section 64 provides as follows: Juvenile in conflict with law undergoing sentence at commencement of this Act In any area in which this Act is brought into force, the State Government or the local authority may direct that a juvenile in conflict with law who is undergoing any sentence of imprisonment at the commencement of this Act, shall, in lieu of undergoing such sentence, be sent to a special home or be kept in fit institution in such manner as the State government or the local authority thinks fit for the remainder of the period of the sentence; and the provisions of this Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective care under sub-section (2) of section 16 of this Act.

11. The highlights in a nutshell can be set out as follows: (a) to make the juvenile justice system more effective and appreciative after taking appropriate consideration of developmental needs of a child or a juvenile in comparison to criminal justice system as applicable to adults; (b) to prescribe a uniform age in respect of any person to be treated as juvenile or the child if he has not attained the age of 18 years in the case of a girl and also in the case of a boy; (c) to ensure speedy disposal of cases as enshrined under Article 2 1 of the Constitution of India, by the authorities as envisaged under the Act regarding the juvenile or the child within a time limit of 4 months; (d) to spell out the role of State as a facilitator rather than a doer by involving voluntary organisations and local bodies in the implementation of the new legislation; (e) provisions have been provided for fully ensuring the child or the juvenile in need of care and protection and the juvenile in conflict with law to be protected under the new Act; (f) to bring the juvenile law in conformity with the convention of the United Nations on the Rights of the Child under the Act; (g) to create special juvenile police units with a humane approach through sensitisation and training of police personnel; (h) to enable increased accessibility to a juvenile or child by establishing Juvenile Justice Boards, Child Welfare committees and homes; (i) to the juvenile justice system which has been made to provide for the juvenile in conflict with law on one hand and the juvenile or child in need of care and protection on the other hand; (j) for effective provisions and various alternatives for rehabilitation and social reintegration of the juvenile or the child, such as adoption, foster care sponsorship and aftercare of abandoned, destitute and neglected or delinquent juvenile or child. [Courtesy - The Juvenile Justice (Care and Protection of Children) Act, 2000 by K.S. VARMA]

12. It is now necessary to notice the historical background and the salient features of the POTA.

Its earlier incarnation was the Terrorists and Disruptive Activities (Prevention) Act, 1985 (TADA for short). It was passed in the year 1985 in order to prevent and control terrorists and disruptive activities. It was thought that it would be possible to control the menace of terrorists within two years. Therefore, the life of the statute was restricted to two years. However, the object was not achieved. The terrorists activities continued unabated. The life of the 1985 Act was due to expire on 23.5.87, Ordinance 2/87 was promulgated by the President of India on 23.5.1987. It came into effect from 24.5.87 . Though some provisions were suitably modified in the ordinance, it was considered necessary to further strengthen the provisions, and therefore the TADA Act came to be passed and its life though initially was for four years, it was being extended from time to time. The Act was a penal statute. Its provisions were drastic. The confessional statements to a Police Officer, not below the rank of a Superintendent of Police, were made admissible in evidence. Provision was also made in regard to identification of an accused, who was traced through photographs. The provisions were a departure from the ordinary law since the common law was found to be inadequate and not sufficiently effective to deal with the special class of offenders indulging in terrorist and disruptive activities. The Act created a special forum for speedy disposal of such cases for raising presumption of guilt, placed extra restrictions in regard to the release of the offender on bail, and made suitable changes in the procedure with a view to achieve its objects.

The President of India promulgated the Prevention of Terrorism Ordinance, 2001, to make provisions for the prevention of and for dealing with terrorist activities and the matter connected therewith. Since the Parliament was not in session at that time and the President was satisfied that circumstances existed which rendered it necessary for him to promulgate the said Ordinance. However, the Prevention of Terrorism Bill to replace the said Ordinance could not be passed in the Parliament during the subsequent session because of attack on Parliament on 13th December, 2001 and subsequent adjournment of the session. To give continued effect to the provisions of the Prevention of Terrorism Ordinance, 2001, the President promulgated the Prevention of Terrorism (Second) Ordinance, 2001 on 30th December, 2001. To replace the said Ordinance with an Act of the Parliament, the Prevention of Terrorism Bill was introduced in the Parliament and the same was passed at the joint sitting of Parliament on 26th March, 2002, and was assented to by the President on 28th March,2002. It came on the Statute book as "THE PREVENTION OF TERRORISM ACT, 2002 (The POTA)". It places the onus of proving the innocence on the accused, thereby presuming guilt. One of the salient features of the Act is that confessions made to a police officer under certain conditions are admissible, which is a deviation from current Indian law, which allows confessions to be admitted as evidence only if they are repeated voluntarily in the court. As per the Act, terrorism includes acts committed with any lethal weapons. Under the Act, offences include inviting support for a terrorist organisation, addressing a gathering of terrorism sympathizers and assisting in arranging a meeting where support is expressed for a terrorist organisation or its activities. Under the provisions of the Act, suspects can be detained for three months without the charges being brought against them and three more months if allowed by a special judge and a police officer can ask the court to order samples of handwriting, fingerprints, footprints, bloods saliva, semen and hair of a suspect. Refusal to give sample will be considered against the accused in trial. The Act also provides some safeguards in order to avoid its misuse. As per the Act, confessions made to the police must be recorded within 48 hours before a magistrate, who will send the accused for medical examination if there is a complaint of torture and police officers can be prosecuted for abusing their authority and compensation can be paid to the victims and a legal representative of the accused can be present for part, but not all, of the interrogation. The provisions of the Act extend to the whole of India. The provisions of the Act also apply to citizens of India outside India, persons in the service of the government, wherever they may be and persons on ships and air-craft registered in India, wherever they may be. As per the provisions of this Act, any person who commits an offence beyond India which is punishable under this Act shall be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India. The properties of terrorist organisation and their sympathisers can be seized even forfeited under the provisions of this Act.

13. Before attempting to find a satisfactory answer to Question No.2, it is necessary to have a look at what Courts have previously done when similar conflicts arose in the particular context of Children' s Acts and JJ

Act, 1986.

JUVENILE JUSTICE ACT/CHILDREN's ACT vs.. CODE OF CRIMINAL PROCEDURE, 1973.

In RAGHBIR vs.. STATE OF HARYANA [AIR 1981 SC 2037 : 1981 (4) SCC 210 : 1981 Cri.L.J. 1497] the accused was less than 16 years and thus a child within the meaning of S.2 (d) of the Haryana Children Act (14 of 1974) and he was accused of an offence under Section 302 Penal Code. He was entitled to the benefit of the Haryana Children Act. It was held that the trial and the conviction under the Cr. P.C. was illegal. In that case Haryana Children Act came into force on March 1, 1974 while the Criminal P.C., 1973 came into force on April 1, 1974. If there be any conflict between any provisions of the Act and the Code, in view of Article 254(1) of the Constitution, the provision of the Act repugnant to any provision of the Code will be void to the extent of repugnancy. The Supreme Court observed as follows: "The purpose of the Haryana Legislature as well as of the Parliament in enacting the Haryana Children Act and the Central Children Act respectively was to give separate treatment to delinquent children in trial, conviction and punishment for offences including offences punishable with death or imprisonment for life. Section 27 of the Criminal P.C. is not 'a specific provision to the contrary' within the meaning of Section 5 of the Code; the intention of the Parliament was not to exclude the trial of delinquent children for offences punishable with death or imprisonment for life, inasmuch as S.27 does not contain any expression to the effect "notwithstanding anything contained in any Children Act passed by any State Legislature". Parliament certainly was not unaware of the existence of the Haryana Children Act coming into force a month earlier or the Central Children Act coming into force nearly fourteen years earlier. What S.27 contemplates is that a child under the age of 16 years may be tried by a Chief Judicial Magistrate or any Court specially empowered under the Children Act, 1 960. It is an enabling provision, and, has not affected the Haryana Children Act in the trial of delinquent children for offences punishable with death or imprisonment for life. Criminal Procedure appears in Item 2 of the Concurrent List of the Seventh Schedule of the Constitution. One of the circumstances under which repugnancy between the law made by the State and the law made by the Parliament may result is whether the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable. In the instant case it can be held that the relevant provisions of the Code and the Act can co-exist. Their spheres of operation are different." It was not as if the Parliament was not aware of the existence of the Haryana Children Act coming into force a month earlier or the Central Children Act coming into force nearly fourteen years earlier. What S.27 of the Act contemplates is that a child under the age of 16 years may be tried by a Chief Judicial magistrate or any Court specially empowered under the Children Act, 1960. It is an enabling provision and has not affected the Haryana Children Act in the trial of delinquent children for offences punishable with death or imprisonment for life. If two enactments are capable of co-existence, then Article 25 4 of the Constitution would not be attracted.

In DALJIT SINGH v.. STATE OF PUNJAB [1992 Crl.LJ 1051 : 1992 (2) CRIMES 142 : 1992(1) Cri.CC 516], it was held as follows: " Definitions given in s.2(e)(h) and (n) (of JJ Act, 1986) make it clear that when a juvenile has committed an offence (may be murder), he is called a delinquent juvenile. Delinquent juvenile might have committed any heinous crime, the matter can be inquired into and he can only be proceeded against under the Act. The Act protects a juvenile from the ordinary law to the extent that under S.3 of the act, when inquiry is taking place and he ceases to be a juvenile, he shall still be continued to be treated as a juvenile. Under S.5, a Juvenile Court is to be established by the State to exclusively act and proceed under the Act, completely disregarding the provisions of the Criminal P.C. Under S.7 it is said that notwithstanding anything provided in any other law, Juvenile Court shall have exclusive power to conduct proceedings against a Juvenile. Under S.18, a delinquent juvenile has to be released on bail in spite of the fact of having committed heinous crime of murder or rape. If he is not to be enlarged on bail, he is to be kept in safe custody/place as ordered under the Act. Punishment of death or life imprisonment has been statutorily prohibited against a delinquent juvenile under S.22 of the Act. From a combined reading of all these Sections along with other relevant provisions given in the Act, it is undoubtedly clear that juvenile Justice Act, 1 986 is a complete Code in itself and has sweepingly overriding effect on any other enactment of the State Legislature or Parliament viz, the Criminal P.C. Regarding inquiry/proceedings or a trial against a delinquent juvenile on

any criminal charge."

JUVENILE JUSTICE ACT and NATIONAL SECURITY ACT, 1980. In PADMABATI DEI v.. DISTRICT MAGISTRATE, CUTTACK [(1995) 3 CRIMES 156 (Ori)], the Orissa High Court observed that Section 3 of the National Security Act, 1980, is the substantive and enabling provision for passing detention order. It refers to the terminology 'any person'. Section 2(d) defines the word 'person' which includes a foreigner also. In the absence of any exception a juvenile would be also a person within the meaning of National Security Act. Definition of the term 'person' as contained in Section 3(42) of the general Clauses act also does not support the case of the petitioner which defines the term 'person' as 'including any company or association or body of individuals whether incorporated or not'. There is no justification whatsoever to restrict the meaning of the term 'person' to a major or a non/juvenile. The primary purpose and object of the National Security Act is to apprehend certain variety of anti-social and subversive elements to insure that by their activities larger interests of the citizens and society are not imperilled. It is not meant to punish a man for having done something criminal in the past. Keeping the above object of the National Security Act in view, there is no reason to restrict its operation only to a major. Such an interpretation has the potentiality of defeating the object of the national Security Act. Therefore, any person, whether he is major or juvenile, would come within the net of the National Security Act, once the subjective satisfaction about the prejudicial activities referred to in Section 3, thereof is properly reached. Section 18(1) of the Act mandates that 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 the Court, such person shall be released on bail (emphasis supplied) notwithstanding anything contained in the Cr PC or in any other law for the time being in force. Therefore, the law is certain that a juvenile or delinquent juvenile can never be remanded to custody much less committed to prison even from the earliest stage. On the other hand, he should be lodged in an observation home or place of safety pending further proceedings against him. The Orissa High Court appears to have reasoned that the word " detained" contained under Section 18 does not denote that the word refers to detention under the preventive detention law. The word "detain" has been not defined under the Juvenile law and word "detained" in Section 18(1) cannot be read in isolation and will have to be read with reference to the whole provision of the Act.

TAMIL NADU PEVENTION OF DANGEROUS ACTIVITIES OF BOOT-LEGGERS, DRUG OFFENDERS, FOREST OFFENDERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND SLUM GRABBERS ACT (14 OF 1982): In RAMACHANDRAN v.. THE INSPECTOR OF POLICE, MADRAS [1994 CRI.L.J. 3722] it has been held by a Division bench of the Madras High Court, as follows: " A child below 16 years cannot be termed as "goonda" within definition of S.2(b) of Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act (14 of 1982) and therefore, his detention under that Act would be unjustified. If a child, is detained as a goonda, he is exposed to every such thing which Juvenile Justice Act (1986) says he should not be exposed to. If he is branded as a goonda, in the sense that he has habitually committed or attempted to commit or abetted the commission of offences punishable under Chapter 16 or Chapter 17 or Chapter 22 of the Indian Penal Code, a habit, he can form only if after the commission of the first offence by him, he is not put to the care of a parent or home, as the Juvenile Justice Act has contemplated to protect him from evils of the society. Since a juvenile is always in a special custody and that custody is deliberately chosen by the Juvenile Justice Act, it is difficult to think that his delinquency will make him a habitual offender and a goonda in that sense. However, when young children are found by the law enforcement Authorities to be engaged in anti-social activities, it cannot be said that no action should be taken against them. There should be more prompt action than in the case of any adult offender, in the case of a juvenile. He should be taken to proper custody but for the purposes under the Juvenile Justice Act, the detaining Authorities - Authorities shall have the freedom to create a special home for juvenile delinquents and juvenile delinquents can be detained in such homes. ...., in view of Ss.21, 22 and 25 of Juvenile Justice Act, there can be no order, after conviction for any offence committed by a juvenile, to sentence him death or to imprisonment. A Juvenile cannot be committed to prison in default of payment of fine or in default of furnishing security. A juvenile cannot be treated as a habitual offender and cannot be called upon to furnish

security for good behaviour under S.110 of the Criminal P.C. He cannot thus, even for the purpose of security, be treated as a habitual offender. There is a provision under S.22 of the Juvenile Justice Act that a child, who has committed heinous offence of murder or rape or other serious offences, is required to be kept in safe custody at a place ordered by the State Government. This is a benefit intended for the children and they must receive it. Hence, a minor, below the age of 16 years, at the time of the commission of the antecedent offences, cannot be termed as a goonda, as defined under S.2(f) of the Tamil Nadu act, and cannot be subjected to preventive detention thereunder."

DECOITY AFFECTED AREAS ACT, 1983: In NANHU v.. STATE OF U.P. [1990 ALL.L.J. 496] the conflict between the two Acts - Juvenile Justice Act, 1986, and Dacoity Affected Areas Act (31 of 1983) - was attempted to be resolved. The juvenile in that case was aged about 10+ years. The Sessions Judge rejected the bail on the ground that under S.10 of the Dacoity Affected Areas Act the bail cannot be granted unless no offence is made out. The learned Single Judge of the Allahabad High Court relied on Section 18 of the Juvenile Justice Act, 1986 and held that the non obstante clause in the section would override not only the provisions of Code of Criminal Procedure but also any other law in force. The special law, namely, Juvenile Justice Act, 1986, would prevail over the general law of S.10 of the Dacoity Affected Areas Act. The only ground on which bail could be refused under S.18 of the Juvenile Justice Act, 1986, being that the release was likely to bring the juvenile into association with any known criminal or exposing him to moral danger or that his release would defeat the ends of justice. In that case, no such ground was made out.

N.D.P.S. Act, 1985: In ANTARYAMI PATRA v.. STATE OF ORISSA [1993 CRI LJ 1908], PATNAIK, J. (Orissa) (as the learned Judge then was) dealing with provisions in Narcotic Drugs and Psychotropic Substances Act (61 of 1985) [NDPS Act], vis-a-vis, JUVENILE JUSTICE ACT, 1986, held that a juvenile delinquent being accused of commission of an offence under the former Act cannot be released unless the pre-conditions contained in S.37 of the former Act are complied with, that this would be the result in view of S.18 of the Juvenile Justice Act, which provides that an accused shall not be released on bail if there appears reasonable grounds for believing that the release is likely to bring him into association with any known criminals or expose him to moral danger or that his release would defeat the ends of justice, and that what is to be noticed is that release of an accused involved in commission of an offence under the Narcotic Drugs etc. Act would defeat the ends of the justice and the drug traffickers would pursue their objective of drug trafficking through such juvenile delinquents. The learned Judge further observed as follows: "No doubt, S.18 of the Juvenile Justice Act made a general provision with regard to the right of a Juvenile delinquent to be released on bail irrespective of the offence committed by him, but the Narcotic Drugs Act is a special provision and in that special statute a further special provision has been made with regard to the pre-conditions to be satisfied for an accused being released on bail. Therefore, the said special provision of the special statute, namely S.37 of the Narcotic etc. Act, would override S.18 of the Juvenile Justice Act and, therefore, even in case of a juvenile delinquent involved in commission of an offence under the said Act, no bail can be granted until and unless the provisions of S.37 of the Narcotic etc. Act are complied with. No doubt, the Narcotic etc. Act was enacted earlier in point of time than the Juvenile Justice Act, but the special provision in relation to the bail by way of insertion of S.37 in the Narcotic Act came on the statute book by Act 2 of 1989 and the Statement of Objects and Reasons of the said amendment indicates that the Parliament thought it appropriate to make stringent provision in respect of an accused being released on bail to meet the challenge arising from drug trafficking." Therefore, the said provision contained in S.37 of the Narcotic Drugs and Psychotropic Substances Act would override the earlier general provision of S.18 of the Juvenile Justice Act and consequently, a juvenile delinquent being accused of commission of an offence under the former Act cannot be released unless the pre-conditions contained in S.37 of the former Act are complied with.

The learned Judge has referred to some of the decisions of the Supreme Court and English Courts: In NARCOTICS CONTROL BUREAU v.. KISHANLAL [AIR 1991 SC 558 : 1 991 Cri.L.J. 654] it has been held that the provisions of S.37 with its non obstante clause should be given its due meaning and it is intended to restrict the power to grant bail. The Supreme Court went to the extent of observing that where there would

be inconsistency between S.439 of the Code of Criminal Procedure and S.37 of the NDPS Act, S.37 prevails and ultimately observed that the power to grant bail under any of the provisions of the Criminal Procedure Code should necessarily be subject to the conditions mentioned in S.37 of the NDPS Act and even the High Court's power under S.439 of the Code of Criminal Procedure is also subject to S.37 of the NDPS Act. While coming to such a conclusion, the learned Judges have borne in mind the fact that the NDPS Act is a special enactment and was enacted with a view to making a stringent provision for the control and regulation of operations relating to narcotic drugs and psychotropic substances. The learned Judge has however mentioned that in the case decided by the Supreme Court, the question of a juvenile delinquent being involved in commission of an offence under the NDPS Act and his rights to be dealt with under S.18 of the Juvenile Justice Act had not come up for consideration. The learned Judge also noticed that the NDPS Act is a penal statute and therefore has to be construed strictly. He relied on the judgment of the Privy Council in THE GAUNTLET, (1872) LR PC 184. The learned Judge further observed that when two Acts are enacted in the same field, one dealing with general law and the other dealing with the special law, then in case of inconsistency between the two, the special law will prevail. When two enactments are passed one later than the other, then it becomes a business for the Courts to consider the exact effect of the latter enactment upon the earlier enactment to see whether they can wholly or in part stand together. Where one statute enacts something in general terms, and afterwards another statute is passed on the same subject, which, although expressed in affirmative language, introduces special conditions and restrictions, the subsequent statute will usually be considered as repealing by implication the former, for affirmative statutes introductive of a new law do imply a negative. The extent of which special Acts are held to override the general law or create exception depends upon the terms of the statute in question. This decision cannot be held to be good law any longer because of the decision of the Supreme Court in RAJSINGH v.. STATE OF HARYANA, 2000 (6) SCC 759. In the case before the Supreme Court the appellant was born on 9.12.1974 as per certificate issued by the Board of School Education which stood reaffirmed by another certificate produced before the Court. The appellant was convicted for an alleged occurrence stated to have taken place on 22.5.1990 when he was a juvenile. The conviction was under Section 20 of NDPS Act. The Supreme Court held that the appellant was a juvenile being less than 16 years of age at the time of the occurrence and therefore trial should have been held by Juvenile Court. The appellant having been tried by sessions Court, the Supreme Court set aside the conviction and sentence imposed upon the appellant and directed that the appellant should be dealt with in accordance with the provisions of the JJ Act.

MATADIN v.. STATE OF M.P. [1994(3) CRIMES 510] was a case where bail application was filed by the petitioner claiming to be 15 years of age. He had been arrested for cultivating cannabis plants. It was held that

the provisions of Juvenile Justice Act over rode the provisions of NDPS Act, that irrespective of section 36A of NDPS Act, a juvenile has to be dealt with under Juvenile Justice Act.

TADA ACT, 1987: SHRI JAGADISH BHUYAN v.. STATE OF ASSAM [1992 CRI.L.J. 3194] (Gauhati) wherein it has been held that although, both the Juvenile Justice Act 1986 - and TADA(P) Act are special Acts, S.25 of the TADA(P) Act contains a non obstante clause with a view to give TADA(P) Act in case of conflict, an overriding effect over the provisions in any enactment or instrument mentioned in the non obstante clause. In the reasoning of the Bench, under the TADA(P) Act the terrorism has been treated as a special criminal problem, that the Act creates a new class of offences called "Terrorist Act and Disruptive Activity" which are to be tried exclusively by a special Court called Designated Court by providing special procedure for trial of such offences, and that when the language of S.25 of the TADA(P) Act is so clear, it could not be said that TADA(P) Act could not overrode the Juvenile Justice Act (1986).

SCHEDULED CASTES & SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1 989: In re: SESSIONS JUDGE, KALPETTA [1995 Cri.L.J.330] (Kerala) a Bench of the Kerala High Court in dealing with an apparent conflict between the two Acts, namely, Juvenile Justice Act, 1986 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as to which would prevail over the other, held that the provisions of latter Act would have no over riding effect over the provisions of 1986 Act, and that Juvenile

offender should be dealt with by Juvenile Court established under 1986 Act. That was a case where the Juvenile aged below 15 years stood charged with offence punishable under Sections 450, 376, and 506 (ii) of the Penal Code and also under Section 3(i)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Bench referred to the decision of the Orissa High Court in ANTARYAMI PATRA v.. STATE OF ORISSA [1993 CRI LJ 1908] (already referred to) and held in para 9 of its judgment, as follows: "The 1989 Act was enacted to check and deter crimes against the members of the Scheduled Caste and Scheduled Tribe communities committed by non-Scheduled Castes and non-Scheduled Tribes. The provisions of the 1989 Act aim at giving protection to the members of the Scheduled Caste and Scheduled Tribe communities against whom atrocities are being committed. A reading of the provisions of 1989 Act will show that the Act was concerned with the victims of the crimes. It is not concerned with the offenders who perpetrate crimes against the members of the Scheduled Castes and Scheduled Tribes. In order to protect the victims, Section 20 was enacted, giving an overriding provision vis-a-vis the provisions contained in all the existing enactments. That overriding power, according to us, cannot be extended to nullify the provisions contained in the 1986 Act, which deals with juveniles who are offenders. The 1989 Act is not concerned with the offenders. So it cannot have any impact on 1986 Act which is concerned with juvenile offenders. The 1986 Act is a special enactment which deals with juvenile offenders. The provisions of that Act cannot be nullified by the 1989 Act which deals with an entirely different field. In this view we hold that the 1989 Act cannot override the provisions of the 1986 Act which specifically deal with juvenile offenders." The Kerala Bench ultimately held that the provisions contained in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act will not have any over-riding effect over the provisions contained in Juvenile Justice Act, 1986.

In GOPINATH GHOSH v.. STATE OF WEST BENGAL [AIR 1984 SC 237 : 19 84 (Supp) SCC 228] one Gopinath Ghosh was convicted by the Additional Sessions Judge along with two others under Section 302 r/w Section 3 4 of the Indian Penal Code for having committed murder of one Rabi Ghosh. It was alleged that he had caused an injury with a fala which landed on the left side chest below the neck of the deceased. It was urged before the Supreme Court that on the date of the offence, i.e. on 19.8.1974, the appellant was aged below 18 years and therefore a 'child' within the meaning of the expression in the West Bengal Children Act, 1959, and therefore, the Court had no jurisdiction to sentence him to suffer imprisonment after holding a trial. The Supreme Court framed an issue for determination: What was the age of the accused Gopinath Ghosh (appellant) on the date of the offence for which he was tried and convicted? and remitted the issue to the Sessions Judge to certify the finding after giving an opportunity to both sides. Liberty was also reserved with the Sessions Judge to send accused Gopinath Ghosh to Chief Medical Officer to ascertain the age. The Sessions Judge certified his finding that the appellant was aged between 16 and 17 years on the date of the offence. The West Bengal Children Act provided for a certain procedure in the case of juvenile delinquent. Section 24 of the said Act starts with a non obstante clause which takes away the jurisdiction of the court to impose a sentence of death on a juvenile delinquent as well as the power to impose sentence of imprisonment or commitment to prison in default of payment of fine or in default of furnishing security on a juvenile delinquent. There is a proviso to subclause (2) of Section 24 which would enable the court to impose a sentence of imprisonment on a juvenile delinquent, if the conditions therein prescribed are satisfied with an obligation on the court to report the case to the State government and direct the juvenile delinquent to be detained in such custody as it may think fit. Section 25 provides for inquiry by court regarding juvenile delinquents. It reads as under: "Where a child having been charged with an offence appears or is produced before a court, the court shall hold the inquiry in accordance with the provisions in the Code of Criminal Procedure, 1898, for the trial of a summons case. Section 26 confers power on the court enabling it to pass orders regarding juvenile delinquents as therein mentioned. Section 4 confers power on the State Government to establish juvenile courts by a notification to be issued in that behalf. Section 5 provides that the powers conferred on courts by the Act shall be exercised amongst others where a juvenile court is not established by a Court of Session. Section 6 provides that when a child is brought before a magistrate or court not empowered to pass an order under the Act, such Magistrate or court shall forward the child to the nearest juvenile court or other court or Magistrate having jurisdiction. Thus, in the case before the Supreme Court, the position was that where a juvenile delinquent was arrested, he/she had to be produced before a juvenile court

and if no juvenile court was established for the area, amongst others, the Court of Session would have powers of a juvenile court. Such a juvenile delinquent ordinarily had to be released on bail irrespective of the nature of the offence alleged to have been committed unless it was shown that there appears reasonable grounds for believing that the release was likely to bring him under the influence of any criminal or expose him to moral danger or defeat the ends of justice. Section 25 forbids any trial of a juvenile delinquent and only an inquiry could be held in accordance with the provisions of the Code of Criminal Procedure for the trial of a summons case and the bar of Section 24 which had been given an overriding effect as it opened with the non obstante clause took away the power of the Court to impose a sentence of imprisonment unless the case fell under the proviso. The Supreme Court allowed the appeal, set aside the sentence of conviction for an offence under Section 302 IPC, and remitted the matter to the magistrate for disposal.

In KRISHNA BHAGWAN v.. STATE OF BIHAR [AIR 1989 PATNA 217] it was held as follows: "The Juvenile Justice Act is a solemn promise by the present to the future. Those who are charged with the statutory duty must not fail. Obedience to law by all concerned alone shall ensure justice to delinquent children. From bare reference to various provisions of the Bihar Children Act (1982) and the Juvenile Justice Act (53 of 1986) it is apparent that extraordinary procedure has been prescribed for enquiring the offence alleged to have been committed by a child/juvenile and punishment hereof. The basic approach appears to be curative instead of punitive. Even the Penal Code, which was framed more than a century ago, had taken note of the age factor in respect of persons committing offences which is evident from Ss.82 and 83 of the Penal Code. In olden days every home was a 'child care home'. Every home protected their child, every child was cared for, looked after, educated and made to live as a proud citizen of the country. Those were the days now petrified in the myths, folklores and songs of the past. When people started living low shrouded with mixture of ignorance, deprivation and subjugation, every home suffered and children suffered most. Independent India inherited with its glorious past liabilities of decades of servitude and the responsibility to lit the dark abyss of future. And who represented the future? Children who alone go into it, live smoothen and stream roll the rough roads, through which the country has to march ahead." Even if the charges against the children are established, a very liberal approach has been provided in respect of punishment for such offences in the Juvenile Justice Act. Different sections put a strict bar on the child/juvenile being sent to jail custody either before an enquiry or after the conclusion of the enquiry in respect of the offence alleged or proved to have been committed. Even if such a child has committed a murder or a rape, in view of S.22, neither he can be sentenced to death nor to imprisonment. It is true that in many cases the offences committed by such delinquent children may be shocking to the conscience and their conduct and behaviour may be abhoring but section 22 is quite conscious of such situations. Still it provides for keeping the delinquent child/juvenile accused of such serious offences, in safe custody at a place ordered by the State government. This benefit has to be extended not only to an accused who is a child/ juvenile at the time of the commencement of the enquiry and has continued as such till the conclusion of the enquiry, but even to an accused who has ceased to be a child/juvenile during the pendency of the enquiry. The same view has been taken by a Full Bench of Calcutta High Court in the case of DILIP SAHA v. STATE OF WEST BENGAL, AIR 1978 Cal 529. "But, gradually with the sweeping social and economic changes together with the rapid progress of sciences dealing with the social circumstances and behaviour, punitive and deterrent criminal justice has been replaced by a predominantly reformative approach to the offenders giving consideration to their personal and social characteristics."

In ABDUL MANNAN v.. STATE OF WEST BENGAL [AIR 1996 SC 905 : 1996 (1) SCC 665] the appellants were charged for various offences including the offence of murder punishable under Section 302, IPC. It transpired that on the date of the commission of the offence these appellants were under the age of 17 and 18 years. Since they were children under the provisions of the West Bengal Children Act, 1959, they were required to be tried by the Juveniles Court but no such Court had been constituted. Subsequently, pending proceedings Juvenile Justice Act, 1986 came into force and the West Bengal Act stood repealed. There was no Court constituted, with the result the Sessions Judge had to conduct the trial. It was contended that the Additional Sessions Judge was not a Sessions Judge, and therefore he could not proceed with the trial. That was rejected and the appeal therefrom came to the Supreme Court by Special Leave. Section 9(3) of the Code

of Criminal Procedure, 1973, provided that Additional Sessions Judges may be appointed by the High Court to exercise jurisdiction in a Court of Sessions. It was held that Sessions Judge would include Additional Sessions Judge under the Code, and that he had got all the power and the jurisdiction of the Sessions Judge to try the offences enumerated under the Code. It was also held that the Additional Sessions Judge was competent to proceed with the trial of juvenile offenders, even though at the relevant time the appellants were juveniles... The object of the Juvenile Justice Act is to reform and rehabilitate the juvenile offenders as useful citizens in the society.

In GANGULA ASHOK v.. STATE OF A.P. [AIR 2000 SC 740 : JT 2000(1) SC 379 : 2000 Crl.L.J. 819] sub-section (2) of Section 4 of the Code of Criminal Procedure dealing with offences under other laws came up for scrutiny. The said provision is as follows: "All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

The Supreme Court observed that a reading of the sub-section made it clear that subject to the provisions in other enactments all offences under other laws should also be investigated, inquired into, tried and otherwise dealt with under the provisions of the Code, that this meant that if other enactment contained any provision which was contrary to the provisions of the Code, such other provisions would apply in place of the particular provision of the Code, and that if there was no such contrary provision in other laws, then provisions of the code would apply to the matters covered thereby. The Supreme Court referred to A.R. ANTULAY v. RAMDAS SRINIVAS NAYAK [1984(2) SCC 500] wherein it has been emphasised that the Code of Criminal Procedure is the parent statute which provides for investigation, inquiring into and trial of cases by criminal courts of various designations. The Supreme Court in STATE OF WEST BENGAL v. NARAYAN K. PATODIA [AIR 2 000 SC 1405] has reiterated the same principle.

We have already noticed that the Gauhati High Court has held in JAGDISH BHUYAN'S case that TADA Act would prevail over JJ Act in view of the overriding effect of its provisions contained in Sec.25. It runs as follows:

"OVERRIDING EFFECT - The provisions of this Act or any rule made thereunder or any order made under such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act."

The corresponding provision in POTA is Section 56, which provides as follows: "OVERRIDING EFFECT - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act."

14. The non obstante clause in Section 16 of JJ (C&PC) Act has already been extracted. Let us now examine the scope and effect of non obstante clauses in statutes.

In UNION OF INDIA v.. G.M. KOIL [AIR 1984 SC 1022 : 1984 Supp. SCC 196 : 1984 (2) LLN 240] it has been held that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions.

In CHANDAVARKAR SITA RATNA RAO v.. ASHALATA S. GURAM [(1986) 4 SCC 447] it was held as follows: "A clause beginning with the expression "notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is often appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in

the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment. The expression ' notwithstanding' is in contradistinction to the phrase 'subject to', the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject." Section 15-A of the Bombay Rent Control Act was introduced on February 1, 1973. The effect of which was, if the licence had been created before that date, the licensee must be deemed to be a tenant and he shall, subject to the provisions of the said Act, be deemed to be a tenant of the landlord, on the terms and conditions of the agreement consistent with the provisions of the Act. Section 15-1 of the said Act provides as follows: "(1) Notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sublet the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein and after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973, for any tenant to give on licence the whole or part of such premises."

Section 15-A which was inserted by Section 14 of the amending Act of 1973 provides as follows: "15-A (1) Notwithstanding anything contained elsewhere in this Act or anything contrary in any other law for the time being in force, or in any contract, where any person is on the 1st day of February, 1973 in occupation of any premises, or any part thereof which is not less than a room, as a licensee, he shall on that date be deemed to have become, for the purposes of this Act, the tenant of the landlord, in respect of the premises or part thereof, in his occupation. (2) The provisions of sub-section (1) shall not affect in any manner the operation of sub-section (1) of Section 15 after the date aforesaid." The question that fell for consideration in the appeal before the Supreme Court was as to who was the licensee mentioned in Section 15-A of the Act. What kind of licensee is contemplated by sub-section (1); could a licensee of a statutory tenant whose contractual tenancy has come to an end be contemplated under the provisions of that Act? The Full Bench of the Bombay High Court held that a statutory tenant whose contractual tenancy did not specifically authorise him to sublet or grant lease could not create a licence which could be sought to be recognised by Section 15-A of the Act. Was that view right, was the question before the Supreme Court. The Supreme Court held that the statutory tenant was in the same position as a contractual tenant until the decree for eviction was passed against him and the rights of a contractual tenant included the right to create licence even if he was the transferor of an interest which was not in fact the transfer of interest. "It was canvassed before us that the non obstante clause was connected with the verb i.e. that a licensee in Section 15-A of the Act on the date be deemed to become tenant but it does not detract from the power of the tenant not to create licence. The construction placed by the Full bench, in our opinion, would curtail the language of the section and on the basis of the High Court's judgment, the amendment ceased to be meaningful for a large section intended to be protected and unless one was constrained by compulsion to give a restricted meaning, one should not do it in that case. We find no such compulsion."

15. In N.F. SALI v.. STATE OF KARNATAKA [AIR 1993 SC 1590 : 199 3 Supp. (2) SCC 399], where selection was made to certain posts as provided under Rules of 1985 from Scheduled Castes and Scheduled Tribes candidates, the Supreme Court held that "... it could not be set aside on the ground of non observance of R.6(2) of 1973 Rules providing for publication of list of marks obtained by candidates on notice board on the day on which interview/viva voce held or on the day following but before the commencement of such test because that rule is inconsistent with R.4(5)(b) of 1985 Rules providing that such publishing of list will be after the oral test is over. The oral test and selection process under the Rules is a special process; it is not confined to one post or one cadre or one group; whereas a normal selection is confined to a particular post or a group of posts, as many as 30 to 35 cadres are specified in the Schedule appended to the Rules. The non obstante clause in Rule 3 of the Rules gives overriding effect to the provisions of the rules and as such the provisions of the 1973 Rules - to the extent of inconsistency - cannot be made applicable to the selection made under the Rules."

16. In INDIAN BANK v.. USHA [(1998) 2 SCC 663] sub-section 14 of Section 45 of the relevant Act provided as follows: "The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force."

S.B. MAJMUDAR, J. observed that before the provision can apply, there must be a provision on a given topic either in any of the other clauses of Section 45 or any scheme framed thereunder and such a provision must be contrary to any other provision on the same topic as found in any other part of the Act or in any other law or award or instrument for the time being in force. Thus on the same topic there must be two contradictory provisions, one, on the one hand in the Scheme or any part of Section 45 and second, on the other hand on the same topic expressing an entirely different and contrary intention in any other part of the Act or in any law or any other award or instrument for the time being in force. The topic for consideration around which the controversy revolves in the present cases is the question of providing compassionate appointments to the eligible heirs of the deceased employees of transferor-Bank who died in harness and who claimed such appointments under the Settlement of 1982 from the transferee-Bank. On this topic or question there must be an express provision in the Scheme or Section 45 of the Act and such express provision should be contrary to and different from the provisio n made on the same question and topic by any other part of the Act or in any other law, agreement, award or instrument for the time being in force. The topic for consideration in that case was the question of providing compassionate appointments to the eligible heirs of the deceased employees of transferor-Bank who died in harness and who claimed such appointments under the Settlement of 1982 from the transferee-Bank. So far as this aspect is concerned learned counsel for the Bank pitched their faith only on the second part of clause 2 and clause 10 for submitting that there is such a contrary provision in the Scheme which would govern the present controversy. The Supreme Court held that the second part of clause 2 did not reflect such a contrary provision. "If the Scheme deals with a topic and if it is comprehensive enough then it would rule out any contrary provision found elsewhere and express provision of the Scheme only has to be given effect to. In the facts of the present case neither clause 2 nor clause 10 of the Scheme represents any provision regarding compassionate appointments to be given to the heirs of the erstwhile deceased employees of the transferor-Bank. The entire Scheme is silent on this topic. It is obvious that a provision which is silent on a topic cannot be said to have laid down any intention contrary to the one as reflected by any other express provision contained in any other instrument or agreement. Hence there is no occasion for the said clauses of the Scheme to project any contrary express provision to override or to supersede the provisions contained in 2(p) Settlement which was binding on the transferor-Bank and which if binding on the transferee-bank would remain operative to the extent benefit thereunder is available to the claimants concerned like the respondents herein. In the light of the relevant clauses of the Amalgamation Scheme, therefore, it is not possible to agree with the contention that no liability could be imposed on the appellant-Bank so far as the claim of the respondents for compassionate appointments was concerned."

17. It was held by the Supreme Court in SHIV BAHADUR SINGH v.. STATE OF VINDHYA PRADESH [AIR 1953 SC 394] "The phrase "law in force" as used in Art.20(1) must be understood in its natural sense as being the law in fact in existence and in operation at the time of the commission of the offence as distinct from the law "deemed" to have become operative by virtue of the power of legislature to pass retrospective laws." In that case, the Vindhya Pradesh Ordinance 48 of 1949 though enacted on 11.9.1949, i.e. after the alleged offences were committed, was in terms made retrospective by S.2 of the said Ordinance which says that the Act "shall be deemed to have been in force in Vindhya Pradesh from the 8th day of August 1948", a date long prior to the date of the commission of the offences. It was suggested that since such a law at the time when it was passed was a valid law and since this law had the effect of bringing this Ordinance into force from 9-8-1949 it cannot be said that the convictions are not in respect of "a law in force" at the time when the offences were committed. This, however, would be to import a somewhat technical meaning into the phrase "law in force" as used in Art.20. "Law in force" referred to therein must be taken to relate not to a law "deemed" to be in force and thus brought into force but the law factually in operation at the time or what may be called the then existing law. Otherwise, it is clear that the whole purpose of Art.20 would be

completely defeated in its application even to 'ex post facto' laws passed after the Constitution. Every such 'ex post facto' law can be made retrospective, as it must be, if it is to regulate acts committed before the actual passing of the Act, and it can well be urged that by such retrospective operation it becomes the law in force at the time of the commencement of the Act. It is obvious that such a construction which nullifies Art.20 cannot possibly be adopted.

18. In MUNICIPAL CORPN. OF DELHI v.. PREM CHAND GUPTA [(2000) 10 SCC 115] the expression "for the time being in force" has been interpreted to refer to the rules which were in force when the event took place.

19. Both Acts, viz., JJ (C&PC) Act and POTA, as noticed already have 'non obstante clauses' and undoubtedly they have overriding effect. The question as to whether there is repugnancy between the two enactments and if so which will prevail still remains unanswered.

20. The Supreme Court in M. KARUNANIDHI v.. UNION OF INDIA [AIR 1979 SC 898] laid down the following propositions to determine the question of repugnancy: (i) It must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field. (ii) There can be no repeal by implication unless the inconsistency appears on the face of the two statutes. (iii) Where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other. (iv) Where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

21. It is now necessary to refer to a few more decisions in this context: A Constitution Bench of the Supreme Court in MARU RAM v.. UNION OF INDIA [(1981) 1 SCC 107 : 1981 SCC (Cri) 112 : 1981 (1) SCR 1196] held that Section 433-A CrPC overrides all other laws which reduce or remit the term of life sentence and mandates that a minimum of 14 years of actual imprisonment should be undergone by a convict where a sentence of life is imposed for an offence for which death is one of the punishments provided by law and remissions vest no right to release when sentence is for life imprisonment. The Court also reiterated that imprisonment for life lasts until the last breath and whatever be the length of remission earned, the prisoner can claim release only if the remaining sentence is remitted by the Government. The Court further negatived the contention that Section 5 of the Criminal Procedure Code saves all remissions, short-sentencing schemes as special and local laws and, therefore, they must prevail over the Code including Section 433-A. For that purpose, Section 5 was referred to. In that case the respondent was awarded life imprisonment and dismissed from service by the General Court Martial after being tried for the offence under Section 302 IPC and under Section 69 of the Army Act, 1950. He preferred a writ petition in the High Court for his immediate release from imprisonment on the ground that he had undergone imprisonment exceeding 14 years. The High Court arrived at the conclusion that in view of the decision in AJIT KUMAR v.. UNION OF INDIA [1987 Supp SCC 493 : 1988 SCC (Cri) 101] the respondent would be entitled to remissions earned in jail and thereby the respondent spent a total period of 15 years 8 months and 29 days of imprisonment which obviously exceeded 14 years. The Court, therefore, directed immediate release of the respondent. That order was challenged in the appeal. It was pointed out by the learned counsel for the appellant that the respondent had not undergone actual imprisonment for 14 years. Before the High Court, it was admitted that the respondent had spent 11 years and 1 month in actual custody, 1 year 7 months and 29 days in pre-trial custody and had earned 4 years' remission in the jail. It was, therefore, submitted that the order passed by the High Court, on the face of it, was against the provision of Section 433-A CrPC and its interpretation given by this Court in the case of MARU RAM v.. UNION OF INDIA (stated supra). The Supreme Court observed that "in the Army Act there is no specific or contrary provision covering the same area. Section 433-a CrPC is a special provision applicable to all the convicts who are undergoing imprisonment for life as provided thereunder. For such convicts, it puts an embargo for reduction of sentence below 14 years of actual imprisonment. We would also mention that after the decision in AJIT KUMAR's case (stated supra) the Army Act was amended (by Act 37 of 1 992) and Section 169-A was added, which is similar to Section 428 of the Criminal Procedure Code."

22. In UNION OF INDIA v.. SADHA SINGH [(1999) 8 SCC 375] the respondent before the Supreme Court was awarded life imprisonment and was dismissed from service by the General Court Martial after being tried for the offence under Section 302 IPC and under Section 69 of the Army Act, 1950. Although he had remained in actual custody for less than 14 years, the High Court, taking into consideration 4 years' remission earned by him in the jail, held that his period of imprisonment exceeded 14 years and, therefore, directed him to be released immediately. Allowing the Central Government's appeal, the Supreme Court held: In the present case, the respondent was convicted under Section 69 of the Army Act, 1950 for the offence of murder. It is true that the Army Act is a special Act, inter alia, providing for investigation, trial and punishment for the offences mentioned therein by a special procedure. Section 177 empowers the Central Government to make rules in respect of prisons and prisoners. Sections 179 to 190 provide for pardon, remissions and suspension of the sentence. There is no specific provision similar to Section 433-A CrPC or contrary to it. Hence, Section 433-A CrPC would operate in the field and a prisoner who is undergoing sentence of imprisonment for life and is convicted for an offence for which death is one of the punishments provided by law or where a sentence of death imposed on a person has been commuted under Section 433 CrPC to imprisonment for life, has to serve at least 14 years of imprisonment excluding remissions earned in jail. As the respondent has not completed 14 years of actual imprisonment, the order passed by the High Court has to be quashed and set aside.

23. According to Mr. Chandru, learned Senior Counsel for the petitioner, as laid down in USMANBAI DAWOOD BAI MEMO v.. STATE OF GUJARAT [1988 (2) SCC 271] the source in respect of the two Acts, namely, JJ (C&PC) Act, 2000, and POTA Act, is derived only from the Code of Criminal Procedure, that they do not operate in the same field, and that there is no apparent conflict and even if it is found that in respect of certain provisions there is oppugnancy, when it comes to dealing with juvenile delinquent, the JJ(C&PC) Act must be deemed to be a Special Act and POTA a general Act and the former would prevail over the latter. In this connection counsel relied on the following decisions LIC v.. DJ BAHADUR [1981 (1) SCC 315 : 1981 (1) LLJ 1 : 198 1 (1) SCR 1083 : AIR 1980 SC 2181] and ALLAHABAD BANK v.. CANARA BANK [2000 (4) SCC 406 : AIR 2000 SC 1256].

24. In K.P.VARGHESE v.. INCOME TAX OFFICER, ERNAKULAM [(1981) 4 SCC 173] HEYDON case [(1584) 3 Co Rep 7a] was relied on " ..... for the sure and true interpretation of all statutes in general .... four things are to be discerned and considered: "(1) What was the common law before the making of the Act, (2) What was the mischief and defect for which the common law did not provide, (3) What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and (4) The true reason of the remedy, and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy." The rule was re-affirmed by Earl of Halsbury in EASTMAN PHOTOGRAPHIC MATERIAL COMPANY v.. COMPTROLLER GENERAL OF PATENTS, DESIGNS AND TRADE MARKS [1898 AC 571].

25. In THE UNION OF INDIA v.. INDIA FISHERIES PRIVATE LTD. [AIR 1966 SC 35 : 1965 (3) SCR 679] it has been held that when there is an apparent conflict between two independent provisions of law, the special provision has to prevail. In that case it was held that Section 49E of the Income Tax Act is a general provision applicable to all assessees and in all circumstances. Sections 228 and 299 of the Companies Act deal with the proof of debts and their payment in liquidation. Section 49E can be reconciled with Ss.228 and 229 by holding that S.49E applies when insolvency rules do not apply. The Supreme Court observed that on the face of Sec.49E, there is no doubt that this Section is not subject to any other provision of law. But this cannot be in a way to defeat the provisions of the Indian Companies Act. The effect of these statutory provisions is, inter alia, that an unsecured creditor must prove his debts and all unsecured debts are to be paid pari passu. Once, therefore, the claim of the Department has to be proved and is

proved in the liquidation proceedings, the Department cannot by exercising the right under S.49e of the Income Tax Act get priority over the other unsecured creditors.

26. In LIC OF INDIA v.. BAHADUR [(1981) 1 SCC 315], relied on by Mr.Chandru, the question that arose for consideration was whether the ID Act is a general legislation pushed out of its province because of the LIC Act, a special legislation in relation to the Corporation employees. The Supreme Court after extracting the following passage from Craies on Statute Law: " The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant,is said not to apply if the prior enactment is special and the subsequent enactment is general, the rule of law being, as stated by Lord Selbourne in Sewards v. Vera Cruz [(1884) 10 AC 59, 68], "that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. There is a well-known rule which has application to this case, which is that a subsequent general Act does not affect a prior special Act by implication. That this is the law cannot be doubted, and the cases on the subject will be found collected in the third edition of Maxwell is generalia specialibus non derogant - i.e. general provisions will not abrogate special provisions." When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms." observed as follows: "It is plain and beyond dispute that so far as nationalisation of insurance business is concerned, the LIC Act is a special legislation, but equally indubitably, is the inference, from a bare perusal of the subject, scheme and sections and understanding of the anatomy of the Act, that it has nothing to do with the particular problem of disputes between employer and employees, or investigation and adjudication of such disputes. It does not deal with workmen and disputes between workmen and employers or with industrial disputes. The Corporation has an army of employees who are not workmen at all. For instance, the higher echelons and other types of employees do not fall within the scope of workmen as defined in Section 2(s) of the ID Act. Nor is the Corporation's main business investigation and adjudication of labour disputes any more than a motor manufacturer's chief business is spraying paints! In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinction when dealing with finer points of law.... The ID Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission - the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, the ID Act is a special statute, and the LIC Act does not speak at all with specific reference to workmen. On the other hand, its powers relate to the general aspects of nationalisation, of management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such, are beyond the orbit of and have no specific or special place in the scheme of the LIC Act. And whenever there was a dispute between workmen and management the ID Act mechanism was resorted to." The problem before the Supreme Court arose because of an industrial dispute between the Corporation and its workmen qua workmen, vis-avis 'industrial disputes' at the termination of the settlement as between the workmen and he Corporation the ID Act is a special legislation and the LIC Act is a general legislation. Likewise, when compensation on nationalisation is the question, the LIC Act is the special statute. An application of the generalia maxim as expounded by English textbooks and decisions leaves us in no doubt that the ID Act being special law, prevails over the LIC Act which is but general law. The Supreme Court referred to its earlier decision in U.P. STATE ELECTRICITY BOARD v. H.S. JAIN, (1979) 1 SCR 355 : (1979) 1 SCR 355, where the problem was whether the standing orders under the Industrial Employment (Standing Orders) Act, 1946, prevailed as against Regulations regarding the age of super-annuation made by the Electricity Board under the specific power vested by Section 79(c) of the Electricity (Supply) Act, 1948, which was contended to be a special law

as against the Industrial Employment (Standing Orders) Act. The Supreme Court held "The maxim generalia specialibus non derogant is quite well known. The rule flowing from the maxim has been explained in MARY SEWARD v. THE OWNER OF THE "VERA CRUZ" (supra) as follows: "Now if anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so." The Supreme Court also referred to its still earlier judgment in J. K. COTTON SPINNING & WEAVING MILS CO. LTD. v.. STATE OF U.P. [AIR 1 961 SC 1170 : (1961) 3 SCR 185] " The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. We have already shown that the Industrial Employment (Standing Orders) Act is a special Act dealing with a specific subject, namely with conditions of service, enumerated in the Schedule, of workmen in industrial establishments. It is impossible to conceive that Parliament sought to abrogate the provisions of the Industrial Employment (Standing Orders) Act embodying as they do hardwon and precious rights of workmen and prescribing as they do an elaborate procedure, including a quasi-judicial determination, by a general, incidental provision like Section 79(c) of the Electricity (Supply) Act. It is obvious that Parliament did not have before it the Standing Orders Act when it passed the Electricity (Supply Act and Parliament never meant that the Standing Orders act should stand pro tanto repealed by Section 79(c) of the electricity supply Act. We are clearly of the view that the provisions of the Standing Orders Act must prevail over Section 79(c) of the Electricity Supply Act, in regard to matters to which the Standing Orders Act applies. What is special or general is wholly a creature of the subject and context and may vary with situation, circumstances and angle of vision. Law is no abstraction but realises itself in the living setting of actualities. Which is a special provision and which general, depends on the specific problem, the topic for decision, not the broad rubric nor any rule of thumb. The peaceful coexistence of both legislations is best achieved, if that be feasible, by allowing to each its allotted field for play. Sense and sensibility, not mechanical rigidity gives the flexible solution. It is difficult for me to think that when the entire industrial field, even covering municipalities, universities, research councils and the like, is regulated in the critical area of industrial disputes by the ID Act, Parliament would have provided an oasis for the Corporation where labour demands can be unilaterally ignored. The general words in Sections 11 and 49 must be read contextually as not covering industrial disputes between the workmen and the corporation. Lord Haldane had, for instance, in WATNEY COMBE REID & CO. v. BERNERS, 1915 AC 885 observed that: " General words may in certain cases properly be interpreted as having a meaning or scope other than the literal or usual meaning. They maybe so interpreted where the scheme appearing from the language of the legislature, read in its entirety, points to consistency as requiring modification of what would be the meaning apart from any context, or apart from the general law." To avoid absurdity and injustice by judicial servitude to interpretative literality is a function of the court and this leaves me no option but to hold that the ID Act holds where disputes erupt and the LIC Act guides where other matters are concerned. In the field of statutory interpretation there are no inflexible formulae or foolproof mechanisms. The sense and sensibility, the setting and the scheme, the perspective and the purpose - these help the judge navigate towards the harbour of true intendment and meaning. The legal dynamics of social justice also guide the court in statutes of the type we are interpreting. These plural considerations lead me to the conclusion that the ID Act is a special statute when industrial disputes, awards and settlements are the topic of controversy, as here. There may be other matters where the LIC Act vis-a-vis the other statutes will be a special law. I am not concerned with such hypothetical situations now.

27. In ALLAHABAD BANK v.. CANARA BANK [(2000) 4 SCC 406 : AIR 20 00 SC 1256] the Supreme Court has held as follows: "At the same time, some High Courts have rightly held that the Companies Act is a general Act and does not prevail under the RDB Act. They have relied upon UNION OF INDIA v. INDIA FISHERIES (P) LTD. [AIR 1966 SC 35 : (1965) 3 SCR 679]. There can be a situation in law where

the same statute is treated as a special statute vis-a-vis one legislation and again as a general statute vis-a-vis yet another legislation. Such situations do arise as held in LIC OF INDIA v.. D.J. BAHADUR [AIR 1980 SC 2181 : (1981) 1 SCC 315]. It was there observed: "... for certain cases, an Act may be general and for certain other purposes, it may be special and the court cannot blur a distinction when dealing with the finer points of law". For example, a Rent Control Act may be a special statute as compared to the Code of Civil Procedure. But vis-a-vis an Act permitting eviction from public premises or some special class of buildings, the Rent Control Act may be a general statute. In fact in DAMJI VALJI SHAH v. LIC OF INDIA (already referred to), this Court has observed that vis-a-vis the LIC Act, 1956, the Companies Act, 1956 can be treated as a general statute. This is clear from para 19 of that judgment. It was observed: "Further, the provisions of the special Act, i.e., the LIC Act, will override the provisions of the general Act, viz., the Companies Act which is an act relating to companies in general."

(emphasis supplied) Thus, some High Courts rightly treated the Companies Act as a general statute, and the RDB Act as a special statute overriding the general statute.

Alternatively, the Companies Act, 1956 and the RDB Act can both be treated as special laws, and the principle that when there are two special laws, the latter will normally prevail over the former if there is a provision in the latter special Act giving it overriding effect, can also be applied. Such a provision is there in the RDB Act, namely, Section 34. A similar situation arose in MAHARASHTRA TUBES LTD. v. STATE INDUSTRIAL AND INVESTMENT CORPORATION OF MAHARASHTRA LTD. [(1993) 2 SCC 144] where there was inconsistency between two special laws, the Finance Corporation Act, 1951 and the Sick Industries Companies (Special Provisions) Act, 1985. The latter contained Section 3 2 which gave overriding effect to its provisions and was held to prevail over the former. It was pointed out by Ahmadi, J. that both special statutes contained non obstante clauses but that the "1985 Act being a subsequent enactment, the non obstante clause therein would ordinarily prevail over the non obstante clause in Section 46-B of the 1951 Act unless it is found that the 1985 Act is a general statute and the 1951 Act is a special one". (SCC p.157, para 9) Therefore, in view of Section 34 of the RDB Act, the said Act overrides the Companies Act, to the extent there is anything inconsistent between the Acts.

28. Rights of a child is an integral part of human rights, yet protagonists of human rights hardly ever focus their attention to the exploitation and abuse of the rights of a child. Human rights issues basically revolve around excesses by Police or Security Agencies, wrongful incarceration etc. The media also rarely highlights exploitation of children's rights as attention of the media is dependent on reader's acceptability and interest; highlighting of police excesses, custodial deaths etc. has better reader response than a mere abuse of the rights of the child.

"My heart leaps up when I behold

A rainbow in the sky.

So was it when my life began

So it is now I am a man;

So be it when I grow old,

Or let me die.

The child is father of the Man

And I could wish my days to be

Bound each to each by natural piety."

(William Wordsworth)

"Every child comes with the message that

God is not yet discouraged of man."

(Rabindranath Tagore)

"In every child who is born, under no matter what circumstances, and of no matter what parents, the potentiality of the human race is born again : and in him, too, once more, and of each of us, our terrific responsibility toward human life; toward the utmost idea of goodness, of the horror of terror and of God." (James Agee) "In praising or loving a child, we love and

praise not that which is but that which we hope for."

(Goethe)

No child is born a criminal : no child is born on angel : he's just born' (Sir Sydney Smith) It sometimes happens that due to compulsions economic or otherwise, the children swerve from the proper path and get carried away. As far back as 1867, John Ruskin wrote: "I hold it for indisputable, that the first duty of a State is to see that every child born therein shall be well housed, clothed, fed and educated till it attain years of discretion." (Time and Tide by Weare and Tyne (1867) Letter 13)

29. Both Acts, viz., JJ (C&PC) Act and the POTA are special Acts passed by the Parliament. Both contain a surfeit of non obstante clauses having overriding effect. But then juveniles have been given a special place in the scheme of things. Our country, as already noted, has been a party to various international conventions and agreements and invoking Article 253 of the Constitution enacted various Acts with children as the prime theme and ensured that all their needs are met and their basic human rights are protected. We have created greater responsibilities in ourselves when it comes to juveniles in conflict with law. The various sections in JJ (C&PC) Act already referred to vouch for the same. As pointed out in MUNNA v.. STATE OF UP [19 82 (1) SCC 545] "The law is very much concerned to see that juveniles do not come into contact with hardened criminals and their chances of reformation are not blighted by contact with criminal offenders. The law throws a cloak of protection round juveniles and seeks to isolate them from criminal offenders, because the emphasis placed by the law is not on incarceration but on reformation. How anxious is the law to protect young children from contamination with hardened criminals is also apparent from Section 27 of the Act which provides, subject only to a few limited and exceptional cases referred to in the proviso, that notwithstanding anything contained to the contrary, no court can sentence a child to death or transportation or imprisonment for any term or commit him to prison in default of payment of fine. It would thus be seen that even where a child is convicted of an offence, he is not to be sent to a prison but he may be committed to an approved school under Section 29 or either discharged or committed to suitable custody under Section 30. Even where a child is found to have committed an offence of so serious a nature that the court is of opinion that no punishment which under the provisions of the Act it is authorised to inflict is sufficient, Section 32 provides that the offender shall not be sent to jail but shall be kept in safe custody in such place or manner as it thinks fit and shall report the case for the orders of the State government. Section 33 sets out various methods of dealing with children charged with offences. But in no case except the exceptional ones mentioned in the act, a child can be sent to jail."

The above enunciation was made by the Supreme Court with reference to U.P. Children Act, 1951, and at a time when even Central Act JJ act, 1986 had not been enacted. It will apply with greater force in the present context. JJ (C&PC) Act no doubt reached the statute book two years earlier to the POTA. It is possible to

argue that at the time POTA was passed Parliament was aware of the presence of JJ (C&PC) Act as law, that still it chose to introduce Sec.56 conferring overriding powers under POTA and that therefore POTA should prevail. As pointed out in the LIC case as between ID Act and LIC Act, so far as nationalisation and insurance business are concerned the latter Act is a special legislation but when it comes to particular problem of disputes between employer and employees, or investigation and adjudication of such disputes it makes way to ID Act. By the same logic, JJ (C& PC) Act dealing as it does with 'Alpha to Omega' of the problems facing juveniles and juveniles in conflict with law providing as it does for specialised approach towards the prevention and treatment of juvenile delinquency in its full range is a special law and will prevail over POTA which is a mere special law compared to JJ (C&PC) Act. JJ (C&PC) Act is the monarch of all that it surveys, in its field. Both are special but JJ (C&PC) Act is more special (apologies to George Orwell).

30. May be the offence committed by the juvenile is shocking like murder or rape but as pointed out in KRISHNA BHAGWAN v.. STATE OF BIHAR [AIR 1989 PATNA 217 (FB)] (though under the earlier Act), the appropriate provision in the Act is quite conscious of such situations. Section 7 of JJ (C&PC) Act enjoins the Magistrate, who is not empowered under the Act to exercise the powers of the Board and before whom the juvenile or child is brought, to forward the child to the competent authority. Section 12 provides that if the release of the juvenile on bail is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or his release would, defeat the ends of justice. If a Board is satisfied that a juvenile has committed an offence it may allow the juvenile to go home with an advice or admonition or direct him to participate in group counselling; community service, etc.; direct him to be released on probation as also order such directives as it may think fit. The Board may also make the terms and conditions of supervision and furnish copy to the juvenile, parent, guardian or other person or fit institution. Thus, welfare of the juvenile is the prime concern of the law makers. The legislature had intended that the juvenile should be extended special care, treatment, development and rehabilitation. The Act overwhelmingly contemplates total separation of juveniles from the mainstream offenders. Under no circumstance should the juvenile have anything to do with them.

31. From the foregoing it follows that the POTA Court in the present case has exceeded its jurisdiction and trespassed into another territory and the mischief has to be undone. What the learned Sessions Judge, Krishnagiri, has done is correct and that can be justified under Section 6 as contended by Mr. Chandru. The Sessions Judge had exercised the powers conferred on the Board when the proceeding came before him 'otherwise'.

32. The writ petition stands allowed. The petitioner shall be proceeded against only under JJ (C&PC) Act. No costs. Consequently, WMP Nos.5721 and 5722 are closed.

pb

To

1. State of Tamilnadu rep by its Secretary to Government Home Department Fort St. George Chennai 9.

2. The Deputy Superintendent of Police 'Q' Branch C.I.D., Coimbatore.

3. The Inspector of Police Uthangarai Police Station Dharmapuri District.