



# Compilation of Judgments relevant to Child Welfare Committee's Powers, Functions and Related Matters

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	1
<b>Obligation of quasi-judicial authorities to record reasons for decisions</b>	<b>3</b>
● M/s. Kranti Associates Pvt Ltd v. Masood Ahmed Khan, (2010) 9 SCC 496 decided by the Supreme Court of India on 8.09.2010	3
<b>Definition of children in need of care and protection under the JJ Act, 2015</b>	<b>4</b>
● Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India (UOI) and Ors. Writ Petition (Criminal) No. 102 of 2007 (Under Article 32 of the Constitution of India) decided by the Supreme Court of India on 05.05.2017	4
<b>CWC's obligation to pass reasoned orders</b>	<b>5</b>
● Pooja Rajput Corpus And Another v. State of Uttar Pradesh, Habeas Corpus Writ Petition No. - 228 of 2024 decided by Allahabad High Court on 22.4.2024.	5
<b>CWC's obligation to ensure child's participation rights</b>	<b>6</b>
● Ajay vs. State (NCT of Delhi) Bail Appln. 3194/2023 decided by the Delhi High Court on 6.11.2023	6
● Selvi Michel v. Child Welfare Committee, RPJJ.No. 2 of 2019 decided by the Kerala High Court on 28.03.2019	6
● Sheeja Navas v. Child Welfare Committee and Ors. RPJJ No. 3 of 2019 decided by the Kerala High Court on 08.03.2019	7
<b>CWC's Role &amp; Jurisdiction</b>	<b>8</b>
● Digvijay Singh & Ors v. State of Madhya Pradesh Writ Petition No. 23718 of 2023 decided by the Madhya Pradesh High Court on 30.10.2023	8
● Siddhant v. State of U.P. and Ors., Criminal Misc. Bail Application No. 36536 of 2023 decided by Allahabad High Court on 13.09.2023	9
<b>CWC's lack of jurisdiction in custody matters</b>	<b>12</b>
● Geetanjali Dogra v. State and Ors. CM (M) 1140/2018 decided by the Delhi High Court on 06.09.2019	12
● Mrs Nidhi Luharuwalla v. State Of Karnataka Writ Petition No.1372 of 2019 (GM-RES) decided by the Karnataka High Court on 7.02.2019	12
<b>CWC's lack of jurisdiction in custody disputes and obligation to pass reasoned orders</b>	<b>13</b>
● H.C.P. Nos. 1868 and 1892 of 2021 decided by Madras High Court on 23.11.2021	13
<b>CWC's Obligation to Conduct Proper Inquiry</b>	<b>14</b>
● Krishnakumar and Ors. v. State of Kerala and Ors. R.P. (JJ) No. 3 of 2018 decided by the Kerala High Court on 18.06.2018	14
<b>CWC's obligation to conduct age-determination inquiry and release an adult</b>	<b>15</b>

● Deepika v. State Of Rajasthan & Ors. D.B. Habeas Corpus Petition No. 164/2019 decided by the Rajasthan High Court on 7.04.2020	15
<b>Placement order of CWC cannot be challenged through habeas corpus</b>	<b>16</b>
● Naresh Kumar v. State of Rajasthan and Ors. D.B. Habeas Corpus Petition No. 18/2022 decided by the Rajasthan High Court on 19.01.2022	16
● Rachna and Ors. v. State of U.P. and Ors. Habeas Corpus Writ Petition No. 362 of 2020 decided by the Allahabad High Court on 08.03.2021	16
<b>Power of the CWC to recognise a guardian for a CNCP</b>	<b>18</b>
● Lavanya Anirudh Verma v. State of NCT of Delhi, Crl. M.C. 301/2017 decided by the Delhi High Court on 8.02.2017	18
<b>Consideration of minor's wishes regarding their welfare and future</b>	<b>19</b>
● Shivani and Ors. v. State of U.P. and Ors., Criminal Misc. Writ Petition No. 14348 of 2023 decided by the Allahabad High Court on 15.12. 2023	19
<b>Right of victim to be heard during bail applications under the POCSO Act, 2012 and role of CWC</b>	<b>20</b>
● Junaid v. State of U.P. and Ors., Criminal Misc. Bail Application No. 46998 of 2020 decided by the Allahabad High Court on 09.07.2021	20
● Bibi Ayesha Khanum and Ors. v. Union of India and Ors., Writ Petition No. 2318 of 2022 (GM-POLICE) decided by the Karnataka High Court on 23.02.2022	23
<b>Confidentiality of the counselling report</b>	<b>25</b>
● Court on its own Motion v. State, CRL.REF.No.2/2016 decided by the Delhi High Court on 4.08.2018	25
<b>Confidentiality of the reports and records of the CWC</b>	<b>26</b>
● Jayan K.S. v. Manju S., OP (FC) No. 130 of 2020 Decided by Kerala High Court on 29.03.2021	26
<b>SC's observations directions on child marriage</b>	<b>28</b>
● Society for Enlightenment and Voluntary Action & Anr. v Union of India & Ors., Writ Petition (C) No. 1234 of 2017 decided by the Supreme Court of India on 18.10.2024	28
<b>CWC's obligations towards child victims of offences under the POCSO Act, 2012</b>	<b>31</b>
● In Re: Right To Privacy of Adolescents, Suo Motu Writ Petition (Civil) No. 3 of 2023 decided by the Supreme Court of India on 20.08.2024	31
<b>CWC's obligation to ensure principles of natural justice</b>	<b>32</b>
● X v State of Kerala, WP (C) No. 35211 of 2024, decided by the Kerala High Court on 25.10.2024	32
<b>Maintainability of Habeas Corpus Writ Petitions against orders by Magistrate/CWC sending a child to CCI</b>	<b>34</b>
● Km. Rachna and another v State of Uttar Pradesh, Habeas Corpus Writ Petition No. 362 of 2020 decided by the Full Bench of the Allahabad High Court on 8.3.2021	34
<b>Grant of minor girl's custody by HC to her mother-in-law in a romantic case under the POCSO Act, 2012</b>	<b>35</b>

● Preeti and Ors. v. State of Haryana and Ors. (CRWP No. 4181 of 2020, decided by the Punjab & Haryana High Court on 16.10.2020.)	35
<b>Gauhati High Court’s Notification pursuant to the directions of the Supreme Court in In Re: Right to Privacy of Adolescents, Suo Moto Writ Petition (C) No. 3/2023</b>	<b>35</b>
<b>Husband denied custody of minor wife</b>	<b>36</b>
● Nitish Kumar v. State of Bihar & Others, CR. WJC No. 880 of 2023 decided by the Patna High Court on 16.01.2024	36
<b>Children cannot be kept in police custody</b>	<b>37</b>
● Gopal Gupta v. State of Bihar & Others, Criminal Writ Jurisdiction Case No. 394 of 2020 decided by the Patna High Court on 24.03.2021	37
<b>CWC’s obligations in cases of children of incarcerated parents</b>	<b>38</b>
● Rekha v. State of U.P., Criminal Misc. Bail Application No. 25993 of 2024 decided by the Allahabad High Court on 09.04.2025	38
<b>Role of CWC in protecting rights of orphaned children</b>	<b>40</b>
● G and Ors. v. State (NCT of Delhi), Home Department and Ors., W.P.(C) 14361/2023 and connected matters, decided by the Delhi High Court on 02.04.2025	40
<b>Placement of children in institutional care to be the step of last resort</b>	<b>42</b>
● Sony Bagchi v. Farida Bibi, F.M.A. No. 195 of 2025 decided by the Calcutta High Court on 02.04.2025	42
<b>Role of Support Persons under the POCSO Act, 2012</b>	<b>43</b>
● We The Women of India v Union of India, Writ Petition (Civil) No. 427 of 2022, decided by the Supreme Court on 18.08.2023.	43

### [Obligation of quasi-judicial authorities to record reasons for decisions](#)

- **M/s. Kranti Associates Pvt Ltd v. Masood Ahmed Khan, (2010) 9 SCC 496 decided by the Supreme Court of India on 8.09.2010**

In this case, the Supreme Court held that quasi-judicial authorities have to record the reasons for a particular decision, if such decisions affect someone prejudicially. It laid down the following:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- b. A quasi-judicial authority must record reasons in support of its conclusions.
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- f. Reasons have virtually become as indispensable a component of a decision making process

as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

- g. Reasons facilitate the process of judicial review by superior Courts.
- h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- j. Insistence on reason is a requirement for both judicial accountability and transparency.
- k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).
- n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
- o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

### [Definition of children in need of care and protection under the JJ Act, 2015](#)

- **Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India (UOI) and Ors. Writ Petition (Criminal) No. 102 of 2007 (Under Article 32 of the Constitution of India) decided by the Supreme Court of India on 05.05.2017**

This PIL originated from a newspaper article titled "Orphanage or Places for Child Abuse" that was forwarded to the court. The Supreme Court expanded the scope of the PIL to consider broader issues of children's rights including, child sexual abuse, trafficking, schools occupied by paramilitary forces, the right to education, etc. With respect to the definition of CNCP, the Supreme Court issued the following direction:

**"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."**

The Court also highlighted:

**“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 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.”

#### CWC's obligation to pass reasoned orders

- **Pooja Rajput Corpus And Another v. State of Uttar Pradesh, Habeas Corpus Writ Petition No. - 228 of 2024 decided by Allahabad High Court on 22.4.2024.**

A 15-year-old girl had been placed in a Government Children's Home by the CWC and had been residing there for three months. She lost an academic year as she could not appear for her Class 7 examination. The girl had been residing with her father for 5-6 years and he had been taking care of her despite his disability and paying for her education. The High Court took a stern view of the placement of the child in a Children' Home by the CWC despite the fact that her father was capable of caring for her and had her custody for many years. In her interaction with the High Court, she was consistent that she wanted to live with her father even after she met her mother. The High Court noted that the mother had previously taken custody of the girl, but had ignored her education and involved her husband in a false case. The court reprimanded the CWC for non-application of judicial mind and not specifying reasons for sending the girl to the children's home.

“6. The most surprising and shocking part is the manner in which, the Nari Niketan/Child Welfare Committee, .... has kept the minor child in Government Children Home (Women) which is a place where normally such type of children whose parents are eager to claim the custody of her child, are not kept as the father admittedly is capable of taking care of the minor daughter as he has custody for last many years.

**9. Surprisingly, neither there is any application of judicial mind nor any reasoning is assigned as to why the child is being sent to the Government Children Home (Women) and in a casual manner,** the child has been sent there and she is staying there since 20.1.2024 and as noticed above she has lost one academic year.

**11. Considering the seriousness of the case about the manner in which the committee has conducted the life liberty of a minor girl,** we take strong exception to the action taken by the committee.”

The High Court awarded a cost of Rs 5 lacs to the father of the girl to be paid by the CWC for their conduct.

### CWC's obligation to ensure child's participation rights

- **Ajay vs. State (NCT of Delhi) Bail Appln. 3194/2023 decided by the Delhi High Court on 6.11.2023**

The bail application notes improper handling of the case by the CWC. The facts of the case are not mentioned in the judgment but the Delhi High Court mentioned that the case concerns a consensual relationship between the applicant and a minor girl. The girl also gave birth to a child. The High Court noted that the CWC conducted proceedings in English, despite the victim being illiterate and only understanding Urdu. The CWC failed to explain the proceedings, including the surrender and adoption of the child, in a language known to the victim and her guardian. The High Court emphasized that the CWC members should have shown more sensitivity and not conducted the proceedings in a “business-like manner.”

“4. This Court has gone through the records of CWC and notes that Form 23, application of surrender, explanation of surrender, etc. are all written or filled in English which everyone is not able to understand. The victim herein is not educated. This Court has perused the supplementary statement dated 25.04.2021 of the mother of the victim recorded by the Investigating Officer, who categorically states in her statement that her daughter i.e. victim is illiterate and she knows only Urdu. She also states that the siblings of victim also know only Urdu language. In these circumstances, it was even more critical that the entire proceedings should have been explained to the victim herein as well as her guardian in their vernacular language or the language they speak and understand, and the **CWC members, who are expected to show utmost sensitivity and be participating in the proceedings instead of conducting the proceedings in a business-like manner, should have seen that the victim and her mother understood the proceedings that were being conducted.**

5. The statements before CWC were also clear that the victim had maintained relationship with the accused out of her own free will and had also opted to continue with the pregnancy. In the meantime, the accused i.e. petitioner herein was in judicial custody, and was unaware about the proceedings, including the surrender of the child before the CWC.”

- **Selvi Michel v. Child Welfare Committee, RPJJ.No. 2 of 2019 decided by the Kerala High Court on 28.03.2019**

The revision petitioner was the mother of a 5-year-old girl child who was sexually abused by the 15-year-old son of the petitioner's tenant. The child was being raised by the petitioner and her husband but was not yet formally adopted by them. The child disclosed the fact of the abuse to her class teacher after which the school authorities informed the CWC and the police. A criminal case was registered against the boy. The CWC directed the child to be kept in SOS Model Home, Thiruvananthapuram. The petitioner challenged this order in the present case.

The Kerala High Court allowed the revision petition and set aside the CWC order based on the following reasons:

- The CWC failed to comply with Section 37, JJ Act, 2015 which mandates considering the child's wishes if the child is sufficiently mature;
- The CWC violated Section 3, JJ Act, 2015 which emphasizes hearing the victim and her relatives before making decisions (the HC noted that from the CWC orders, they

found that interaction with the victim did not take place, only her statement was recorded);

- The inquiry contemplated under Section 36, JJ Act was not properly conducted in the presence of the child's parents;
- Keeping the child in the SOS Model Home would negatively affect her future;
- Although the petitioner was not an adoptive parent, the court deemed her a "fit person" under Section 40, JJ Act, making her eligible for the child's custody and
- The child expressed a desire to go with the petitioner.

It observed:

"27. Virtually the inquiry contemplated under Section 36 of the Act was not conducted in the presence of the father and mother of the child. It has also come out that the mother and other family members were permitted to see the child. The Committee has not recorded the statement of the revision petitioner and on going through the impugned order, it would reveal that practically, no inquiry was conducted as contemplated under the Juvenile Justice Act and Rules. Nowhere it is stated that they have given option of the child regarding the residence of choice was obtained and considered. It is very important to note that when the child needs the care and protection before putting the child in Children Home, there should be application of mind by the committee and the committee shall take into account the investigation report of the Child Welfare Committee as well as the child wishes. On a reading of Section 37 of the Act read with Section 3 of the Act, it is crystal clear that the Child Welfare Committee has to consider the wishes of the child also. The child is about 5 years old and her wishes should have been given due consideration."

The High Court directed the Superintendent of the SOS Model Home to release the child to her mother and that the child will be under the supervision of the District Welfare Officer, Thiruvananthapuram.

- **Sheeja Navas v. Child Welfare Committee and Ors. RPJJ No. 3 of 2019 decided by the Kerala High Court on 08.03.2019**

The petitioner challenged the order passed by the CWC regarding placement of her 15-year-old daughter in a shelter home. The petitioner's daughter was sexually assaulted by an Imam, their family friend, who was a frequent visitor to their house. The High Court directed the release of the child to the mother as the CWC did not follow proper procedures and principles under JJ Act, 2015. Principles under Section 3, JJ Act, 2015 were not followed while deciding on custody application under Section 40, JJ Act, 2015. Further, no enquiry was conducted under Section 36, JJ Act, 2015 and the child's wish to stay with her family was not considered. The main argument of the child not being safe at home as the accused was a frequent visitor in their home was rejected by the High Court. The High Court noted:

"28. In view of the facts of the cases and considering the interaction with the child as well as the family members, we find that the decision which was taken by the Child Welfare Committee is not in accordance with law. While considering the custody applications when the victim is stationed in Children Home which comes under Section 40 of the Act. Then

the Welfare Committee shall evaluate the suitability of the person to whom the custody is to be given guided by the fundamental principle envisaged under Section 3 of the Act. The child Welfare Committee has not considered it under Section 40 of the Act and no inquiry was conducted under Section 36 of the Juvenile Justice Act. The main argument was that she is stationed in the Children Home since her life is not safe at home. **The ground which was stated that there is possibility of access of the accused to the victim. But it is not a ground to station the juvenile in the children home. It has come out that the victim is stationed at shelter home against her wishes. The committee should have given prime importance to the wishes of the child.**

**29. The impugned order does not show that the opinion and wishes of the victim child was considered by the Committee in this case. At present, her opinion/desire is to go along with the petitioner and we have considered the matter in detail on the basis of the fundamental principles as envisaged Section 3 of the Act.** Moreover, the petitioner was staying along with her mother with the company of the other family members before she was removed to the Children Home. Hence the victim child is at present undergoing mental stress and she was suddenly removed from her family atmosphere.

30. Considering all these aspects, we have a considered opinion that there is no harm in releasing her to the custody of her mother and other family members, so that they can safe guard her interest and protect her life and also relax mental stress as she is suddenly removed from her family.”

### CWC's Role & Jurisdiction

- **Digvijay Singh & Ors v. State of Madhya Pradesh Writ Petition No. 23718 of 2023 decided by the Madhya Pradesh High Court on 30.10.2023**

The Madhya Pradesh High Court criticised CWC, Alirajpur for overstepping its authority by wrongly rescuing school children from a hostel citing that it was being run in contravention of Sections 41 and 42, JJ Act, 2015. The High Court noted that institutions prescribed under Sections 41 and 42, JJ Act, 2015 are of ‘children in conflict with law’ or ‘children in need of care and protection’ as defined by the Act. The hostel in the present case did not fall under the abovementioned sections, as the children were residing there as per the wishes of their parents, and thus the CWC’s actions were unfounded. The SIRs also did not reveal any allegation of mistreatment of children in the hostel. The CWC acted in excess of its powers under the JJ Act. The High Court directed the District Magistrate to issue necessary directions regarding the prolonged absence of the children in schools and to ensure that no coercive action is taken against them. It held:

“8] A perusal of the aforesaid provisions clearly reveals that they are meant for the children and institutions prescribed under Sections 41 & 42 of the Act, and thus, are in respect of the children who are either in conflict with law or the children who are in need of care and protection. Similarly, the provisions of Section 2 (13) and (14) are also not applicable in the present case as none of the ingredients of both the sub-sections are present in the impugned order Annexure P/1.

9] On the contrary, the respondents have also placed on record the Social Investigation Report which is conducted under Section 36 (2) of the Act of 2015, and there is absolutely no allegation against any person that the children were mistreated in the hostel. In such fact

and circumstances of the case, this Court is inclined to allow the present petition and is of the considered opinion that **the provisions of Sections 41 and 42 of the Act of 2015 cannot be invoked in the facts and circumstances of the case and the children were unnecessarily being harassed by the respondents No.4, 5 & 6 and, it appears that they have acted in excess of their powers prescribed under the Act of 2015, they are also directed to act cautiously in future, and any lapse on their part shall make them personally liable for their acts.**”

- **Siddhant v. State of U.P. and Ors., Criminal Misc. Bail Application No. 36536 of 2023 decided by Allahabad High Court on 13.09.2023**

The case centres on the issue of CWC reports being deficient and in non-conformity with Rule 4, POCSO Rules, 2020. This leads to hindrance in fair administration of bail under the POCSO Act, 2012 and in dispensation of justice to child victims of sexual violence. The Allahabad High Court pointed the importance of CWC reports in “implementation of various protective measures and other entitlements of victims under the POCSO Act, 2012 read with POCSO Rules, 2020” and noted that it must be “placed before the learned trial court as well as High Court for consideration at the time of hearing of the bail applications”.

“44. Consideration of CWC reports while deciding bail applications reflects the new contours of law created by the POCSO Act [also see Junaid (supra)].

45. CWC reports play a critical role in the implementation of various protective measures and other entitlements of victims under the POCSO Act, 2012 read with POCSO Rules, 2020.

46. The CWC report assists the courts in evaluating the victim's condition and to sensitize the process of law. The CWC report also helps the court to determine whether the victim has access to various protective and rehabilitative measures under the POCSO Act, 2012 read with POCSO Rules, 2020. The courts are obligated to direct the authorities to provide the benefits and entitlements to child victims under the POCSO Act, 2012 read with POCSO Rules, 2020, whenever shortcomings are observed. The rights of the child victims are brought to fruition in this manner.

47. Denial of statutory support systems like counselling services, medical care, support persons, and legal aid put the victims at a disadvantage in court proceedings, impede their rehabilitation and defeat the intent of the legislature.

48. CWC reports also enable courts to oversee the functioning of various government agencies and statutory bodies charged with duties of implementing the POCSO Act, 2012 read with POCSO Rules, 2020.

**50. In summation the CWC reports are pivotal to serve justice to child victims of POCSO Act, 2012 offences in line with the enactment. It is thus imperative that CWC**

**report should be placed before the learned trial court as well as High Court for consideration at the time of hearing of the bail applications.”**

The High Court also dealt with other matters related to role of CWC with regards to child victims of sexual violence, notably the need to take assistance of trained mental health professionals and incorporation of their views in the CWC orders which can help the child victims’ rehabilitation. The need for standard evaluation systems/enquiry formats for CWCs to assess mental health conditions of child victims of sexual violence was also highlighted.

“33. The words employed in Rule 4 and Rule 4 (6)(vii) of the POCSO Rules, 2020 especially the phrase "best interests of the child" reflect the wide ambit of the CWC enquiry. Operationalizing the broad terms of Rule 4(6)(vii) of the POCSO Rules, 2020, is the key to achieving the legislative object of the CWC. Rule 4(6)(vii) of the POCSO Rules, 2020 also embraces an enquiry into the mental health and psychological condition of a victim of a POCSO Act offence.

**34. Engaging with child victims of sexual offences and evaluating their conditions is a complex task. The process requires sensitive engagement and professional handling of the victim by experts in child psychology, mental health and allied fields. In many instances CWC members are not professional psychologists or experts in mental health and behavioural sciences, and often do not have a ready access to the advice of the latter.** Absence of expert advice results in infirmities in CWC reports which may inflict lasting traumas upon victims, impede their rehabilitation and even cheat the process of justice. In these circumstances it is mandatory for the CWC to work with expert agencies to develop a scientific framework for evaluating the mental condition and needs of a child victims of sexual abuse.

35 . Paucity of trained psychologists and mental health experts was noticed by the National Institute of Mental Health & Neurosciences, Bangalore 11 in its report published in August 2023 rendered in the context of 'Juveniles in conflict with law.'

36. Creation of standardized lines of enquiries and templates developed by expert agencies like NIMHANS can supply the deficiencies in the current system. Standardized evaluation systems/enquiry formats so drawn up by institutions like NIMHANS can guide the CWC in assessing the mental condition of a child victim of a POCSO Act offence, and to determine the process of rehabilitation of the latter. The said standards of enquiry can form the basis of the CWC reports.

37. Opinions of mental health experts/psychologists in CWC reports is a legal mandate which aid the courts to determine the capacity of the child victim to depose before the court and to sensitize the trial proceedings. **Incorporating opinions of mental health professionals/psychologists in the said reports will also assist in the rehabilitation of the victim by making a timely reference to mental health professionals for prolonged treatment if needed.**

The High Court issued the following directions for the execution of points made in the judgment:

“I. The Judicial Training & Research Institute, Lucknow, in consultation with the State Government, institutions of higher legal learning, institutions of higher research and education, institutions of special expertise like NIMHANS, CWCs and other experts in the field shall create a standardized evaluation system/line of enquiry to determine the mental condition of the victims of offences under the POCSO Act, 2012 and to provide for their rehabilitation. The said standardized lines of enquiry shall provide the basis for the CWC to engage with the child and to create a report contemplated under Rule 4 of the POCSO Rules, 2020.

II. State Government/Additional Chief Secretary, Department of Women & Child Development, Government of U.P., Lucknow shall render all support to the JTRI in this undertaking.

III. NIMHANS shall create standardized evaluation enquiries/templates for determining the mental health and rehabilitation measures of a child victim of sexual offences at the request of the JTRI.

IV. The JTRI shall similarly after consultation with the State Government, CWCs and other institutions of expertise and higher learning create appropriate standardized evaluation formats/templates containing all other relevant facts contemplated in Rule 4 of the POCSO Rules, 2020 and Rule 19 of the JJ Act, 2015, and other relevant provisions of law.

V. The CWCs shall use the above standardized lines of enquiries/templates for drawing up the CWC reports under the POCSO Act, 2012 read with POCSO Rules, 2020.

VI. The State Government is directed to ensure that details of agencies whose assistance can be taken by the CWC under Section 39 of the POCSO Act, 2012 are duly provided to the CWCs.

VII. The JTRI shall after due consultation with the State Government, CWC and other stake holders prepare the training modules for all CWC members in the State. The training modules will be implemented by the State Government.

VIII. The JTRI, Lucknow, shall conclude the exercise within a period of four months from the date of receipt of a copy of this order.

54. This Court also notices that the CWC have not been provided with the necessary infrastructure and lack the required wherewithal to discharge their functions. The State Government/Additional Chief Secretary, Government of U.P. Lucknow, are directed to urgently evaluate and upgrade infrastructure available with the CWC to facilitate discharge of their statutory functions.”

The High Court also noted that **“the CWC report is not part of the investigations made by the police into the offences under Section 173 Cr.P.C. The report cannot be equated with the statements of the victim made under the relevant provisions of the Cr.P.C.”**

“55. CWC while creating the report has to be conscious of the scope and limitations of its jurisdiction. The CWC report is not part of the investigations made by the police into the offences under Section 173 Cr.P.C. The report cannot be equated with the statements of the victim made under the relevant provisions of the Cr.P.C.

56. The CWC has to adhere to norms of legal propriety and act within the bounds of its jurisdiction in order to achieve its statutory purpose. The CWC acting in consonance with

these tenets will sensitize the statutory authorities and the process of justice to the plight of victims and bring their rights to fruition.”

### CWC’s lack of jurisdiction in custody matters

- **Geetanjali Dogra v. State and Ors. CM (M) 1140/2018 decided by the Delhi High Court on 06.09.2019**

The petitioner and her husband were involved in litigations under the Protection of Women from Domestic Violence Act, 2005 before the Family Court. While these proceedings were ongoing, the petitioner’s husband filed an application before the CWC under Section 2(14) (iii), JJ Act, 2015 to restore the basic right of the child under “Article 9 of the UNCRC which provides that in the event of separation of parents, children have the right to live with their parents unless it is bad for them and the children whose parents do not live together have the right to stay in contact with both parents, unless this might hurt the child”. The CWC could not interact with the child as he was stated to be unwell. It interacted with the parents of the child and considered the SIR of the parents. It gave permission to the father to visit the child for two hours on every Saturday/Sunday with mutual convenience of both parents at the residence of the mother. The petitioner-mother challenged the CWC order. The Delhi High Court set aside the CWC order, noting that the “jurisdiction to grant permission or access” to the minor child “is vested with the Family Court concerned alone” in light of the pending litigation. It held as follows:

“30. It is apparent thus that in terms of provisions of the Guardians and Wards Act, 1890 powers are conferred on the Court of competent jurisdiction to decide the aspects of guardianship, visitation and access to a minor child and as observed elsewhere hereinabove, in the circumstances of the instant case **where there is litigation pending between the parties i.e. the petitioner and the respondent no. 2 before the Family Courts, Delhi, the respondent no. 2 could not have resorted to a mode to detract from the adjudication qua the rights of access to the minor child, which are to be made by a Court of law.**

31. On a consideration of the submissions that have been made on behalf of either side, as observed hereinabove, in terms of Section 7(1) of the Family Courts Act, 1984, taking the same into account and the aspect that there is a litigation pending in the Family Court between the mother of the minor child and the father of the minor child as has been submitted on behalf of the petitioner and not refuted on behalf of the respondent no. 1 in as much as the proceedings for maintenance are pending before the said Court, it is apparent that **jurisdiction to grant permission or access to the respondent no. 2 to the minor child in the circumstances of the instant case is vested with the Family Court concerned alone.**”

- **Mrs Nidhi Luharuwalla v. State Of Karnataka Writ Petition No.1372 of 2019 (GM-RES) decided by the Karnataka High Court on 7.02.2019**

In this case, while custody proceedings were ongoing in the Family Court, the father complained to the CWC that his child felt scared of the petitioner (his mother) and felt safe with him. The CWC, despite acknowledging its lack of jurisdiction in custody matters, intervened and granted custody to the father, after taking the statement of the child into account. The Karnataka High Court set aside the CWC’s order, stating that even if the CWC believed the child needed care and protection, it

should have referred the matter to the Family Court where custody proceedings were already pending, rather than making its own determination. It held that the CWC cannot usurp the jurisdiction of Family Courts in pending child custody matters. The relevant paragraph from the judgment is as follows:

**“136. The Committee cannot be permitted usurp the jurisdiction of the competent Court exercising powers under the provisions of the Guardians Act.** Admittedly, the proceeding under the Guardians Act is pending where the issue with regard to the custody of the minor is pending adjudication. In the instant case, the Committee, on the basis of the communication sent by the child to the Committee, has taken the custody from the petitioner and has handed over the custody of the child to respondent No.3. Under the provisions of the Guardians Act, the Court is empowered to make an order under Section 7 of the aforesaid Act. The said jurisdiction conferred by law cannot be taken away by the Committee which is a statutory body. In the fact situation of the case, even if the Committee was of the opinion that the child was in need of care and protection, it ought to have referred the matter for consideration before the Family Court where the issue with regard to the custody of the minor was pending consideration. The usurpation of jurisdiction by the Committee in a matter which is sub-judice before the Court of competent jurisdiction under the Guardians Act cannot be sustained in the eye of law. The impugned order passed by the Committee dated 03.01.2019 is quashed and set aside.”

#### CWC’s lack of jurisdiction in custody disputes and obligation to pass reasoned orders

- **H.C.P. Nos. 1868 and 1892 of 2021 decided by Madras High Court on 23.11.2021**

The Madras High Court set aside a CWC order that had placed a girl in a reception home amid a custody dispute between her adoptive and biological mothers, who are sisters-in-law. The High Court held that the CWC and police had acted beyond their scope, as the child was not an orphan and in need of care and protection. The High Court returned custody to the adoptive mother, who had raised the child for about 10 years. It allowed the biological family unrestricted access on weekends.

“5. Strangely, the Inspector of Police, Ammapet AWPS registered a petition enquiry in C.S.R.No.541 of 2021, conducted enquiry, brought both the sides to the police station and informed the Child Welfare Committee (CWC), Salem. The CWC, Salem, by a reception order dated 27.10.2021, admitted ... in Government Lifeline Trust, Reception Home, Salem. Thus, the CWC successfully took away the custody of the child, which was normally growing in the family of the adopted parents and branded it as a child in need of care and protection and handed the child over to the Lifeline Trust, **by a mere reception order, without any reasons in support thereof.**

11. Though an appeal remedy is provided under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015, against the order of the CWC dated 15.11.2021, on facts, we find that the police and the CWC had acted beyond the scope of the said Act, by mechanically lodging ... in the said Home. [] is not an orphaned child, who is in need of care and protection. On the contrary, she has two mothers *viz.*, [] and [], who are fighting with each other to give her care and protection. This is a matter which should not have been brought to the police station at all.

12. In our opinion, the removal of the child by the CWC from the custody of [] based on the police complaint of [], lodging of the child by the CWC in the said Home and thereafter, handing over the custody of the child to [], are clearly illegal.”

### CWC's Obligation to Conduct Proper Inquiry

- **Krishnakumar and Ors. v. State of Kerala and Ors. R.P. (JJ) No. 3 of 2018 decided by the Kerala High Court on 18.06.2018**

A 13-year-old girl was living with her father, stepmother, and sister and later moved to her maternal grandmother's house. Her biological mother had passed away when she was 10-years-old. In 2017, the girl went missing and after being found, a case was registered under the POCSO Act against one person. The girl was produced before the CWC which placed her in a Women's Shelter Home from which she tried escaping twice. The girl's father and maternal grandmother (the petitioners) filed applications with the CWC for her release, which were dismissed. The present revision petition is against the order of the CWC dismissing the petitioners' applications for custody. The High Court interacted with the girl. She stated that she wanted to live with her grandmother or her father and that her grandmother is financially capable to look after her. The High Court noted that the CWC failed to conduct a proper inquiry, did not record statements of the petitioners, failed to consider the child's wishes and passed an order without sufficient investigation or reasoning. The High Court thus set aside the CWC order, and directed that the child be released to her grandmother.

“11. In this case, admittedly, the father and grandmother approached the Committee for restoration of their child. A perusal of the file reveals that there is nothing to show that any statement of the revision petitioners herein was taken at any point of time. The inquiry contemplated under Section 36 of the Act was not conducted in the presence of the father or the 2nd petitioner with whom earlier the child was staying. The Committee got no case that the second petitioner not approached the Committee or not came to see the child. When the Committee itself got a case that 2nd petitioner/grandmother had visited earlier, at least her statement should have been recorded, even though in the inquiry, only a summary procedure need be followed. **A perusal of the records reveals that practically no inquiry conducted as contemplated under the Act and Rules. There is no report from the District Child Welfare Officer before coming to the conclusion that the child herein is in need of care and protection. The report available in the file is a report submitted after the issue of an order to transfer the child to Palakkad district. There is nothing on record to show that any social investigation as contemplated under Section 36(2) or Rule 19(3) was conducted in this case. Only the statement of the juvenile recorded. There is nothing to show that her option regarding the residence of choice was obtained and considered.**

12. It is also relevant to note that she was transferred to a shelter home in Palakkad district. It appears that the Committee took a decision to transfer the child to Palakkad district. Naturally, thereafter the Committee available in that district has to seisin the matter. But, thereafter, while the child was in Palakkad district, the impugned order was passed. **When a child is found in need of care and protection, before putting the child in Children's Home, there should be application of mind by the Committee; Committee shall take into account the investigation report by the Child Welfare Officer as well as child's wishes. This aspect is crystal clear from Section 37 of the Act viewed in the light of Section 3 of the Act. In this case, child is aged 13 years. Her wishes should have been**

given due consideration. Surely, if there is cogent and forcing reasons, the Committee will be justified to pass an order to put the juvenile in Children's Home even against her wishes and rejecting the request of the family members for custody. But, it should be strictly followed by an inquiry as contemplated in the Act and Rules with a speaking order.

**13. Considering the totality of the case in hand, it can be only said that the impugned order is illegal and not in accordance with law.** While considering a custody/restoration application when the girl is stationed in Children's Home, which will come under Section 40 of the Act, the Committee shall evaluate suitability of the person to whom custody to be given guided by the fundamental principles envisaged in Section 3 of the Act. Section 40 was not considered in its true spirit in this case. As this court held in *Jose Maveli v. State of Kerala and Anr.* [MANU/KE/0243/2007 : 2007 (2) KHC 545], poverty cannot be a ground for declining the custody/restoration of the child. **A victim/juvenile cannot be stationed in a Children's Home or in any other such shelter on the ground that there is possibility of access of the accused to the victim.** It is the duty of the investigating agency or the prosecution, as the case may be, to take steps to see that such a situation is not therein. The victim shall not be the sufferer.

**14. There is nothing to show that the opinion of the juvenile was considered by the Committee in this case.** As the fact reveals, twice she jumped from the Shelter Home. There is no case that she committed any offence. The said acts only reveal that how she is reacting to the order to put her in a Shelter Home. **Her opinion/desire is to go with the petitioners. The said wish is considered by this Court on the basis of the fundamental principles envisaged in Section 3 of the Act."**

#### [CWC's obligation to conduct age-determination inquiry and release an adult](#)

- **Deepika v. State Of Rajasthan & Ors. D.B. Habeas Corpus Petition No. 164/2019 decided by the Rajasthan High Court on 7.04.2020**

The Rajasthan High Court ordered the Chairperson and Member of a CWC to pay compensation of Rs. 50,000 each for illegally confining a girl in a government children's home for a year after she had attained the age of majority. The High Court criticized the CWC for its incompetence and possible foul motive in failing to take appropriate action. It noted that the CWC's actions were violative of the JJ Act, 2015.

**"After a careful perusal of the record, we are of the opinion that the delay occasioned in concluding the age related enquiry of the girl was not bonafide, but was clothed with foul motive and was intentionally deferred on more than one occasion.** We have more than one reasons to hold so. The father of the girl [] clearly mentioned in the FIR that Mst. 'D' was 19 years of age. The girl had clearly conveyed to the CWC as early as on the first date of her production before it that she was not desirous to go with her parents and that the date of birth certificate submitted by her parents was fabricated. In spite thereof, rather than immediately summoning the original school record for concluding the age related enquiry expeditiously, the CWC intentionally kept on calling the parents of the girl in the proceedings even though they had expressly conveyed their unwillingness to take the girl back with them. In any event, in the month of April 2019, all relevant documents pertaining to the age of the girl had been placed before the CWC and there was no cause to defer the proceedings any further. The girl was brought to the CWC from Balika Gruh, Jodhpur on

number of occasions and she persistently pleaded that she should be released from the Balika Gruh. However, her pleas fell on deaf ears. The CWC, Pali concluded the age related enquiry only after receiving a strong direction issued by this court vide order dated 08.08.2019. Therefore, we have no hesitation in holding that the entire endeavour of .... the Ex-Chairperson, CWC, Pali in **not concluding the age related enquiry was malafide and tainted with foul motive and resulted into the illegal confinement of the corpus Mst. 'D' at the Balika Gruh for a period of almost 11 months. The action of the CWC runs totally contrary to the mandate of the Juvenile Justice Act. Therefore, the conduct of the Ex-Chairperson, CWC, Pali deserves to be deprecated.** We are informed that by now composition of the CWC, Pali stands dissolved and the noticees are no longer holding the relevant posts.

As an upshot of the discussion made above, we hereby direct [], Ex-Chairperson, CWC, Pali and [] Ex-Member, CWC, Pali to pay compensation to the tune of Rs.50,000/- each to the writ petitioner Mst. 'D' for her illegal confinement at the Balika Gruh, Jodhpur for a period of almost 11 months after the first date of her production before the CWC, Pali. The noticees shall deposit this amount with the District Judge, Pali within a period of 60 days from today. The amount so deposited shall be paid to the writ petitioner as compensation by transferring the same into her bank account.”

#### Placement order of CWC cannot be challenged through habeas corpus

- **Naresh Kumar v. State of Rajasthan and Ors. D.B. Habeas Corpus Petition No. 18/2022 decided by the Rajasthan High Court on 19.01.2022**

The Rajasthan High Court dismissed a habeas corpus petition seeking the production of a minor girl who was claimed to be the petitioner's legally wedded wife. It held that the validity of an order passed by the CWC under the JJ Act cannot be examined in a writ of habeas corpus. The girl was placed in a Girls' Home under a valid CWC order. She was not under illegal confinement, and was a minor, therefore only her parents could claim her custody.

**“It is trite to state that validity of an order passed by the Child Welfare Committee under the Juvenile Justice (Care and Protection of Children) Act, 2015 cannot be examined in a writ of habeas corpus.** Apparently, as the corpus has been sent to the Balika Gruh, Jodhpur under a valid order of the Child Welfare Committee in terms of the Juvenile Justice (Care and Protection of Children) Act, 2015, she is not under any kind of illegal confinement. Furthermore, as the date of birth of the corpus recorded in her school documents is 05.06.2006, she being a minor, no one other than her parents can stake a claim for her custody.”

- **Rachna and Ors. v. State of U.P. and Ors. Habeas Corpus Writ Petition No. 362 of 2020 decided by the Allahabad High Court on 08.03.2021**

The first petitioner's brother had eloped with a 17-year-old girl (second petitioner) and they had been staying with her. The second petitioner's mother had filed an FIR under Section 363 and 366, IPC against the first petitioner's brother. In her statement under Section 161, Cr.P.C., the second petitioner stated she had left home voluntarily due to frequent beatings by her mother and was staying with the first petitioner. The second petitioner was produced before the Chief Judicial

Magistrate (CJM) which determined her age as 17 years based on her High School Certificate submitted by the police. The CJM sent the second petitioner to a Children's Home. The petitioners are seeking the second petitioner's release from the Children's Home through this petition. The Allahabad High Court held that a writ of habeas corpus is not maintainable against the judicial order passed by a Judicial Magistrate or a Court of Competent Jurisdiction or a Child Welfare Committee under the JJ Act.

“69. Therefore, in such situation it cannot be presumed that in case the corpus is in Women Protection Home pursuant to an order passed by the Child Welfare Committee, which is neither without jurisdiction nor illegal or perverse, keeping in mind the provisions of the J.J. Act, the detention of the corpus cannot be said to be illegal and in case the petitioner is aggrieved by the order of the Child Welfare Committee, or the Magistrate, the petitioner is at liberty to take recourse of remedy of an appeal or revision provided under Sections 101 and 102 of the J.J. Act.

77. Once corpus is minor and the girl had refused to go with her parents, then in such situation arrangement has to be made. Her interest is paramount and before proceeding to pass order for custody of the minor, the welfare of the minor has to be kept in mind. The wish of minor and the wish/desire of girl can always be considered by the Magistrate concerned/Committee and as per her wishes/desire further follow up action be taken in accordance with law under the J.J. Act.

78. Thus, it is evident that a writ of habeas corpus would not be maintainable, if the detention in custody is pursuant to judicial orders passed by a Judicial Magistrate or a court of competent jurisdiction or by the Child Welfare Committee. Suffice to indicate that an illegal or irregular exercise of jurisdiction by the Magistrate passing an order of remand or by the Child Welfare Committee under J.J. Act cannot be treated as an illegal detention. Such an order can be cured by way of challenging the legality, validity and correctness of the order by filing an appropriate proceeding before the competent appellate or revisional forum under the statutory provisions of law but cannot be reviewed in a petition seeking writ of habeas corpus.

In this writ petition, reference to a larger bench was made to decide on three issues. These issues and answers to the same are as follows:

“79. We accordingly come on our conclusions in respect of question Nos. 1, 2 and 3 for determination as follows:-

Question No. 1 : (1) Whether a writ of habeas corpus is maintainable against the judicial order passed by the Magistrate or by the Child Welfare Committee appointed under Section 27 of the Act, sending the victim to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home?;

Answer : **If the petitioner corpus is in custody as per judicial orders passed by a Judicial Magistrate or a Court of Competent Jurisdiction or a Child Welfare Committee under the J.J. Act. Consequently, such an order passed by the Magistrate or by the Committee cannot be challenged/assailed or set aside in a writ of habeas corpus.**

Question No. 2: Whether detention of a corpus in Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home pursuant to an order (may be improper) can be termed/viewed as an illegal detention?

Answer: An illegal or irregular exercise of jurisdiction by a Magistrate or by the Child Welfare Committee appointed under Section 27 of the J.J. Act, sending the victim to Women

Protection Home/Nari Niketan/Juvenile Home/Child Care Home cannot be treated an illegal detention.

Question No. 3 : Under the Scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015, the welfare and safety of child in need of care and protection is the legal responsibility of the Board/Child Welfare Committee and as such, the proposition that even a minor cannot be sent to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home against his/her wishes is legally valid or it requires a modified approach in consonance with the object of the Act?

Answer: **Under the J.J. Act, the welfare and safety of child in need of care and protection is the legal responsibility of the Board/Child Welfare Committee and the Magistrate/Committee must give credence to her wishes. As per Section 37 of the J.J. Act the Committee, on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the orders mentioned in Section 37(1) (a) to (h)."**

#### Power of the CWC to recognise a guardian for a CNCP

- **Lavanya Anirudh Verma v. State of NCT of Delhi, Crl. M.C. 301/2017 decided by the Delhi High Court on 8.02.2017**

A 12-year-old girl and her 9-year-old brother were found abandoned in a park in Delhi by police officers. They handed the two children to the Child Welfare Officer. Upon counselling by him, the children stated their father had been sexually assaulting the minor girl and was physically violent with both of them. Their mother had abandoned them three years back and remarried another man. The Child Welfare Officer reported to the CWC. The CWC placed the children in a Children's Home and an FIR was registered against the father under Section 376, IPC and Section 6, POCSO Act, 2012. The petitioner, Director of Samarpan Home for Girls where the minor girl was placed, filed an application to inspect court records related to the case. This was dismissed due to lack of petitioner's locus standi to make such application and inspect the records. An application was then made to CWC to appoint the petitioner as the guardian of the minor girl which the CWC allowed. The petitioner filed another application to inspect case records before the Additional Sessions Judge, which was again dismissed. She then filed this petition in the High Court challenging the dismissal orders.

The Delhi High Court set aside the Additional Sessions Judge's orders. It noted that the CWC had rightly appointed the petitioner as guardian since there was no natural guardian available as the father was the accused and the mother had abandoned the child. It ordered that the petitioner would act as guardian ad litem for the minor girl. With respect to the power of the CWC to appoint the director of the institution in which the child had been placed as a guardian, it held:

**"20. In the present case, since the father of Minor 'X' was the accused and the mother had abandoned the family and remarried, the Child Welfare Committee (CWC) had rightly appointed the petitioner as the guardian of Minor 'X' as there was no natural guardian. The Learned Additional Sessions Judge opined that CWC had the power to**

appoint a guardian only for the proceeding before it which is contrary to the interpretation of the word "guardian" as now defined under Section 2(31) of the JJ Act, 2015 wherein the words 'before that authority' have been consciously deleted. Even if the Learned ASJ was of the opinion that a guardian appointed by the CWC cannot act as a guardian in the proceedings before it, the Court should have appointed a Guardian Ad Litem for the proceedings going on before it. Despite the fact that the learned Additional Sessions Judge was under a constitutional obligation and bound by the decisions of the Supreme Court and this Court laying down guidelines to be followed and mandated the Court to ensure that the victim had a guardian ad litem and was given legal representation, the learned Additional Sessions Judge failed to comply with the same by not only not recognizing the guardian so appointed by the Child Welfare Committee but also by not appointing a guardian ad litem.

21. The repeated advertence of the learned Additional Sessions Judge in the impugned orders that the guardian was not a family member fails to notice that the mother of the victim had abandoned her and the father was the accused. Learned Additional Sessions Judge also not only failed in its constitutional and statutory obligation but also failed to exercise its parens patriae jurisdiction for watching the best interest of the child victim.”

#### Consideration of minor’s wishes regarding their welfare and future

- **Shivani and Ors. v. State of U.P. and Ors., Criminal Misc. Writ Petition No. 14348 of 2023 decided by the Allahabad High Court on 15.12. 2023**

Petitioner no. 1 left her home after being scolded by her mother. Her mother filed an FIR alleging that her daughter had absconded with petitioner no. 2. The girl was later recovered by the police. In her statement under Section 164, Cr.P.C., she claimed to be 19 years old and stated she had married petitioner no. 2 willingly. They had also registered their marriage. Upon investigation, it was found that the girl was 16 years old based on her Class X mark sheet. The girl was presented before the CWC. As her parents refused custody, she was sent to a Children’s Home by the CWC. Petitioners sought the custody of the minor wife to be given to the husband in the present case. The Allahabad High Court left the option of raising the issue of validity of marriage by the parties before a competent court in the future. It noted that the present petition only concerns release of minor-wife’s custody by the husband. The High Court decided to release the minor wife (petitioner no. 1) to live with her husband (petitioner no. 2) based on her statement under Section 164, Cr.P.C. wherein she expressed her desire to stay with her husband. The High Court also noted that “a minor capable of making conscious decisions about her welfare and future life and voluntarily entering into a marital relationship should be considered”.

“14. Concerning the custody of the minor-wife, her statement under Section 164 Cr.P.C. asserts that she is 19 years old, married to petitioner no.2 through Hindu rites and customs, and has been living as husband and wife since the date of marriage, and subsequently registered at the Marriage Registration Office-III, Ghaziabad, U.P. **She further expresses her desire to live with her husband and requests to be handed over to him.**

15. The court opines that a minor possesses the capacity to form an intelligent preference about the choice of living arrangements. The paramount consideration in deciding the return of a minor to the custody of a guardian or husband is the welfare of the minor.

16. **The co-ordinate Bench of this Court consistently holds the view that a minor capable of making conscious decisions about her welfare and future life and**

**voluntarily entering into a marital relationship should be considered.** It is noteworthy that the mother of petitioner no.1 has declined the custody of the minor wife. Consequently, the court concludes that petitioner no.1 is no longer required to be retained and is free to go with her husband. She is at liberty to live with the man of her choice.”

### Right of victim to be heard during bail applications under the POCSO Act, 2012 and role of CWC

- **Junaid v. State of U.P. and Ors., Criminal Misc. Bail Application No. 46998 of 2020 decided by the Allahabad High Court on 09.07.2021**

The Allahabad High Court in this case discussed the rights of the victim and the accused in a case under the POCSO Act in the context of bail. It also highlighted the duty of police/SJPU to serve notice of the bail application upon the victim, share the date of hearing and provide information about entitlements and services in light of Rule 4(13), 4(14) and (15), POCSO Rules, 2020. The Allahabad High Court passed directions related to the provision of notice of a bail application for offences under the POCSO Act, 2012 read with POCSO Rules, 2020 to the child victim and outlined the duties of various stakeholders. Directions relevant to the CWC are as follows:

#### **“B. Functions of CWC:-**

- I. Receive information and documents from the police and take appropriate action thereupon as provided in the POCSO Act, 2012 read with POCSO Rules, 2020.
- II. To apprise the child of its entitlements under the POCSO Act, 2012 read with POCSO Rules, 2020. Identify the person who would be best suited to protect the interests of the child and receive notices of the legal proceedings on its behalf from amongst the following persons: child's parents/guardian/any other person in whom the child has trust and confidence or appoint a support person for the child whenever required.
- III. To prepare reports and coordinate with the police and various government agencies for providing information and services entitled to the child.
- IV. To coordinate with the DLSA and HCLSC to provide free legal aid in appropriate cases to the child at the District Court and High Court respectively.
- V. Disclose to the High Court as well as the trial court the status of entitled information and services including free legal aid provided to the child and submit relevant reports when the bail application is placed before the Court.

#### **C. Functions of DLSA and HCLSCI.**

- I. The DLSA and the HCLSC have to provide services of a legal counsel to the victim free of cost, upon the recommendation of the CWC, in bail proceedings before the District Court and High Court respectively. The agencies have to coordinate their functioning in this regard.
- II. To inform the District Court and High Court respectively about the status of the legal aid provided to the victim and the requisition of the CWC in this regard, when the bail application is placed before the court.

#### **D. Functions of District Magistrate:**

- I. To review the functioning of the CWC on a quarterly basis.

61. In terms of Section 33(7) of the POCSO Act, 2012 the name of the victim/parents/legal guardians of the victim or her address or any other information which tends to reveal the identity of the child shall be anonymized. All other steps shall be taken by the police, CWC and all other concerned authorities to ensure that the identity of the victim is not compromised.

62. CWC and HCLSC shall be joined as necessary parties to all bail applications for offences under the POCSO Act, 2012. The CWC and HCLSC shall ensure that they are represented by their respective counsels when the bail application is placed before the court. The DLSA will be a party in bail application in district courts. Child or her parents or legal guardians shall be impleaded as party without disclosing their names, and other identifying details like address and so forth.

75. Accordingly, the following timeline to execute the different statutory functions by the respective authorities shall be implemented:

		Time period
1.	Information of crime to be given by local police/SJPU to CWC (Ref: Section 19(6) of the POCSO Act 2012).	24 hours after report of crime
2.	Time period for CWC for creation of an assessment report and to identify person from amongst the parents/guardian/person in whom the child has trust or to nominate support person (if required) who is best suited to protect the best interests of child and receive bail notice on its behalf.	Within 3 days from date of lodgement of the F.I.R.
3.	Time period for service of notice of bail application by the local police/SJPU upon CWC.	Within 3 days from the date of service of notice of bail application upon the office of the Government Advocate at the High Court.
4.	Time period for service of notice of bail application by the local police/SJPU upon the child and to apprise it about information and services entitled under the POCSO Act, 2012 read with POCSO Rules, 2020.	Within 4 days from date of service of notice of bail application upon office of Government Advocate at High Court.
5.	Time period for CWC and District Legal Services Authority for providing legal aid before the hearing of the bail application in the District Court. CWC shall also provide details of information and services entitled to the child under the POCSO Act, 2012 read with POCSO Rules, 2020.	Within 5 days from date of receipt of notice of bail application by CWC

6.	Time period for CWC and High Court Legal Services Committee, DLSA for providing legal aid before hearing of the bail application in the High Court and District Court respectively.	Within 5 days from date of receipt of notice of bail application by CWC
7.	Time period for child/child's parents/guardian/any other person in whom the child has trust and confidence/support person to engage counsel of choice for the hearing of the bail application before the High Court and the District Court.	Within 5 days from the date of service of notice of bail application by local police/SJPU upon the child.
8.	Time period for police authorities to provide instructions to the Government Advocate, along with report of service of bail application upon victim and CWC, report apprising the child of entitled information and services under the POCSO Act, 2012 read with POCSO Rules, 2020 and other reports described earlier.	Within 8 days after the date of service of notice of bail application upon the office of the Government Advocate at the High Court. Under all circumstances the same should be provided to the Government Advocate before the bail application is placed before the Court.
9.	Time period for CWC to submit report before the High Court regarding the status of information and services including legal aid provided to the child.	Report to be produced when bail application is first placed before the Court.
10.	Time period for HCLSC and DLSA to inform the High Court and trial court respectively about the grant of legal aid to the victim and requisition in this regard by CWC.	When the bail application is placed before the court.
11.	Time for the Registry to place the bail application before the Court.	On the 10th day after service of notice of bail application upon the office of the Government Advocate at the High Court.

89. For this purpose the following directions are being issued:

I. The Director General of Police, UP Police/competent officer in the PHQ shall create a framework and standard operating procedures for the State of U.P. to ensure compliance of the directions and strict adherence to the timeline of duties stated earlier. The framework shall include nomination of officials responsible for executing specific tasks with a corresponding time line.

- II. The Senior Superintendent of Police/Deputy Commissioner of Police/Superintendent of Police (in districts where there is no post of Senior Superintendent of Police) of the concerned district shall be the nodal officer, who shall supervise the staff charged with the duty of actually serving the bail notice upon the victim and the CWC, imparting information about entitlements under the POCSO Act, 2012 read with POCSO Rules, 2020 to the victim, and submitting the assessment (Form B) to the CWC and to furnish timely instructions to the Government Advocate/District Government Counsel in bail applications. In case, there is default on part of such official, the S.S.P./D.C.P/S.P. of the concerned district shall take immediate action in accordance with law against such erring official.
- III. The Director General of Police shall create a State Level Committee headed by Officer not below than the rank of Additional Director General of Police. The aforesaid committee shall prepare biannual reports which review the working and implementation of the above said directions throughout the State of U.P., & examine the action taken against the officials who violate the directions.
- IV. The District Magistrate of the concerned district to ensure that the reports as directed in this order are produced by the CWC before the Court when the bail application is placed in Court. Appropriate action shall be taken against those who default.
- V. Biannual reports shall be prepared by the Principal Secretary/competent authority in the Ministry of Child Welfare, Government of U.P. regarding compliance of the directions by the CWCs in State of U.P. and the action taken against erring officials.
- VI. Reports under Direction Nos. III and V shall be placed before the High Court Legal Services Committee; High Court Committee for monitoring the expeditious disposal of rape and Protection of Children From Sexual Offences Act cases; High Court Committee for monitoring implementation of the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000, twice in an year.
- VII. The Director General of Police, U.P., the Principal Secretary, Child Welfare Committee, Government of U.P., L.R., Government of U.P. to respectively file compliance affidavits before the Registrar General, Allahabad High Court, Allahabad on or before 12.09.2021.
- VIII. The Registry shall ensure that the child or its parents are not joined as parties to the bail application by name. It should also be ensured that any other information like address or neighbourhood which will reveal the identity of the child shall not be stated in the bail application. The aforesaid details shall be anonymised.
- IX. The Registrar General shall ensure compliance of all the directions, related to the Registry of this Court.”

- **Bibi Ayesha Khanum and Ors. v. Union of India and Ors., Writ Petition No. 2318 of 2022 (GM-POLICE) decided by the Karnataka High Court on 23.02.2022**

The petitioners were mothers of children who were victims of sexual offences punishable under the POCSO Act. They went through a harrowing time as they were not provided with the opportunities to object to the bail proceedings against the accused persons. Due to this, the accused persons were granted bail without consideration of their objections. The petitioners noted that directions passed in this judgment will not affect their cases as bail had already been granted. They filed this writ petition to prevent similar situations for other mothers who are complainants or informants in POCSO cases. The Karnataka High Court passed the following directions:

17. We have perused the Judgment of the High Court of Judicature at Bombay in PIL No. 5/2021 (Arjun Kishanrao Malge v. State of Maharashtra and Others dated 08.04.2021), as also the judgment of the Hon'ble Delhi High Court in Reena Jha v. Union of India (W.P. (C) 5011/2017). The Division Bench of the Hon'ble High Court of Judicature at Bombay as also the Single Judge of the Hon'ble High Court of Delhi have extensively dealt with this matter and issued directions which in our opinion could also be issued by this Court. Hence, we issue the following directions:

17.1. The Investigation officer or the SJPU shall inform the Victim's parents/caregiver/guardian as also the legal counsel if appointed, about any application for bail or any other application having been filed by the accused or the prosecution in the said proceedings.

17.2. The public prosecutor shall serve a copy of any application or objections to be filed in the said proceedings on the Victim's parents/caregiver/guardian as also the legal counsel if appointed and issue notice of hearing of such application on them, along with all relevant documents and records necessary for their effective participation in the proceedings, in this regard the prosecutor is entitled to take the assistance of the Investigating Officer or the SJPU and file necessary proof of service of copies and notice of hearing. In the unlikely event of service not being effected it shall be the duty of the Prosecutor to inform the reasons in writing to the relevant court.

17.3. The Accused or the counsel for the accused shall serve a copy of any application or objections to be filed in the said proceedings on the Victim's parents/caregiver/guardian as also the legal counsel if appointed and issue notice of hearing of such application on them, along with all relevant documents and records necessary for their effective participation in the proceedings. The Accused or the Counsel for the Accused to file necessary proof of service of copies and notice of hearing. In the unlikely event of service not being effected it shall be the duty of the Accused or Counsel for the Accused to inform the reasons in writing to the relevant court.

**17.4. In the event of the accused being a close family member or an acquaintance of the family, in addition to the above a copy of any application or objections to be filed in the said proceedings shall be served on the jurisdictional Child Welfare Committee (CWC) and issue notice of hearing of such application on CEC, along with all relevant documents and records necessary for their effective participation in the proceedings;**

17.5. The concerned Court, before proceeding to hear the application, shall ascertain the status of service of notice, and if it is found that notice has not been issued or though issued has not been served, the Court may make such reasoned order as it deems fit to secure the ends of justice, taking into account any emergent circumstances that warrant dealing with the application in the absence of the Victim's parents/caregiver/guardian or legal counsel.

17.6. Despite service of the above notice, if none were to appear, the Court may proceed further or issue a fresh notice, as the Court may deem fit and proper, considering the interest of justice.

17.7. When the proceedings under the POCSO Act also involve offences under Sections 376(3), 376-AB, 376-DA or 376-DB of the Indian Penal Code, the notice to the victim shall be issued under Section 439(1-A) read with Rule 4(13) and 4(15).

17.8. Whenever an accused who is charged under Sections 376(3), 376-AB, 376-DA or 376DB of the IPC or the provisions of the POCSO Act, moves an application for bail be it regular, interim, transit or any other classification, notice shall be issued by the Accused to the Investigating officer, SJPU, Public Prosecutor as also any counsel on record for the victim/complainant/informant;

17.9. The victim/complainant/informant who appears before the Court may be represented by own counsel or by a counsel appointed by the Karnataka State Legal Service Authority or the concerned District Legal Services Authority/Taluka Legal Services Authority.

17.10. The state Government to provide for sufficient funds in order to make payments to the counsel so appointed.

17.11. On service of notice on the Victim's parents/caregiver/guardian as also the legal counsel, they are to be informed about the protection available under Witness Protection Scheme, 2018 and enquire if they require any such protection, if there is a request made for police protection, the same shall be considered and granted in terms of the Witness Protection Scheme 2018. In the event of information being provided by a whistleblower necessary protection to be provided in terms of The Whistle Blowers Protection Act, 2014.”

### Confidentiality of the counselling report

- **Court on its own Motion v. State, CRL.REF.No.2/2016 decided by the Delhi High Court on 4.08.2018**

In this case, the Delhi High Court received a reference from a JJB to examine the legality of the practice of recording of the statement of a victim of sexual offences by an NGO or a private counsellor and the filing of such statement or counselling report along with a chargesheet before the trial court under Section 173, Cr.P.C. The HC clarified that:

“(i) A statement under the POCSO Act can be made only to a police officer or a magistrate, and;

(ii) **Provisions of the POCSO Act or the JJ Act do not contemplate any report to be made by a counsellor.** It further makes it explicitly clear that counselling report/notes of the counsellor (as well as any person or expert recognized under the POCSO Act and Rules of 2012 and the JJ Act) are **confidential in nature and the same cannot be made a part of the chargesheet or otherwise on the trial court record.**

The counsellor at best has the duty of facilitating the victim and disclosure of any kind made by the victim to the counsellor is confidential in nature. The notes prepared during the counselling by the counsellor as well as his report are completely confidential and cannot be made part of the chargesheet or the record of the trial court in a case under POCSO Act, 2012.”

Clarification was also sought by the HC on the permissibility and legality of recording of multiple statements/versions of a victim of sexual assault, both women and children, by an investigating officer/judicial officer. The HC noted that the law allows the investigating agencies to record multiple statements of the victims. There is no prohibition on recording multiple statements by the police.

### Confidentiality of the reports and records of the CWC

- **Jayan K.S. v. Manju S., OP (FC) No. 130 of 2020 Decided by Kerala High Court on 29.03.2021**

The petitioner and respondent are husband and wife. This was a second marriage for both. The petitioner has two sons (aged 12 and 8 years) from his first marriage, while the respondent has a son (aged 12 years) from her first marriage. All of them were residing together. The petitioner filed for divorce on grounds of cruelty, alleging that the respondent physically assaulted his children, starved them, and discriminated against them in favour of her own child. When his younger son was allegedly assaulted by the respondent, the petitioner reported the matter to the CWC, which then initiated proceedings and reported the case to the Police Station.

The issue revolves around the petitioner's access to documents produced by the CWC Chairperson during his divorce proceedings. The petitioner filed an application to obtain certified copies of these documents, which was dismissed by the Family Court. The petitioner challenged this dismissal in the present case.

The Kerala High Court noted that **while the JJ Act, 2015 provides for confidentiality of reports related to children, this confidentiality is not absolute under Section 99(1), JJ Act, 2015.** The proviso to this Section allows the CWC or JJB to communicate contents of a report to the child's parent or guardian if deemed appropriate. The High Court found that as the natural guardian of the child, the petitioner has the right to access documents pertaining to his child's safety and well-being. It interpreted Section 99(2) broadly, stating that a parent who suffered loss due to injury caused to their child would also qualify as a 'victim' and shouldn't be denied access to case records. The HC directed the Family Court to permit the petitioner or his counsel to peruse the contents of the file based on the reasoning that the contents of the exhibit requested were relevant to proving cruelty in the petitioner's divorce petition.

**“8. The confidentiality related to the reports of the Child Welfare Committee or Board stated in Section 99(1) of the JJ Act is not absolute. The Committee or the Board has the power to communicate the substance of the report to the child or child's parent or guardian, if it so thinks fit. The parent or guardian who has the right to protect the interest of the minor has every right to at least know the contents of the report especially when the said report relates to the safety and well being of the child. When such a report is called for before a court of law in a dispute related to the parent or guardian of the child or involving the interest of the minor, the access to the contents of the report cannot be denied to parent or guardian of the minor relying on the confidentiality clause under Section 99(1) of the JJ Act, especially in a case where the contents of the report are relevant for adjudication of the said report.**

9. The petitioner is none other than the natural guardian of the child. As stated already, the contents of the file may be relevant for adjudication of the dispute in the original petition filed by the petitioner against the respondent. Hence, the petitioner has every right to have access to the file. The Court below dismissed the petition holding that the petitioner would



not fall within the expression 'victim' stated in sub-clause (2) of S. 99. But, the Court below did not take into account proviso to the sub-clause (1) of S. 99 at all which clearly says that the Committee or the Board, as the case may be, has the power to communicate the substance of the report to the child or its parent or guardian, if it so thinks fit. In such circumstances, the Court has also power to permit the child's parent or guardian to peruse the report filed before the Court if the contents of the said report appear to be relevant for proper adjudication of the subject matter of the dispute before the Court. That apart, the meaning of the expression 'victim' found in sub-clause (2) of S. 99 cannot be restricted to the term 'victim' defined under S. 2(wa) of Cr.P.C. A parent or guardian of the child who suffered loss or injury caused by reason of the act or omission of the offender, would also be a victim.”

## SC's observations directions on child marriage

- **Society for Enlightenment and Voluntary Action & Anr. v Union of India & Ors., Writ Petition (C) No. 1234 of 2017 decided by the Supreme Court of India on 18.10.2024**

The case involves a Public Interest Litigation filed under Article 32 of the Constitution by an NGO working against child marriage. The primary concern raised was the high prevalence of child marriages in India despite the enactment of the Prohibition of Child Marriage Act, 2006 (PCMA). The Petitioner sought issuance of effective guidelines and directives for *“stronger enforcement mechanisms, awareness programs, the appointment of Child Marriage Prohibition Officers, and comprehensive support systems for child brides including education, healthcare, and compensation, to ensure the protection and welfare of vulnerable minors”*.

The SC delved into the socio-economic factors behind child marriage, history of child marriage in India, the current legal and policy framework encompassing PCMA and other relevant legislations such as the POCSO Act, JJ Act, 2015, etc. and International Human Rights Laws and Standards on child marriage. India's constitutional and international law obligations concerning the protection of rights of children affected by child marriage was also discussed in detail.

Further, the SC outlined the legal framework to deal with Children in Need of Care and Protection (CNCP) under the JJ Act, 2015. It emphasized that **children involved in child marriages must be produced before the CWC to ensure their rehabilitation and other needs.**

“84. The Act provides a comprehensive framework to deal with CNCP. Section 27 of the JJ Act establishes the Child Welfare Committee to inter alia handle and resolve complaints in relation to children who are in need of care. **The CWC's role is to ensure the children's basic needs are met and that they are protected, treated, developed, and rehabilitated.**

**85. Therefore, children who are married off are required to be produced before the CWC so that they may be rehabilitated and taken care of. ”**

Lastly, the Court provided detailed guidelines and suggestions to eliminate child marriage in India. Some of these are of relevance to CWCs including:

### **“ F. Educational and Social Support**

#### **1. Educational Incentives and Scholarships**

1.1. The Ministry of Women and Child Development is directed to consider the viability of implementing comprehensive educational incentive programs specifically targeted at girls at risk of child marriage. This includes:

1.1.1. Providing scholarships to girls for secondary and higher education to encourage families to prioritize education over early marriage;

1.1.2. Offering stipends or financial support for families with daughters who remain in school beyond the age of fifteen, as a tangible incentive for delaying marriage; and



1.1.3. Creating mentorship programs that connect at-risk girls with role models who have successfully pursued education and career opportunities.

## **2. Social Welfare Programs**

2.1. The Ministry of Women and Child Development will also consider developing and implementing social welfare programs to assist families at risk of engaging in child marriage, including:

2.1.1. Conditional cash transfer programs that provide financial support to families in exchange for commitments to keep their daughters in school and delay marriage until legal adulthood;

2.1.2. Access to vocational training and skill development programs for families, enabling them to improve their economic status and lessen reliance on marrying off daughters for financial relief; and

2.1.3. Support services for families facing economic hardships, such as food assistance, healthcare services, and access to microfinance opportunities to promote sustainable livelihoods.

## **3. Convergence and Continuity of Services**

3.1. The Chief Secretaries of all States/UTs shall designate an appropriate authority who shall ensure the convergence of services across various government departments and agencies to create a cohesive support system for vulnerable and at-risk communities. This includes:

3.1.1. Regular inter-departmental meetings to coordinate efforts and resources among education, health, social welfare, and law enforcement sectors to address the multifaceted nature of child marriage; and

3.1.2. Establishing community-based resource centres that provide information and support related to education, legal rights, and social services to families at risk of child marriage.

## **G. Monitoring and Accountability**

### **3. Individual Care Plans for At-Risk Girls**

3.1. State authorities must develop and implement Individual Care Plans (ICP) for at-risk girl children, ensuring compliance with Section 10 of the JJ Act, which mandates individualized care and rehabilitation for children in need of care and protection. It shall include:

3.1.1. Immediate access to educational resources tailored to the child's needs;

3.1.2. Regular psychological support sessions, including counselling and therapy, as necessary;

3.1.3. Establishment of peer support groups to help at-risk girls connect with one another and share experiences;

3.1.4. Monitoring by Child Welfare Officers/District Child Protection Unit (DCPU) should occur every month for the first year post-intervention to ensure successful reintegration into education and community life; and

3.1.5. Follow-up assessments should be conducted every three months to evaluate the effectiveness of the ICP, adjusting support services as needed to address any emerging challenges faced by the child.

## **H. Technology-Driven Initiatives for Reporting Child Marriage**

### **1. Creation of a Centralized Reporting Portal**

1.1. The Ministry of Home Affairs, in collaboration with the Ministry of Women and Child Development and the NALSA, shall establish a designated portal for online reporting of child marriages. This portal will include features for anonymous reporting, allowing victims and concerned citizens to easily lodge complaints and access support services; and

1.2. The portal will serve as a centralized platform for collecting and analyzing data on child marriage incidents, enabling targeted interventions. It will enhance accessibility, transparency, and accountability by ensuring that all reports are addressed promptly by enforcement agencies and CMPOs.

### **2. Leveraging Technology for Support Services**

2.1. Each State and UT shall make all endeavours to disseminate information against child marriage across all print, digital and social media – with a focus on regions where child marriages are likely to occur in high numbers. They shall also consider the viability of data analytics to identify high-risk areas and patterns of child marriage, enabling swift interventions.

### **3. Technology-Driven Monitoring of Attendance**

3.1. The Ministry for Women and Child Development, in coordination with the relevant State Ministries, shall consider the viability of a technology-driven monitoring system to track daily attendance for school-going girls up to the 12th grade, ensuring compliance with the privacy standards outlined in the Supreme Court judgment in *KS Puttaswamy (9J)* (supra).

## **I. Funding and Resources**

### **2. Juvenile Justice Fund Institutionalization**

2.1. The State Governments are directed to institutionalize the Juvenile Justice Fund established under Section 105 of the JJ Act. This fund will provide financial assistance in the form of scholarships and stipends specifically for girls at imminent risk of child marriage or whose marriages have been annulled, promoting their educational and social empowerment.

### **3. Compensation for Girls Opting Out of Marriage**

3.1. The Ministry of Women and Child Development is requested to consider the viability of providing compensation to girls who opt out of marriage upon reaching the age of majority under the NALSA Victim Compensation Scheme or respective State Victim Compensation Schemes. This compensation should be equivalent to that provided to rape victims, ensuring adequate support for those who have escaped child marriage.

### **4. Identification and Support for At-Risk Children**

4.1. Superintendents of Police and Collectors are directed to identify instances of child marriage and monitor children at risk of dropping out of school due to socio-economic challenges or threats of early marriage. This initiative should ensure:

4.1.1. Comprehensive access to education and health services for at-risk children; and

4.1.2. Provision of stipends and fellowships to support their continued education and mitigate the factors contributing to child marriage.”

### CWC’s obligations towards child victims of offences under the POCSO Act, 2012

- **In Re: Right To Privacy of Adolescents, Suo Motu Writ Petition (Civil) No. 3 of 2023 decided by the Supreme Court of India on 20.08.2024**

In this case, the SC took *suo motu* cognizance of a judgment by the Calcutta High Court,<sup>1</sup> in which the HC had set aside a conviction under Sections 363 and 366, IPC and Section 6, POCSO Act, 2012 under Section 482, CrPC coupled with Article 226 of the Constitution. The SC had objections regarding several remarks by the HC on adolescent sexuality and its decision to quash the case on the basis of consensual romantic relationship between the 14-year-old victim and the 25-year-old accused. In her cross-examination, the victim had stated that she left her house and married the accused on her own accord and expressed her desire to stay with him. The victim and the accused also had a 10-month-old daughter at the time of cross-examination. However, the SC overturned the HC decision and held the accused guilty under Sections 376(2)(n) and Section 376(3), IPC and Section 6, POCSO Act, 2012. It considered the large age gap between the victim and the accused and dismissed the HC’s observations on the problems concerning criminalisation of consensual sexual acts between adolescents. It also established a three-member expert committee to help the victim form an informed view whether she wants to live with the accused and wants to avail benefits provided by the state government. The SC further observed that the HC could not have quashed the prosecution in view of settlement between the parties by relying on *Gian Singh v. State of Punjab & Anr.*<sup>2</sup>.

The Court delved into the State’s obligations to provide care and protection to victims of offences under the POCSO Act, 2012 and pointed out non-compliance of Section 19(6)<sup>3</sup>, POCSO Act, 2012 in the present case. The Court also noted non-compliance of the provision by the police at the grassroot level which results in violation of Article 21 of the Constitution of India by depriving various welfare benefits for CNCP under the JJ Act, 2015. It further noted that even when Section 19(6) is complied with, the CWCs often do not take any action despite their duty to take *suo motu* cognizance of cases and reaching out to CNCP who are not produced before the CWC under Section 30(xii), JJ Act, 2015.

The SC instructed that a copy of this judgment be sent to the Secretaries of the Law Departments of each State and Union Territory. The Law Secretaries are required to collaborate with the relevant departments to ensure provision of benefits under the JJ Act to the victims of offences under the POCSO Act, 2012.

<sup>1</sup> *Probbat Purkait @ Provat v The State Of West Bengal*, CRA (DB) 14 OF 2023 decided by the Calcutta High Court on 18.10.2023.

<sup>2</sup> [2012] 8 SCR 753.

<sup>3</sup> Section 19(6), POCSO Act, 2012 states:

“(6) The Special Juvenile Police Unit or local police shall, without unnecessary delay but within a period of twenty-four hours, report the matter to the Child Welfare Committee and the Special Court or where no Special Court has been designated, to the Court of Session, including need of the child for care and protection and steps taken in this regard.”

“37. The police must strictly implement sub-section (6) of Section 19 of the POCSO Act. If that is not done, the victim children are deprived of the benefits of the welfare measures under the JJ Act. **Compliance with Section 19(6) is of vital importance. Non-compliance thereof will lead to a violation of Article 21.**

35. However, at the grassroot level, sub-section (6) of Section 19 is not being implemented. Even if the information is provided to the CWC, the children in need of care and protection are not being produced before the CWC. Even if the information is given under sub-section (6) of Section 19 of the POCSO Act, the CWCs are not taking any action, though, under clause (xii) of Section 30, CWC has the duty to take suo motu cognizance of the cases and reach out to the children in need of care and protection who are not produced before the CWC. Under sub-section (6) of Section 19, the police are under a mandate to report the matter to the jurisdictional Special Court or the jurisdictional Sessions Court, in the event the Special Court has not been established. On getting information, it will be ideal if the Special Courts or the Sessions Courts forward the information to the jurisdictional CWC. It is very crucial that sub-section (6) of Section 19 is scrupulously implemented and the CWCs take immediate action to protect the victim. Therefore, we are directing that a copy of this judgment should be forwarded to the Secretaries of the Law Department of each State and Union Territories. The Law Secretaries must coordinate with the concerned departments and ensure that the benefits of these statutory provisions under the JJ Act are extended to the victims of the offences under the POCSO Act. The Secretaries will also ensure that the State Governments undertake the process of framing rules as required by Section 110(1), including the rules provided under Section 46, to make the measures provided under the JJ Act more effective.”

### CWC’s obligation to ensure principles of natural justice

- **X v State of Kerala, WP (C) No. 35211 of 2024, decided by the Kerala High Court on 25.10.2024**

The petitioner, a young lactating mother, challenged the order passed by a CWC, which granted custody of her daughter to her husband. The petitioner had left her marital home with her child after facing mental and physical harassment from her husband and moved in with her mother. Subsequently, the petitioner eloped with a man after which her husband filed an FIR, under Section 57, Kerala Police Act, 2011<sup>4</sup>. During the investigation, she was produced before a Magistrate and set

<sup>4</sup> Section 57, Kerala Police Act stated as follows:

“Police to attempt to locate missing persons.– (1) Whenever a Station House Officer receives any information from which he reasonably suspects that any person is missing and there are circumstances to believe that,- (a) such person is in danger or not under the protection of lawful guardianship; or (b) such person may be subjected to some dangerous offence ; or (c) such person is absconding himself to prevent someone from implementing a lawful right declared by any court, such officer shall register the information in a manner similar to the procedure prescribed for a cognizable offence and take immediate action to locate the missing person.

(2) During such enquiries such officer or any officer deputed by him may examine and record the statement of any witness and search any place.

(3) All persons shall answer truthfully to any question by a Police Officer enquiring this matter and a copy of such statement recorded by that officer shall be given to the witness and after getting such copy, the witness shall sign and acknowledge that such copy has been received.

her at liberty noting that she was 23-years-old and had chosen to live with the man she eloped with. The Magistrate also directed the police to produce the child before the CWC for further orders, as it was believed the child might be a CNCP. The CWC granted the custody of the child to the petitioner's husband.

At the time of the petition's admission, the petitioner's counsel argued that the baby was still being breastfed, and the order by the CWC deprived the child of her mother's milk. Consequently, the HC issued an interim order directing that the custody of the child be given to the petitioner for half an hour every day, at the Police Station, with the presence of a woman police constable and ensuring privacy for breastfeeding. In response to the above order, the petitioner's husband filed a counter affidavit along with a copy of the CWC's order. In the order, the CWC had expressed concerns regarding the petitioner's decision to elope with a person who was the step-grandfather of her child, and her stated unwillingness to return to her husband. The CWC was apprehensive about the safety of the child and entrusted the child's responsibility with the father.

The Kerala High Court noted that for Section 2(14)(v), JJ Act, to be attracted, the parent or guardian should be found unfit or incapacitated. It referred to *Shaiju S and others v Child Welfare Committee, Kollam and others*<sup>5</sup> to highlight that CWC's role can arise in a case only when both parents are not in a position to take care or protect the child. The High Court noted that the CWC's concern should only be in the best interest of the child and that the petitioner's decision to live with another person of her choice is not the CWC's concern. It highlighted that the the personal morals of the CWC Members' resulted in a biased decision and observed as follows:

“Judged by moral standards of the members, the petitioner may not be a good person, but that does not make her a bad mother. **Personal moral values always result in biased judgments. Unfortunately, the order reflects nothing other than the moral bias of the Committee members.**”

The HC also pointed out that the CWC's decision violated the mother's right to breastfeed her baby and the baby's right to be breastfed under Article 21 of the Constitution. It noted the following in this regard:

“14. Surprisingly, the fact that the child was being breastfed is not seen to have been taken into account by the Committee, while hastily granting custody of the child to the 3rd respondent. The counsel for the petitioner is correct in her submission that, severance of a one year and four month old baby from its mother violates her right to breastfeed the baby and that of the baby to be breastfed, such right being a facet of right to life under Article 21 of the Constitution. Our Constitution also imposes a duty on the State to raise the level of nutrition, which implicitly support breastfeeding.”

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(4) All searches under this section shall be done in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(5) The missing person if found on enquiry shall forthwith be handed over to the responsible guardian or produced before the Magistrate having jurisdiction.

(6) Where the person so produced is a woman or a child the Magistrate shall take such steps as are needed to safeguard the privacy and interest of that person.”

<sup>5</sup> 2021 6 KHC 573.

Based on the abovementioned considerations, the HC quashed the order by the CWC as it was violative of the principles of natural justice and fundamental rights of the petitioner and her child. It also granted the child's custody to the petitioner.

[Maintainability of Habeas Corpus Writ Petitions against orders by Magistrate/CWC sending a child to CCI](#)

- **Km. Rachna and another v State of Uttar Pradesh, Habeas Corpus Writ Petition No. 362 of 2020 decided by the Full Bench of the Allahabad High Court on 8.3.2021**

The first petitioner sought the release of the second petitioner, her friend, who was allegedly illegally detained in a Girls' Home. The second petitioner was placed in the Girls' Home by the CWC. She had eloped with her boyfriend who is also the brother of the first petitioner. An FIR was filed by the second petitioner's mother under Sections 363 and 366, IPC against her boyfriend. In her statement under Section 164, CrPC, the second petitioner stated that she left her home as she was being tortured by her mother and brother and is living happily with the first petitioner.

The writ petition was referred to a larger Bench by a Division Bench of the Allahabad HC to address three larger questions of law. The HC answered those questions as follows:

**“(1) Whether a writ of habeas corpus is maintainable against the judicial order passed by the Magistrate or by the Child Welfare Committee appointed under Section 27 of the Act, sending the victim to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home?”**

If the petitioner corpus is in custody as per judicial orders passed by a Judicial Magistrate or a Court of Competent Jurisdiction or a CWC under the JJ Act. Consequently, such an order passed by the Magistrate or by the Committee cannot be challenged/assailed or set aside in a writ of habeas corpus.

**(2) Whether detention of a corpus in Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home pursuant to an order (may be improper) can be termed/viewed as an illegal detention?**

An illegal or irregular exercise of jurisdiction by a Magistrate or by the CWC under Section 27, JJ Act, sending the victim to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home cannot be treated as an illegal detention.

**(3) Under the Scheme of the JJ Act, 2015, the welfare and safety of child in need of care and protection is the legal responsibility of the CWC and as such, the proposition that even a minor cannot be sent to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home against his/her wishes is legally valid or it requires a modified approach in consonance with the object of the Act ?**

Under the JJ Act, the welfare and safety of child in need of care and protection is the legal responsibility of the Board/CWC and the Magistrate/Committee must give credence to her wishes. As per Section 37 of the JJ Act the Committee, on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of SIR submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the orders mentioned in Section 37(1)(a) to (h).”

The HC noted that CWC/Magistrate must always **consider the wishes and welfare of the child** regarding their placement. If a minor girl refuses to go with her parents, an arrangement must be made after consideration of wishes and welfare of the girl and subsequent follow up action can be taken as per JJ Act, 2015. Lastly, it clarified that **an illegal or irregular exercise of jurisdiction by the Magistrate/CWC in the context of placement of a child cannot be treated as an illegal detention**. The **legality, validity and correctness of such an order can be challenged by filing an appropriate proceeding before the competent appellate or revisional forum** in accordance with the law including remedy of an appeal or revision provided under Sections 101 and 102, JJ Act, 2015.

### [Grant of minor girl's custody by HC to her mother-in-law in a romantic case under the POCSO Act, 2012](#)

- **Preeti and Ors. v. State of Haryana and Ors. (CRWP No. 4181 of 2020, decided by the Punjab & Haryana High Court on 16.10.2020.)**

The petitioners were in a romantic relationship. They eloped and got married in a temple. At the time of marriage, the first petitioner was aged 17 years and the second petitioner was aged 18 years. Following their marriage, the first petitioner's father threatened to kill them. The couple reported these threats to police officials but no action was taken. They then filed the present writ petition seeking police protection from the first petitioner's parents and their relatives due to the ongoing threats. As the High Court found Preeti to be a minor, it sent her to a Nari Niketan Home. An affidavit was filed by her mother-in-law wherein she stated she was ready to accept Preeti as her daughter-in-law. In the event if the second petitioner is apprehended due to an FIR filed by the first petitioner's parents, even then she will take care of her. The first petitioner was not willing to go back to her parents and testified that she eloped on her own will and married the second petitioner.

**The High Court allowed the first petitioner to stay with her mother-in-law, and directed the CWC to monitor her well-being through regular visits.** It considered the marriage to be conducted according to Hindu customs, including the Saptapadi ceremony, to be valid. The Superintendent of Police, Sonipat, was instructed to ensure the safety of the couple by providing protection from any threats or harm from the first petitioner's parents and their relatives. The HC also highlighted the **growing trend of runaway couples** and stressed on **considering the views of a child on the verge of majority**.

### [Gauhati High Court's Notification pursuant to the directions of the Supreme Court in \*In Re: Right to Privacy of Adolescents\*, Suo Moto Writ Petition \(C\) No. 3/2023](#)

The Gauhati High Court issued a notification pursuant to the directions of the Supreme Court in *In Re: Right to Privacy of Adolescents*, Suo Moto Writ Petition (C) No. 3/2023 (para 35), wherein the Apex Court had observed that at grassroots level, Section 19(6) of the POCSO Act is not being implemented. The Notification which shall come into effect immediately, reads as follows:

1. The Special Court (POCSO) or the jurisdictional Sessions Court [where there is no Special Court (POCSO)], on receiving information from the police under Section 19 (6) of the POCSO Act, 2012, that an offence has been committed under the said Act and that the victim is in need of care and protection, shall forward the information to the jurisdictional Child Welfare Committee (CWC) without delay for the rehabilitation of the child victim besides directing the police to produce the victim before the jurisdictional CWC.
2. On coming to a finding that the Special Juvenile Police Unit has failed to report that the victim is in need of care and protection and to produce him/her before the CWC, the Special Court (POCSO) or the jurisdictional Sessions Court [where there is no Special Court (POCSO)], shall report the matter to the Superintendent of Police of the concerned district, who shall then ensure compliance.
3. On coming to a finding that the CWC has failed to act to properly rehabilitate the victim, the Special Court (POCSO) or the jurisdictional Sessions Court [where there is no Special Court (POCSO)], shall report the matter to the District Commissioner of the concerned district, who shall then take steps for getting the victim rehabilitated as per the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, and the POCSO Act, 2012.
4. The Special Courts shall ensure mandatory compliance of Rule 4(10) of POCSO Rules, 2020 by the Special Juvenile Police Unit viz., “where a support person has been provided to the child the SJPU or local police shall, within 24 hours of making such assignment, inform the Special Court.”
5. If it comes to the knowledge of the Special Court that a child against whom an offence has been committed is residing with the accused person, the Special Court will immediately apprise the CWC and direct the latter to take appropriate steps for rehabilitation of the child.
6. The Special Court will call for annual reports, preferably in the month of January, from the CWC pertaining to the present residence and status of rehabilitation of children against whom offence has been committed and for whom care and protection is provided under Section 19(5) of the POCSO Act.

### Husband denied custody of minor wife

- **Nitish Kumar v. State of Bihar & Others, CR. WJC No. 880 of 2023 decided by the Patna High Court on 16.01.2024**

The petitioner, filed a habeas corpus petition seeking the release of his wife from the Girls Home. The petitioner’s wife was placed in the care home following a complaint by her father, who claimed she was a minor at the time of marriage. In her statement under Section 164, CrPC, she stated that she married him voluntarily, had given birth to a child, and expressed her desire to reside with him. The prosecution argued that petitioner’s wife was a minor at the time of marriage and child marriage is prohibited under law. She was a minor as per her school admission register and birth certificate. The HC was asked to decide whether a minor wife can be compelled to stay in the Girls Home while she refuses to go back to her parents.

The HC noted that child marriage is an offence but not illegal under the Hindu Marriage Act, 1955 and is a voidable marriage under the PCMA. It further explained that a minor girl’s welfare is always the paramount consideration and the devastating effects of child marriage for girls including health impact, violence, etc.

The HC referred to *Independent Thought v UOI*<sup>6</sup> and noted that a minor girl sought to be married is a CNCP who must be produced before the CWC under Section 27, JJ Act, 2015 and “that under no circumstances can a child below 18 years of age give consent express or implied for sexual intercourse.”

The court held that when a minor girl expresses threat to her life in her parent’s custody, the court may send her to an appropriate home to provide her shelter till she attains majority. Further, it placed reliance on *Shafin Jahan*<sup>7</sup> and held that “there is no inherent right vested in the husband to claim custody of a minor girl by filing writ of habeas corpus on illegal detention”. In the present case, the court considered the petitioner’s wife’s refusal to go back to her parents and stated that her stay in the Girls Home, cannot be termed as being detrimental to her and her child’s well being. It also denied the release of the petitioner’s wife to the petitioner till she attains the age majority. The CWC was directed to monitor the girl by making periodical inspections in the Girls Home and to comply with obligations cast under the JJ Act, 2015. The court also directed the petitioner to open a bank account in the name of his child and regularly deposit money for the child’s welfare. Lastly, the court noted that in case the petitioner’s wife wishes to go back to her parents, then the CWC shall permit her to do so by passing appropriate orders.

#### Children cannot be kept in police custody

- **Gopal Gupta v. State of Bihar & Others, Criminal Writ Jurisdiction Case No. 394 of 2020 decided by the Patna High Court on 24.03.2021**

The petitioner, victim’s father filed a writ of habeas corpus seeking the release of his minor daughter. An FIR was lodged by the petitioner under Section 366A, IPC when the 16-year-old victim went missing. In her statement under Section 164, Cr.P.C, the victim stated that she eloped with and married the accused due to ill-treatment by her parents and although she wished to go back to her parents, she feared that they may kill her. The HC, in this regard, stated as follows:

“Thus, it is not a case of only torture for compelling the victim girl to solemnize a marriage with a person of the choice of her father, according to her, she was also at imminent risk of marriage before attaining the age of marriage and her parents were likely to be responsible for the same.”

The court was informed by the petitioner’s counsel that the victim eloped again and was living with the accused and noted that the police must take the case to its logical end and thereby closed the matter.

“8. At this stage, this Court has been informed by learned counsel for the petitioner that the victim girl has once again eloped and she is presently living in the house of the accused. Having noticed that the petitioner has already lodged a First Information Report, the victim girl was recovered pursuant thereto but once again eloped during the pendency of the writ

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<sup>6</sup> AIR 2017 SC 4904.

<sup>7</sup> *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368.

application and the whereabouts of the victim girl is now well known to the petitioner, this Court would have simply closed the matter in the present proceeding. In the given facts and circumstances, now the Police has to take the case to its logical end. The petitioner has remedies available to him for proper investigation of the case.”

The court proceeded to highlight certain violations of the law in the present case. It pointed out that the victim was a CNCP under Section 2(14), JJ Act, 2015 and described CWC’s obligations under the JJ Act, 2015 and Bihar Juvenile Justice (Care and Protection of Children) Rules, 2017 (Bihar JJ Rules). However, after recovery, the victim was produced before the Chief Judicial Magistrate (CJM) instead of first producing her before the CWC and kept in the police station. The CJM recorded her statement under Section 164, CrPC and allowed her medical examination on the request of the Investigating Officer. Thereafter, the victim was again kept in the police station for the next two days and nights. The court noted non-compliance with Rule 19, Bihar JJ Rules which deals with procedure for enquiry for CWC. It also highlighted that there is no record to show that the victim was interviewed about whether she faced sexual violence and needed psychological and legal support as required under the Bihar JJ Rules and POCSO Act (the court reproduced Section 24, 25 and 26, POCSO Act after making this point).

**The court further noted that the CJM should have ensured the victim’s production before the CWC.** Lastly, it directed the State Government to:

- Establish a Child Protection Society for the State and Child Protection Units in every district under Section 106, JJ Act, 2015.
- Designate a Child Welfare Police Officer in every police station to handle cases involving children as mandated under Section 107, JJ Act, 2015.
- Ensure training for police and judicial officers on child rights to prevent procedural lapses in similar cases. The responsibility to ensure such training was given to DGP, Bihar and Director, Bihar Judicial Academy respectively.

#### [CWC’s obligations in cases of children of incarcerated parents](#)

- **Rekha v. State of U.P., Criminal Misc. Bail Application No. 25993 of 2024 decided by the Allahabad High Court on 09.04.2025**

The applicant sought bail on the ground that her 5-year-old daughter had been residing with her in prison due to her incarceration. Her counsel contended that the child’s rights under the Constitution and other beneficial legislations are being violated and will impact her future negatively due to the applicant’s incarceration. The applicant was alleged to have murdered her minor step-child and thrown his body in a tank in their house.

The Allahabad HC acknowledged the concerns raised by the applicant and noted that “family circumstances and social roots” are considerations to be factored by the courts while granting bail. It stated as follows:

**“5. The collateral damage inflicted upon a child as a result of denial of bail to their parent becomes most significant when the child has to reside in prison with the**

**accused parent.** The Court cannot shut its eyes to the plight of such children consequent to their confinement in jail by default.

6. Every parent has a duty to ensure the well-being, education and well rounded development of their child. However, parents cannot fulfil these obligations if they are imprisoned. Each child has a fundamental right to education, and an environment conducive to their development as a dutiful citizen of the country. **Neglect of rights of children who suffer from such default confinement in jail will reflect the failure of the State and inadequacy of the judicial process.** Deprivation of rights of these children will put a question mark on the ability of the State and the capacity of the judicial process to uphold the constitution and the laws.

7. **Fair administration of justice in bail jurisdiction commands this Court to ensure that adverse consequences accruing to the child as a result of rejection of the bail application of their parent (mother in this case) are mitigated** and the rights of minor children of inmates residing in jails are protected.”

The HC gave a detailed overview of the constitutional, judicial and statutory legal framework concerning the rights of children in such a context. It gave directions to stakeholders including the CWC to protect the rights of children of incarcerated parents in Uttar Pradesh. The directions specific to the CWC and District Probationary Officers are as follows:

***“VII A (V) Child Welfare Committee***

68. The CWC of respective districts to execute the following directions:

- (1) To visit jails and investigate the conditions of children residing in jails with their parents.
- (2) CWC shall promptly frame a report regarding the status of the child and shall also make findings in regard to various relevant aspects including the following parameters:
  - A. Health,
  - B. Education facilities
  - C. Overall development,
  - D. Insulation from other prisoners
  - E. Compliance of the directions in this judgement
  - F. Execution of the scheme of government made in pursuance of this judgement.
  - G. Implementation of the individual child care plan to be created by District Probationary Officer.
- (3) CWC shall submit the aforesaid report to the court at the hearing of bail application of the parent of the child.
- (4) CWC shall also submit the said report to respective State authorities and authorities of district administration.
- (5) Submit reports before competent authorities to ensure that children above 6 years who are residing with their parents (under trials/convicts) in jails are sent to Observation Homes.
- (6) CWC shall examine each case of children below 6 years.

***VIIA (VI) District Probationary Officers***

69. The DPOs of respective districts to execute the following directions:

- (i) To **create individual care plan for holistic development of each child in prison** residing with their parent in jail, after consultation with experts.
- (ii) The individual care plan shall include various parameters including the following:
  - A. Health
  - B. Nutrition Plan
  - C. Exposure to sunlight and fresh air
  - D. Education
  - E. Sports, extra-curricular and creative activities
  - F. Overall well rounded development
  - G. Maximum interface of the children with their school mates and other children of their age outside the jail premises.
  - H. Appointment of mentor teacher at schoolThese activities are only exemplars and not exhaustive.
- (iii) The individual care plan shall provide or shielding the child from negative influences in jails, and prevent contact of the child with other prisoners.
- (iv) Implement the plan in coordination with government authorities at the local level.

The HC rejected the applicant's bail application as the offence alleged was grave in nature, there was motive to commit the offence and there was likelihood that the applicant committed the offence. Directions were issued to the District Magistrate, Jail Superintendents, CWC, Ghaziabad to ensure that the rights and entitlements of the minor child of the applicant are realized by taking appropriate steps as outlined in the judgement. The HC particularly noted that the child must be admitted to a school which is situated outside the jail premises and she must not have any contact with other prisoners (except her mother) and parents of similarly situated children who are residing in jail.

### Role of CWC in protecting rights of orphaned children

- **G and Ors. v. State (NCT of Delhi), Home Department and Ors., W.P.(C) 14361/2023 and connected matters, decided by the Delhi High Court on 02.04.2025**

The petitioners, orphaned minors residing in CCIs, filed writ petitions and invoked the *parens patriae* jurisdiction to seek protection of their deceased parents' properties. The petitioners alleged that their relatives were misappropriating their inherited assets and that they were not in possession of any property or financial resources.

The Delhi HC had suggested the counsel appearing for the CWC to frame and implement guidelines to protect property rights of orphaned children in Delhi. The draft guidelines were prepared and presented to the court. The HC directed the State to frame the guidelines. The role of CWC in the draft guidelines is as follows:

#### **“3.1 Role of Child Welfare Committee:**

- a) Any child who is found to be an orphan shall be produced before the CWC within 24 hours under section 31 r/w section 32, JJ Act.

- b) The CWC shall ascertain the immediate need of the child and pass appropriate order as prescribed under the Section 37, JJ Act as well as the relevant rules under the JJ Rules.
- c) The CWC shall direct the CCI where child is placed or DCPU to prepare SIR along with information regarding all assets, properties and financials of parent(s) of such a child in accordance with JJ Act & rules thereof. The SIR shall be submitted within fifteen days. The report should include details of all movable and immovable property(ies) over which the child may have a succession/inheritance interest/right. It may also include information on the parent's will, insurance policies, benefits, fixed deposits, bank accounts, job compensation, pension, insurance money, cash, jewellery etc. The report shall be submitted to the CWC in accordance with Section 36(2) of the Act.  
(Note - Existence of movable and immovable properties in the name of such child should not be an impediment to them being declared as legally free for adoption as contemplated in Section 38 of the JJ Act. Additionally, it can be ensured that the factum of the assets of the child shall not be disclosed by the CWC or the Specialised Adoption Agency (SAA) to the prospective adoptive parents until adoption is finalised through the District Magistrate 's order)
- d) The CWC shall ensure the procurement of legal heir and succession certificate in favour of the child as well as death certificates of parent(s) as early as possible. The process for procurement of such certificate(s) must be initiated within 7 days from receiving of the SIR. The CWC shall also ensure that necessary assistance by the concerned DCPU/Local Police/DLSA is provided to the child/guardian in procuring the legal heir certificate, the succession certificate and death certificates (whichever is applicable) from the concerned Authority/Court.
- e) The CWC within 7 days of receiving the SIR along with information regarding all assets from the DCPU and procuring all relevant and available documents must compile the same and forward it along with an intimation letter to the District Magistrate (DM) within whose jurisdiction the child is residing for the purpose of protecting the property(ies) and assets that the child is entitled to.
- f) The CWC shall be at the liberty to take assistance of the Legal Aid Counsel (LAC) deputed in CWC for compiling information and documents as well as drafting the intimation letter to the OM.”

Additionally, the HC issued directions to the courts considering the applications for guardianship and for protection of the properties of the children as follows:

- “a. The Application filed by the District Magistrate for guardianship over a minor child's property should be placed before the Family Court which is already dealing with the application of guardianship of the child to avoid conflicting directions and speedy disposal of application.
- b. Interim orders necessary to protect the property of the child be passed expeditiously, preferably within a period of four weeks from the date of application filed in compliance of Section 12 of the GAW Act.
- c. The concerned Family Courts should adopt a child- centric approach. A separate counsel on behalf of the child be appointed to ensure that the views of the child are duly considered.

d. The Family Court must keep the case pending till the child attains the age of majority. The guardian should be asked to submit yearly accounts to the concerned family court and the family court should also oversee the accounts and statements as filed by the guardian.

e. In case the child is eligible for adoption in accordance with the JJ Act, 2015 and the Adoption Regulation 2022, the pendency of an Application for protecting the child's property may not be in any way be allowed to hinder the process of adoption.

f. Where there are two or more siblings, the State would protect the interest of the minor sibling(s) and defend and institute any and all claims, suits on their behalf. In cases where there are legal heirs other than the orphaned child, the District Magistrate shall duly protect the interest of the child(ren) by contesting and instituting such proceedings as may be applicable under the applicable guardianship laws, personal laws and civil procedure.”

Lastly, the HC directed the State to circulate the order and adopted guidelines to all concerned authorities and courts.

### Placement of children in institutional care to be the step of last resort

- **Sony Bagchi v. Farida Bibi, F.M.A. No. 195 of 2025 decided by the Calcutta High Court on 02.04.2025**

The appellant, a Hindu woman, found a mentally ill woman in labor on the street and took her to a hospital, following which twin boys were born to that woman in August, 2021. The biological mother, a Muslim woman, disappeared and could not be traced thereafter. The appellant has since raised the children, now aged around three and a half years, and admitted them to an English medium school. The appellant filed for guardianship under Sections 7, 12, and 25, Guardians and Wards Act, 1890. The Trial Court dismissed the application, holding that the children were “abandoned” and therefore they were CNCP as per the JJ Act and directed their custody to the CWC. The appellant challenged this decision in the present case.

The appellant contended that she was acting with the support of the children’s maternal grandmother, who affirmed her inability to care for the children and expressed no objection to their custody being handed over to the appellant. It was argued that under Mohammedan personal law, custody could vest in female relatives and that the concept of Kafalah under Islamic law can apply. The appellant also relied on *Laxmi Kant Pandey v Union of India*<sup>8</sup> to support court-ordered guardianship in the best interest of minors.

The HC rejected the application of personal law, noting that the appellant was a Hindu and the children were Muslim, and held that Kafalah, being intra-community, could not be invoked. It clarified that *Laxmi Kant Pandey* was delivered in the context of inter-country adoption and this domain is now governed by the JJ Act. It emphasized that the JJ Act, 2015 is the applicable statute and overrides personal law in such contexts.

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<sup>8</sup> (1984) 2 SCR 795.

The court held that the children were not “abandoned” or “surrendered” within the meaning of the JJ Act, as no such declaration had been made by the CWC. Instead, they qualified as “orphans” under Section 2(42)(ii) as their only guardian, the biological mother, was mentally incapacitated and missing, and unable to care for them. The court distinguished “orphans with family support” from those without and held that the appellant’s long-term care and personal bond with the children amounted to “family support”. It noted that while the application under the Guardians and Wards Act was not maintainable, the children should not be forcibly removed from the appellant without proper inquiry.

The HC modified the Trial Court’s order. The CWC was directed to initiate proceedings under Section 36, JJ Act, consider the appellant as a “fit person” under Section 37(1)(d), and evaluate other options including foster care and sponsorship. If the CWC finds that the appellant is taking sufficient care of the children, the children shall not be placed in adoption under Section 38, JJ Act and the CWC may consider the appellant as a fit person for a long term, which may extend till the time the children attain majority. The HC emphasized that the CWC while undertaking the above exercise must be guided by the principles under Section 3, JJ Act including “**the placement of the children in institutional care to be the step of last resort, after making such reasonable inquiry as required.**”

### [Role of Support Persons under the POCSO Act, 2012](#)

- **We The Women of India v Union of India, Writ Petition (Civil) No. 427 of 2022, decided by the Supreme Court on 18.08.2023.**

In this case, the Supreme Court emphasised the role of a Support Person for victims under the POCSO Act, 2012:

“12. In crimes against children, it is not only the initiating horror or trauma that is deeply scarring; **that is aggravated by the lack of support and handholding in the days that follow. In such crimes, true justice is achieved not merely by nabbing the culprit and bringing him to justice, or the severity of punishment meted out, but the support, care, and security to the victim (or vulnerable witness), as provided by the state and all its authorities in assuring a painless, as less an ordeal an experience as is possible, during the entire process of investigation, and trial.** The support and care provided through state institutions and offices is vital during this period. **Furthermore, justice can be said to have been approximated only when the victims are brought back to society, made to feel secure, their worth and dignity, restored.** Without this, justice is an empty phrase, an illusion. The POCSO Rules 2020, offer an effective framework in this regard, it is now left to the State as the biggest stakeholder in it – to ensure its strict implementation, in letter and spirit.”