

[2018] 2 S.C.R. 940

A

SAMPURNA BEHURA

v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No. 473 of 2005)

B

FEBRUARY 09, 2018

[MADAN B. LOKUR AND DEEPAK GUPTA, JJ.]

Public Interest Litigation: Non-implementation or tardy implementation of laws beneficial to children-Juvenile Justice Act of 2000 and 2015 – Failure of State Governments to implement various provisions of the Act of 2000 including, inter alia, the establishment of Child Welfare Committees, Juvenile Justice Boards, Special Juvenile Police Units, establishment of Homes for children in need of care and protection, improving the living conditions of juveniles in conflict with law – Writ petition u/Art. 32 seeking directions to the Chief Secretaries and the Directors General of Police and Superintendents of Police of all the States to forthwith implement the Act of 2000 and directions to States to provide basic amenities – Held: Keeping in view the need to strengthen the juvenile justice system in the country, issuance of certain directions to States for proper implementation of the Juvenile Justice Act – Chief Justice of each High Court to establish child friendly courts and vulnerable witness courts in each district – Juvenile Justice (Care and Protection of Children) Act, 2000 – Juvenile Justice (Care and Protection of Children) Act, 2015 – Constitution of India – Art. 32.

F

Disposing of the writ petition, the Court**HELD: 1. Suggestions and recommendations:**

(i) National and State Commissions for Protection of Child Rights
(a) The Commissions for Protection of Child Rights Act, 2005 provides for the Central Government constituting a body to be known as the NCPCR (National Commissions for Protection of Child Rights) at the national level and the State Governments constituting a body to be known as the SCPCR (State Commissions for Protection of Child Rights) at the State level. [Para 56] [968-C]

H

(b) At the national level, the NCPCR is an institution consisting of eminent persons and experts in their respective fields. As such, they are expected to look at issues concerning the welfare of children in the national perspective taking into consideration the views of every SCPCR and other stakeholders. At the State level, the SCPCR is an equally significant body consisting of eminent persons and experts. They are expected to take policy decisions for the benefit of the children in their State, regardless of which State the children originally belong to, for there might be children of one State who are in need of care and protection but in a Child Care Institution of another State. The functions of the NCPCR and the SCPCR are more or less the same except that one performs these functions at the national level, while the other performs these functions at the State level. [Paras 57, 58] [969-B-D]

A
B
C

(c) Both the NCPCR and the SCPCR have a range and variety of functions to perform and each one of them entails a great deal of responsibility. It is given to understand that both the Government of India and the State Governments have not been giving these bodies the freedom to decide on broad policy matters and indeed in some instances, particularly relating to the SCPCR, vacancies have not been filled up for several months. Unfortunately, at one point of time, even the position of the Chairperson of the NCPCR was lying unfilled for several months, until, on the directions of this Court, the position was eventually filled up. Unless the NCPCR and the SCPCRs are given due importance by the Government of India and the State Governments and vacancies are filled up in time, the enforcement of the rights of children will remain on the back burner and any number of welfare schemes formulated by the Government of India or by the State Governments will remain unimplemented or their implementation will remain sketchy and symbolic. [Para 59] [971-B-E]

D
E
F

(d) There is hope and trust that those in authority and power in the Government of India and in the State Governments appreciate the importance of adhering to the provisions of the laws enacted by Parliament and ensure that the NCPCR at the National level and the SCPCR at the State level actually function and perform their duties and recognize their responsibilities. [Para 60] [971-E-F]

G
H

A (ii) State Child Protection Society and the District Child Protection Unit

(a) The constitution of the State Child Protection Society and the District Child Protection Unit need serious consideration so that all stake-holders, including the police and NGOs are actively involved in the performance of the functions, duties and responsibilities of these two bodies. The functions of the State Child Protection Society and the District Child Protection Unit are detailed in Rule 84 and Rule 85 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 framed by the Government of India. The functions are varied, extensive and geared to improve the living conditions of children through different strategies and with the involvement of all stake-holders. [Para 61, 62] [972-A-C]

(b) Section 106 of the JJ Act provides for the constitution of a State-level Child Protection Society and a District-level Child Protection Unit. Section 106 JJ Act broadly indicates that the primary function of the State Child Protection Society and the District Child Protection Unit is to ensure implementation of the JJ Act. In addition, these bodies are obliged to ensure that the institutions under the JJ Act are established and maintained, competent authorities in relation to children and their rehabilitation are in place and these two bodies are also required to coordinate with Government officials as well as NGOs to discharge their wide-ranging functions. The involvement of civil society through NGOs is a progressive step and these two bodies are expected to take their assistance from time to time. If these two bodies actually perform their duties, responsibilities and functions in the manner expected of them, the implementation of the JJ Act would no longer be an issue. Unfortunately, these bodies are not functioning in many places or in the manner in which they are expected to and in several districts the District Child Protection Unit has not even been constituted. There is expectation that remedial steps to be taken by all concerned. [Paras 63-65] [972-D, G-H; 973-A-B]

(iii) Juvenile Justice Boards and Child Welfare Committees

(a) The appointment of some social workers as members of the JJB is not necessarily in accordance with the provisions of Section

4 of the JJ Act. The selection of social workers as members of the JJB is required to be carried out in accordance with the provisions of Rule 88 read with Rule 87 of the Model Rules. The appointment of social workers is serious business, inasmuch as they bring their experience - practical and professional - while conducting an enquiry under the JJ Act. This becomes all the more important when it is appreciated that the social workers can also conduct an enquiry independent of the Principal Magistrate as provided for in Section 7 of the JJ Act. However, the final disposition of the enquiry cannot be without the Principal Magistrate as mandated in the proviso to sub-section (3) of Section 7. Thus, there is a heavy responsibility on the social workers to make a meaningful contribution during the course of an enquiry and also at the time of its disposition. [Paras 67, 68] [973-E; 974-C-E]

(b) The training of the Principal Magistrate as well as the social workers is extremely important and this is provided for in Rule 89 of the Model Rules. Unfortunately, the duration of training and the curriculum and course have not yet formulated, and the nature of training given to the Principal Magistrate and the social workers is somewhat *ad hoc* and unstructured. The lack of meaningful and effective training (and refresher courses) can have a vital impact on the ultimate disposition of an enquiry as also on the rehabilitation and reintegration of a juvenile in conflict with law who is before the JJB. Serious thought is required to be given to this not only from the point of view of awareness of the law and child rights but also from the point of view of sensitization of the JJBs, case management and creation of a child friendly ambience and environment within the JJB for a juvenile in conflict with law. [Para 69] [974-F-H]

(c) If there are a large number of inquiries pending, it is the obligation of the JJB to sit on a daily basis so that the enquiry is concluded within the time limit prescribed by the JJ Act. Where a large number of inquiries are pending, it would be worthwhile for the State Government and the High Court to consider having more than one JJB. [Para 71] [975-E-F]

(d) JJB is virtually in the nature of a court, although it does not conduct a trial, but only conducts an enquiry. Nevertheless, it

- A does need adequate staff to perform its functions in an efficient manner. The JJB also has several administrative functions and they need due attention so that there is effective coordination between the JJB, the officials of the Observation Home, the police, the juvenile in conflict with law and the parents of that juvenile and lawyers representing the police as well as the juvenile in conflict with law. These administrative duties need attention if the JJB is to function effectively and a casual statement that the JJB has adequate staff, though possibly correct, is neither here nor there considering the requirements of the stake-holders who attend the enquiry before the JJB. [Para 72] [973-A-C]
- B
- C (e) There is a dire need to have quality legal aid lawyers who can assist juveniles in conflict with law. This is an issue that must be taken up with all earnestness by the State Legal Services Authority. Unless a child is given adequate legal representation, it may impact his or her future, more so if the child in conflict with law is found guilty and placed in a Special Home. On its part, NALSA has brought out a manual for training of legal aid lawyers and it is believed that it will be extremely useful not only for legal aid lawyers who are representing juveniles in conflict with law, but also for legal aid lawyers generally. Similarly, prosecutors also need to be sensitized and the State Governments would take necessary steps to educate and train them keeping in mind the primary objective of the JJ Act, which is to reintegrate a juvenile in conflict with law in society and to rehabilitate that juvenile. [Para 73] [976-D-F]
- D
- E
- F (f) It is clear from Rule 64 of the Modal Rules that a Probation Officer has a very important role to play in ensuring that a juvenile in conflict with law is given adequate representation and a fair hearing before the JJB and the enquiry is conducted in a manner that is conducive to the rehabilitation of the juvenile in conflict with law. In this regard, the preparation of an individual care plan and post release plan gain immense significance and Probation Officer has an important role to play. [Para 75] [978-F-G]
- G
- H (g) It is of great importance that a Probation Officer should be given adequate training, sensitization and awareness of his or her duties and responsibilities. NALSA has made a significant contribution in this regard by preparing a training module for

Probation Officers. It is expected all the State Governments as well as MWCD to ensure that training is given to Probation Officers on the lines suggested by NALSA with improvements being made in adult learning techniques, training methodology, the curriculum and the course content in due course of time. The said conclusions are equally applicable to the CWCs. [Para 76] [978-G-H; 979-A]

A
B

(iv) Use of technology

(a) The use of technology, both by the JJBs as well as by the CWCs is extremely important and it is disheartening to note from the affidavits and submissions made by MWCD that there is an acute shortage of computers and peripherals with the JJBs and CWCs. Technology is important not only for the effective functioning of the JJBs and CWCs, but also to deal with issues that would arise from time to time concerning the tracing and tracking of missing children, the rescue of children working in hazardous industries, trafficked children, children who leave the Child Care Institutions, victims of child sexual abuse and follow-up action, among several other requirements. It is well-known that our country is a technological power-house and if advantage is not taken of the resources available and fully utilize the benefits of technology through computers and the internet for the benefit of children, our status as a technological power-house would be in jeopardy and would remain only on paper. Data, particularly of the magnitude of the kind, can be easily collected through the use of computers and internet. This would be of great assistance in planning and management of resources and MWCD and others concerned with child rights must take full advantage. [Para 79] [979-E-H; 980-A]

C
D
E
F

(b) The use of computers and peripherals would make an immense contribution to the administrative functioning of the JJBs and CWCs. Both the Government of India and the State Governments need to look into this and provide necessary software and hardware to the JJBs and the CWCs for obvious reasons. The Police authorities in Telangana and AP in consultation with the Juvenile Justice Committee of the High Court have made considerable use of information and communication technology and innovative steps must be encouraged. Similarly, the use of

G
H

A video conferencing could also be considered in appropriate cases where some inconvenience to the juvenile in conflict with law necessitates the use of video conferencing facilities. [Para 80] [980-B-C]

(c) MWCD must be complimented for bringing out an online Central Level Monitoring System. This online system is working rather effectively although it would need upgrading from time to time as the months go by. The unfortunate part is that there does not seem to be much active cooperation extended by the State Governments in updating the information on the Central Level Monitoring System. Needless to say, updating information is extremely important so that there can be efficient planning which will ultimately lead to better management of issues concerning children. The State Governments are required to fill up the information on the Central Level Monitoring System once a quarter and surely that cannot be a difficult task. [Para 81] [980-D-E, F]

(v) Role of Police

(a) An extremely important stake-holder in the effective implementation of the JJ Act is the local police. Section 107 mandates the appointment of a Child Welfare Police Officer and a Special Juvenile Police Unit in each district. The SJPU must also include two social workers having experience of work in the field of child welfare, one of them being a woman. The responsibility for appointment lies on the State Government. Many States have actually appointed CWPOs and set up SJPU.

F Unfortunately, their duties and responsibilities have not been clearly identified but are generally stated in Rule 86 of the Model Rules. Also no system of effective training for CWPOs and SJPU has evolved and many of them exist only symbolically and only because the law requires them to exist. Since the duties and responsibilities of the CWPOs and SJPU have not been specified or identified, it is high time that the Bureau of Police Research & Development and the National Police Academy in consultation with the State Police Academies identify the functions, duties and responsibilities of the CWPOs and SJPU. In this regard, NALSA has prepared Guidelines for Training Juvenile/Child Welfare Officers attached to every police station and members of the

Special Juvenile Police Unit. Perhaps this could be a starting point for their training through the Bureau of Police Research & Development and the Police Academies. [Paras 82, 83] [980-G-H; 981-E-H]

(b) With regard to the Police generally, it was submitted that due to the policy of rotation, it often happens that soon after a police officer completes his or her training that officer is transferred out to another department. This is a waste of effort and one of the ways of resolving problems arising out of transfers is for every State Police Academy to conduct regular training programmes under the guidance of senior police officials of the State and for the State Government to optimally utilize the services of its officers. Similarly, the Government of India is required to involve Railway Police for dealing with children. No information or data is forthcoming in this regard. The Government of India through the Railways is expected to look into the matter with some degree of urgency. A large number of runaway children and children on drugs are found in railway stations (and other places) working as rag-pickers or performing other menial activities. It was submitted that even otherwise, there is rampant drug abuse among such children. Efforts must be made to establish de-addiction centres especially for such children and also generally for juveniles in conflict with law and children in need of care and protection. [Para 86] [982-E-G]

(vi) Child Care Institutions

(a) Many of the Child Care Institutions are housed in run-down buildings and are hardly conducive to comfortable living even to a minimum degree. State Governments must appreciate that they are not doing any charity by putting up children in Child Care Institutions - they are merely performing their statutory and constitutional obligations. There is, therefore, an urgent need to make an evaluation and assessment of all the Child Care Institutions in every State to ascertain their condition, the infrastructure requirements and staffing requirements. Children live in these Institutions, not because they want to but because they have no other option, since most of them are children in need of care and protection. The obligation of society is to provide solace and comfort to these children and adherence to the

A minimum standards of care. Model Rules contain details for improved Child Care Institutions and their requirements. [Para 87] [982-G-H; 983-A-C]

(b) There are additional duties and responsibilities obligated by the Constitution on the State Governments such as providing education, health-care (both physical and psychological) and adequate nutrition. These are huge areas that need to be looked into with all sincerity by the bodies and institutions established under the Commissions for Protection of Child Rights Act, 2005 and the JJ Act. But, in such exceptional circumstances, the courts are constitutionally obliged to issue a continuing mandamus in public interest for implementation of the laws enacted by Parliament, which is essentially the primary responsibility of the Executive. If the Executive ignores the mandate of Parliament with continuing callousness, it would only be to the detriment of the children of the country. [Para 88] [984-B-D]

D (c) MWCD has made considerable efforts in ensuring that Child Care Institutions run and managed by individuals and NGOs are registered in accordance with the provisions of the JJ Act. There has been some resistance to registration from some institutions, thus, it is made clear that the law has to be obeyed as long as it exists on the statute books. It might be uncomfortable for those who manage some of these Child Care Institutions, but registration is compulsory and in public interest to ensure that minimum standards of care are maintained and the children in those Institutions are well looked after. Occasionally there are allegations originating from Child Care Institutions of trafficking and child sexual abuse, some of which may be unverified, but to avoid any such shameful allegations it is necessary that their registration, their management and functioning are strictly monitored by the State Governments and by MWCD. [Para 89] [983-G-H; 984-A-B]

G (d) It was suggested by the counsel that in all Child Care Institutions, there should be a segregation of children in terms of age and wherever applicable segregation based on the nature of the offence allegedly committed so that the possibility of sexual abuse or any other kind of violence is eliminated. Additionally,
H all such institutions should be advised to provide vocational or

continuing education with a view to re-settling children in conflict with law and children in need of care and protection by reintegrating and mainstreaming them in society. It was emphasized that there should be adequate staff available in all Child Care Institutions so that they are able to perform their duties efficiently. It was also suggested that the location of the JJBs and CWCs should be in close proximity of the Child Care Institutions to avoid children having to travel long distances for their appearance before these statutory bodies. All these suggestions and recommendations made by the counsel are issues of concern and must be dutifully addressed by the State Governments and the SCPCRs. [Paras 90, 91] [984-F-H; 985-A]

(e) The submissions made with regard to Child Care Institutions was that District Legal Services Authorities may make unscheduled visits to them to ascertain whether they are in fact functioning as they should, is definitely worth implementing and NALSA is expected to go ahead with the suggestion. In fact, the Chief Justices Conference in 2006 had specifically adverted to the appointment of Visitors to Child Care Institutions and in the Chief Justices Conference in 2013 and 2015 improving the living conditions in Child Care Institutions was also adverted to. NALSA and District Legal Services Authorities to respect the views expressed in the Chief Justices Conferences. [Para 92] [985-B-C]

(vii) Juvenile Justice Fund

(a) The JJ Act provides for the constitution of a Juvenile Justice Fund. It is quite distressing to note that some of the State Governments have not even set up the Juvenile Justice Fund while one or two State Governments have set up the Fund with an embarrassing amount of only a few thousand rupees. It is wondered how the welfare of children can be looked after by these State Governments with such a pittance in the kitty. Obviously, these State Governments are not seriously concerned about the welfare of children, which is a pity. This is official apathy to the rights of children and a cause for worry. [Para 93] [985-D-F]

(viii) Evaluation and assessment

(a) It would be appropriate if some sort of an evaluation or social

A audit is carried out every six months for the next couple of years to monitor and supervise the implementation of the JJ Act. More than sufficient time has already elapsed since the Act of 2000 was enacted by Parliament and certainly the children of the country deserve much better and cannot wait for another 15 or 16 years for the effective implementation of the JJ Act. Most of the children who were born when the Act of 2000 was enacted are nearing adulthood and many of them have not had the benefit of the provisions of the Act of 2000. This mistake, a serious one, cannot be repeated in the implementation of the JJ Act. [Para 94] [985-G-H; 986-A]

C 2. Conclusions and directions:

Keeping in mind the concerns expressed by the counsels and the need to invigorate the juvenile justice system in the country, the following directions are given:

D (i) The Ministry of Women and Child Development in the Government of India and the State Governments should ensure that all positions in the NCPCR and the SCPRs are filled up well in time and adequate staff is provided to these statutory bodies so that they can function effectively and meaningfully for the benefit of the children.

E (ii) The NCPCR and the SCPCR should take their duties, functions and responsibilities with great earnestness keeping in mind the faith reposed in them by Parliament. These bodies have a very significant and proactive role to play in improving the lives of children across the country.

F (iii) The State level Child Protection Societies and the District level Child Protection Units have an enormous responsibility in ensuring that the JJ Act is effectively implemented and Child Care Institutions are managed and maintained in a manner that is conducive to the well being of children in all respects including nutrition, education, medical benefits, skill development and general living conditions. These two bodies would be well advised to take the assistance of NGOs and civil society.

G (iv) The State Governments must ensure that all positions in the JJBs and CWCs are filled up expeditiously and in

H

accordance with the Model Rules or the Rules framed by the State Government. Any delay in filling up the positions might adversely impact on children and this should be avoided. A

(v) The JJBs and CWCs must appreciate that it is necessary to have sittings on a regular basis so that a minimal number of inquiries are pending at any given point of time and justice is given to all juveniles in conflict with law and social justice to children in need of care and protection. B

(vi) The NCPCR and the SCPCRs must carry out time-bound studies on various issues, as deemed appropriate, under the JJ Act. Based on these studies, the State Governments and the Union Territories must take remedial steps. C

(vii) The NCPCR and the SCPCRs must carry out a study for estimating the number of Probation Officers required for the effective implementation of the JJ Act. Based on this study, the State Government must appoint the necessary number of Probation Officers. It must be emphasised that the role of a Probation Officer is critical for the rehabilitation and social reintegration of a juvenile in conflict with law and due importance must be given to their duties as postulated in the Model Rules and Rules, if any. D E

(viii) MWCD must continue to make creative use of information and communication technology not only for the purpose of collecting data and information but also for other issues connected with the Act such as having a database of missing children, trafficked children and for follow up of adoption cases etc. F

(ix) There is a need to set up Special Juvenile Police Units and appoint Child Welfare Police Officers in terms of the JJ Act at the earliest and not only on paper. It is necessary to clearly identify the duties and responsibilities of such Units and Officers and wherever necessary, guidance from the available expertise, either National Police Academy G H

A or Bureau of Police Research and Development or NGOs must be taken for the benefit of children.

(x) The National Police Academy and State Police Academies must consider including child rights as a part of their curriculum on a regular basis and not as an isolated or sporadic event.

B (xi) The management of Child Care Institutions is extremely important and State Governments and Union Territories would be well advised to ensure that all such institutions are registered so that children can live a dignified life and issues of missing children and trafficking are also addressed.

C (xii) State Governments and Union Territories would be well advised to appoint eminent persons from civil society as Visitors to monitor and supervise the Child Care Institutions in all the districts. This will ensure that the management and maintenance of these Institutions are addressed.

D (xiii) The JJ Fund is a bit of an embarrassment with an absence of an effective response from the State Governments and the Union Territories. If financial resources are not made available for the welfare of the children we shudder to think what could be better utilization of the funds.

E (xiv) NALSA has done a remarkable job in collecting data and information relating to the JJ Act, as evidenced by the three part Report prepared by it. NALSA is requested to carry forward the exercise and complete a similar Report preferably before 30th April, 2018 to assist all the policy making and decision taking authorities to plan out their affairs.

F (xv) All authorities such as JJBs and CWCs, Probation Officers, members of the Child Protection Societies and District Child Protection Units, Special Juvenile Police Units, Child Welfare Police Officers and managerial staff of Child Care Institutions must be sensitized and given adequate training relating to their position. A very positive step has been taken in this regard by NALSA and it is

G

H

expected that the NCPCR with the assistance of the SCPCRs to carry forward this initiative so that there is meaningful implementation of the JJ Act. A

(xvi) Each High Court and the Juvenile Justice Committee of each High Court to continue its proactive role in the welfare of children in their State. To make the involvement and process more meaningful, Chief Justice of every High Court is requested to register proceedings on its own motion for the effective implementation of the 2015 Act so that road-blocks if any, encountered by statutory authorities and the Juvenile Justice Committee are meaningfully addressed after hearing the concerned governmental authorities. [Para 95] [986-B-H; 987-A-H; 988-A-H; 989-A-F] B C

3. The Chief Justice of each High Court is requested to seriously consider establishing child friendly courts and vulnerable witness courts in each district. Inquiries under the JJ Act and trials under other statutes such as the Protection of Children from Sexual Offences Act, 2012, the Prohibition of Child Marriage Act, 2006, trials for sexual offences under the Penal Code and other similar laws require to be conducted with a high degree of sensitivity, care and empathy for the victim. [Para 96] [989-F-G] D E

Sheela Barse II v. Union of India (1986) 3 SCC 632; *Sheela Barse v. Union of India* (1988) 4 SCC 226 : [1988] 2 Suppl. SCR 643; *Court on its own motion v. State of Punjab and The National Commission for the Protection of Child Rights (NCPCR) v. The State of Haryana and Others* Decided on 9th April, 2013, MANU/PH/0599/2013; *Naisul Khatun v. State of Assam and Ors.* 2011 Cri LJ 326 : 2010 SCC Onluine Gau 225; *The Matter of Letter of Sanat Kumar Sinha (Chief Co-ordinator), Bal Sakha v. The State of Bihar through the Chief Secretary, Govt. of Bihar and Ors.* MANU/BH/0384/2008 – referred to. F G

Case Law Reference

(1986) 3 SCC 632	referred to	Para 22
[1988] 2 Suppl. SCR 643	referred to	Para 24
2011 Cri LJ 326:2010 SCC	referred to	Para 70

H

A CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 473 of 2005

Under Article 32 of The Constitution of India.

Colin Gonsalves, Sr. Adv., Ms. Sneha Mukherjee, Ms. Jyoti Mendiratta, Advs. for the Petitioner.

B

S. Wasim A. Qadri, R. K. Rathore, Ms. Sunita Sharma, Ms. Gunwant Dara, A. A. Raj, B. V. Balram Das, G. S. Makker, Raj Bahadur, Shailender Saini, Saeed Qadri, Vikas Bansal, Gagan Gupta, Saurabh Gupta, Advs. for the Respondents.

C

The Judgment of the Court was delivered by

D

MADAN B. LOKUR, J. 1. What can a citizen do if the State pays no attention to his or her fundamental or human or statutory right, nor takes serious interest in fulfilling its constitutional or statutory obligations? What if that citizen is a voiceless child or someone whose voice cannot be heard over the din of governance – for example, physically or mentally challenged persons, senior citizens, and other disadvantaged sections of society such as scheduled castes, tribals and several others? The aggrieved would perhaps approach the judiciary (if he or she could and as a last resort) for the enforcement of a human right. Should the judiciary take corrective steps and be accused of ‘judicial activism’ or overreach – or should the cynics and skeptics have their day resulting in the grievance of the voiceless and the disadvantaged remaining unheard and the fundamental and human rights lying unaddressed?

E

F

2. These questions arise in the context of the virtual non-implementation or tardy implementation of laws beneficial to voiceless (and sometimes silenced) children, particularly, the Juvenile Justice (Care and Protection of Children) Act, 2000 (the Act of 2000) and the Juvenile Justice (Care and Protection of Children) Act, 2015 (the JJ Act). We record and acknowledge our appreciation for the efforts of Sampurna Behura in highlighting some of these issues by way of a Public Interest Litigation and to learned counsel for the appearing parties in rendering assistance enabling us to address some of these issues by not making these proceedings adversarial, but a constructive effort for the benefit of the children of our country. No one has any doubt that it is time for the State to strongly and proactively acknowledge that even children in our

G

H

SAMPURNA BEHURA v. UNION OF INDIA & ORS. 955
[MADAN B. LOKUR, J.]

country have fundamental rights and human rights and they need to be enforced equally strongly. A

3. If Nelson Mandela is to be believed, “Our children are our greatest treasure. They are our future. Those who abuse them tear at the fabric of our society and weaken our nation.”¹ Our policy and decision makers need to heed this advice and warning and appreciate that they are not doing any favour to the children of our country by caring for them – it is their constitutional obligation and the social justice laws enacted by Parliament need to be effectively and meaningfully enforced. B

Background and Chief Justices Conferences

4. In a prescient understanding of child rights, the Chief Justices’ Conference held in 2006 (presided by the Chief Justice of India with participation by the Chief Justice of every High Court) the following resolution was passed: C

“a) That High Courts will impress upon the State Governments to set up Juvenile Justice Boards, wherever not set-up. The Chief Justices may nominate a High Court Judge to oversee the condition and functioning of the remand/observation homes established under the Juvenile Justice (Care and Protection of Children) Act, 2000. D

b) The Chief Justices of the High Courts will expedite the matter with the respective State Governments for setting up of Juvenile Justice Boards, wherever they have not yet been set up. E

c) The Chief Justices of the High Courts will nominate a Judge to make periodical visits to Juvenile Homes, wherever set up, and the learned Judge may suggest remedial measures for the betterment of the conditions of the juvenile homes and inmates.” F

5. The above resolution was passed almost six years after the Act of 2000 came into force – meaning thereby that even about six years after Parliament enacted a law for the benefit of children, the State Governments had not taken steps to fulfill one basic requirement of the law, that is, to set up Juvenile Justice Boards. G

6. In 2009 the Chief Justices’ Conference discussed the progress made in setting-up of Juvenile Justice Boards and the resolution passed

¹ Address by President Nelson Mandela at National Men’s March, Pretoria on 22 November 1997

H

A in the Conference in 2006 was reiterated indicating that little or no progress had still been made by the State Governments in setting up Juvenile Justice Boards. So, almost a decade had gone by without compliance by the State Governments of a basic statutory obligation laid down by Parliament.

B 7. In 2013 the issue of strengthening the juvenile justice system was again discussed at the Chief Justices' Conference and the resolutions passed in 2006 and 2009 were reiterated. In addition, the mandate of setting up Child Welfare Committees in all districts was also emphasized to meet the requirements of children in need of care and protection and to give full effect to the provisions of the Act of 2000. It was the further
C resolved:

D “It was further resolved that Juvenile Justice Committees, as had been set up in the Delhi High Court, under the guidance of the Chief Justice and senior judges and others concerned with the welfare of juveniles and the working of the Juvenile Justice (Care and Protection of Children) Act, 2000, be set up in all the High Courts to monitor the implementation of the provisions of the Act in their true spirit.

E It was noticed that the State Governments had not taken serious steps to establish and set-up the various Homes, referred to in the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006 and the Juvenile Justice (Care and Protection of Children) Rules, 2007. It was noticed that the conditions in the Remand/ Observation Homes and Shelter Homes are not up to the standard and a lot of improvement was required to make
F these facilities meaningful, as envisaged under the above Act and Rules. It was also noticed that After-care Homes for adolescents passing into adulthood and, in particular girls, have not been taken up seriously by the concerned Authorities. The Chief Justices shall take up the matter with the State Governments for improving the conditions of the various Homes, referred to in
G the above Act and the Rules, and to provide for permanent staff to run the said establishments, as it was reported by some of the Chief Justices that many of the employees of the Homes had been working on an ad-hoc basis, even for as many as fifteen years. The Chief Justices were requested to take up the matter

H

SAMPURNA BEHURA v. UNION OF INDIA & ORS. 957
[MADAN B. LOKUR, J.]

with the State Authorities to ensure that services of such persons, A
who have been working on ad-hoc basis, are regularised, if
necessary, by creation of posts.

Particular notice was taken of the fact that the provisions of the
Juvenile Justice (Care and Protection of Children) Act, 2000,
had not yet been implemented in the State of Jammu and B
Kashmir.”

8. In 2015 the issue of strengthening the juvenile justice system
was once again discussed at the Chief Justices’ Conference and the
following resolution passed:

“Resolved that the High Courts shall continue to take all steps C
necessary, including evolving ways to ensure greater sensitivity,
to effectively deal with cases in the field of Juvenile Justice in
their respective States. The High Courts should ensure that
constitution of Juvenile Justice Boards and Child Welfare D
Committees are in place, that visits are regularly made to the
Juvenile Homes, Special Homes, Observation Homes, Shelter
Homes and Rescue Centres etc. and that such homes are set up
wherever they have not already been set up. It shall also be
ensured that the requisite facilities are provided as per the
Standards, Rules, Policies and Guidelines in all such Homes/ E
Centres. The assistance of State Legal Services Authorities and
District Legal Services Authorities shall also be taken in this
regard.”

9. Finally, in 2016 at the Chief Justices’ Conference the following
resolution was passed:

“The Conference has noted the necessity for ensuring institutional F
support for juveniles in conflict of law and children in need of
care and protection.

Resolved that:

(i) cases pending for a period in excess of one year be disposed G
of on priority by the JJBs;

(ii) Juvenile Justice Committees of the High Courts shall monitor
the pendency and disposal of adoption cases and applications
for declaring children free for adoption on a priority basis;

H

- A (iii) steps be taken to ensure that every district is equipped with a Child Protection Unit, Special Juvenile Police Unit, Observation Homes and Children Homes;
- (iv) pending cases of orphaned, abandoned and surrendered children be monitored by the Juvenile Justice Committees of High Courts;
- B (v) training and refresher training be imparted to judicial officers;
- (vi) vacancies in juvenile justice institutions be filled up on a mission mode basis in three months; and
- (vii) State Legal Services Authorities should actively discharge their role.”
- C

10. At this stage, it may be mentioned that pursuant to the resolutions passed in the Chief Justices’ Conferences, every High Court has constituted a Juvenile Justice Committee headed by a judge of the High Court to take stock of and look into issues concerning children. We may note that every High Court has responded more than positively and each Juvenile Justice Committee has brought about some improvements in the living conditions in Homes and in the well-being and lives of many children.

D

11. Appreciating that the judiciary has a constitutional obligation to ensure that everybody acts in the best interests of the child, the Chief Justice of India set up a Committee in the Supreme Court to address the issues of effective implementation of the Act of 2000 – such is the importance given by the judiciary to the rights of children.

E

12. Notwithstanding nudging by the judiciary, judicial ‘activism’ and criticism of it, over the last decade or so, State Governments and Union Territories have not fully complied with the provisions of a law solemnly enacted by Parliament for the benefit of children. In many instances, only cosmetic changes have been introduced at the ground level with the result that voiceless children continue to be subjects of official apathy. However, it must be acknowledged that the Union of India through the Ministry of Women and Child Development (for short MWCD) has taken some bold steps in recognizing the rights of the children and giving them some importance. Nevertheless, the overall picture relating to the recognition of the rights of children and their realization is far from satisfactory and remains gloomy as we continue to trudge along the long and winding road.

F

G

H

SAMPURNA BEHURA v. UNION OF INDIA & ORS. 959
[MADAN B. LOKUR, J.]

Writ petition in Public Interest

A

13. Sampurna Behura, the petitioner before us, has done her Masters in Sociology and was pursuing her Doctoral Thesis in the same subject at the relevant time. She has been involved in handling cases of child sexual abuse, street children and working children and has also undertaken various studies on child rights.

B

14. Concerned with the plight of children in the country, Sampurna Behura filed a writ petition under Article 32 of the Constitution drawing attention to several Articles of the Constitution which impose primary responsibility on the State to ensure that the needs of children are met and their basic human rights are protected. The Articles in the Constitution referred to by her include those in the Chapter on Directive Principles of State Policy. She has also drawn attention to the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November, 1989. The Convention, to which India is a signatory, emphasizes *inter alia*, securing the best interests of the child, social reintegration of child victims etc.

C

D

15. She has also stated in the writ petition that the Act of 2000 was passed by Parliament bearing in mind various standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 and other relevant international instruments.

E

16. The main burden of the writ petition is the failure of State Governments to implement various provisions of the Act of 2000 including, *inter alia*, the establishment of Child Welfare Committees, Juvenile Justice Boards, Special Juvenile Police Units, establishment of appropriate Homes for children in need of care and protection, improving the living conditions of juveniles in conflict with law, medical facilities for children in the custody of the State and several other human rights issues. It is on these broad facts and averments that relief was prayed for in public interest.

F

G

17. The writ petition also drew attention to surveys and researches conducted in 2004-2005 in various States but it is not necessary to refer to them in any great detail, notwithstanding their significance and importance, since they might have lost immediate relevance with the passage of time.

H

A 18. The prayer in the Public Interest Litigation is to the effect that the Chief Secretaries and the Directors General of Police and Superintendents of Police of all the States should forthwith implement the Act of 2000 in its true spirit.

B 19. There is also a prayer that all respondent States be directed to provide basic amenities like nutritious food, proper and hygienic accommodation, educational facilities, recreational facilities and rehabilitation centres for juveniles in various Homes and to direct the Collectors of each district to involve reputed NGOs in implementing the orders of this Court.

C 20. The Act of 2000 has since been repealed and what is now in force is the JJ Act. The repeal of the Act of 2000 does not at all change the sum and substance of the reliefs claimed in the Public Interest Litigation. As such this petition though filed way back in 2005 is not infructuous, the issues raised being very much topical and alive even today.

D **Proceedings in this Court**

E 21. The writ petition was first taken up for consideration on 26th September, 2005 when notices were issued to all the respondents (Union of India and States). After service of notice (which itself took about one year!) the matter was taken up on 3rd January, 2007 and it was observed that the prayer in the writ petition was for forthwith implementation of the Act of 2000 in its true letter and spirit and that the petition highlighted some provisions of the said Act which had not been implemented despite a number of years having elapsed. It was noted that the writ petition highlights the horrible conditions in some Homes for children and that this was a violation of Article 21 of the Constitution. Under these circumstances, the Court required detailed affidavits to be filed by the respondent States through the Chief Secretary of each State.

G 22. Reference was made in the order dated 3rd January, 2007 to *Sheela Barse II v. Union of India*² which also dealt with abandoned or destitute children lodged in various jails across the country for “safe custody”. It was noted in that decision that the National Policy for the Welfare of Children contained the following preamble:

“The nation’s children are a supremely important asset. Their nurture and solicitude are our responsibility. Children’s

H ² (1986) 3 SCC 632

SAMPURNA BEHURA v. UNION OF INDIA & ORS. 961
[MADAN B. LOKUR, J.]

programmes should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skill and motivations needed by society. Equal opportunities for development of all children during the period of growth should be our aim, for this would serve our large purpose of reducing inequality and ensuring social justice". A
B

23. The Court noted in that decision that if a child is a national asset (as per the National Policy), it is the duty of the State to look after the child with a view to ensuring full development of the personality and that is why statutes dealing with children provide that a child shall not be kept in jail. It was directed that on no occasion should children be kept in jail and if a State Government does not have sufficient accommodation in its remand homes or observation homes for children, they should be released on bail instead of being subjected to incarceration in jail. C

24. It was also emphasized that Juvenile Courts should be set up in each district and there must be a special cadre of Magistrates who are suitably trained for dealing with cases against children. Some other directions were also issued but they arise out of the Childrens' Act and are presently not relevant. Reference was also made in the order to *Sheela Barse v. Union of India*³ wherein this Court reiterated its decision referred to above. D
E

25. It was noted that Juvenile Justice Boards (for short 'JJBs') and Child Welfare Committees (for short 'CWCs') under the Act of 2000 have been constituted in very few districts. It was also noted that some observation homes are like prisons with uniformed or armed police. F

26. After a few subsequent hearings and completion of pleadings, the Court impleaded the National Commission for Protection of Child Rights (the NCPCR) by an order dated 14th February, 2011 and the National Legal Services Authority (for short 'NALSA') by an order dated 11th July, 2011. In the hearing on 19th August, 2011 quite a few suggestions were made by NALSA in respect of child rights. We will consider these submissions at the appropriate stage. G

27. During the course of hearing, the Court lamented the confusion and uncertainty about the availability of statistics relating to the number

³ (1988) 4 SCC 226

H

A of juveniles in conflict with law in each district and details of such children. This made it difficult to make an effective plan for providing legal aid or providing appropriate Homes. The State Legal Services Authorities were therefore required to collect data and NALSA was required to make data available to the Court for issuing further directions. The Court also observed that CWCs and JJBs are not functional or not constituted in every district. Accordingly the State Legal Services Authorities were requested to coordinate with the appropriate Department in the State Government to ensure that CWCs and JJBs are established as per the Act of 2000.

C 28. Pursuant to the order dated 19th August, 2011 a detailed and excellent Report was prepared by NALSA in three parts on the existing facilities for implementation of the Act of 2000, with the month and year of reporting being August 2011.

D 29. When the case was again taken up on 12th October, 2011 the Court reiterated the importance of the directions passed on 19th August, 2011 and also added focus to setting up Special Juvenile Police Units under Section 63 of the Act of 2000. Directions were given in this regard to the Home Department and the Director General of Police of all the States and Union Territories to ensure that there is at least one police officer in every Police Station who has the necessary aptitude and is given appropriate training and orientation to function as a Juvenile or Child Welfare Officer. The State Legal Services Authorities and NALSA were requested to provide necessary training and orientation in phases to such officers.

F 30. The Home Department and the Directors General of Police were also directed to ensure that Special Juvenile Police Units are set up in every district and city to coordinate and upgrade the treatment of juveniles in conflict with law and children in need of care and protection as required by sub-section (3) of Section 63 of the Act of 2000.

G 31. When the case was taken up for consideration on 11th September, 2015 by the Social Justice Bench of this Court, it was noticed that the Union of India had filed affidavits on 31st July, 2015 and 9th September, 2015. From a reading of these affidavits, it appeared that a large number of Homes were not registered under the provisions of the Act of 2000. Since this was a matter of concern (with a possibility of trafficking of children), the learned Additional Solicitor General appearing

H

SAMPURNA BEHURA v. UNION OF INDIA & ORS. 963
[MADAN B. LOKUR, J.]

for the Union of India was requested to look into the matter and he submitted that the Union of India had initiated steps to ensure that the Homes run by NGOs get registered under the Act of 2000 in a few months time. A

32. Soon thereafter, the JJ Act was passed by Parliament and brought into force on 15th January, 2016. The JJ Act brought in several changes in the juvenile justice regime but the substratum of the petition filed by Sampurna Behura remained unaffected. B

33. Her PIL was taken up on 15th February, 2016 in the above background and after hearing learned counsel for the parties and going through various orders passed by this Court from time to time, the following issues were identified as needing serious consideration and deliberation: C

1. Constitution of State Child Protection Society.
2. Constitution of State Commissions for the Protection of Child Rights. D
3. Establishment of Juvenile Justice Boards (JJBs) in every district (if necessary more than one in some districts) and their training.
4. Establishment of Child Welfare Committees (CWCs) and their training. E
5. Appointment of Probation Officers and their training.
6. Establishment of Special Juvenile Police Units in every Police Station, their training and updating the Police Training Manual.
7. Provision for legal aid lawyers and their training. F
8. Proper selection of members of JJBs and CWCs.
9. Assessment of manpower requirements of JJBs and CWCs and filling up the vacancies.
10. Furnishing of on-line quarterly reports by the State Governments.
11. Significance of Social Investigation Report. G
12. Principal Magistrates should exclusively deal with Juvenile Justice inquiries.
13. Registration of child care institutions. H

A 14. Improvement of living conditions in government run child care institutions.

15. Establishment of Juvenile Justice Fund.

B 34. Thereafter, the matter was taken up on 9th May, 2016 when the learned Additional Solicitor General stated that the process of collecting and updating information online was underway in MWCD and was proceeding at a fast pace and that he expected it to be completed very soon. He also stated that the names of persons in various positions, such as members of JJBs and CWCs would be placed on the website of MWCD so that it would be easy to contact them whenever necessary.

C Learned Additional Solicitor General stated that the assistance of the State Governments and the Union Territories was required for completing the project. Accordingly this Court directed the State Governments and the Union Territories to render necessary assistance to the Union of India for updating the information and keeping it updated from time to time.

D 35. As far as NALSA is concerned, it submitted on record a copy of the Training Module for Legal Services Lawyers and Probation Officers but it was suggested by the learned Senior Counsel appearing for NALSA that since the Modules were prepared on the basis of the Juvenile Justice (Care and Protection of Children) Rules, 2007 NALSA would conduct some pilot training programmes to ascertain their efficacy and subsequently bring them in line with the new Rules to be framed under the JJ Act.

F 36. In the hearing on 22nd August, 2016 the Union of India was required to consider the feasibility of urgently providing computers and internet connectivity to the Juvenile Justice Boards and Child Welfare Committees.

G 37. The matter was again taken up on 17th February, 2017 by which time considerable progress had been made by MWCD in the online collection of information to the extent that a Central Level Monitoring Format had been prepared which could easily be filled up by the States and Union Territories for providing full information which could be collated.

H 38. We also required, in addition to the collated information, that the State Commission for Protection of Child Rights (SCPCR) should be in place in every State and Union Territory. It may be mentioned that

SAMPURNA BEHURA v. UNION OF INDIA & ORS. 965
[MADAN B. LOKUR, J.]

the SCPCR is a body constituted under the provisions of the Commissions for Protection of Child Rights Act, 2005 with a variety of functions as detailed in Section 13 of the said Act. A

39. On 5th April, 2017 and on 11th July, 2017 we noted the information made available on the composition and constitution of the SCPCRs and on an overall view of the matter it was found that a large number of vacancies existed and that little or nothing was being done by some of the State Governments to fill them up or to show any urgency in respect of protection of the rights of children. B

40. Subsequently, on 15th November, 2017 we required MWCD to inform us of the amounts lying in the Juvenile Justice Fund in each State and Union Territory. C

41. With all this information available on record in some form or the other, we heard the submissions of learned counsel for the parties on 20th November, 2017 and reserved judgment.

42. We have gone into detail with regard to some of the more important proceedings that have taken place in the matter from the time when the Public Interest Litigation was instituted only to highlight various dimensions to the problems faced by children and the casual approach that most State Governments and Union Territories have towards the rights of children. It is easy to forget that children also deserve dignified treatment and merely because they have no voice in the affairs of State, it does not mean that they are inconsequential members of society who can be compelled to live in conditions that are uncomfortable (to say the least) and who have little or no access to justice. D E

Affidavits filed by MWCD

43. During the progress of the case, MWCD filed a few status reports and affidavits. F

44. In an affidavit filed on 31st July, 2015 the status of an online Central Level Monitoring System being implemented by MWCD was indicated. Briefly, each State and Union Territory is given a login ID and password to access the formats, feed data and submit Reports to MWCD. Very broadly, the areas covered by the Reports are Homes and Children, Open Shelters, Specialized Adoption Agencies, Non-Institutional Care, Child Welfare Committees, Juvenile Justice Boards and Service Delivery Structures. This is a very forward-looking step and a major attempt to G H

- A collect information so that the JJ Act could be effectively implemented and the planning process more structured rather than *ad hoc*.

45. MWCD filed another affidavit on 8th September, 2015 which indicated requests made to States and Union Territories to adhere to the requirements of entering information in the software as required by the Central Level Monitoring System. An indication was given in the affidavit regarding the extent of compliance. For the period 2014-15 it was stated that while most States and Union Territories had provided the necessary information, as many as 7 States were not fully compliant. For the period 2015-16 most States did not provide the necessary information. Those who did were Assam, Union Territory of Chandigarh, Chhattisgarh, Himachal Pradesh, Madhya Pradesh, Meghalaya, Mizoram, Nagaland, Punjab, Tamil Nadu and Tripura.

46. MWCD filed a status report on 4th December, 2015 giving the details of Child Care Institutions and their registration as well as the availability of Probation Officers in the States and Union Territories. Unfortunately, as per the affidavit the status was quite unsatisfactory in the sense that not many Child Care Institutions had been registered and there was a serious shortage of Probation Officers. In a further affidavit of 12th February, 2016 MWCD stated that steps were being taken for the registration of Child Care Institutions and it also indicated the role of a Probation Officer in the scheme of things.

47. In yet another affidavit filed by MWCD on 29th March, 2016 a factual response was given with regard to the 15 issues identified by this Court on 15th February, 2015.

48. MWCD filed its final status report on 3rd May, 2016 in which it was stated that some formats for information given in the Central Level Monitoring System were added in view of the 15 issues identified by this Court.

49. In the affidavit dated 11th January, 2017 it was disclosed by MWCD that the availability and use of computers and peripherals for juvenile justice issues was in quite a poor state. In fact, complete information in this regard was not made available to MWCD by the States and Union Territories.

50. In the final affidavit filed by MWCD it was disclosed that a National Consultation was held on 26th September, 2017 and it appears from a reading of the affidavit that there is considerable improvement in

SAMPURNA BEHURA v. UNION OF INDIA & ORS. 967
[MADAN B. LOKUR, J.]

the understanding of child rights and juvenile justice issues by the participants, but there is still a lot to be done. Unfortunately, the minutes of the National Consultation have not been placed on record. A

Information and data provided by NALSA

51. As far as NALSA is concerned, it had carried out a remarkable study and placed on record a three part Report on issues pertaining to Juvenile Justice Boards, Child Welfare Committees and Homes under the Act of 2000. Even though the reports prepared by NALSA are extremely useful, since they are now quite dated (with data upto August 2011) they are not being referred to in any detail. B

52. NALSA gave another Report on 20th July, 2015 in which it was pointed out that a large number of inquiries are pending before the JJBs. It was pointed out that in Uttar Pradesh alone there are 34,569 inquiries pending and in district Durg in Chhattisgarh, there are 1883 inquiries pending before the JJBs. It was pointed out in the report that many of the JJBs did not sit on a regular basis with some sitting maybe once or twice a week. It was also pointed out that in some places the distance between the Observation Home and the JJB was considerable. It was submitted that there was a need for Probation Officers who would deal exclusively with juvenile justice issues. C D

53. At this stage, it may be mentioned that in May 2016 a Training Module for Probation Officers was brought out by NALSA. This Training Module has since been utilized by NALSA and we have been given to understand that it has been found to be extremely useful and beneficial as a training guide. E

Submissions made by the petitioner

54. On its part, the petitioner submitted a large number of steps that need to be taken to improve the lives of children in Child Care Institutions and enable them to live with dignity. Suggestions were also given by the petitioner on 10th and 25th September, 2013 and 10th May, 2016 on several aspects of child rights and juvenile justice. Most of these suggestions complement the suggestions given by NALSA. F G

Discussion, suggestions and recommendations

(i) National and State Commissions for Protection of Child Rights

55. Child related laws enacted by Parliament provide for two extremely important policy and decision-making institutions in respect of H

A children and child rights, namely the NCPCR and the SCPCRs. Similarly,
two extremely important bodies have been provided for at the ground or
grass-roots level for implementation of the JJ Act, namely the State
Child Protection Society and the District Child Protection Unit. In our
opinion, if these institutions and bodies perform their duties as required
B by the laws made by Parliament, under the supervision and guidance of
the concerned State Government and the Government of India, recognition
and enforcement of child rights could actually become a reality in our
country.

56. The Commissions for Protection of Child Rights Act, 2005
provides for the Central Government constituting a body to be known as
C the NCPCR at the national level and the State Governments constituting
a body to be known as the SCPCR at the State level. The composition
of the NCPCR is provided for in Section 3 of the statute while a similar
composition of the SCPCR is provided for in Section 17 of the statute.
Section 3 of the Commissions for Protection of Child Rights Act reads
D as follows:

**“3. Constitution of National Commission for Protection of
Child Rights.—**(1) The Central Government shall, by
notification, constitute a body to be known as the National
Commission for Protection of Child Rights to exercise the powers
E conferred on, and to perform the functions assigned to it under
this Act.

(2) The Commission shall consist of the following Members,
namely:—

(a) a Chairperson who, is a person of eminence and has done
F outstanding work for promoting the welfare of children; and

(b) six Members, out of which at least two shall be women, from
the following fields, to be appointed by the Central Government
from amongst persons of eminence, ability, integrity, standing
and experience in,—

G (i) education;

(ii) child health, care, welfare or child development;

(iii) juvenile justice or care of neglected or marginalized children
or children with disabilities;

H

SAMPURNA BEHURA v. UNION OF INDIA & ORS. 969
[MADAN B. LOKUR, J.]

(iv) elimination of child labour or children in distress; A

(v) child psychology or sociology; and

(vi) laws relating to children.

(3) The office of the Commission shall be at Delhi.”

57. It is quite apparent that at the national level, the NCPCR is an institution consisting of eminent persons and experts in their respective fields. As such, they are expected to look at issues concerning the welfare of children in the national perspective taking into consideration the views of every SCPCR and other stakeholders. At the State level, the SCPCR is an equally significant body consisting of eminent persons and experts. They are expected to take policy decisions for the benefit of the children in their State, regardless of which State the children originally belong to, for there might be children of one State who are in need of care and protection but in a Child Care Institution of another State. B C

58. The functions of the NCPCR and the SCPCR are more or less the same except that one performs these functions at the national level, while the other performs these functions at the State level. Section 13 of the Commissions for Protection of Child Rights Act, 2005 details the functions of the NCPCR and this reads as follows: D

“13. Functions of Commission.—(1) The Commission shall perform all or any of the following functions, namely:— E

(a) examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation; F

(b) present to the Central Government, annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards;

(c) inquire into violation of child rights and recommend initiation of proceedings in such cases; G

(d) examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures; H

- A (e) look into the matters relating to children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures;
- B (f) study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child rights and make recommendations for their effective implementation in the best interest of children;
- (g) undertake and promote research in the field of child rights;
- C (h) spread child rights literacy among various sections of the society and promote awareness of the safeguards available for protection of these rights through publications, the media, seminars and other available means;
- D (i) inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organisation; where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary;
- E (j) inquire into complaints and take *suo motu* notice of matters relating to,—
- (i) deprivation and violation of child rights;
- F (ii) non-implementation of laws providing for protection and development of children;
- (iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children,
- G or take up the issues arising out of such matters with appropriate authorities; and
- (k) such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions.
- H

SAMPURNA BEHURA v. UNION OF INDIA & ORS. 971
[MADAN B. LOKUR, J.]

(2) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.” A

59. It will be seen from the above that both the NCPCR and the SCPCR have a range and variety of functions to perform and each one of them entails a great deal of responsibility. We have been given to understand that both the Government of India and the State Governments have not been giving these bodies the freedom to decide on broad policy matters and indeed in some instances, particularly relating to the SCPCR, vacancies have not been filled up for several months. In fact, the NCPCR was compelled to file a writ petition in the Punjab and Haryana High Court for a mandamus to the State Governments of Punjab and Haryana and the Union Territory of Chandigarh to fill up the vacancies of members of the SCPCR.⁴ Unfortunately, at one point of time, even the position of the Chairperson of the NCPCR was lying unfilled for several months, until, on the directions of this Court, the position was eventually filled up. We need hardly say that unless the NCPCR and the SCPCRs are given due importance by the Government of India and the State Governments and vacancies are filled up in time, the enforcement of the rights of children will remain on the back burner and any number of welfare schemes formulated by the Government of India or by the State Governments will remain unimplemented or their implementation will remain sketchy and symbolic. B C D E

60. We hope and trust that those in authority and power in the Government of India and in the State Governments appreciate the importance of adhering to the provisions of the laws enacted by Parliament and ensure that the NCPCR at the National level and the SCPCR at the State level actually function and perform their duties and recognize their responsibilities. F

(ii) State Child Protection Society and the District Child Protection Unit

61. In the absence of any clear-cut guidelines on who should be appointed to these two bodies, the State Governments have found an easy way out by appointing Government officials only and leaving out G

⁴ Court on its own motion v. State of Punjab and The National Commission for the Protection of Child Rights (NCPCR) v. The State of Haryana and Others, Decided on 9th April, 2013 and reported as MANU/PH/0599/2013

H

A members of civil society. In our opinion, the constitution of the State Child Protection Society and the District Child Protection Unit need serious consideration so that all stake-holders, including the police and NGOs are actively involved in the performance of the functions, duties and responsibilities of these two bodies.

B 62. The functions of the State Child Protection Society and the District Child Protection Unit are detailed in Rule 84 and Rule 85 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 framed by the Government of India. [It may be noted that some States have framed their independent Rules, but we are not referring to them].
 C The functions are varied, extensive and geared to improve the living conditions of children through different strategies and with the involvement of all stake-holders.

D 63. For the effective implementation of the JJ Act and the policies laid down by the NCPCR and the SCPCRs, Section 106 of the JJ Act provides for the constitution of a State-level Child Protection Society and a District-level Child Protection Unit. Section 106 of the JJ Act reads as follows:

E “**106. State Child Protection Society and District Child Protection Unit.**-----Every State Government shall constitute a Child Protection Society for the State and Child Protection Unit for every District, consisting of such officers and other employees as may be appointed by that Government, to take up matters relating to children with a view to ensure the implementation of this Act, including the establishment and maintenance of institutions under this Act, notification of
 F competent authorities in relation to the children and their rehabilitation and co-ordination with various official and non-official agencies concerned and to discharge such other functions as may be prescribed.”

G 64. A perusal of the above provision broadly indicates that the primary function of the State Child Protection Society and the District Child Protection Unit is to ensure implementation of the JJ Act. In addition, these bodies are obliged to ensure that the institutions under the JJ Act are established and maintained, competent authorities in relation to children and their rehabilitation are in place and these two bodies are also required to coordinate with Government officials as well as NGOs

H

SAMPURNA BEHURA v. UNION OF INDIA & ORS. 973
[MADAN B. LOKUR, J.]

to discharge their wide-ranging functions. The involvement of civil society through NGOs is a progressive step and these two bodies are expected to take their assistance from time to time. A

65. If these two bodies actually perform their duties, responsibilities and functions in the manner expected of them, the implementation of the JJ Act would no longer be an issue. Unfortunately, we have been informed that these bodies are not functioning in many places or in the manner in which they are expected to and in several districts the District Child Protection Unit has not even been constituted. We expect remedial steps to be taken by all concerned. B

(iii) Juvenile Justice Boards and Child Welfare Committees C

66. With regard to the establishment of JJBs, we were given to understand that most districts now have a JJB, but it is high time that every district in every State must have a JJB. An exception could perhaps be made, such as in some districts of Arunachal Pradesh where there is perhaps no juvenile crime or, there could be some districts where the number of inquiries are very few in which event the JJB may appropriately schedule its sittings. Similarly, a ‘circuit JJB’ could be considered if there are some adjacent districts where the number of pending inquiries is quite few. D

67. We have also been given to understand that the appointment of some social workers as members of the JJB is not necessarily in accordance with the provisions of Section 4 of the JJ Act. The relevant provision in this regard reads as follows: E

“4. Juvenile Justice Board :— 1. xxx xxx xxx

2. A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (hereinafter referred to as Principal Magistrate) with at least three years experience and two social workers selected in such manner as may be prescribed, of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class. F G

3. No social worker shall be appointed as a member of the Board unless such person has been actively involved in health, education, H

A or welfare activities pertaining to children for atleast seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law.

4. xxx xxx xxx

B 5. The State Government shall ensure that induction training and sensitization of all members including Principal Magistrate of the Board on care, protection, rehabilitation, legal provisions and justice for children, as may be prescribed, is provided within a period of sixty days from the date of appointment.

6. and 7. Xxx xxx xxx.”

C 68. The selection of social workers as members of the JJB is required to be carried out in accordance with the provisions of Rule 88 read with Rule 87 of the Model Rules. It must be appreciated that the appointment of social workers is serious business, inasmuch as they bring their experience - practical and professional - while conducting an enquiry under the JJ Act. This becomes all the more important when it is appreciated that the social workers can also conduct an enquiry independent of the Principal Magistrate as provided for in Section 7 of the JJ Act. However, the final disposition of the enquiry cannot be without the Principal Magistrate as mandated in the proviso to sub-section (3) of Section 7 of the JJ Act. There is therefore a heavy responsibility on the social workers to make a meaningful contribution during the course of an enquiry and also at the time of its disposition.

F 69. In this context, it is important to note that the training of the Principal Magistrate as well as the social workers is extremely important and this is provided for in Rule 89 of the Model Rules. Unfortunately, the duration of training and the curriculum and course have not yet formulated, and the nature of training given to the Principal Magistrate and the social workers is somewhat *ad hoc* and unstructured. The lack of meaningful and effective training (and refresher courses) can have a vital impact on the ultimate disposition of an enquiry as also on the rehabilitation and reintegration of a juvenile in conflict with law who is before the JJB.

G Serious thought is required to be given to this not only from the point of view of awareness of the law and child rights but also from the point of view of sensitization of the JJBs, case management and creation of a child friendly ambience and environment within the JJB for a juvenile in conflict with law. It appears to us that not much thought has been given to these aspects of the functioning of the JJBs and that is perhaps the

H

SAMPURNA BEHURA v. UNION OF INDIA & ORS. 975
[MADAN B. LOKUR, J.]

reason why a very large number of inquiries are pending as mentioned above, with the State of Uttar Pradesh topping the list. A

70. On the functioning of the JJBs, it is worth referring to the following passage from a decision of the Gauhati High Court in *Naisul Khatun v. State of Assam and Ors.*⁵

“The second disturbing aspect of the case is that it appears the Juvenile Justice Board constituted under section 4 of the Act did not actually sit or assemble to deal with the case of the juvenile. We say so because from the original case records we find that all the order sheets passed in the matter, including those refusing bail, to juvenile have all been signed only by the Principal Magistrate of the Juvenile Justice Board. There is nothing to suggest that the two social worker members of the Board ever met to consider the request of the juvenile’s father to grant him bail. This is rather unfortunate because the application of mind has to be by the Juvenile Justice Board and not only by the Principal Magistrate.” B C D

71. The submissions made before us by learned counsel for the petitioner as well as by learned counsel appearing for NALSA suggest that the JJBs do not have daily sittings. Of course, this would depend upon the number of inquiries pending before each JJB, but clearly if there are a large number of inquiries pending, it is the obligation of the JJB to sit on a daily basis so that the enquiry is concluded within the time limit prescribed by the JJ Act. It does not serve any purpose at all if an enquiry remains pending for a considerable period of time - no one benefits by the delay in the disposition of an enquiry. In this context, we may also add that where a large number of inquiries are pending, it would be worthwhile for the State Government and the High Court to consider having more than one JJB. In Delhi, for instance, there are as many as three JJBs functioning at any given point of time and that is because of the large number of pending enquiries. Similar steps can be taken by some of the other State Governments as well as by the High Courts after evaluating and making an assessment of the need for more than one JJB being established in a district. E F G

72. During the course of hearing, we had emphasized the need for a study to be conducted by the State Governments on whether there

⁵ 2011 Cri LJ 326 = 2010 SCC Online Gau 225

- A is adequate staff available with the JJBs. Unfortunately, the response was rather poor and we were only told that there is adequate staff available. It must be appreciated that a JJB is virtually in the nature of a court, although it does not conduct a trial, but only conducts an enquiry. Nevertheless, it does need adequate staff to perform its functions in an efficient manner. The JJB also has several administrative functions and
- B they need due attention so that there is effective coordination between the JJB, the officials of the Observation Home, the police, the juvenile in conflict with law and the parents of that juvenile and lawyers representing the police as well as the juvenile in conflict with law. These administrative duties need attention if the JJB is to function effectively and a casual
- C statement that the JJB has adequate staff, though possibly correct, is neither here nor there considering the requirements of the stake-holders who attend the enquiry before the JJB.

73. In this context, it must also be mentioned that there is a dire need to have quality legal aid lawyers who can assist juveniles in conflict
- D with law. This is an issue that must be taken up with all earnestness by the State Legal Services Authority. Unless a child is given adequate legal representation, it may impact his or her future, more so if the child in conflict with law is found guilty and placed in a Special Home. On its part, NALSA has brought out a manual for training of legal aid lawyers and we believe that it will be extremely useful not only for legal aid
- E lawyers who are representing juveniles in conflict with law, but also for legal aid lawyers generally. Similarly, prosecutors also need to be sensitized and we hope that the State Governments will take necessary steps to educate and train them keeping in mind the primary objective of the JJ Act, which is to reintegrate a juvenile in conflict with law in society
- F and to rehabilitate that juvenile.

74. In the context of conducting an effective enquiry, the role of a Probation Officer cannot be underestimated nor can we underestimate the significance of an accurate Social Investigation Report prepared by a Probation Officer. The duties of a Probation Officer have been detailed
- G in Rule 64 of the Model Rules and this reads as follows:

- H “**64. Duties of a Probation Officer.** — (1) On receipt of information from the Police or Child Welfare Police Officer under clause (ii) of sub-section (1) of section 13 of the Act, without waiting for any formal order from the Board, the Probation Officer shall inquire into the circumstances of the child as may have

SAMPURNA BEHURA v. UNION OF INDIA & ORS. 977
[MADAN B. LOKUR, J.]

bearing on the inquiry by the Board and submit a social investigation report in Form 6 to the Board. A

(2) The social investigation report should provide for risk assessment, including aggravating and mitigating factors highlighting the circumstances which induced vulnerability such as traffickers or abusers being in the neighbourhood, adult gangs, drug users, accessibility to weapons and drugs, exposure to age inappropriate behaviours, information and material. B

(3) The Probation Officer shall carry out the directions given by the Board and shall have the following duties, functions and responsibilities: C

(i) To conduct social investigation of the child in Form 6;

(ii) To attend the proceedings of the Board and the Children's Court and to submit reports as and when required;

(iii) To clarify the problems of the child and deal with their difficulties in institutional life; D

(iv) To participate in the orientation, monitoring, education, vocational and rehabilitation programmes;

(v) To establish co-operation and understanding between the child and the Person- in-charge; E

(vi) To assist the child to develop contacts with family and also provide assistance to family members;

(vii) To participate in the pre-release programme and help the child to establish contacts which could provide emotional and social support to the child after release; F

(viii) To establish linkages with Probation Officers in other Districts and States for obtaining social investigation report, supervision and follow-up;

(ix) To establish linkages with voluntary workers and organisations to facilitate rehabilitation and social reintegration of children and to ensure the necessary follow-up; G

(x) Regular post release follow-up of the child extending help and guidance, enabling and facilitating their return to social mainstreaming; H

- A (xi) To prepare the individual care plan and post release plan for the child;
- (xii) To supervise children placed on probation as per the individual care plan;
- (xiii) To make regular visits to the residence of the child under his supervision and places of employment or school attended by such child and submit periodic reports as per Form 10;
- B (xiv) To accompany children where ever possible, from the office of the Board to the observation home, special home, place of safety or fit facility as the case may be;
- C (xv) To evaluate the progress of the children in place of safety periodically and prepare the report including psycho-social and forward the same to the Children's Court;
- (xvi) To discharge the functions of a monitoring authority where so appointed by the Children's Court;
- D (xvii) To maintain a diary or register to record his day to day activities such as visits made by him, social investigation reports prepared by him, follow up done by him and supervision reports prepared by him;
- (xviii) To identify alternatives of community services and to establish linkages with voluntary sector for facilitating rehabilitation and social reintegration of children; and
- E (xix) Any other task as may be assigned."

75. It is clear from a reading of the above provision that a Probation Officer has a very important role to play in ensuring that a juvenile in conflict with law is given adequate representation and a fair hearing before the JJB and the enquiry is conducted in a manner that is conducive to the rehabilitation of the juvenile in conflict with law. In this regard, the preparation of an individual care plan and post release plan gain immense significance and a Probation Officer has an important role to play in this.

76. Once again, it is of great importance that a Probation Officer should be given adequate training, sensitization and awareness of his or her duties and responsibilities. NALSA has made a significant contribution in this regard by preparing a training module for Probation Officers. We expect all the State Governments as well as MWCD to ensure that training is given to Probation Officers on the lines suggested by NALSA

SAMPURNA BEHURA v. UNION OF INDIA & ORS. 979
[MADAN B. LOKUR, J.]

with improvements being made in adult learning techniques, training methodology, the curriculum and the course content in due course of time. A

77. The submissions made by learned counsel for all the parties and our views and conclusions pertaining to the JJBs are equally applicable to the CWCs and it is not necessary to repeat them. However, it might be noted that it is not always necessary for the State Legal Services Authority to appoint legal aid lawyers to assist the CWC - this would depend on a case to case basis and only as an Amicus Curiae for the purpose of advising the CWC on a question of law, should the need arise. B

78. We were informed, somewhat unfortunately, that Child Welfare Committees are sometimes treated as 'second class bodies' and that payment of honorarium is not made to them on a regular basis. In addition, they are compelled to hold their sittings in buildings with very poor infrastructure facilities. This is a sad commentary on the working of the JJ Act for which the full responsibility rests on the shoulders of the concerned State Governments who must remedy the situation. C D

(iv) Use of technology

79. The use of technology, both by the JJBs as well as by the CWCs is extremely important and we are disheartened to note from the affidavits and submissions made by MWCD that there is an acute shortage of computers and peripherals with the JJBs and CWCs. Technology is important not only for the effective functioning of the JJBs and CWCs, but also to deal with issues that would arise from time to time concerning the tracing and tracking of missing children, the rescue of children working in hazardous industries, trafficked children, children who leave the Child Care Institutions, victims of child sexual abuse and follow-up action, among several other requirements. It is well-known that our country is a technological power-house and if we are unable to take advantage of the resources available with us and fully utilize the benefits of technology through computers and the internet for the benefit of children, our status as a technological power-house would be in jeopardy and would remain only on paper. Data, particularly of the magnitude of the kind that we are concerned with, can be easily collected through the use of computers and the internet. This would be of great assistance in planning and management of resources and MWCD and others concerned with child rights must take full advantage of this. E F G H

A 80. That apart, there can be no doubt that the use of computers
and peripherals would make an immense contribution to the administrative
functioning of the JJBs and CWCs. Both the Government of India and
the State Governments need to look into this and provide necessary
software and hardware to the JJBs and the CWCs for obvious reasons.
B We were informed by learned counsel that the Police authorities in
Telangana and Andhra Pradesh in consultation with the Juvenile Justice
Committee of the High Court have made considerable use of information
and communication technology and we are of the view that innovative
steps must be encouraged. Similarly, the use of video conferencing could
also be considered in appropriate cases where some inconvenience to
C the juvenile in conflict with law necessitates the use of video conferencing
facilities.

81. In the context of the use of technology, MWCD must be
complimented for bringing out an online Central Level Monitoring System.
We have been told by the learned Additional Solicitor General that this
D online system is working rather effectively although it would need
upgrading from time to time as the months go by. The unfortunate part is
that there does not seem to be much active cooperation extended by the
State Governments in updating the information on the Central Level
Monitoring System. In one of the affidavits filed by MWCD and adverted
E to above, it was stated that while almost every State Government has
filled up the relevant information for the year 2014-15, but the response
was rather lukewarm with regard to the period 2015-16. Needless to
say, updating information is extremely important so that there can be
efficient planning which will ultimately lead to better management of
issues concerning children. We may mention that the State Governments
F are required to fill up the information on the Central Level Monitoring
System once a quarter and surely that cannot be a difficult task.

(v) Role of Police

82. An extremely important stake-holder in the effective
implementation of the JJ Act is the local police. Section 107 of the JJ Act
G mandates the appointment of a Child Welfare Police Officer (for short
'CWPO') and a Special Juvenile Police Unit (for short 'SJPU') in each
district. The SJPU must also include two social workers having experience
of work in the field of child welfare, one of them being a woman. The
responsibility for appointment lies on the State Government. Section 107
H of the JJ Act reads as follows:

SAMPURNA BEHURA v. UNION OF INDIA & ORS. 981
[MADAN B. LOKUR, J.]

“107. Child Welfare Police Officer and Special Juvenile Police Unit. — 1. In every police station, at least one officer, not below the rank of assistant sub-inspector, with aptitude, appropriate training and orientation may be designated as the child welfare police officer to exclusively deal with children either as victims or perpetrators, in co-ordination with the police, voluntary and non-governmental organisations. A B

2. To co-ordinate all functions of police related to children, the State Government shall constitute Special Juvenile Police Units in each district and city, headed by a police officer not below the rank of a Deputy Superintendent of Police or above and consisting of all police officers designated under sub-section (1) and two social workers having experience of working in the field of child welfare, of whom one shall be a woman. C

3. All police officers of the Special Juvenile Police Units shall be provided special training, especially at induction as child welfare police officer, to enable them to perform their functions more effectively. D

4. Special Juvenile Police Unit also includes Railway police dealing with children.”

83. We have been given to understand by learned counsel for the parties that many States have actually appointed CWPOs and set up SJPU. Unfortunately, their duties and responsibilities have not been clearly identified but are generally stated in Rule 86 of the Model Rules. We have also been given to understand that no system of effective training for CWPOs and SJPU has evolved and many of them exist only symbolically and only because the law requires them to exist. Since the duties and responsibilities of the CWPOs and SJPU have not been specified or identified, it is high time in our opinion, that the Bureau of Police Research & Development and the National Police Academy in consultation with the State Police Academies identify the functions, duties and responsibilities of the CWPOs and SJPU. In this regard, we may note that NALSA has prepared Guidelines for Training Juvenile/Child Welfare Officers attached to every police station and members of the Special Juvenile Police Unit. Perhaps this could be a starting point for their training through the Bureau of Police Research & Development and the Police Academies. E F G

H

A 84. The importance of training can be appreciated from the allegations made before the Patna High Court in *The Matter of Letter of Sanat Kumar Sinha (Chief Co-ordinator), Bal Sakha v. The State of Bihar through the Chief Secretary, Govt. of Bihar and Ors.*⁶ It was alleged in that case that a child was handcuffed by policemen in uniform during his transit from the Police Station to the Civil Court for his appearance before the Chief Judicial Magistrate. Additionally, it was alleged that contrary to the provisions of the Act of 2000 the identity of the child was disclosed. Of course, the Patna High Court took up the issue with due seriousness but such a situation ought not to have occurred at all and could have been avoided through proper training and sensitization.

C 85. With regard to the Police generally, it was submitted that due to the policy of rotation, it often happens that soon after a police officer completes his or her training that officer is transferred out to another department. This is a waste of effort and one of the ways of resolving problems arising out of transfers is for every State Police Academy to conduct regular training programmes under the guidance of senior police officials of the State and for the State Government to optimally utilize the services of its officers.

E 86. Similarly, the Government of India is required to involve Railway Police for dealing with children. No information or data is forthcoming in this regard and learned counsel for the parties were unable to assist us insofar as this aspect is concerned. We expect the Government of India through the Railways to look into the matter with some degree of urgency. We were told by learned counsel that a large number of runaway children and children on drugs are found in railway stations (and other places) working as rag-pickers or performing other menial activities. It was submitted before us that even otherwise, there is rampant drug abuse among such children. Efforts must be made to establish de-addiction centres especially for such children and also generally for juveniles in conflict with law and children in need of care and protection.

G (vi) **Child Care Institutions**

87. There is a lot to be said with regard to Child Care Institutions. Many of them are housed in run-down buildings and are hardly conducive to comfortable living even to a minimum degree. State Governments

H ⁶ MANU/BH/0384/2008

SAMPURNA BEHURA v. UNION OF INDIA & ORS.
[MADAN B. LOKUR, J.]

983

must appreciate that they are not doing any charity by putting up children in Child Care Institutions - they are merely performing their statutory and constitutional obligations. There is, therefore, an urgent need to make an evaluation and assessment of all the Child Care Institutions in every State to ascertain their condition, the infrastructure requirements and staffing requirements. Children live in these Institutions, not because they want to but because they have no other option, since most of them are children in need of care and protection. The obligation of society is to provide solace and comfort to these children and adherence to the minimum standards of care. Model Rules contain details for improved Child Care Institutions and their requirements. The State Governments have merely to adhere to these minimum requirements. The condition of some State managed Child Care Institutions is best illustrated by the observations made by the Punjab and Haryana High Court in ***Court on its own motion v. State of Punjab*** (supra) to the following effect:

“....The sordid state of the said Observation Home depicted that Observation Home at Sonapat had two barracks and a front side courtyard with high walls. The entry gate was similar to jail gate. The Home was having no source of recreation facilities or playground for the juveniles housed therein. The courtyard was filled with stagnated water due to blockage of drainage system and there was hardly any place for going out of barrack for using courtyard. Enquiry revealed that there was no arrangement for potable water. The bathrooms and kitchen were also in deplorable condition. The Observation Home was managed by a single teacher who, besides performing job of a teacher, was also looking after the overall administration of the Home. In this manner, no meaningful education was being imparted to the children. The Observation Home was found to be worse than a prison. Observation Home at Hoshiarpur (Punjab) was found to be no better with almost similar dilapidated conditions.....”

88. There are, of course, additional duties and responsibilities obligated by the Constitution on the State Governments such as providing education, health-care (both physical and psychological) and adequate nutrition. These are huge areas that need to be looked into with all sincerity by the bodies and institutions established under the Commissions for Protection of Child Rights Act, 2005 and the JJ Act. Concerned citizens like Sampurna Behura can only highlight the systemic implementation

- A lapses and flaws and hope that the State Governments and the various bodies constituted under statutes enacted by Parliament perform their duties and functions. But, in such exceptional circumstances, the courts are constitutionally obliged to issue a continuing mandamus in public interest for implementation of the laws enacted by Parliament, which is essentially the primary responsibility of the Executive. If the Executive
- B ignores the mandate of Parliament with continuing callousness, it will only be to the detriment of the children of our country.

89. In this context, we may add that MWCD has made considerable efforts in ensuring that Child Care Institutions run and managed by individuals and NGOs are registered in accordance with
- C the provisions of the JJ Act. We are quite surprised that there has been some resistance to registration from some institutions, as informed by the learned Additional Solicitor General, and therefore we must make it clear that the law has to be obeyed as long as it exists on the statute books. It might be uncomfortable for those who manage some of these
- D Child Care Institutions, but registration is compulsory and in public interest to ensure that minimum standards of care are maintained and the children in those Institutions are well looked after. We may note that occasionally there are allegations originating from Child Care Institutions of trafficking and child sexual abuse, some of which may be unverified, but to avoid any such shameful allegations it is necessary that their registration, their
- E management and functioning are strictly monitored by the State Governments and by MWCD.

90. It was suggested by learned counsel that in all Child Care Institutions, there should be a segregation of children in terms of age and wherever applicable segregation based on the nature of the offence
- F allegedly committed so that the possibility of sexual abuse or any other kind of violence is eliminated. Additionally, all such institutions should be advised to provide vocational or continuing education with a view to re-settling children in conflict with law and children in need of care and protection by reintegrating and mainstreaming them in society. All these
- G are issues of serious concern and need to be addressed by the State Governments and SCPCRs.

91. It was emphasized that there should be adequate staff available in all Child Care Institutions so that they are able to perform their duties efficiently. It was also suggested that the location of the JJBs and CWCs
- H should be in close proximity of the Child Care Institutions to avoid children

SAMPURNA BEHURA v. UNION OF INDIA & ORS. 985
[MADAN B. LOKUR, J.]

having to travel long distances for their appearance before these statutory bodies. All these suggestions and recommendations made by learned counsel are issues of concern and must be dutifully addressed by the State Governments and the SCPCRs. A

92. One of the submissions made with regard to Child Care Institutions was that District Legal Services Authorities may make unscheduled visits to them to ascertain whether they are in fact functioning as they should. We are of opinion that this 'Visitor' system is definitely worth implementing and we expect NALSA to go ahead with the suggestion given. In fact, the Chief Justices Conference in 2006 had specifically adverted to the appointment of Visitors to Child Care Institutions and in the Chief Justices Conference in 2013 and 2015 improving the living conditions in Child Care Institutions was also adverted to. NALSA and the District Legal Services Authorities must respect the views expressed in the Chief Justices Conferences. B C

(vii) Juvenile Justice Fund

93. The JJ Act provides for the constitution of a Juvenile Justice Fund. The learned Additional Solicitor General placed before us figures relating to the contribution of the State Governments in the Juvenile Justice Fund. We are quite distressed to note that some of the State Governments have not even set up the Juvenile Justice Fund while one or two State Governments have set up the Fund with an embarrassing amount of only a few thousand rupees. We wonder how the welfare of children can be looked after by these State Governments with such a pittance in the kitty. Obviously, these State Governments are not seriously concerned about the welfare of children, which is a pity. This is yet another example of official apathy to the rights of children and a cause for worry. D E F

(viii) Evaluation and assessment

94. Finally, it would be appropriate if some sort of an evaluation or social audit is carried out every six months for the next couple of years to monitor and supervise the implementation of the JJ Act. More than sufficient time has already elapsed since the Act of 2000 was enacted by Parliament and certainly the children of our country deserve much better and cannot wait for another 15 or 16 years for the effective implementation of the JJ Act. Most of the children who were born when the Act of 2000 was enacted are nearing adulthood and many of them G H

- A have not had the benefit of the provisions of the Act of 2000. This mistake, a serious one at that, cannot be repeated in the implementation of the JJ Act. It is said that children are the future of the country and if they are not looked after, it is the future of the country that is at stake.

Conclusions and Directions

- B 95. Keeping in mind the concerns expressed by all learned counsel and the need to invigorate the juvenile justice system in the country, we are of the view that the following directions ought to be given and we do so.
- C 1. The Ministry of Women and Child Development in the Government of India and the State Governments should ensure that all positions in the NCPCR and the SCPRs are filled up well in time and adequate staff is provided to these statutory bodies so that they can function effectively and meaningfully for the benefit of the children.
- D 2. The NCPCR and the SCPCR should take their duties, functions and responsibilities with great earnestness keeping in mind the faith reposed in them by Parliament. A position in these statutory institutions is not a sinecure. These bodies have a very significant and proactive role to play in improving the lives of children across the country.
- E 3. The State level Child Protection Societies and the District level Child Protection Units have an enormous responsibility in ensuring that the JJ Act is effectively implemented and Child Care Institutions are managed and maintained in a manner that is conducive to the well being of children in all respects including nutrition, education, medical benefits, skill development and general living conditions. These two bodies would be well advised to take the assistance of NGOs and civil society to ensure that the JJ Act serves the purpose for which it is enacted by Parliament.
- F
- G 4. The State Governments must ensure that all positions in the JJBs and CWCs are filled up expeditiously and in accordance with the Model Rules or the Rules framed by the State Government. Any delay in filling up the positions might adversely impact on children and this should be avoided.
- H

SAMPURNA BEHURA v. UNION OF INDIA & ORS. 987
[MADAN B. LOKUR, J.]

5. The JJBs and CWCs must appreciate that it is necessary to have sittings on a regular basis so that a minimal number of inquiries are pending at any given point of time and justice is given to all juveniles in conflict with law and social justice to children in need of care and protection. This is a constitutional obligation. A
6. The NCPCR and the SCPCRs must carry out time-bound studies on various issues, as deemed appropriate, under the JJ Act. Based on these studies, the State Governments and the Union Territories must take remedial steps. B
7. In particular the NCPCR and the SCPCRs must carry out a study for estimating the number of Probation Officers required for the effective implementation of the JJ Act. Based on this study, the State Government must appoint the necessary number of Probation Officers. It must be emphasised that the role of a Probation Officer is critical for the rehabilitation and social reintegration of a juvenile in conflict with law and due importance must be given to their duties as postulated in the Model Rules and Rules, if any, framed by the State Governments and the Union Territories. C
D
8. The MWCD must continue to make creative use of information and communication technology not only for the purpose of collecting data and information but also for other issues connected with the JJ Act such as having a database of missing children, trafficked children and for follow up of adoption cases etc. With the utilization of technology to the fullest extent, administrative efficiency will improve considerably, which in turn will have a positive impact on the lives of children. E
F
9. It is important for the police to appreciate their role as the first responder on issues pertaining to offences allegedly committed by children as well as offences committed against children. There is therefore a need to set up meaningful Special Juvenile Police Units and appoint Child Welfare Police Officers in terms of the JJ Act at the earliest and not only on paper. In this context, it is necessary to clearly identify the duties and responsibilities of such Units G
H

- A and Officers and wherever necessary, guidance from the available expertise, either the National Police Academy or the Bureau of Police Research and Development or NGOs must be taken for the benefit of children.
- B 10. The National Police Academy and State Police Academies must consider including child rights as a part of their curriculum on a regular basis and not as an isolated or sporadic event.
- C 11. The management of Child Care Institutions is extremely important and State Governments and Union Territories would be well advised to ensure that all such institutions are registered so that children can live a dignified life in these Institutions and issues of missing children and trafficking are also addressed.
- D 12. State Governments and Union Territories would be well advised to appoint eminent persons from civil society as Visitors to monitor and supervise the Child Care Institutions in all the districts. This will ensure that the management and maintenance of these Institutions are addressed. We have no doubt that the State Legal Service Authorities and the District Legal Service Authorities will extend full assistance and cooperation to the government authorities in this venture as well as to the Visitors.
- E
- F 13. The JJ Fund is a bit of an embarrassment with an absence of an effective response from the State Governments and the Union Territories. If financial resources are not made available for the welfare of the children we shudder to think what could be better utilization of the funds.
- G 14. NALSA has done a remarkable job in collecting data and information relating to the JJ Act, as evidenced by the three part Report prepared by it. We request NALSA to carry forward the exercise and complete a similar Report preferably before 30th April, 2018 to assist all the policy making and decision taking authorities to plan out their affairs.
- H 15. The importance of training cannot be over-emphasized. It is vital for understanding and appreciating child rights and

SAMPURNA BEHURA v. UNION OF INDIA & ORS. 989
[MADAN B. LOKUR, J.]

for the effective implementation of the JJ Act. All authorities such as JJBs and CWCs, Probation Officers, members of the Child Protection Societies and District Child Protection Units, Special Juvenile Police Units, Child Welfare Police Officers and managerial staff of Child Care Institutions must be sensitized and given adequate training relating to their position. A very positive step has been taken in this regard by NALSA and we expect the NCPCR with the assistance of the SCPCRs to carry forward this initiative so that there is meaningful implementation of the JJ Act.

16. Since the involvement of the State Governments and the Union Territories is critical to child rights and the effective implementation of the JJ Act, it would be appropriate if each High Court and the Juvenile Justice Committee of each High Court continues its proactive role in the welfare of children in their State. To make the involvement and process more meaningful, we request the Chief Justice of every High Court to register proceedings on its own motion for the effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 so that road-blocks if any, encountered by statutory authorities and the Juvenile Justice Committee of the High Court are meaningfully addressed after hearing the concerned governmental authorities. A copy of this judgment and order should be sent by the Secretary General of this Court to the Registrar General of each High Court for being placed before the Chief Justice of every High Court for initiating *suo motu* proceedings.

96. Finally, we request and urge the Chief Justice of each High Court to seriously consider establishing child friendly courts and vulnerable witness courts in each district. Inquiries under the JJ Act and trials under other statutes such as the Protection of Children from Sexual Offences Act, 2012, the Prohibition of Child Marriage Act, 2006, trials for sexual offences under the Indian Penal Code and other similar laws require to be conducted with a high degree of sensitivity, care and empathy for the victim. It is often said that the experience in our courts of a juvenile accused of an offence or the victim of a sexual offence is traumatic. We need to have some compassion towards them – even juveniles in conflict

- A with law, since they are entitled to the presumption of innocence - and establishing child friendly courts and vulnerable witness courts is perhaps one manner in which the justice delivery system can respond to ease their pain and suffering. Another advantage of such child friendly courts and vulnerable witness courts is that they can be used for trials in which adult women are victims of sexual offences since they too are often
- B traumatized by the not so friendly setting and environment in our courts.

- C 97. We record our appreciation for Sampurna Behura for highlighting the issues raised in this Public Interest Litigation and to learned counsel for the appearing parties in not making this an adversarial proceeding, but a constructive effort for the benefit of the children of our country.

98. The petition stands disposed of.

- D 99. The Registry should list the matter on 13th March, 2018 for directions after obtaining a response from the Registrar General of each High Court.

Nidhi Jain

Petition disposed of.