

^REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 102 OF 2007

Re: Exploitation of Children in Orphanages
in the State of Tamil Nadu

â- |.Petitioner

er

versus

Union of India & Ors.

â- |.Respondents

J U D G M E N T

Madan B. Lokur, J.

1. This writ petition was taken up on the basis of an article published in the Hindi newspaper â- SHindustanâ- \235 (Lucknow Edition) on 4 th

July, 2007. The article was written by Ms. Anjali Sinha and the translated caption of the article is â- SOrphanage or Places for Child Abuseâ- \235. The article was forwarded to this Court by one A.S. Choudhury along with a letter and that is the genesis of this petition which w

as registered as a Public Interest Litigation (PIL) on 10 th September, 2007.

Ms. Aparna Bhat was appointed as Amicus Curiae to assist this Court.

At the outset we must and do acknowledge the unstinting and excellent

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efforts put in by Ms. Aparna Bhat over the last 10 years in rendering assistance in this matter.

2. Broadly, the article written by Ms. Anjali Sinha mentions that orphanages in Mahabalipuram in Tamil Nadu, run by NGOs as well as government institutions were reportedly involved in systematic sexual abuse of children. A sting operation indicated that sexual services of children were being provided to foreigners as well as Indian tourists and that the rates of children whose sexual services were being taken were fixed over telephone or in a meeting at the orphanage.

3. It is further stated that in a program organized by the State Commission for Women in Tamil Nadu, representatives of the National Commission for Women participated and it was acknowledged that government schools have become unsafe for girl students due to sexual abuse. The incident of an eight year old girl who was harassed by her Principal was mentioned and it was noted that the Principal was only transferred out by way of punishment. Another incident was mentioned where the school teacher misbehaved with students in the presence of other students in a closed room.

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4. The then Ministry of Family and Child Welfare along with UNICEF brought out a report on the condition of children in which it was reported that 53% of children suffered from sexual abuse. Children were reported to be the subject of institutional abuse as well as by relatives.

5. On these broad facts Ms. Anjali Sinha suggested that the problem of sexual abuse of children especially in government institutions has become a serious problem and requires immediate redressal. She made some suggestions including a Counseling Cell in each school where children are taught how to recognize abuse and providing a complaint mechanism accessible to children in case of any such incident. Proceedings in this Court

6. Over the years, this Court passed several orders and also mentioned that certain other issues such as trafficking of children, schools being occupied by Central Para Military Forces and the right to education guaranteed to children require consideration. In other words, this Court sought to expand the scope of this PIL to include the rights of

children in general.

7. In an order passed on 7 th February, 2013 the learned Additional W.P. (Crl.) No. 102 of 2007

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Solicitor General and the learned Amicus submitted that the main reason for this Court issuing various orders is to ensure that the provisions for the rights of children as well as provisions for proper facilities to children in education as also health are implemented. It was submitted that obviously the rights of children can be adequately secured only if the monitoring and controlling provisions contained in statutes relating to children such as The Commissions for Protection of Child Rights Act, 2005, The Right of Children to Free and Compulsory Education Act, 2009, The Protection of Children from Sexual Offences Act, 2012 and The Juvenile Justice (Care and Protection of Children) Act, 2000 are fully implemented.

8. A detailed order was passed by this Court on 16 th December, 2013

lamenting that despite the directions issued, little or no progress was made by the States in protecting the rights of children. As far as the Commissions for the Protection of Child Rights are concerned, they exist only on paper since in some cases the Chairperson had not been appointed or the Members had not been appointed or no rules and regulations had been framed. This Court observed that the lackadaisical manner in which the States and the Union Territories had responded to the rights of children made it necessary to draw attention to the

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constitutional rights guaranteed to children. It was observed that the inaction of the States was in the teeth of the directions given by this

Court and additionally the States and Union Territories ought to realize that they have to operate in accordance with the provisions of the Constitution of India.

9. Accordingly, specific information was sought from each State and Union Territory regarding efforts made by the respective governments. Affidavits were filed by the States and Union Territories from time to time as an attempt to respond to the questions raised by this Court regarding action taken by the concerned governments in protecting the rights of children as well as implementation of the statutes mentioned above. The responses were disheartening then and the situation has not changed substantially even after almost a decade since this Court took cognizance of the matter. Progress, if any, has been marginal. Unfortunately, it appears that the governments of some of the States and Union Territories have little remedial or pro-active concern for children.

10. On 20 th

March, 2015 this Court raised the need for a social audit in terms of Rule 64 of the Juvenile Justice (Care and Protection of

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Children) Rules, 2007 and the utilization of funds given to the States and Union Territories under the Integrated Child Protection Scheme.

11. On 17 th

April, 2015 this Court raised the issue of a concurrent monitoring audit under the Integrated Child Protection Scheme as well as the establishment of Juvenile Justice Boards, Child Welfare Committees, Special Juvenile Police Units, functioning of Child Care Institutions and functioning of adoption agencies.

12. On 31 st

July, 2015 at the instance of the learned Amicus, the issue of formulating Child Care Plans was discussed in addition to laying down a policy for conducting social audits. On 28 th

August, 2015, the issue of vacancies in the National Commission for the Protection of Child Rights was raised by this Court. On 30th October, 2015 the format for social audits was discussed, in the context of finalizing something workable and pragmatic.

13. Since it appeared that there was a lack of seriousness and more tragically a lack of empathy towards the well being and welfare of children amongst some of the States and Union Territories and complete apathy with respect to the disturbingly increasing instances of child sexual abuse, often by someone in a position of authority and ineffective W.P. (Crl.) No. 102 of 2007

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implementation of the laws passed by Parliament virtually making parliamentary legislation irrelevant, we heard detailed submissions of all the parties with the intention of passing appropriate directions so as to ensure the meaningful implementation of the statutes already enacted by Parliament. It must be appreciated that the Juvenile Justice (Care and Protection of Children) Act, 2015 is a medium for the State to honour the Directive Principles of State Policy particularly under Article 39(f) of the Constitution by giving opportunities to children to develop in a healthy manner and in conditions of freedom and dignity. Indeed, though the Directive Principles of State Policy are fundamental to the governance of the country, they are not enforceable. However, as held in *Bandhua Mukti Morcha v. Union of India*, once a directive principle is enforced through law the State must be obligated to enforce the statute to uphold its constitutional obligation. 1

14. In this context, it is pertinent to note that India acceded to the Convention on the Rights of the Child (CRC) on the 11th December, 1

(1984) 3 SCC 161

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1992. Article 19 of the CRC obligates the State Parties to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse". 235

15. Keeping all this in mind, the learned Amicus focused on three principal issues namely (1) Children in need of care and protection; (2) Trafficked children (3) Street children. We do not propose to consider the plight of trafficked or street children, since that would mean losing focus on the issues raised by Ms. Anjali Sinha. We leave open the issues of trafficked children and street children for consideration in an appropriate case.

16. On the rights of children in need of care and protection it was submitted that issues relating to child care institutions whether managed by the State Government or by NGOs or other voluntary organizations need to follow certain minimum standards of care and in addition, rehabilitation of such children must be a priority.

Children in need of care and protection

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17. 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 "POCSO 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.

18. 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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19. In *Workmen v. Management of American Express International Banking Corporation* 2

this Court held in paragraph 4 of the Report that:

“The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced.”

20. A similar view was expressed in *Regional Director, ESI Corporation. v. Francis De Costa* 3

when it was observed that “It is settled law that to prevent injustice or to promote justice and to effectuate the object and purpose of the welfare legislation, broad interpretation should be given, even if it requires a departure from literal construction.”

21. The necessity of giving a purposeful interpretation to a provision in a statute was recognized in *MSR Leathers v. S. Palaniappan* 4

when this Court observed that:

(1985) 4 SCC 71
1993 Supp (4) SCC 100

(2013) 1 SCC 177
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“..one of the salutary principles of interpretation of statutes is to adopt an interpretation which promotes and advances the object sought to be achieved by the legislation, in preference to an interpretation which defeats such object. This Court has in a long line of decisions recognised purposive interpretation as a sound principle for the courts to adopt while interpreting statutory provisions.”

A similar view was expressed, though in a different context, in *Badshah v. Urmila Badshah Godse* . 5

A far more detailed discussion on the subject is to be found in the Constitution Bench decision of this Court in *Abhiram Singh v. C.D. Commachen* . 6

22. 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 State Parties shall recognize 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- \235.

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(2014) 1 SCC 188

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(2017) 2 SCC 629

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23. Learned Amicus drew our attention to 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) 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.

Child care institutions

24. Children in need of care and protection are given shelter in homes that are managed by the State Government or by NGOs or by voluntary organizations. In this context, it is necessary to draw attention to Section 41 of the JJ Act which mandates, notwithstanding anything

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contained in any other law for the time being in force, that all institutions, whether run by a State Government or by voluntary organizations 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 within six months of the commencement of the said Act. The JJ Act came into force on 15 th January, 2016 but we were informed that the process of registration is underway and not yet complete.

25. In this day and age when high quality technology is available and there is no shortage of manpower in the country we are unable to appreciate why the provisions of Section 41 of JJ Act have not yet been fully implemented particularly as regards registration of child care institutions. It is virtually impossible to find out what is going on within its four walls. The article by Ms. Anjali Sinha is a prime example of what can happen in child care institutions. It is not clear from the article whether all the institutions referred to were registered or not, but surely the government run institutions must have been registered or licensed. Therefore, if activities of the nature mentioned by Ms. Anjali Sinha in her article are carried out in government run institutions, one can only

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imagine what possibly can go wrong in unregistered institutions, which are managed beyond the law.

26. Apart from their registration, the statute requires quite a few salutary actions to be taken by such institutions including recording the residential capacity and purpose of the child care institution. Rule 21 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (hereinafter referred to as the Model Rules) specifies the manner of registration of child care institutions and provides, inter alia, the availability of the bye-laws and memorandum of association, office bearers etc. of such institutions. The State Government is obligated to consider an application for registration of a child care institution (in Form 27) in light of aspects like whether provision exists for the care and protection of children, their health, education, boarding and lodging

facilities, vocational studies and rehabilitation (among others things). It is only then that a certificate of registration can be issued. The State Government is also obligated to conduct an inspection of an applicant institution and it appears to us that if such an inspection is faithfully and sincerely carried out, it will reveal the dark underbelly, if any, of a dubious child care institution such as those referred to by Ms. Anjali Sinha. The strict implementation of the provisions of the JJ Act will go

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a long way in making the life of children in such child care institutions safer and far more comfortable than it has been and also reduce the possibility of crimes such as trafficking, sexual abuse or sexual assault or sexual harassment of children. If the registration of child care institutions is not complete, their management obviously cannot be supervised. Therefore, a misstep in the very first stage could have a chain reaction and perhaps disastrous consequences in some cases as is evident from the incidents of child abuse in institutions as brought out by Ms. Anjali Sinha.

Minimum Standards of care

27. Article 3 of the CRC mandates that all actions concerning children undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies shall have the best interest of the children as a primary consideration. Article 3(3) of the CRC specifically obligates the State Parties to ensure that institutions responsible for care and protection of children shall conform to standards laid down by competent authorities, particularly in areas of safety, health, staff and supervision. However, the minimum standards of care prescribed for institutions cannot be ensured if the child care institution is not identified and registered.

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28. In this regard it is necessary to draw attention to the provisions of Chapter VI of the Model Rules particularly the series of rules starting from Rule 26 onwards. Amongst other things, these Rules deal with the staffing pattern of child care institutions, physical infrastructure, clothing, bedding, toiletries and other articles, sanitation and hygiene, daily routine, nutrition and diet scale, medical health, mental health, education, vocational and recreational facilities and genuine efforts in the rehabilitation and re-integration of such children into society. All these requirements are rendered unenforceable in the absence of registration of child care institutions.

29. The Integrated Child Protection Scheme, which also concerns itself with the minimum standards of care in child care institutions, refers to several of these requirements and also draws attention to the rehabilitation programme of children and their recreation. The minimum standards of care prescribed for child care institutions must be adhered to in letter and spirit and not only on paper.

30. We have been given to understand by the learned Amicus that unfortunately, even in registered child care institutions, many of the statutory facilities and requirements are missing. If that be so, we can

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only imagine the living conditions of children in unregistered institutions.

31. 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* 7

this Court cited *Charlesworth & Percy on Negligence* 8 and held

that the essential components of negligence are: (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 recognized 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.

Utilization of grants

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(2005) 6 SCC 1

8

10 th

Edition (2001)

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32. During the course of hearing, we found that many of the Model Rules though workable and beneficial, exist only on paper and there has been no serious attempt to implement the provisions or the requirements under the Integrated Child Protection Scheme. One of the concerns that kept coming up as an excuse for non-implementation of the Rules was a so-called shortage of funds. We are surprised that such an excuse was advanced even though a large amount allocated towards child welfare is lying unspent.

33. Really therefore, the problem is not a lack of funds but the absence of a will to gainfully utilize the available grants. In this context, learned Amicus brought to our notice by way of an example, the statement of expenditure under the Integrated Child Protection Scheme for the year 2013-14. This indicates that the unspent grant is over Rs.3000 lakhs. (This figure does not include unspent amounts by the State of Andhra Pradesh and the State of Uttarakhand). Therefore, it cannot be said that there is a shortage of funds. The chart brought on

record is as follows:-

Year-wise details of unspent grants

Sl. No. Name of the State Unspent
(Amount in Lakhs)

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2013-14

1 Andhra Pradesh 2999.28 *

2 Arunachal Pradesh 147.05

3 Assam 148.47

4 Bihar 442.14

5 Chhattisgarh 0.00

6 Goa -

7 Gujarat 545.23

8 Haryana 238.92

9 Himachal Pradesh 138.10

10 Jammu & Kashmir -

11 Jharkhand 147.21

12 Karnataka 57.94

13 Kerala 291.52

14 Madhya Pradesh 1084.67

15 Maharashtra 0.00

16 Manipur 473.13

17 Meghalaya 0.00

18 Mizoram 0.00

19 Nagaland 0.00

20 Orissa 2.63

21 Punjab 749.37

22 Rajasthan 253.33

23 Sikkim 50.36

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25 Tripura 0.00
26 Uttar Pradesh 99.92
27 Uttarakhand 333.92*
28 West Bengal 268.95
29 Andaman & Nicobar
Island -
30 Chandigarh 25.17
31 Dadra & Nagar
Haveli 9.63
32 Daman & Diu 58.63
33 Delhi 676.68
34 Lakshadweep -
35 Puducherry -
Total 6498.27

* States have not submitted their Statement of Expenditure (SOE)

We are told that the same situation continued for subsequent years as well.

34. No doubt, 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 children who are in need of care and protection. The State cannot conflate non-availability of funds to shirk

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their obligations with inefficient utilization of grants. We are pained that such an excuse is being trotted out.

National and State Commissions

35. Parliament has, of course, appreciated the need for protecting the rights of children in many of the ways that we have mentioned above and that is why the Commissions for Protection of Child Rights Act, 2005 was enacted. In fact the Preamble to the said Act is extremely significant and brings into focus not only the necessity of protecting the rights of children generally but also as a part of our obligations to the

international community. The Preamble to the Commissions for Protection of Child Rights Act, 2005 (hereinafter referred to as "the CPCRA") reads as follows:

"An Act to provide for the constitution of a National Commission and State Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights and for matters connected therewith or incidental thereto.

WHEREAS India participated in the United Nations (UN) General Assembly Summit in 1990, which adopted a Declaration on Survival, Protection and Development of Children;

AND WHEREAS India has also acceded to the Convention on the Rights of the Child (CRC) on the 11th December, 1992;

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AND WHEREAS CRC is an international treaty that makes it incumbent upon the signatory States to take all necessary steps to protect children's rights enumerated in the Convention;

AND WHEREAS in order to ensure protection of rights of children one of the recent initiatives that the Government have taken for Children is the adoption of National Charter for Children, 2003;

AND WHEREAS the UN General Assembly Special Session on Children held in May 2002 adopted an Outcome Document titled "SA World Fit for Children" containing the goals, objectives, strategies and activities to be undertaken by the

member countries for the current decade;

AND WHEREAS it is expedient to enact a law relating to children to give effect to the policies adopted by the Government in this regard, standards prescribed in the CRC, and all other relevant international instruments;

36. To fulfill the obligations to children, the CPCR Act provides for the constitution of a National Commission for Protection of Child Rights (for short "the NCPCR") and for the constitution of State Commissions for Protection of Child Rights (for short "the SCPCR"). These Commissions are intended to function under the provisions of the CPCR Act and their vast range of functions has been delineated in Section 13 as well as in Section 24 of the CPCR Act.

37. It was pointed out by the learned Amicus that the NCPCR and the SCPCR can play a very crucial role in fostering child rights. This deserves to be recognized, but is unfortunately overlooked both by the W.P. (Crl.) No. 102 of 2007

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Union Government as well as by the State Governments. She pointed out that there are a large number of vacancies in many of these bodies and in fact the NCPCR was, at one time, without any Chairperson for more than a year. Some of the State Governments have also not bothered to fill up the vacancies in the SCPCR and some others have used the SCPCR as a sinecure for some favourites. This again, as pointed out, is nothing but providing lip service to the provisions of a parliamentary legislation and not giving serious attention to the constitutional rights of children. This is certainly not acceptable.

38. Similarly, in the implementation of the POCSO Act, the NCPCR and the SCPCR have a vital role to play. As mentioned above, issues of sexual abuse or sexual assault or sexual harassment complained of by Ms. Anjali Sinha need attention and Section 44 of the POCSO Act places a great burden on the shoulders of the NCPCR and the SCPCRs. These authorities have an obligation to monitor the implementation of the POCSO Act as is evident from Section 44 thereof which reads as follows:

S 44. Monitoring of implementation of Act - (1) The National Commission for Protection of Child Rights constituted under Section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under Section 17, of the Commissions for Protection of Child Rights Act, 2005 (4 of W.P. (Crl.) No. 102 of 2007

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2006), shall, in addition to the functions assigned to them under that Act, also monitor the implementation of the provisions of this Act in such manner as may be prescribed.

(2) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in it under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).

(3) The National Commission or, as the case may be, the State Commission, referred to in sub-section (1), shall, also include, its activities under this section, in the annual report referred to in Section 16 of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).

39. In our opinion, it is imperative that the NCPCR and the SCPCR be allowed to function in terms of the CPCR Act and the POCSO Act and only for the benefit of children. These Commissions are under an obligation to take action wherever necessary including approaching the Constitutional Courts wherever necessary. These Commissions are under an obligation to prepare annual reports and if necessary special reports but it has been pointed out that this requirement has hardly been implemented mainly because of a lack of interest that these Commissions have shown in functioning under the statute and also partly because of the large number of vacancies in these Commissions.

40. This is not to suggest that the NCPCR or the SCPCRs are not doing a good job. On the contrary, the NCPCR has of late begun taking W.P. (Crl.) No. 102 of 2007

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its statutory obligations quite seriously and there are a few SCPCRs that are also faithfully performing their functions under the relevant statutes. On the other hand, there are some SCPCRs that are not performing well at all or are defunct and headless. It is difficult to appreciate how, under these circumstances, the JJ Act or the POCSO Act can at all be implemented, let alone implemented effectively.

41. Needless to say, it is obligatory on the part of the Union Government as well as of the State Governments to ensure that the provisions of laws enacted by Parliament are faithfully and sincerely implemented and the statutory Commissions constituted under the provisions of the CPCR Act must be allowed to function as independent statutory bodies under the provisions of the said Act, the POCSO Act as well as the JJ Act.

42. The rule of law includes adherence to parliamentary legislation by all concerned including State Governments and the Union Government and it would be extremely unfortunate if the concerned governments voluntarily and knowingly flout the provisions of law solemnly enacted by Parliament. We need say nothing more on this subject, except that laws solemnly enacted by Parliament cannot be insulted by putting W.P. (Crl.) No. 102 of 2007

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hurdles in the effective functioning of these Commissions, such as by not appointing the Chairperson or Members.

Rehabilitation and social re-integration

43. With regard to the future of children in need of care and protection, the JJ Act contains obligatory provisions such as Section 53 which deals with rehabilitation and social re-integration services in child care institutions. This provision requires the State to take care of the

basic requirements of children in such institutions including children with special needs, legal aid where required and more importantly assistance in obtaining proof of identity. There have been instances brought to our notice where children; particularly in the case of abandoned children, are unable to give any information about their parentage or permanent address etc. In such cases, proof of identify is crucial for the welfare of the child, otherwise he or she is reduced to a mere statistic.

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44. The provision for rehabilitation and re-integration services has several facets and cannot be read in isolation but must be read, inter alia, in conjunction with Section 54 of the JJ Act which requires the inspection of child care institutions registered under the said Act.

Inspection Committees are required to be set up which shall mandatorily visit all facilities housing children in the area allocated, at least once in three months in a team of not less than three members, of whom at least one shall be a woman and one shall be a medical officer. Their Inspection Reports are required to be furnished to the District Child Protection Unit or the State Government, as the case may be, for further action. Form 46 of the Model Rules prepared under Rule 41 thereof is quite exhaustive and if the Form is filled up with due seriousness it will go a long way in improving the living conditions of children in child care institutions.

45. The importance of rehabilitation and social re-integration clearly stands out if we appreciate the objective of the JJ Act which is to foster restorative justice. There cannot be any meaningful rehabilitation, particularly of a child in conflict with law who is also a child in need of care and protection unless the basic elements and principles of restorative justice are recognized and practised.

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46. Unfortunately, one of the problems faced in introducing restorative justice is that a child in a child care institution is treated as a number and no effort is made to introduce any individual child care plan postulated by Rule 19 of the Model Rules read with Form 7. Learned Amicus informed us that the Form is very rarely filled up (if at all) and little or no attention is paid to the needs of each child including a child in conflict with law. She submitted that specific directions should be given for the preparation of individual child care plans in every child care institution since that is really the heart of rehabilitation and social re-integration of a child in need of care and protection. Of course, some expertise is involved in this exercise but as we had mentioned earlier, there is no shortage of manpower in our country and it is only the will of the State Governments, Union Territories and the Union Government which is coming in the way of the effective implementation of the provisions of the JJ Act, Model Rules and filling up various Forms and their analysis.

Training of personnel

47. One of the more important issues raised by the learned Amicus in the context of rehabilitation and social re-integration is to be found in

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Rule 89 of the Model Rules which concerns itself with training of personnel dealing with children. This rule provides for a minimum period of 15 days training to various categories of personnel under the JJ Act including the staff of Children's Courts, Principal Magistrates and Members of Juvenile Justice Boards, Chairpersons and Members of Child Welfare Committees, Police Officers including persons in charge of child care institutions etc. Rule 89 of the Model Rules also postulates that the Judicial Academy and the Police Academy in the States as well as the State Legal Services Authorities prepare appropriate training modules, training manuals and provide training to personnel. It was pointed out by the learned Amicus that this rule is being followed more in the breach and there is hardly any Judicial Academy or Police Academy or State Legal Services Authority which conducts 15 days training programmes. This is quite unfortunate to say the least.

48. The importance of quality training can best be understood by giving a negative example, which is that unless proper training is imparted to the concerned personnel, it is quite possible that strange practices and procedures may evolve due to the absence of proper guidance. It has been brought to our notice in cases of adoption of children some extremely unusual and impracticable orders have been

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passed by the concerned Courts. It is high time that the High Courts exercise their supervisory jurisdiction and intervene and take appropriate remedial steps. It is also high time that training of personnel be given due importance. We may note here that it was brought to our attention by the learned Amicus that untrained or inadequately trained personnel can unwittingly play havoc with the lives of victims of sexual abuse or sexual assault or sexual harassment.

De-institutionalization

49. In the context of rehabilitation and social re-integration, it was submitted before us that institutionalization of children is not necessarily the only available option. This submission of the learned Amicus also finds support in Article 20 of the CRC. The Article obligates the State Parties to provide special protection and assistance to children temporarily or permanently deprived of family environment. The Article illustrates alternate care in the form of foster placement, adoption or necessary placement in suitable institution. It is clear that the first

option exercised by the authorities should not be institutionalization of a child in need of care and protection and the same is a measure of the last resort. Article 40(4) of the CRC pertaining to children accused of violating the law also states that the State Parties shall ensure â- Sca re, W.P. (Crl.) No. 102 of 2007

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guidance, supervision, counseling, probation, foster care, education and vocational training and other alternatives to institutional careâ- \235. Indeed, in keeping with the spirit of the CRC, the JJ Act itself encourages alternatives to institutionalization such as adoption (Chapter VIII), foster care (Section 44) and Sponsorship (Section 45). This too needs some serious thought, as submitted by the learned Amicus . 50. The learned Additional Solicitor General brought to our notice that the Union Government has since framed the Adoption Regulations, 2017 as well as the Model Guidelines for Foster Care, 2016. These need to be implemented by all concerned including the Courts, particularly those dealing with issues of adoption. However, as mentioned above, training in the understanding and appreciation of the JJ Act, the Model Rules, Regulations and Guidelines is imperative and merely handing over copies of these documents to the concerned personnel even if they are judicial officers or police officers or government functionaries is not enough. Some sort of training is absolutely necessary so that the aims and objects of the various statutory provisions enacted for the benefit of children and to foster their rights are implemented in letter and spirit. W.P. (Crl.) No. 102 of 2007

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51. We must emphasize, at this stage that it is absolutely necessary for all stakeholders having interest in the welfare of children to work together towards a common goal. This teamwork would include not only the government machinery but also the police, civil society and the judiciary.

Juvenile Justice Committee

52. That the judiciary is not far behind in fulfilling its constitutional responsibilities is obvious from the fact that the rather slack implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 even after four years of its enactment, compelled the Chief Justice of India to request all the High Courts to set up a Juvenile Justice Committee to ensure effective implementation of the said Act and monitor the activities under the said Act. The High Courts have a constitutional obligation to ensure that the rights of all citizens, including children, as guaranteed under the Constitution are preserved, protected and respected. With this in mind, all the High Courts have since set up a Juvenile Justice Committee consisting of Judges of the High Court and these Committees ensure that the provisions of the Act are implemented in letter and spirit. For better co-ordination on issues W.P. (Crl.) No. 102 of 2007

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relating to children, some High Courts have also provided a Secretariat for the Juvenile Justice Committee.

53. With the passage of time, it has been realized that the importance of the Juvenile Justice Committee in the High Court cannot be overemphasized. It is time for all of us to now realize that judges are no longer required to remain in an ivory tower. Judges of all the Courts including the Constitutional Courts have non-judicial duties and obligations to perform so that the fundamental rights of the people are respected. It is this realization that led the Constitutional Courts to exercise jurisdiction in social justice issues through Public Interest Litigation and it is this that requires judges of the Courts to ensure access to justice under the Legal Services Authorities Act, 1986 to indigent people and those who cannot afford legal services due to

financial or other constraints. It is very much in keeping with this constitutional obligation and goals that the concern and involvement of each Juvenile Justice Committee in the effective implementation of the Act is an absolute necessity. It is equally the obligation of the concerned officials of the State, including the police, to render all assistance to each Juvenile Justice Committee to ensure that the goals envisaged by the JJ W.P. (Crl.) No. 102 of 2007

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Act and the constitutional vision are successfully achieved in the shortest possible time.

Social audit

54. For the purposes of ensuring that the implementation of the JJ Act is proceeding in the right direction, it is necessary that a social audit be conducted every year. Social audits give reasons for introspection as well as for improvement in the services.

55. Social audit has gained relevance as a tool of public accountability. It has been defined as "A San assessment of a department's non financial objectives through systematic and regular monitoring on the basis of the views of its stakeholders." 235 9

A social audit is considered novel as it is supposed to serve as a supplement to a conventional Government Audit, often done in 12 month cycles generating an audit report every time. 10

In fact, in the Report of the Task Group on Social Audit by the Office of the Comptroller and Auditor General, it was opined that social audit be brought into the mainstream of auditing by 9

Social Audit: A Toolkit, A Guide for Performance Improvement and Outcome Measurement

available at <https://cgg.gov.in/publicationdownloads2a/Social%20Audit%20Toolkit%20Final.pdf> .

10

Ibid

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the Indian Audit and Accounts Department as an essential process and tool in all the performance audits of social sector programmes as they afford an opportunity to strengthen the micro level scrutiny of the programme planning, implementation and monitoring. 11

56. The requirement of a social audit is necessary not only for purposes of introspection but also transparency and accountability in the effective implementation of the JJ Act. There cannot be any reason to avoid conducting social audits, more particularly since they have been encouraged by the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 as well as by the Integrated Child Protection Scheme, by the Comptroller and Auditor General of India and the National Food Security Act, 2013. The impression given to us is that for some inexplicable reason the Union Government is shying away from social audits.

57. In the hearing on 17 th April, 2015, the learned Additional Solicitor General informed us that no social audit was carried out despite the rule being notified in 2007. The Union of India was then directed to finalize 11

Report of the Task Group on Social Audit, Office of the Comptroller and Auditor General of India, (2010) at pg 5

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a policy for conducting social audits. In the hearing on 30 th October,

2015 we were informed that the formats for social audit have been more or less finalized. In its affidavit filed sometime in November 2015, the Union of India has annexed copies of Model Social Audit Formats for

Child Welfare Committees, Juvenile Justice Boards, Special Juvenile Police Units, Children Homes, Specialized Adoption Agencies, Open Shelter/Shelter Homes, Observation Homes and Special Homes. It is stated in the affidavit that these formats will be circulated for pilot testing by selected States as mentioned in an earlier affidavit dated 29 th October, 2015.

58. We have not been informed whether any steps have been taken to conduct social audits in terms of the Model Formats prepared by the Union of India or the result of the pilot testing, if any. It is therefore necessary to ensure that these formats are tested out with urgency so that the implementation of the JJ Act is made more meaningful.

Technology and computers

59. We have been given to understand that there is no data base of all the child care institutions in the country. State Governments have not even validated the available data or undertaken the mapping of child W.P. (Crl.) No. 102 of 2007

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care institutions in collaboration with the Union Government. This is an essential first step since it is difficult to imagine how children in child care institutions can be cared for if there is no record of the number of institutions, number of children in such institutions, relevant information regarding the children etc. Therefore technology can be put to good use for collection, revision and access of records of children in need of care and protection and the child care institutions.

60. It is imperative for the Union Government as well as the State Governments to make out a complete list of all child care institutions along with their addresses and the person in charge or the principal officer as well as full details of the children residing in these child care institutions. Learned Amicus submitted that all these details, though necessary, are not available with the Union Government or the NCPDR. Availability of all this information is possible only with the use of technology and a massive computerization program.

61. Similarly, for the effective functioning of the Juvenile Justice Boards as well as the Child Welfare Committees, it is necessary that they should be equipped with computers and printers along with uninterrupted power supply units so that their day to day functioning can W.P. (Crl.) No. 102 of 2007

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be taken care of. Learned Amicus pointed out that perhaps this may be asking for too much since she has received complaints to the effect that very often stationery is not available with the Child Welfare Committees or the Juvenile Justice Boards and an appropriate requisition has to be made to the State Government or the local authority, which is leisurely processed. In our opinion if this submission were to be accepted it would indicate a very sorry state of affairs in which the Juvenile Justice Boards and the Child Welfare Committees are made to function. This step-child attitude cannot be permitted to continue since these statutory bodies are vital for having necessary supervision over child care institutions within their jurisdiction.

Directions

62. In view of the above discussion, the following directions are issued:

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

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extended to all such children in fact requiring State care and protection.

2. The Union Government and the governments of the

States and Union Territories must ensure that the process of registration of all child care institutions is completed positively by 31 st

December, 2017 with the entire data being confirmed and validated. The information should be available with all the concerned officials. The registration process should also include a data base of all children in need of care and protection which should be updated every month. While maintaining the database, issues of confidentiality and privacy must be kept in mind by the concerned authorities.

3. The Union Government and the governments of the States and Union Territories are directed to enforce the minimum standards of care as required by and in terms of the JJ Act and the Model Rules positively on or before 31 st December, 2017.

4. The governments of the States and Union Territories should draw up plans for full and proper utilization of W.P. (Crl.) No. 102 of 2007

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grants (along with expenditure statements) given by the Union Government under the Integrated Child Protection Scheme. Returning the grants as unspent or casual utilization of the grants will not ensure anybody's benefit and is effectively wasteful expenditure.

5. It is imperative that the Union Government and the governments of the States and Union Territories must concentrate on rehabilitation and social re-integration of children in need of care and protection. There are several schemes of the Government of India including skill development, vocational training etc which must be taken advantage of keeping in mind the need to rehabilitate such children.

6. The governments of the States and Union Territories are directed to set up Inspection Committees as required by the JJ Act and the Model Rules to conduct regular inspections of child care institutions and to prepare reports of such inspections so that the living conditions of children in these institutions undergo positive changes. These Inspection Committees should be W.P. (Crl.) No. 102 of 2007

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constituted on or before 31 st

July, 2017 and they should conduct the first inspection of the child care institutions in their jurisdiction and submit a report to the concerned government of the States and Union Territories on or before 31 st

December, 2017.

7. The preparation of individual child care plans is extremely important and all governments of the States and Union Territories must ensure that there is a child care plan in place for every child in each child care institution. While this process may appear to be long drawn and cumbersome, its necessity cannot be underestimated in any circumstances. The process of preparing individual child care plans is a continuing process and must be initiated immediately and an individual child care plan must be prepared for each child in each child care institutions on or before 31 st December, 2017.

8. Wherever the State Commission for Protection of Child Rights has not been established or though established is not fully functional in the absence of a Chairperson or

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any one or more Members, the governments of the States and Union Territories must ensure that all vacancies are filled up with dedicated persons on or before 31st December, 2017. The SCPCRs so constituted must publish an Annual Report so that everyone is aware of their activities and can contribute individually or collectively for the benefit of children in need of care and protection.

9. The training of personnel as required by the JJ Act and the Model Rules is essential. There are an adequate number of academies that can take up this task including police academies and judicial academies in the States. There are also national level bodies that can assist in this process of training including bodies like the Bureau of Police Research and Training, the National Judicial Academy and others including established NGOs. Wherever possible training modules should be prepared at the earliest.

10. It is time that the governments of the States and Union Territories consider de-institutionalization as a viable alternative. It is not necessary that every child in need

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of care and protection must be placed in a child care institutions. Alternatives such as adoption and foster care need to be seriously considered by the concerned authorities.

11. The importance of social audits cannot be over-emphasized. The necessity of having a social audit has been felt in some statutes which have been mentioned above and also by the Comptroller and Auditor General of India. That being the position, it is imperative that the process of conducting a social audit must be taken up in right earnestness by the National Commission for the Protection of Child Rights as well as by each State Commission for the Protection of Child Rights. This is perhaps the best possible method by which transparency and accountability in the management and functioning of child care institutions and other bodies under the JJ Act and Model Rules can be monitored and supervised.

12. While the Juvenile Justice Committee in each High Court is performing its role in ensuring the

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implementation of the JJ Act and Model Rules, there is no doubt that each Committee will require a small Secretariat by way of assistance. We request each Juvenile Justice Committee to seriously consider establishing a Secretariat for its assistance and we direct each State Government and Union Territory to render assistance to the Juvenile Justice Committee of each High Court and to cooperate and collaborate with the Juvenile Justice Committee in this regard.

13. We acknowledge the contribution made by Ms. Aparna Bhat in taking keen interest in the issues raised in this PIL and for rendering effective assistance to this Court at all times. The Supreme Court Legal Services Committee will give an honorarium of Rs. 2 lakhs to Ms. Aparna Bhat out of the funds available for juvenile

justice issues.

14. While there may be some other issues specifically concerning children in need of care and protection we leave these issues open for consideration and grant liberty to the learned Amicus to move an appropriate W.P. (Crl.) No. 102 of 2007

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application in this regard including any application for modification or clarification of the directions given above.

15. The Union of India is directed to communicate our directions to the concerned Ministry or Department of each State and Union Territory for implementation and to collate necessary information regarding the implementation of these directions with the assistance of the National Commission for the Protection of Child Rights and the State Commission for the Protection of Child Rights. A status report in this regard should be filed in this Court on or before 15th January, 2018. The Registry will list this case immediately thereafter.

â |â |â |â |â |â |â |â |â | J
(Madan B. Lokur)

â |â |â |â |â |â |â |â |â | J
May 5 , 2017 (Deepak Gupta)
New Delhi;
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ITEM NO.1A COURT NO.5 SECTION PIL(W)
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Criminal) No(s). 102/2007
RE:EXPLOI.OF CHILN.IN ORPH.IN ST.OF T.N Petitioner(s)
VERSUS

UNION OF INDIA & ORS. Respondent(s)

Date : 05/05/2017 This petition was called on for pronouncement today.

For Petitioner(s) By Post
Amicus Ms. Aparna Bhat, Adv.
Ms. Joshita Pai, Adv.

For Respondent(s) Mr. Maninder Singh, ASG
Ms. Swarupama Chaturvedi, Adv.
Mr. G.S. Makker, Adv.
Mr. Senthil Jagadeesan, AOR
M.P. Ms. Bansuri Swaraj, Adv.
Mr. C. D. Singh, AOR
NCPCR Ms. Anindita Pujari, Adv.
Intervenor Mr. Raghenth Basant, Adv.
Ms. Aanchal Tikmani, Adv.
Mr. Mishal Johari, Adv.

Hon'ble Mr. Justice Madan B. Lokur pronounced the reportable judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Deepak Gupta.
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The Court made the following directions:

1. The definition of the expression â Schild in need of care and protectionâ \235 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.

2. The Union Government and the governments of the States and Union Territories must ensure that the process of registration of all child care institutions is completed positively by 31 st

December, 2017 with the entire data being confirmed and validated. The information should be available with all the concerned officials. The registration process should also include a data base of all children in need of care and protection which should be updated every month. While maintaining the database, issues of confidentiality and privacy must be kept in mind by the concerned authorities.

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3. The Union Government and the governments of the States and Union Territories are directed to enforce the minimum standards of care as required by and in terms of the JJ Act and the Model Rules positively on or before 31 st December, 2017.

4. The governments of the States and Union Territories should draw up plans for full and proper utilization of grants (along with expenditure statements) given by the Union Government under the Integrated Child Protection Scheme. Returning the grants as unspent or casual utilization of the grants will not ensure anybody's benefit and is effectively wasteful expenditure.

5. It is imperative that the Union Government and the governments of the States and Union Territories must concentrate on rehabilitation and social re-integration of children in need of care and protection. There are several schemes of the Government of India including skill development, vocational training etc which must be taken advantage of keeping in mind the need to rehabilitate such children.

6. The governments of the States and Union Territories are directed to set up Inspection Committees as required by the JJ Act and the Model Rules to conduct regular inspections of child care institutions and to prepare

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reports of such inspections so that the living conditions of children in these institutions undergo positive changes. These Inspection Committees should be constituted on or before 31 st

July, 2017 and they should conduct the first inspection of the child care institutions in their jurisdiction and submit a report to the concerned government of the States and Union Territories on or before 31 st December, 2017.

7. The preparation of individual child care plans is extremely important and all governments of the States and Union Territories must ensure that there is a child care plan in place for every child in each child care institution. While this process may appear to be long drawn and cumbersome, its necessity cannot be underestimated in any circumstances. The process of preparing individual child care plans is a continuing process and must be initiated immediately and an individual child care plan must be prepared for each

child in each child care institutions on or before 31 st December, 2017.

8. Wherever the State Commission for Protection of Child Rights has not been established or though established is not fully functional in the absence of a Chairperson or any one or more Members, the governments of the W.P. (Crl.) No. 102 of 2007

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States and Union Territories must ensure that all vacancies are filled up with dedicated persons on or before 31 st December, 2017. The SCPCRs so constituted must publish an Annual Report so that everyone is aware of their activities and can contribute individually or collectively for the benefit of children in need of care and protection.

9. The training of personnel as required by the JJ Act and the Model Rules is essential. There are an adequate number of academies that can take up this task including police academies and judicial academies in the States. There are also national level bodies that can assist in this process of training including bodies like the Bureau of Police Research and Training, the National Judicial Academy and others including established NGOs. Wherever possible training modules should be prepared at the earliest.

10. It is time that the governments of the States and Union Territories consider de-institutionalization as a viable alternative. It is not necessary that every child in need of care and protection must be placed in a child care institutions. Alternatives such as adoption and foster care need to be seriously considered by the concerned authorities.

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11. The importance of social audits cannot be over-emphasized. The necessity of having a social audit has been felt in some statutes which have been mentioned above and also by the Comptroller and Auditor General of India. That being the position, it is imperative that the process of conducting a social audit must be taken up in right earnestness by the National Commission for the Protection of Child Rights as well as by each State Commission for the Protection of Child Rights. This is perhaps the best possible method by which transparency and accountability in the management and functioning of child care institutions and other bodies under the JJ Act and Model Rules can be monitored and supervised.

12. While the Juvenile Justice Committee in each High Court is performing its role in ensuring the implementation of the JJ Act and Model Rules, there is no doubt that each Committee will require a small Secretariat by way of assistance. We request each Juvenile Justice Committee to seriously consider establishing a Secretariat for its assistance and we direct each State Government and Union Territory to render assistance to the Juvenile Justice Committee of W.P. (Crl.) No. 102 of 2007

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each High Court and to cooperate and collaborate with the Juvenile Justice Committee in this regard.

13. We acknowledge the contribution made by Ms. Aparna

