

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28<sup>th</sup>SEPTEMBER, 2022

IN THE MATTER OF:

+ **W.P.(CRL) 1361/2021**

**RAJESH KUMAR**

..... Petitioner

Through: Mr. S.D. Windlesh and Mr. Abhay  
Kumar, Advocates.

versus

**STATE (GOVT. OF NCT OF DELHI) & ORS.** ..... Respondents

Through: Ms. Richa Kapoor, ASC for the State  
with Ms. Shivani Sharma and  
Ms.Surabhi Katyal, Advocates with  
SI Mumtaz, Police Station DIU,  
Police Station Khyala.

Mr. R.H.A. Sikander, Standing  
Counsel for R-3 along with Mr.Jayant  
Bhatia, Advocate

Ms. Rebecca John, Senior Advocate  
(*amicus curiae*) with Ms. Praavita  
Kashyap, Mr. Pravir Singh and  
Ms.AdyaRajkotia Luthra, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The instant writ petition has been filed under Articles 226 and 227 of the Constitution of India, 1950, read with Section 482 of the Code of Criminal Procedure, 1973, seeking the following prayers:

*“1. Issuance of writ/ order/ direction in the Nature of a writ of mandamus or of any other type of writ/direction/order to the Respondents for conducting*

*Magisterial Enquiry into recent escape/kidnapping of five minor girls from children home at Bakhtawarpur. Delhi 110041 run by Kasturba Gandhi National Memorial Trust and other Similar incidents reported in the past also: and*

*2. Issuance of writ/ order/ direction in the Nature of a writ of mandamus or of any Other type of writ / order/ direction in the nature of a writ of mandamus or of any other writ to the Respondents to take over the child home being run by Kasturba Gandhi National Memorial Trust and to further blacklist the trust; and*

*3. Issuance of writ/ order/ direction in the nature of a writ of mandamus or of any other type of writ/order/direction to the Respondents to initiate legal action against the criminal negligency on the part of the staff that resulted into frequent incidence of escape/kidnapping of minor Hindu girls: and*

*4. Issuance of writ/ order/ direction in the Nature of a writ of mandamus or of any Other type of writ to the respondents to immediately arrest the kidnappers of five Minor girls on the night of 26/27 march 2021 and take action against them as per the law: and*

*5. For issuance of writ/ order/ direction in the Nature of a writ of mandamus or of any other type or writ / order/ direction to the Respondents to arrest the accused responsible for illegally kidnapping five Minor girls from the child home of KGNMT illegally detaining one of the minor girl at 1730-31 4<sup>th</sup> floor Jodha Bai Extn and Committing sexual assaults and thereafter Converting the minor victim from Hinduism To Islam and organizing Nikkah: and*

*6. For issuance of writ/ order/ direction in the Nature of a writ of mandamus or of any Other type or writ / order/ direction to the Respondents to grant maximum victim Compensation to the victim of this case as*

*Admissible under the NALSA's scheme of 2018. This hon'ble may also be kind enough to Please provide any other relief in favour of the petitioner and against the Respondents as the court may deem fit and just in the facts And circumstances of the case. ”*

## **GENESIS OF THE MATTER**

2. The genesis of the instant writ petition lies in the alleged kidnapping of five minor girls from Kasturba Gandhi National Memorial Trust (*hereinafter referred to as the “Trust”*) on the intervening night of 26.04.2021 and 27.04.2021. An FIR was registered, being FIR No. 132/2021, dated 27.03.2021 under Section 363 of the Indian Penal Code, 1860, at P.S. Alipur, and pursuant to the same, investigation was conducted. A Status Report dated 07.09.2021 was filed by the Assistant Commissioner of Police, District Investigation Unit, Outer North Distt. Delhi, stating that during the course of the investigation, it was found that the minor girls had willingly escaped from the Trust, with the majority having escaped in an attempt to join their romantic partners. No mishappening was reported by the minor girls.

3. The Status Report further noted that the daughter of the Petitioner herein, who is one of the allegedly kidnapped minor girls, had filed a petition against her father, the Petitioner herein, before this Court, seeking protection from her parents. This Court had initially directed for the girl to be placed in the custody of her parents. However, the girl had allegedly received beatings at the hands of her parents, and thereafter, this Court, *vide* Order dated 09.03.2021, had directed for the girl to be placed at the Trust and for Chairperson of the Child Welfare Committee (CWC)-X, Alipur, to

ensure that adequate safety, protection and education was provided to the girl.

4. The Status Report further states that after a failed suicide attempt, the daughter of the Petitioner herein was treated at IHBAS, Delhi, and thereafter, she was shifted to Rescue Foundation, a home for children, in Khanjhwala, Delhi. As per the Status Report, the daughter of the Petitioner has repeatedly expressed her unwillingness to go back to the Trust as well as has categorically stated that she had escaped from the Trust on her own and had not been kidnapped by anyone. Keeping this in view, a visit of the Trust was conducted and the following was found:

*“Keeping in view of the above allegations, KGNMT Bakhtawarpur Delhi was visited and found that the building is about 40-45 Years old and due to the old structure of building the condition of rooms and windows are also not found good. The iron roads of the window were found very weak. The back side boundary wall is about 8 feet high and also found in deteriorated condition. As per the present condition of the building it is very much possible that the inmates can escape easily from the above home. The staff of KGNMT Bakhtawarpur Delhi revealed that the CCTV cameras installed in rear side were recently installed only after the above incident of escaping of five minor girls. At present 63 girls are found lodged in the KGNMT Bakhtawarpur KGNMT Bakhtawarpur and total 16 CCTV cameras are found installed. No adequate security guard specially female guards are found deployed in KGNMT Bakhtawarpur Delhi. During enquiry from the staff of KGNMT Bakhtawarpur Delhi it was revealed that total 14 incidents of escape of girls from KGNMT Bakhtawarpur Delhi including present escape of 5 minor girls had taken place. In all the previous 13 incidents also separate FIRs were registered for each incident. No active connivance/negligence of the staff of KGNMT*

*Bakhtawarpur Delhi could be established till date in investigation for escape of 5 minor girls.”*

5. A Reply to the instant writ petition was also filed by Respondent No.3 - Delhi Commission for Protection of Child Rights (DCPCR) wherein it was highlighted that despite repeated letters to the Chairperson of CWC-X, Alipur, seeking a detailed report along with the Individual Care Plan prepared for the girl, no response to the same was received. In fact, *vide* Communication dated 07.09.2021, the Respondent No.3 informed the Chairperson of the CWC-X, Alipur, that the running away of the five minor girls had been brought to its notice, and it was *“disappointing to know that despite continuous exchange of correspondences from 19.03.2021 till 13.08.2021, this Commission was kept in the dark and not informed about the incident occurred in KGNMT CCI”*. Consequently, on 07.09.2021 itself, the Respondent No.3 wrote to the Deputy Director (CPU), Department of Women and Child Development, GNCTD, stating that an inquiry was required to be conducted into the administrative circumstances resulting in the escape of children from the Trust by a duly constituted District Inspection Committee under Section 54 of The Juvenile Justice (Care and Protection of Children) Act, 2015 (*hereinafter referred to as “JJ Act”*).

6. A surprise visit was conducted at the Trust by the Inspection Committee on 29.09.2021 and a report pursuant to the same was submitted wherein it was noted that the security facilities at the Trust were satisfactory, but certain steps could be taken to better it. The steps as suggested by the Inspection Committee have been reproduced as under:

- “1. Installation of PA system and alarm system.*
- 2. Glass (broken glasses) has been installed on some walls but rest of the walls also needs to be covered with glasses or barbed wire.*

3. *Non-functional CCTV cameras should be repair without any delay.*
4. *Staff of the Trust should be motivated regularly to keep bonding with the girls so that the staff may aware of all type of movement/planning of girls well in advance.*
5. *Regular counselling of all girls especially new comers by a professional counsellor will be appreciated.*
6. *Installation of Halogen light at walls and ground area for night security.*
7. *To appoint 2 more security guard for proper security and round in the night time.”*

7. The Petitioner herein, who is the father of one of the allegedly kidnapped minor girls, is of the opinion that the said Trust is being mismanaged, and is being shielded by the Government of National Capital Territory of Delhi and Delhi Police. It is the Petitioner's contention that the accused persons, involved in the kidnapping of the five minor girls, are not being apprehended or interrogated on account of vested interests. During the course of the proceedings, this Court was informed by the learned Counsel for the Petitioner that the Trust, which functions as a "Child Care Institution" (*hereinafter referred to as "CCI"*) under the JJ Act and houses children who are in need of care and protection or are in conflict with law, has not been functioning properly.

8. In light of the observations of the State and the DCPCR, along with the submissions of the learned Counsel for the Petitioner, highlighting the deplorable condition of the Trust, this Court, *vide* Order dated 22.11.2021, deemed it necessary to expand the scope of the instant writ petition to assess the overall functioning of CCIs, and directed for the Joint Director, Children Protection Unit, Department of Women and Child Women, to be present in

Court to assist the Court in issuing directions for better functioning of CCIs.

The relevant portion of the said Order is as under:

*“6. This petition cannot be confined only to the one incident of 26/27th March, 2021 where five (5) minor children escaped from the home. The overall functioning of the institutions has to be assessed to see as to whether the adequate measures have been provided in the homes so as to ensure that the children do not escape from such homes and what facilities have been provided to the children in the homes.*

*7. Let the Joint Director, Child Protection Unit, Department of Women and Child Development, be present in the Court for assisting the Court in giving directions to ensure better functioning of the various child care institutions.”*

9. *Vide* Order dated 09.12.2021, this Court reiterated its observations that the affairs at the Trust as well as other CCIs were appalling in nature, and it had transpired that children housed at these places were either running away or being kidnapped at regular intervals, and that no concrete action was being taken by the State to countervail the same. Since it appeared that there was a lack of empathy being exhibited regarding the well-being and welfare of children, especially the increasing instances of runaway young adolescent girls, this Court deemed it appropriate to appoint Ms. Rebecca Mammen John, learned Senior Advocate, as *Amicus Curiae*, to assist this Court in the instant matter.

10. Ms. John, learned Senior Advocate, submitted a Status Report on the basis of an inspection conducted at the Trust on 22.01.2021 from 11 AM to 1 PM. Certain observations were made by Ms. John, and this Court deems it appropriate to reproduce the same at this juncture:

*“2. The entire property is a 6 and a half acre plot with a high boundary wall surrounding it. Besides the child care home, the Trust also runs a creche and a Goushala within the premises. I drove in through a large gate, which was unlocked from inside to let me in. The gate was manned by a guard and I was allowed in only after I revealed my identity. In addition to this gate, which is the sole gate used for entry and exit, there is another gate close to the main gate which is permanently locked.*

*3. I was first taken to the Provincial Office which functions between 10AM and 6PM. I met Mr. Subhash who is in charge of this branch of the Trust along with Ms. Varuna. the representative from the DCPCR, along with a few others.*

*4. One acre of the land is devoted to the child care home exclusively. The home comprises of 19 rooms, 8 bathrooms and 7 latrines. At present, there are 63 children between 7 and 18 years who are housed in the home; of these, 22 children are between the ages of 15 - 18. On enquiry the following details of the children at the home were revealed:*

- 23 were Orphaned Children*
- 11 Children whose parents were separated from them*
- 16 children with single parents who are unable to care for them*
- 7 children who had run away from their homes*
- 2 children who were child labourers*
- 4 children whose homes could not be traced*

*5. In my conversation with the home officials, I was told that every room typically housed 4 children. Prior to the COVID-19 Pandemic all the children attended either the nearby primary school or went to the Sarvodaya Kanya Vidyalaya. However, for the past*



*two years they have been confined largely within the home and take online classes.*

*6. On enquiry, I was told by Mr. Subhash that three guards were available in the premises around the clock on a rotation basis, with one guard permanently staying within the premises. Recently, two female guards have also been employed and remain present inside the home. There are 16 CCTV cameras spread across the campus with five cameras positioned inside the home. On inspection I later found that the cameras were placed at strategic entry and exit points. They were not placed inside the rooms or bathrooms and do not invade the privacy of the residents.*

*7. The home has an infirmary with 5 beds. There is a full time nurse, Ms. Bhupati, who resides in the premises. A doctor, Dr. Uma, also visits the premises on a weekly basis. For more complex ailments, the children are taken to Raja Harichandra Hospital at Narela. Before the pandemic, dental clinics and health clinics were also organised, including health clinics by Maulana Azad Medical College. On inspection the infirmary was found unoccupied but it was equipped with two oxygen cylinders and 2 oxygen concentrators. Basic medicines were also available at the clinic. On enquiry I was told that the girls were given sanitary pads as per requirement. There was also a sanitary pad dispensing unit in the home along with an eco-friendly sanitary pad disposal unit.*

*8. Next to the infirmary, is a Tuition Room where several girls of different age groups were seen taking online classes. Girls from the same class were found sharing laptops and mobile phones. In all there are 4 laptops and 8 mobile phones which are shared between the girls at different times. The tuition room was covered with daris on the floor. There were attendants sitting inside the room. The room is large and so one part of the room is used for conducting stitching*

*classes and there were about 4 - 5 sewing machines in the room. This room, I was informed, is also used to teach art, craft, and dance.*

*9. Adjacent to the study/tuition room is a room which is a pictorial memorial to Mahatma Gandhi. Several posters and photographs of Mahatma Gandhi were hung on the walls. I was informed that the girls are made aware of India's Freedom Struggle and the role of Mahatma Gandhi in that freedom struggle.*

*10. Adjacent to the Gandhi memorial room is a large dining room which is used by the residents and in keeping with Gandhian traditions, everyone ate while sitting on the floor and the food plates were placed on low stools. Outside the dining room, the weekly menu chart and schedule for the day was displayed.*

*11. The home runs a large kitchen which is supervised by a cook and some of the older resident girls help in doing chores such as peeling vegetables. I was informed by the girls about the menu for the day as well as the fact that they were taught cooking by their didi. There was also a storeroom which stored the provisions that were required for running the kitchen. Outside the kitchen there is a covered area used to wash utensils. There are also several outdoor tandoors/angeethis occasionally used to make tandoori rotis. Although the bathrooms are fitted with geysers, the outdoor tandoors are also used to heat water for bathing purposes. Between this first building which has the rooms mentioned hereinabove and the home, there is a large open space.*

*12. A Goushala is run on one side and it is used to source milk for the home. On the other side is the entrance to the home. On entering the home I was taken to an office which is open throughout the day and night, with a CCTV camera placed outside it. The office keeps a record of everyone in the home along*

*with all details of admission and discharge and other relevant information.*

*13. The home has a large open courtyard with rooms on either side. The corridors which run along the courtyard are covered ensuring that the residents can walk comfortably when it rains. Although it was raining on the day of inspection, and the ground was therefore wet, I was informed that the central courtyard was usually used for playing badminton.*

*14. The home has a TV Room as well as a recreational room with carom boards. A suggestion box has been placed outside these rooms. When asked, I was informed by both the children and the staff that it was used mostly by the children to make suggestions regarding the menu.*

*15. The incident of 27.03.2021, where five senior residents ran away from the premises, took place in a double room adjacent to the TV room. I was shown the window through which the girls ostensibly escaped. The window opens into the backyard which is a large open area leading to the external boundary wall. I was informed that at the time of the incident there was a single grill which was perhaps loose and disconnected from the base on account of its age and the meshing outside was also a single mesh. I was informed that the single grill was easily removed and the mesh was cut using a kitchen knife. All windows in the rooms have since been reinforced with new grills and double mesh. I was also informed that the incident took place between 3-30 - 4:00 AM in the morning, and although Mrs. Sangita Chauhan, who is the warden/counsellor, was sleeping in the adjacent connected room, the girls escaped without her knowledge.*

*16. I was told by the officials at the child care home that all the girls involved in the incident dated 27.03.2021 were adolescent girls between the ages of*

16-17. All of them had run away from their parental homes. Each of these girls had stayed in the home for a short duration of time ranging from 6 days to 2 months. They were provided counselling through which their case histories came to light. All the girls in these cases had love interests which were opposed to by their families. Most had attempted to run away to join their romantic partners. These facts are corroborated by the status report dated 07.09.2021 filed by the GNCT, Delhi before this Hon'ble Court (at Pg. 66 - 71):

- Ms. S had run away from her home with a boy. She was placed in the Child Care Institution on 09.02.2021 by way of order of the Hon'ble Delhi High Court in WP (Crl.) 404/2021.
- Ms. Kh had run away from her home due to her relationship with a boy. She was brought to the Child Care Institution on 21.03.2021.
- Ms. So had run away from her home with a boy. She is six months pregnant and presently staying at Nari Niketan Nirmal Chaya. She was brought to the Child Care Institution on 17.03.2021.
- Ms. P had run away from home after the death of her mother. She did not get along with her stepmother and had been married off by her father. She was brought to the Child Care Institution on 11.12.2020.
- Ms. K had eloped from her village in Nepal with a boy from a neighbouring village. She was brought to Delhi by her stepsister. She was found abandoned and was placed in the Child Care Institution on 27.01.2021.

17. In addition to the reinforcement of the grills and installation of double meshing, CCTV cameras and halogen lights have been installed between the outer walls of the rooms and the boundary walls, as well as at strategically selected places, within and on the perimeter of the home. The outer boundary walls have

also been raised from the earlier 6 & 1/2 feet to the present 8 & 1/2 feet.

18. The two interconnected rooms called Parvati Kutir and Krishna Kutir which accommodate some of the oldest girls, now have two wardens inside the rooms at night. Inspecting the other rooms, I found a room called Shiksha room where all the study materials are kept; bathrooms, latrines, and rooms where the smaller children are housed. I also spoke to some of the younger residents, including J, who recited a poem for me, and her sister R as well as their friend D. They are in standards 1 and 3. I was informed by the children that Upma and milk was served for breakfast that morning.

19. Presently, the children are residing in 14 rooms, of which 10 are downstairs and 4 are upstairs. There are a total of 5 night attendants with a dedicated night attendant for the rooms which are upstairs. The night attendants sleep only once all the children have gone to their rooms and claim to check the rooms in the middle of the night.

20. The home is equipped with an RO and a water dispenser. There are four rooms on the first floor of which one room is used as an isolation room in case of sickness. I was informed that between 2020 and now, not a single girl has contracted COVID. Recently, 22 of them have been vaccinated in the 15 - 18 age group. I also saw the toilets and wash areas and the units for dispensing sanitary napkins.

21. CCTV cameras have been installed in the rear area of the property and the boundary wall has also been raised. There is also a covered guard room on the rear side of the property.

22. Besides the children in the property, I interacted with Mr. Subhash and Ms. Anupama Bannerjee, who

remains in the home permanently, Ms. Vandana, who is the house sister, Ms. Bhupati, who is the nurse, and Ms. Uma Devi who is the vocational teacher. Ms. Rupa and Komal had been brought in for additional security. I spoke to Mr. Imamuddin, the guard who resides in the premises. Ms. Varuna from DCPCR and Mr. Arunendra, the District Child Protection Officer were also present. I also interacted with Ms. Sunita Rodhiya and Ms. Ronica, Institutional Care District Child Protection Officers, who visit the premises on a monthly basis. I verified from the staff and the children that clothes, stationary and soap and other home needs besides food were provided by the home to the children. The photographs taken during the inspection by me of the home are collectively annexed herewith and marked as Annexure A.

***Additional Observations:***

A. The home was clean, the children seemed well provided for and appeared reasonably happy. The children were wearing warm clothes and were masked. The older girls were attending online classes or helping out in the kitchen.

B. The building itself required repair and maintenance but was otherwise not found deficient in basic facilities.

C. There is an urgent need to invest in a few more laptops for the home, considering the present situation where only online classes are being conducted.

D. As the home was on a 6 acre plot, full of trees and vegetation, there was a sense of openness which is conducive to a child care home.

E. Children with parents are allowed to meet their parents once the request is forwarded to the CWC

*and the CWC gives permission for the same. Most of the children don't have parents or have been abandoned by them.*

*F. The barbed wires on the boundary walls are not visible from the home I did not find the conditions to be abysmal or oppressive, on the contrary I was reasonably satisfied with the prevailing conditions when I left the home.*

*G. The incident that took place was perhaps unprecedented, but it was one where some planning had taken place. It is for the police to investigate whether there was any complicity of the home staff and it would not be proper for me to comment on that.*

*H. While it is entirely possible that the home and adjoining areas were cleaned and prepared for the inspection, my overall impression was that the home, though old and in need of structural maintenance, was clean and reasonably well run. extensively interacted with the children and they did not voice any complaints to me, although I gave them time and opportunity to voice their concerns.”*

11. Keeping in view the peculiar facts and circumstances that have been exhibited in the instant writ petition, this Court is of the opinion that the focus of this Judgement shall be on *children in need for care and protection* (“CNCP”), especially the development of adolescent girls and the need to institute measures in CCIs that can aid in their holistic development as well as their assimilation in society after they attain majority.

## **LEGAL FRAMEWORK GOVERNING THE INSTANT SUBJECT**

12. In 1989, the United Nations Convention on the Rights of the Child (UNCRC) was adopted, and since then, it has become one of the most widely ratified treaties in the world. It is a legally-binding international agreement that sets out the civil, political, economic, social and cultural rights of every child, irrespective of their or their parent's race, religion, colour, sex, language, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Article 3 of the treaty categorically notes as follows:

*“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

*2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*

*3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”*



13. Article 20 of the UNCRC gains prominence as it is with regard to children who have been temporarily or permanently deprived of their familial environment, and states that such children shall be entitled to special protection and assistance provided by the State:

***“1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.***

*2. States Parties shall in accordance with their national laws ensure alternative care for such a child.*

*3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.”*

14. In the Indian jurisprudential landscape, Article 15(3) of the Constitution of India, 1950 (*hereinafter referred to as the “Constitution”*), empowers the State to make special provisions for women and children. Article 39(f), a Directive Principle for State Policy (DPSP), stipulates that the policy of the State should ensure 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. Other Articles such as Article 45 and 47 of the Constitution further make the State responsible for ensuring that all the needs of children are met and that their basic needs are protected.

It is pertinent to note at this juncture that though DPSPs are fundamental to the governance of the country, they are not enforceable. However, once a DPSP has been enforced through a statutory enactment, it becomes imperative for the State to enforce the said statute in order to uphold its constitutional obligation [Refer to Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161].

15. The UNCRC was ratified by India on 11.12.1992. In pursuance of the said treaty and in consonance with Articles of the Constitution mentioned hereinabove, a number progressive legislations were passed and policies were formulated to address pressing child rights issues. The JJ Act was enacted in 2000 to provide for the protection of children. This Act was amended twice to address gaps in its implementation and to make the law more child-friendly. A need to re-enact the 2000 Act became expedient, and therefore, the JJ Act, as it stands today, came into force on 15.01.2016. The Preamble of the JJ Act has been reproduced as under for ease of comprehension of the intention of the legislation:

*“An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinafter and for matters connected therewith or incidental thereto.*

*WHEREAS, the provisions of the Constitution confer powers and impose duties, under clause (3) of article*

*15, clauses (e) and (f) of article 39, article 45 and article 47, on the State to ensure that all the needs of children are met and that their basic human rights are fully protected;*

*AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child;*

*AND WHEREAS, it is expedient to re-enact the Juvenile Justice (Care and Protection of Children) Act, 2000 to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection, taking into consideration 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), the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993), and other related international instruments.”*

16. The aims and objectives of the Act, as delineated above, must be borne in mind before proceeding with the instant matter. The JJ Act, in furtherance of these aims and objectives, deals with two categories of children as defined under Section 2 of the JJ Act: i. children in need of care and protection (CNCP), and ii. children in conflict with law (CCL). The category of CNCP has been further divided into 12 categories under Section 2(14) of the JJ Act:

*“(14) “child in need of care and protection” means a child—*

*(i) who is found without any home or settled place of abode and without any ostensible means of subsistence; or*

*(ii) who is found working in contravention of labour laws for the time being in force or is found begging, or living on the street; or*

*(iii) who resides with a person (whether a guardian of the child or not) and such person—*

*(a) has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or*

*(b) has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or*

*(c) has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person; or*

*(iv) who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care, if found so by the Board or the Committee; or*

*(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or*

*(vi) who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him; or*

*(vii) who is missing or run away child, or whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed; or*

*(viii) who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts; or*

*(ix) who is found vulnerable and is likely to be inducted into drug abuse or trafficking; or*

*(x) who is being or is likely to be abused for unconscionable gains; or*

*(xi) who is victim of or affected by any armed conflict, civil unrest or natural calamity; or*

*(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;”*

17. The scope of the aforementioned definitional clause was expanded by the Supreme Court in Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India, (2017) 7 SCC 578, by way of the observation that as the JJ Act was intended for the benefit of children and was intended to protect and foster their rights, the definition of a CNCP must be given a broad and purposeful interpretation. The Supreme Court, therefore, observed that the categories of children under Section 2(14) of the JJ Act ought not to be treated as exhaustive, but illustrative and furthering

the requirements of social justice. The relevant portions of the said Judgement have been reproduced as under:

*“63. Who is a child in need of care and protection? The provisions of the Protection of Children from Sexual Offences Act, 2012 (for short “the Pocsso Act”) do not provide any definition of a child in need of care and protection. But no one can deny that a child victim of sexual abuse or sexual assault or sexual harassment is a child in need of care and protection. Similarly in a given case, a child accused of an offence and brought before the Juvenile Justice Board or any other authority might also be a child in need of care and protection.*

*64. Even though a child in need of care and protection is defined in Section 2(14) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as “the JJ Act”) the definition does not specifically include some categories of children. Consequently, we are of the view that since the JJ Act is intended for the benefit of children and is intended to protect and foster their rights, the definition of a child in need of care and protection must be given a broad interpretation. It would be unfortunate if certain categories of children are left out of the definition, even though they need as much care and protection as categories of children specifically enlisted in the definition. Beneficial legislations of the kind that we are dealing with demand an expansive view to be taken by the courts and all concerned.*

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*68. Read in this light, the definition of a child in need of care and protection given in Section 2(14) of the JJ Act should be given a broad and purposeful interpretation — it ought not to be treated as exhaustive but illustrative and furthering the requirements of social justice. This understanding*

would also be in consonance with Article 40 of the CRC which stipulates that the

*“States parties shall recognise rights of every child accused of an offence and treatment of such a child shall be in a manner consistent with promotion of the child's dignity and worth....”*

69. The learned Amicus Curiae drew our attention to the decisions rendered by some High Courts which have taken a broad-based approach to the meaning of a child in need of care and protection and some other High Courts that have adopted a comparatively narrow interpretation. These decisions were rendered in the context of the Juvenile Justice (Care and Protection of Children) Act, 2000 and would not really be applicable insofar as the JJ Act is concerned. However, this does not detract from her submission that a child in need of care and protection must be given a wider meaning and in addition to some children in conflict with law as discussed above, it must also include victims of sexual abuse or sexual assault or sexual harassment under the POCSO Act as also victims of child trafficking. Such children must also be given protection under the provisions of the JJ Act being victims of crime under the POCSO Act and the Immoral Traffic (Prevention) Act, 1956.

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108.1. The definition of the expression “child in need of care and protection” under Section 2(14) of the JJ Act should not be interpreted as an exhaustive definition. The definition is illustrative and the benefits envisaged for children in need of care and protection should be extended to all such children in fact requiring State care and protection.”

18. Over the years, there has been a shift in the approach to child rights and in addressing the needs of children; from one based on *welfare* to one based on rights of the children. The Juvenile Justice Act, 2015 – A Handbook for Field Administrators, prepared by the National Gender Centre (NGC), Lal Bahadur Shastri National Academy of Administration (LBSNAA), has noted that the latter approach is “*an acceptance of the legal and moral obligations of the State and its institutions to fulfil its duties and responsibilities towards children in ‘Best Interests of the Child’.*” This principle of best interest can be cultivated from the aforementioned Article 3(3) of the UNCRC as well as Section 2(9) of the JJ Act which defines “best interest of the child” as the basis of any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development.

19. Taking into note the best interest of the child, it has been reiterated time and again in all the legislations pertaining to children that long-term institutional care should be the last resort while trying to achieve rehabilitation and social re-integration of a child. This approach has been reflected in the National Policy for Children, 2013, which emphasises on how a positive family environment is important for the overall development of a child, and that children are not to be separated from their parents, except where such separation is necessary in their best interest. In fact, the Policy states the objective of the Policy is “*To secure the rights of children temporarily or permanently deprived of parental care, the State shall endeavour to ensure family and community-based care arrangements including sponsorship, foster care and adoption, with institutionalisation as a measure of last resort, with due regard to the best interests of the child and guaranteeing quality standards of care and protection*”. Moreover, it



has been established in the said Policy that children are not a homogenous group and their different needs require different responses, especially in view of the multi-dimensional vulnerabilities experienced by children in different circumstances.

20. In this context, a CCI, albeit the last possible resort to ensure the safety and shelter for any child, and the least desirable resort for long term or permanent placement of a child, becomes a critical component of the legal framework envisaged by the JJ Act. CCIs, therefore, act as intermediaries designed to provide a safe and nurturing environment where a child can recover from trauma, regain trust, and gain skills to negotiate with the world outside the CCI. CCI has been defined under Section 2(21) of the JJ Act and observes that it is meant to provide care and protection to those children who are in need of such services. Section 41(1) of the JJ Act mandates that all institutions, whether run by a State Government or by voluntary organisations or NGOs which are meant, either wholly or partially, for housing children in need of care and protection, shall be registered under the JJ Act in such manner as may be prescribed.

*“2. (21) “child care institution” means Children Home, open shelter, observation home, special home, place of safety, Specialised Adoption Agency and a fit facility recognised under this Act for providing care and protection to children, who are in need of such services;”*

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*41. (1) Notwithstanding anything contained in any other law for the time being in force, all institutions, whether run by a State Government or by voluntary or non-governmental organisations, which are meant, either wholly or partially, for housing children in need*

*of care and protection or children in conflict with law, shall, be registered under this Act in such manner as may be prescribed, within a period of six months from the date of commencement of this Act, regardless of whether they are receiving grants from the Central Government or, as the case may be, the State Government or not: Provided that the institutions having valid registration under the Juvenile Justice (Care and Protection of Children) Act, 2000 on the date of commencement of this Act shall be deemed to have been registered under this Act.”*

21. The aspect of rehabilitation and re-integration services in institutions registered under the JJ Act and the management thereof has been stipulated under Section 53 of the JJ Act. These services include, but are not limited to, basic requirements such as food, shelter, clothing and medical attention, as well as other requirements such as occupational therapy, life skill education, mental health interventions, etc. The scope of the services is wide and takes into consideration the best interests of the child, as is exhibited by sub-Section (xiii) of the Section which states that “*any other service that may be reasonably be provided in order to ensure the well-being of the child, either directly by the State Government, registered or fit individuals or institutions or through referral services*”. Section 53 has been reproduced here as under:

*“53. (1) The services that shall be provided, by the institutions registered under this Act in the process of rehabilitation and re-integration of children, shall be in such manner as may be prescribed, which may include—*

*(i) basic requirements such as food, shelter, clothing and medical attention as per the prescribed standards;*

*(ii) equipment such as wheel-chairs, prosthetic devices, hearing aids, braille kits, or any other suitable aids and appliances as required, for children with special needs;*

*(iii) appropriate education, including supplementary education, special education, and appropriate education for children with special needs: Provided that for children between the age of six to fourteen years, the provisions of the Right of Children to Free and Compulsory Education Act, 2009 shall apply;*

*(iv) skill development;*

*(v) occupational therapy and life skill education;*

*(vi) mental health interventions, including counselling specific to the need of the child;*

*(vii) recreational activities including sports and cultural activities;*

*(viii) legal aid where required;*

*(ix) referral services for education, vocational training, de-addiction, treatment of diseases where required;*

*(x) case management including preparation and follow up of individual care plan;*

*(xi) birth registration;*

*(xii) assistance for obtaining the proof of identity, where required; and*

*(xiii) any other service that may reasonably be provided in order to ensure the well-being of the child, either directly by the State Government,*

*registered or fit individuals or institutions or through referral services.*

*(2) Every institution shall have a Management Committee, to be set up in a manner as may be prescribed, to manage the institution and monitor the progress of every child.*

*(3) The officer in-charge of every institution, housing children above six years of age, shall facilitate setting up of children's committees for participating in such activities as may be prescribed, for the safety and well-being of children in the institution. ”*

22. The provision for rehabilitation and reintegration services cannot be read in isolation, but must be read, *inter alia*, in conjunction with Section 54 of the JJ Act. The JJ Act mandates for inspections to be conducted at these CCIs under Section 54 which directs for the State Government to appoint Inspection Committees for the State and district, as the case may be, for all institutions registered or recognised to be fit under the JJ Act for such period and for such purposes, as may be prescribed. These Inspection Committees are required to furnish their inspection reports to the District Child Protection Unit or the State Government for further action. Form 46 prepared under Rule 41 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (*hereinafter referred to as the “Model Rules”*) is exhaustive and, if filled up with due seriousness, is capable of going a long way in improving the living conditions of children in CCIs. Furthermore, Section 55 of the JJ Act also mandates for the Central Government or the State Government to independently evaluate the functioning of structures, including registered CCIs, at such period and

through such persons or institutions as may be prescribed by that Government.

23. Rule 64 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, requires the Central Government of the State Government to monitor and evaluate the implementation of the JJ Act annually, including the functioning of CCIs, as well as to carry out a social audit of the same with the support and involvement of organisations working in the field of mental health, child care and protection and autonomous bodies like the National Institute of Public Co-operation and Child Development, Indian Council for Child Welfare, Childline India Foundation, Central and State level Social Welfare Boards, School of Social Work and School of Law.

24. Chapter VI of the Model Rules enumerates provisions on the aspect of rehabilitation and social re-integration, with Rule 21 prescribing the manner of registration of CCIs, and Rule 26 elaborating upon the management and monitoring of CCIs. Rule 26 of the Model Rules has been reproduced as follows:

***“26. Management and Monitoring of Child Care Institutions.-***

*(1) The personnel strength of a Child Care Institution shall be determined according to the duty, posts, hours of duty and category of children that the staff is meant to cater to.*

*(2) The staff of the Child Care Institution shall be subject to control and overall supervision of the Person-in-charge who by order, shall determine their specific duties and responsibilities in keeping with the statutory requirements of the Act and these rules.*

*(3) The number of posts in each category of staff shall be fixed on the basis of capacity of the institution and*

*shall proportionately increase with the increase in the capacity of the institution.*

*(4) In case of Child Care Institutions housing girls, only female Person-in charge and staff shall be appointed.*

*(5) Any person associated with a Child Care Institution should not have been convicted of an offence or have been involved in any immoral act or in act of child abuse or employment of child labour or in an offence involving moral turpitude or hold any office in any political party during his tenure.*

*(6) No person shall be appointed to or work in a Child Care Institution without police verification.*

*(7) The suggested staffing pattern for an institution with a capacity of 100 children may be as below:*

S. No	Personnel/ Staff	Number
1.	Person-in-charge (Superintendent)	1
2.	Probation Officer/Child Welfare Officer/Case Workers (NGOs) A Child Welfare Officer may be designated as Rehabilitation-cum-Placement Officer	3
3.	Counselor/ Psychologists/mental health expert	2
4.	House Mother/ House Father	4
5.	Educator/ Tutor	2(Part time)
6.	Medical Officer (Physician)	1 (on call)
7.	Para-medical staff/ Staff Nurse/Nursing Orderly	1
8.	Store Keeper cum Accountant	1
9.	Art & Craft & activity teacher	1(Part time)
10.	PT Instructor-cum-Yoga trainer	1(Part time)
11.	Cook	2
12.	Helper	2
13.	House keeping	2
14.	Driver	1
15.	Gardener	1(Part time)

*(8) In case of institutions housing infants, provision for ayahs and paramedical staff shall be made as per need.*

*(9) The security personnel shall be deployed as per nature and requirement of the Child Care Institution, taking into consideration strength of the children, age*

*groups, physical and mental status, segregation facility based on the nature of offence and structure of the Institution.*

*(10) The security personnel to be engaged or appointed shall be adequately trained and oriented to deal with the children with sensitivity preferably ex-servicemen or retired para-military personnel or through Director General of Resettlement.*

*(11) The security personnel shall not be with arms or guns but have training and special skills to handle a crisis situation, control violence and escape of children from the institution, conduct search and frisking and security surveillance.”*

25. Flowing from the above provisions, it comes to the notice of this Court that not only does the JJ Act and the Rules emanating therefrom account for the services that are to be disseminated at CCIs for the development of a child being housed at such a CCI, but it also mandates for the Central as well as the State Government to conduct inspections and evaluations of the CCIs in order to ensure that nothing slips through the cracks and that every decision that is taken is for the betterment of the child in question.

26. Moreover, in furtherance of the principle of best interest of the child, minimum standards of care in CCIs have also been formulated. The Integrated Child Protection Scheme (ICPS), for instance, is a centrally-sponsored scheme styled as an instrument to implement the provisions of the JJ Act, draws attention to the minimum standards of care that must be adhered to in letter and spirit, and not only on paper. More importantly, these duties had been established by the Supreme Court in Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India

(supra), which has gone a step further to state that a failure to maintain a basic or minimum standard of care can be actionable as negligence:

*“77. In a given case, failure to maintain a basic or minimum standard of care can be actionable as negligence. In Jacob Mathew v. State of Punjab [Jacob Mathew v. State of Punjab, (2005) 6 SCC 1 : 2005 SCC (Cri) 1369] this Court cited Charlesworth & Percy on Negligence [ T.C. Walton, Charlesworth & Percy on Negligence, (10th Edn., Sweet & Maxwell, London 2001).] and held that the essential components of negligence are : (Jacob Mathew case [Jacob Mathew v. State of Punjab, (2005) 6 SCC 1 : 2005 SCC (Cri) 1369] , SCC pp. 15-16, para 11)*

*“11. ... (1) the existence of a duty to take care, which is owed by the defendant to the complainant;*

*(2) the failure to attain that standard of care, prescribed by the law, thereby committing a breach of such duty; and*

*(3) damage, which is both causally connected with such breach and recognised by the law, has been suffered by the complainant.”*

*Effectively therefore, if the officers of the State do not ensure that minimum standards of care are followed in the child care institutions, they could well be guilty of negligence. Since ours is a welfare State it would be difficult for uncaring officers to absolve themselves of a charge of negligence and also perhaps of a violation of the human rights of children.”*

27. The JJ Act, under Section 46, also mandates for “aftercare” of children leaving the CCI when they turn 18 years of age. These residents, or



young adults, are entitled to “aftercare” support in order to instil in them the tools for independent living and community integration. It is the State’s responsibility to ensure that these young adults receive the requisite care till they turn 21 and, in exceptional circumstances, for two further years. Rule 25 of the Model Rules stipulates how the State Government shall prepare a programme for CCIs who have to leave CCIs on attaining 18 years of age by providing for their education, giving them employable skills and placement as well as providing them places to stay to facilitate their re-integration into the mainstream of society.

### **OBSERVATIONS AND CONCLUSION**

28. Enfold Proactive Health Trust, in collaboration with United Nations International Children’s Emergency Fund (UNICEF), published a report on 08.04.2020 titled “Guidelines for Child Care Institutions under the Juvenile Justice (Care and Protection of Children) Act, 2015 in the Context of COVID-19”, wherein it was observed that children residing in CCIs were already vulnerable to the negative impact of being institutionalised and deprived of their liberty, and how an inadequate care environment can impair a child’s emotional and social development, thereby leaving them at risk of being violated, exploited, abused and neglected. In a paper titled “Children in Institutional Care: Delayed Development and Resilience” published in Society for Research in Child Development, Volume 76, Issue 4, it was stated that children exposed to institutional care often suffer from “structural neglect” which may include minimum physical resources, unfavourable and unstable staffing patterns, and socially emotionally inadequate caregiver-child interactions.

29. In a module formulated on “CCIs under the JJ Act”, UNICEF has explored the reasoning as to why institutional care should be the last alternative. The relevant portion of the module is as follows:

*“Step 8: Why institutional care should be the last alternative?”*

*It is universally accepted that even the best institution cannot substitute the nurturing care that a family can give to a child. However, there are some children for whom that may be the only option. So, it is important to improve the quality of child care in institutions, develop small “Group Homes” and simultaneously develop family based alternative services. Studies and experiences have shown that a child who has been deprived of family care and brought up in a large impersonal institution may show some of the following problems:*

- *Lack of individual attention, individualisation, one-to-one caring and interaction makes it difficult for a child to feel secure and bonded to one caregiver.*
- *“Multiple Mothering” syndrome - when a child is cared for by changing staff, the child is unable to form an attachment with any one person. This leads to a lot of emotional isolation and insecurity in the child.*
- *Excessive “Routinisation” and “Regementisation” does not take into account individual needs of the child and hence the child either becomes very reticent and submissive or may react by becoming defiant and rebellious.*
- *Inability to form lasting, meaningful relationships. The child finds it difficult to trust people in authority or even peers when he has*

*had too many negative experiences. These negativities have been shown to be carried on in adult life in various researches as much as that children coming out of institutions are maladjusted in the society.*

- *Due to the psychological, emotional and nutritional deprivation these children may also show poor academic performance, and other behavioural problems.*
- *The “Institutionalised Child Syndrome” is sometimes evident in the child’s “self-esteem”. Some children may develop poor self-worth, which may reflect later in inter personal relationship problems”*

30. The negative impact of institutional care is also showcased by the occasional escape of children from CCIs which has prompted the National Commission for Protection of Child Rights (NCPCR) to formulate a Standard Operation Procedure (SOP) on Escape/Runaway/Sexual Abuse/Death of Children in Child Care Institutions. This SOP describes the procedure that must be followed while investigating cases of escape, run-away or missing children in CCIs. It has been stated that in cases of escape or run away of child from the CCI, the Superintendent/Person-in-charge, or immediate Superior Officer (in case Superintendent/Person-in-charge is absent) or any other person concerned with safety and well-being of the child, shall take the prescribed action immediately, and no punitive action is to be taken against the errant child who has been found/recovered and brought back to the CCI. The SOP also provides for certain preventive steps that may be taken, including organisation of awareness workshops to inform the inmates of vulnerabilities, such as sexual abuse, kidnapping, etc.

31. It must further be borne in mind that older adolescent girls, such as the Petitioner's daughter, may face peculiar challenges that require unique consideration. These girls more often than not become a part of the juvenile justice system in a bid to escape oppressive home environments caused by poverty, insecurity, and by virtue of entrenched patriarchy. These girls aspire for better education, healthcare and vocational training, and also wish to explore non-coercive relationships. Such aspirations and needs are met with parental or familial disapproval, and in such situations, the girl's own choices and actions are made subordinate to the choices of her family who staunchly exercise control over the autonomy of the girl.

32. It has been brought to the notice of this Court by the learned *Amicus Curiae* that the fact the girls at the Trust, including the Petitioner's daughter, escaped the Trust within weeks of their arrival, only reveals their desperation and state of mind; they not only found their own home environment to be oppressive, but they also perceived the Trust to be a stumbling block to their aspirations in life. Such girls become victims of oppressive home structures, inter-generational poverty, lack of opportunity, and the burden of gendered work. In addition to the same, their lack of autonomy extends to an absence of choice when it comes to choosing romantic partners. Many of these young girls enter into romantic relationships and, therefore, face tensions and hostilities within the family structure. This can lead to the creation of a stifling atmosphere within the family which is often marred by attempts to either get the girl forcefully married; at worst, she may also be subjected to physical violence, and all of this is done to negate the girl's assertion of choice and agency.

33. In this context, when girls of this vulnerable age are housed at CCIs, one needs to consider their psychosocial needs to create a safe, nurturing and

habitable environment for them. A sensitive approach to their rehabilitation should be premised on the myriad range of anxieties, insecurities and uncertainties that they may be experiencing, such as i. being placed in the alien environment of a CCI; ii. they may fear legal action against their romantic partners, after being separated from them; iii. they may feel especially vulnerable and alone considering the rejection and assault that they have faced at the hands of primary care givers, iv. they may also apprehend societal backlash from extended family, peers, neighbours, etc.

34. It is the perception of CCIs that they are environments that must be escaped from that requires a complete overhaul by way of sensitisation of the individuals who are engaged with these CCIs. Despite being a last resort measure, CCIs remain pertinent for those children for whom there are no feasible options other than institutional placement. Therefore, there is a need for existing institutions to be improved in a way that individualised quality standards of care are provided and the rights of the child remain safeguarded.

35. As can be demonstrated from the statutory provisions as well as the judicial pronouncements in relation to those provisions, it cannot be said that there is a dearth in the legal stipulations governing the field. However, there is a clear schism between the promulgation of the provisions and their implementation on the ground. It is unfortunate to observe that the apathy of the authorities is seeping through the cracks and hampering the development of those who are at the age wherein they require consistent nourishment; mental, physical and nutritional. The recurrent running away of these young girls reveals that there is clearly a certain dissatisfaction that they are experiencing at these CCIs which incites their need to escape from the CCIs; it could either be that their basic needs remain unmet or that they are not

receiving the physical or mental nourishment that they so desire or require at that age.

36. It is indeed a sorry state of affairs which requires rectification at the earliest. The Juvenile Justice Act, 2015 – A Handbook for Field Administrators, prepared by the National Gender Centre (NGC), Lal Bahadur Shastri National Academy of Administration (LBSNAA), in collaboration with UNICEF, has aptly noted that unlike an adult, a child cannot access the ‘system’ on their own, and therefore, it becomes imperative that the ‘system’ reaches the child. The responsibility does fall on the governance system at different levels, and proactive measures need to be taken to ensure that children exposed to institutional care receive the type of care needed for growth in all dimensions.

37. At this juncture, before delving into the guidelines that shall be delineated in the instant Judgement, this Court wishes to address a possible hindrance to the implementation of the provisions mentioned hereinabove. Shortage of funds cannot be an excuse for non-implementation of the statutory provisions. It has been observed in Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India (supra), that the problem is not a lack of funds, but the absence of a will to gainfully utilise the available grants that are allocated towards child welfare that are lying unspent. This has been reiterated in a piece written by journalist Namita Bhandare published by India Spend, titled “Abuse of Children in India’s Institutions Reveals Nationwide Crisis of Reform”. Further, it is the constitutional obligation of the State to ensure that for safeguarding and fostering the rights of children, adequate funds are available, particularly for CNCs. The State cannot conflate non-availability of funds to shirk their obligations with inefficient utilisation of grants. This Court, therefore,

beseeches the concerned authorities to make a serious attempt to implement the guidelines enumerated in this Judgement, which are in consonance with the existing statutory provisions and cast an iron-clad obligation on the said authorities.

### **GUIDELINES**

38. In view of the foregoing observations, this Court deems it fit to lay the down the following guidelines that must be adopted by the State, for which professional help may be taken from the stakeholders, including civil society:

- i. Data with regard to the number of functioning CCIs and the children residing therein should be collected and updated every quarter of the year. The exercise with regard to the children residing at a CCI should be conducted by the said CCI, and a consolidated report should be prepared on the same at the end of the year, which should be analysed by the Ministry of Women and Child Development, with professional help being sought from the National Institute of Public Cooperation and Child Development (NIPCCD). The findings of the analysis of the data, along with the data, should be published on a public portal.

The idea behind the collection of data is for purposes of introspection as well as for improvement of services available at a CCI. It will enable the CCIs to improve their infrastructure

and stock up on the amenities that may be needed by the children. It is also a relevant tool of public accountability and can keep the CCIs in check in order to prevent them from stagnating or deteriorating.

ii. Individual Care Plans, under Rule 19 read with Form 7 of the Model Rules, must be formulated for every child within 7 days of the child being brought to the CCI, and they should not be prepared in a mechanical or a casual manner. The plans should be tailored not only to psychological and physical capabilities of the child, but it should take into consideration the future aspirations of the child, based on their case history, circumstances and individual needs. These plans should be cultivated by the resident counsellor who has had interpersonal interactions with the child and has considerable understanding of the psyche of the child.

iii. A gender-neutral Education Plan with special emphasis on reproductive health must be formulated for residents of CCIs between the ages of 11-18. While more often than not, reproductive health is taught only to young adolescent girls as it is assumed that this area of learning only pertains to them, this presumption should be done away with, and the teachings should be extended to everyone housed at all CCIs. A gender neutral plan will not only create awareness amongst all genders, but will also incite empathy and sensitivity with regard to reproductive health.



iv. It becomes pertinent to note that technology has permeated through our lives and it is next to impossible to conduct any form of activity without having access to devices such as mobile phones and laptops. In this regard, it is necessary to ensure that every CCI has access to the requisite number of gadgets that can be allocated accordingly amongst the children and no child should be deprived of their right to education on account of lack of access to any technological device. Provisions are also to be made to ensure that the children have access to a reliable and fast internet connection. However, all children must be taught the implications of unhampered access to internet and basics of cybercrime. This access to internet should be monitored to the extent that it protects the children from any untoward incident, but also does not infringe upon their curiosity and sense of learning.

v. Recreational activities should be made available, with hobbies such as playing of musical instruments, singing, dancing, etc. being taught to the children. In this regard, the CCIs can reach out to academies such as the YWCA for pro bono dissemination of classes. All children must also be made to partake in outdoor physical activities such as badminton, basketball, etc. (depending on the space available at the CCI) in order for the development of their physical and mental well-being. Play areas should be created/designated, with swings and other equipment for younger children. Research indicates that

outlets such as physical outdoor sports and other hobbies aid children who are emotionally vulnerable and at risk, in developing healthy coping mechanisms, thereby steering them away from potential vices such as drug abuse and resorting to physical violence.

vi. While access to healthcare is a must and cannot be compromised with at any point, it becomes imperative to emphasise that, considering the vulnerability of the children housed at the CCIs, there must be unimpeded access to mental healthcare in particular. An independent counsellor/child psychologist who is well-versed with dealing with various problems afflicting the psyche of a child must be present at the CCI on a bi-weekly basis, and should also be available in case of emergencies. As has been stated above, the category of a “child” cannot be generalised; it is a homogenous group and their different needs require different responses, especially in view of the multi-dimensional vulnerabilities experienced by children in different circumstances. The counsellor must address these multi-dimensional vulnerabilities while remaining cognisant of the fact that insensitive responses to these vulnerabilities exhibited by a child who is at a malleable age can lead to unfortunate repercussions.

vii. In January 2022, the Department of Women and Child Development, Delhi, had organised a “Bal Samvad” for girls residing in government-run CCIs. The same was done in

collaboration with organisations such as Room to Read and Space2Grow known for creating an environment to inculcate both literacy skills and reading habits in young girls, as well as to create sustainable solutions for complex social problems. The purpose of the “Bal Samvad” was take suggestions from children residing at the CCIs regarding upgrade of the infrastructure of the CCI.

This Court is of the opinion that similar *samvads* (discussions) can take place at individual CCIs every month to record suggestions of the children as well as to give an opportunity to all the children to voice their concerns, apprehensions and feelings. Creative activities can be organised, such as preparation of drawing posters, poetry recitation, dramatics, in order to provide children various outlets for expressing their feelings and views. This shall be in addition to the suggestion boxes present at the CCIs and will also instil a sense of leadership in the children, thereby aiding in their overall growth as individuals as well as providing them with a platform to express their opinions.

viii. Flowing from the above, CCIs must ensure that children, especially older adolescent children, are given an effective right to be heard. Mechanisms should be created to enable children in CCIs to participate in decisions concerning their health, including placement, treatment, etc., and to demonstrate that their views are respected and given due weight in accordance

with their age and maturity. An opportunity should be provided to the child to take increasing responsibility for their own health and development. This is especially with regard to those children who are short of turning major and will be required to leave the CCI.

ix. A centralised round-the-clock helpline should be set up which the children should be made aware of and allowed to access in case they have grievances with the CCI that they are placed at, and this helpline should be manned by an authority specialising in child care and development. In addition to the help, a mechanism for grievance redressal should be set up by an independent authority and made available for children to express their views and concerns to the appropriate authorities. This mechanism should be accessible to the children at all times.

x. Staffing of the CCIs requires urgent intervention. Rule 67 of the Model Rules takes into account the security measures that are taken to ensure the safety of the children. The safety of the children remains of primary importance, and to improve supervision at night and to prevent incidents such as the one on 27.03.2021, a “wide-awake” supervision staff member must be assigned each night. Female security guards should be provided at CCIs housing girls, and security personnel should be available in reserve for any emergency situation.

xi. Measures taken by CCIs cannot be limited to surveillance by way of CCTVs and security guards, especially in view of how children are also entitled to their right to privacy and confidentiality. It is also pertinent to note that at no juncture can a CCI be made to resemble a detention centre or a prison; the atmosphere at a CCI should be akin to that of a nurturing home. In such circumstances, there is a need for the sensitisation of the workers, security guards and other workers. They must be taught how to deal with children, especially those children approaching maturity and are prone to exhibiting rebelliousness, with kindness and patience. Specific teaching should be imparted to these individuals that breaks down gender stereotypes. Cooking, for instance, should be taught to all children by virtue of the same being an important life skill, and not from the perspective of it being a duty that solely resides in the realm of the female gender. In this regard, it has been brought to the notice of this Court that the children are made to take up menial jobs, such as cooking and cleaning, in the name of chores. This practice requires to be stopped. While children should be taught these basic life skills, but they should not be utilised to *only* perform these chores in place of those who are engaged to conduct these jobs.

xii. Despite “aftercare” being mandated under Section 46 of the JJ Act and Rule 25 of the Model Rules, this fails to be a focus area for most CCIs. For children aged 13-14 and above, CCIs must devise individual plans that are geared towards

formulating a clear path to respectable living for the children. Career awareness, vocational training and basic financial literacy should be present at the core of such plans. Young adolescent girls, in particular, must be taught the importance of financial independence in breaking the chains of a patriarchal society.

In addition to these basic skills, the individual plans must take into consideration the skills and the inclinations of the child themselves. In this regard, partnerships may be formed with non-profit organisations who may aid the CCIs in helping the children realise their full potential as well as to train them to apply for jobs and thereafter secure employment for them after they leave the CCI. Children wanting to pursue higher studies should also be given the requisite training and education required in this regard. The care that is provided to these children must emulate the care and concern that is exhibited by parents during the formative years of their child.

39. Even though the legal framework for ensuring proper functioning of the CCIs is in place, this Court can take judicial notice of the apathy in the functioning of the CCIs and the failure on the part of the CCIs in not providing a conducive environment for the children housed at the CCIs. It appears that there is a complete lack of direction and initiative amongst the persons manning these institutions as to how they must guide the children towards a better future. In order to ensure this, the Secretary, Department of Women and Child Development, and the Chairperson, Delhi Commission

for Protection of Child Rights, are directed to conduct periodic meetings at least once in every three months to monitor the functioning of the CCIs. They shall also ensure periodic inspection of all CCIs in Delhi, which must be conducted at least once in three months. The report of the functioning of every CCI and the Minutes of Meeting conducted by the Secretary - Department of Women and Child Development and the Chairperson - Delhi Commission for Protection of Child Rights, shall be filed in this Court twice a year, i.e. on every 31<sup>st</sup> July and 31<sup>st</sup> January of each calendar year.

40. This Court acknowledges the contribution of the learned *Amicus Curiae*, Ms. Rebecca Mammen John, and is pleased to extend its immense gratitude to her for her invaluable assistance and inputs on an issue that is afflicting and impeding growth of society as a whole.

41. While there may be some other issues that may have remained unaddressed, this Court feels compelled to state that the legislations pertaining to CNCs is vast and comprehensive, and the concerned authorities must, without fail, comply with and implement the provisions stipulated thereunder. We, therefore, grant liberty to the learned *Amicus Curiae* to move an appropriate application in this regard, including any application for modification or clarification of the guidelines given above.

42. In light of the above, the original reliefs sought in the instant petition are dismissed, along with the pending application(s), if any.

**SUBRAMONIUM PRASAD, J**

**SEPTEMBER 28, 2022**

*Rahul*